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Private Sector Norms and Public Service Practices: Employment Relations in the Civil Service and the National Health Service

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The case for support

Submission for a PhD by Published Work

Private Sector Norms and Public Sector Practices: employment relations in the Civil Service and the National Health Service

Susan Corby

This submission for a PhD by published work examines employment relations in the Civil Service and the National Health Service from 1991-2001. It focuses on management/union relations, pay determination and equal opportunities, looking at the interaction between private sector norms and public sector values. It first considers whether the State is no longer a model employer setting an example to the private sector. It finds considerable variation not only between the two sub-sectors, but also between employing bodies within each sub-sector, submitting that one crucial explanatory variable are the values of the key players. Second, it considers whether there has been trade union renewal but can find no evidence. Third it inquires whether the traditional public sector ethos has been undermined by private sector norms. It contends that judged on equal opportunities it has: the justification is mainly now based on the business case, rather than the social justice case that formerly predominated. Finally it discusses whether 1997, and the change in the political complexion of the government, was a watershed in public sector employment relations. It concludes that although there are many similarities between the pre- and post-1997 position, it is too soon to reach a definitive judgment.

1. Introduction

1.1. Overview

This submission for a PhD by published work looks at employment relations in the Civil Service and the National Health Service (NHS) over the last decade and in particular at management/union relations, pay determination and equal opportunities.

The focus of research over this period was the extent to which private sector norms advocated by the State impacted on public sector practices:

- a) in the Civil Service compared to the NHS
- b) in employing bodies within the Civil Service (ie executive agencies) and employing bodies within the NHS (ie NHS trusts).

The submission is in three parts. First, the distinctions between the private and public sectors are discussed, along with the change agenda pursued by successive governments since 1979 to make the public sector more like the private sector.

Second, four key debates are rehearsed: whether the state as employer is no longer a 'model' employer; whether there has been trade union renewal; whether the public sector ethos has been undermined; and whether the accession of the Labour government in 1997 was a watershed in respect of public sector employment relations. Third, the author's contributions to these debates are demonstrated.

1.2 Background

1.2.1 Public/private sector distinctions

The body of work is posited on the fact that there are significant differences between public and private sector organisations (Hepple, 1982; Fredman and Morris, 1989; Beaumont, 1992). The difference, however, does not relate to the greater strength of

trade unions in the public sector compared to the private sector, because this has not always been the case; nor does the difference relate to the absence of profit, a characteristic which the public services share with the private not-for-profit sector.

One important difference relates to the fact that the State as direct or indirect employer, unlike private sector employers, has the power to initiate legislation and to take executive action which impacts directly on employment relations. For instance it legislated to ban the Prison Officers' Association from inducing industrial action in 1994 and established a pay review body for prison officers in 2001 (Corby, 2002).

Second, the government derives the revenue to pay its employees, including civil servants and NHS employees, primarily from taxation and not primarily from the output of employees. This allows the government when dealing with its employees to give priority to political or macro-economic factors, rather than commercial ones. For instance where industrial action has a financial impact, the State, unlike most private sector employers, has the resources to make a political decision not to accede to the demands of employees, as was illustrated in the 20-week civil service dispute in 1981 and the dispute in the fire services 2002-2003. (For a further discussion see Fredman and Morris, 1989.)

A third difference relates to the fact that the government, unlike private sector employers, can justify employment relations decisions on grounds of national or public interest. For instance a minister may overturn arbitration decisions in respect of the Civil Service generally, GCHQ and HM Prison Service on grounds of 'public interest'. The government has no equivalent locus in private sector arbitration decisions (Corby, 2000b; 2002).

Fourth, government, unlike private sector employers, is subject to the constraints of parliament and the electorate, to whom it is ultimately accountable. One

concomitant is that there are more formal reporting rules and procedures relating to recruitment and promotion in the public sector than in the private sector. See, for instance the annual reports of the Civil Service Commission which oversees the civil service recruitment process.

1.2.2 The change agenda

In 1979 the election of a radical Conservative government under the leadership of Margaret Thatcher broadly speaking had the aim of changing the public sector to make it more like the private sector and pursued a multi-faceted change agenda.

First market mechanisms were injected. For instance in the Civil Service and the NHS the government instituted a programme of competitive tendering and contracting out. This took two forms: a direct instruction to tender for services with no opportunity for an in house bid, as in the Ministry of Defence; or allowing the in-house service to bid against outside tenders. For instance in 1981 the then Health Minister wrote to regional and area health authorities suggesting that they consider contracting out their hotel services, as this could save money. This was followed by an official circular in 1983 (Mailly *et al*, 1989). In fact few contracts were awarded outside the NHS, but concessions were agreed by trade unions to win tenders and protect jobs (Kelliher, 1995; 1996). Similarly in the Civil Service there was competitive tendering, principally of support services but also of other services (HM Treasury, 1991).

From 1992 the public finance initiative (PFI), now known as public/private partnerships (PPP) provided a new form of contracting out. Under PFI/PPP the private sector designs, builds and sometimes operates public sector establishments: schools, prisons, hospitals and then leases them back to the public sector for typically 25 years.

PPP's attraction to governments is that it enables investment in the public sector to take place without capital spending appearing as public expenditure. Second, there is an assumption that the private sector is more efficient and enterprising than the public sector and so money is better spent (Sachdev, 2002).

Also market mechanisms were injected by the privatisation of public utilities and nationalised industries: telecommunications, gas, electricity, water, railways and smaller public assets owned by local authorities such as nursing homes and bus companies. In addition, parts of the Civil Service were privatised such as the National Engineering Laboratory and the National Physical Laboratory in 1995, the Chessington Computer Centre, the Transport Research Laboratory and the Teachers' Pension Agency in 1996 and the Building Research Establishment in 1997. (See Cabinet Office, 2001 for further examples.)

Moreover, where market mechanisms could not be created, proxies for them were established. For example in the wake of the Ibbs report (Efficiency Unit, 1988), executive agencies were set up in the Civil Service to separate policy development from customer provision. In the NHS a so-called internal market was formed from 1991 with purchasers, ie health authorities and General Practice fundholders, and providers, ie NHS trusts and private sector healthcare organisations (Department of Health, 1990).

The second main form that the change agenda took is the introduction of what is often called 'new public management' (NPM) (Dunleavy and Hood, 1994).

Although there are at least three ways that the term NPM is used, they all encompass the transformation of bureaucratic and paternalistic public services into responsive and consumer oriented ones (Farnham and Horton, 1996). Some regard NPM essentially as neo-Taylorism (Pollitt, 1993). Examples include the financial

management initiative in the Civil Service; the efficiency studies pioneered in the Civil Service as Rayner scrutinies (named after Sir Derek Rayner of Marks and Spencer) and then introduced into the NHS (Harrison, 1988); and the setting of performance targets stemming from the Citizen's Charter (Cabinet Office, 1991) which spawned other charter initiatives such as the patient's charters in England, Scotland and Wales (Farnham and Horton, 1996).

Alternatively NPM is equated with the introduction of private sector management practices into the public sector, such as benchmarking in the Civil Service (Cabinet Office, 1998), accrual accounting, devolved budgeting, delayed hierarchies, and outsourcing. Other private sector management practices relate to human resource management and in particular the development of more individualised approaches to employees in place of traditional, collectivist ones and measures aimed at replacing staff compliance with staff commitment (Farnham and Horton, 1996).

Third, NPM is used as an umbrella term covering the organisational changes outlined above, together with neo-Taylorism and private sector management practices. Storey (1989:21) points out that the Audit Commission with 'its insistent message that bureaucracy is no longer an appropriate organisational mode for today's environment' has been an influential catalyst.

2. The key debates

2.1 The four areas

Against this background, undoubtedly it is clear that there has been change in the public services, which to use shorthand fall under the rubric of what has been termed commercialisation/marketisation, but there is academic debate about the extent to

which these changes have impacted on employment relations. Accordingly, this section looks at the debates in four key areas:

- whether the state as employer is no longer a 'model' employer;
- whether there has been trade union renewal;
- whether the public sector ethos has been undermined;
- whether the direction of change has been altered with the change in the political complexion of the government in 1997.

In each of these areas we first group together those who argue positively, ie in favour of the contention, and then those who argue against the contention.

2.2 The State as model employer

2.2.1 The end of a tradition?

Fredman and Morris (1989) were among the first to argue that the state was no longer a 'model' or 'good' employer. Before 1979, they argue, the state was a good employer, encouraging trade union organisation, committed to collective bargaining, providing *de facto* job security and using its position as a major purchaser of private sector services to require employers to pay 'fair wages' (ie the Fair Wages Resolution) when providing goods and services for central government. Also in a context of accountability within a democratic political system, public services were structured hierarchically, with a high degree of centralised rule making; bargaining arrangements were at national/multi-employer level; there was unilateral access to arbitration to avoid industrial conflict and an emphasis for many public servants upon pay comparability with the private sector (eg the Priestley system for civil servants and the Clegg Commission of 1979). In addition, there was a high level of union involvement in the determination of terms and conditions and joint agreement through

a well-developed 'Whitley' system (joint management/union committees). Indeed the scope of consultation was wide and consultation often merged into negotiation as, unlike most parts of the private sector, the two processes of negotiation and consultation were not defined and distinct. Moreover the provision of facility time to union representatives (time off for industrial relations and trade union duties) was relatively generous compared with many private sector companies.

According to Fredman and Morris (1989) Conservative administrations from 1979 departed from the State's role as model employer, applying private sector employment relations practices; for instance undermining job security and national collective bargaining, ceasing to encourage trade union membership in the Civil Service and rescinding the Fair Wages Resolution. They admit that pre-1980 there were pockets of low pay in the public services and that the structure of collective bargaining and job security were not totally undermined in the decade after 1979. Nonetheless they argue that the state was no longer a model employer.

Hepple (1982) charts the decline of the state as model employer even earlier. He argues that the 1970s witnessed a breakdown in what he calls the 'traditional' model which was replaced by a 'new' model. More recently Carter and Fairbrother (1999) have maintained that there has been a historical transformation of the public sector. Up to the 1980s, they say, a model employer philosophy prevailed, albeit in a partial and uneven form. During the 1980s and 1990s 'the "model employer" was replaced by "economy, efficiency and effectiveness" ... and "best [private sector] practice"' (Carter and Fairbrother, 1999: 142). In this process collective conditions and national bargaining were undermined.

This view that the state from 1979 was no longer a model employer is supported by others. Smith and Morton (1993, 1994) argue that the government's

stance in favour of collectivism was reversed from 1979. Probably the starkest example was the removal in 1984 not only of collective bargaining but also the right to belong to a trade union from those working at Government Communications Headquarters (GCHQ) the intelligence gathering centre. Although the GCHQ union ban only affected a small number of civil servants (some 7,000) it demonstrated that the Conservative government as employer was no longer going to endorse union membership. According to the Workplace Industrial Relations Survey: 'the proportion of workplaces in central government where managers said that management strongly recommended trade union membership halved between 1984 and 1990' (Millward *et al*, 1992:361).

As well as the derecognition of trade unions for collective bargaining, partial union exclusion policies, ie the marginalisation of unions while recognising their continued right to operate, was a feature of the Conservative governments as employer post 1979, as Smith and Morton (1993) point out. For example a survey in 1997 found that most NHS managers had a fairly restricted view of what constituted collective bargaining (Carr, 1999). In the Civil Service Gagnon (1996) found that the role of trade unions in designing pay arrangements and setting pay rates in Civil Service executive agencies diminished during the early 1990s.

As noted in sub-section 2.2.1 above, a hallmark of the model employer approach was *de facto* job security. There is evidence, however, that job security diminished in the period 1979-1997. For instance the Workplace Employee Relations Survey (WERS) found that in 1998 three quarters of all public sector workplaces had some employees on fixed term contracts, compared to a third of private sector workplaces (Cully *et al*, 1999). Similarly the Labour Force Survey found that in spring 1996, 10 per cent of employees in the public sector were on temporary

contracts, compared to 6 per cent in the private sector (Sly and Stillwell, 1997). In addition, the Cranet survey found that in 1995 at least 20 per cent of employees were on fixed term contracts in a third of higher education establishments (Hegewisch, 1999) and the ratio of casual civil servants to permanent civil servants increased from 1:92 in 1979 to 1:25 in 1998 (Government Statistical Service, 1998). Morgan and Allington (2002) also point out that the trend to fixed term contracts and the increased use of agency staff could be found in nursing and local government over the same period, though to a lesser extent than in universities.

Furthermore, the early 1990s witnessed some decentralisation of pay determination in the public sector, in line with changes that had already taken place in the private sector. In the Civil Service, national level pay bargaining ended in 1996 to be superseded by joint pay determination by agency/department, although the Treasury continued to maintain some control (Talbot, 1997). In further education, too, the majority of colleges departed from national pay bargaining and negotiated their own agreements (White, 1999).

Those who argue that the State's distinctive role as employer notably waned in the period 1979-1997 also include Storey (1989). His case study research found that public sector organisations had adopted a range of private sector management practices including mission statements, newsletters, quality circles or equivalent, performance appraisals, a greater role for line managers and 'a raft of devices which reach out to the employee on an individual basis' (Storey, 1989:22). Similarly Foster and Scott (1998: 131) maintain:

Employment relationships within the public sector itself became closer to those of private companies through such mechanisms as the decentralisation of

operational management and closer specification of working practices leading to intensification of workloads.

2.2.2 Continuity?

As seen in the previous sub-section, many academics argue that the state essentially departed from its role as model employer. Others, while recognising that changes have taken place, argue for continuity. For instance Morgan *et al* (2000: 107) say:

If the notion of the “good” employer is informed by a relative standard and comparison with the private sector, then the distinctiveness of the public sector is still apparent, notwithstanding recent change.

Indeed according to WERS 1998, union density in the public sector was significantly higher at 57 per cent, compared to 26 per cent in the private sector (Cully *et al* 1999). Similarly Duncan (2001) maintains that an, albeit modified, model employer role has been maintained and the scope for convergence with the private sector on labour matters is limited, not least because of the political process.

Moreover, turning from the general to the specific, pay comparability between public servants and their private sector counterparts may have ended in the Civil Service, but the police continue to have an indexation agreement which began in 1977, albeit the formula changed in 1994. In addition to the three pay review bodies established prior to 1979, two new pay review¹ bodies were established by the Conservative government – one for nurses and paramedicals in 1983 and the other for school-teachers in 1991 - rather than letting the pay of these groups be determined purely by market forces. This is because all the pay review bodies base their recommendations to government partly on pay comparability surveys and statistics (White, 2000).

¹ A third pay review body, for prison officers, was established by the Labour government in 2001

The continuity of pay determination arrangements in the period 1979-1997 can also be seen in the resilience of the tradition of national multi-employer bargaining in the public sector. As Cully *et al* (1999) drawing on WERS point out, most private sector bargaining took place at either the company or workplace level and multi-employer bargaining was a public sector phenomenon. Indeed only in the Civil Service did national bargaining end. In local government national agreements remained, though 34 councils in England opted out (White 1999). Furthermore, although grant maintained schools could depart from the national terms and conditions for school teachers, only one chose to do so (White, 1999).

As to the NHS, national arrangements remained largely intact despite the government's encouragement of trust bargaining by 'pump-priming money'; by exhortation; by introducing a new category of employee (health care assistant) who would not be covered by national arrangements; and by a complex agreement providing for local top-ups on national minima. A survey found that only 35 out of 137 trusts had made extensive use of their freedom to set their own terms and conditions of employment (IRS, 1997).

A survey by Carr (1999) supports this. He found that although NHS managers narrowed the scope of bargaining (see sub-section 2.2.1 above), they remained committed to a traditional, pluralist approach. Also, looking solely at the NHS and in particular at competitive tendering of catering, Kelliher (1996) found that managers chose to remain with the co-operative approaches traditionally found in the NHS.

Other indications of continuity can be seen in the fact that despite new titles of, for instance, HR director and HR manager, the role of the personnel practitioner in the public sector changed little in the period 1979-1997, according to Bach (1999a). Despite the rhetoric of private sector strategic management, personnel managers in the

public sector remained subject to constraints, both political and financial, and their role continued to be 'reactive' and 'predominantly administrative', rather than strategic (Bach, 1999a:194).

In addition, while fixed term contracts may have become more common in the public sector than the private sector in the 1990s, job security still remained a feature of the former. Although in the period 1979-1997 organisations both in the public and private sectors reduced their workforces, public sector workplaces making workforce reductions opted for *compulsory* redundancies in only 15 per cent of cases. The comparable figure for the private sector was 32 per cent (Cully *et al*, 1999).

Interestingly other academics, while arguing for continuity, maintain that the state's role as model employer was qualified both before and after 1979. For instance Colling warns against looking at the past through rose coloured spectacles. Pre-1979 there was low pay and discriminatory employment procedures in large parts of the public sector. Post 1979, 'the influence of market forces continues to be intertwined with more traditional political pressures. Current management practice consequently exhibits continuities from the past as well as innovation' (Colling, 1997:673). Similarly Bach (1999b) looking at NHS pay and focusing on nurses argues that ever since the NHS was formed the state has always strictly controlled public expenditure to the detriment of nurses' pay.

2.3 Trade union renewal

2.3.1 The growth of activism

Another key debate centres on the vitality of public sector unionism. Fairbrother (1990, 1994, 1996, 2000) argues that public sector restructuring (which largely aped private sector decentralisation) was a catalyst for increasing union activity in the

workplace. Drawing from his research in local government and in the Civil Service, particularly Inland Revenue and the Benefits Agency, Fairbrother argues that union renewal arises at office/workplace level as consequence of, and in response to, challenges to union organisation emanating from the decentralisation of public services and managerial authority, the assertion of local managers' prerogative and the restructuring of work organisation. Union renewal also arises because there is relatively high union density in the public sector. The prerequisites for trade union renewal are membership participation, membership education and the overcoming of sectionalism and Fairbrother (1996:112) says:

These are forms of unionism where the emphasis is on... egalitarian forms of organisation and operation rather than hierarchy, and involvement and participation rather than passivity and remoteness. Although there is often unevenness in the articulation of these features of participative unionism, they nonetheless constitute a set of practices which define the possibility of union renewal.

Thornley (1998), looking at the NHS and drawing on questionnaires with Unison lead negotiators and interviews in 12 trusts and two Unison regional offices, appears largely to support Fairbrother's views. She says (1998:428):

Although the process and outcomes have initially been poor from the vantage point of [NHS] trust employees and their negotiators, this has not been due to any lack of staff side activity, and there is evidence that driving pay determination down to local level is increasing the potential for conflict and impacting [beneficially] on union membership and activism.

Furthermore, Fairbrother (1990, 1994, 1996, 2000) says full-time officers have had a detrimental effect on workplace unionism. In the past Civil Service branch secretaries acted as ciphers for national union policy, transmitting policy downwards and reporting membership responses upwards, but they have now begun to organise in a more participative manner 'despite the preferences and concerns of the national leadership' (1996:140). This view is in line with earlier work by Hyman (1975) who

characterises union officers and stewards in opposite corners, the former representing their own interests and that of their union bureaucracy and the latter representing the interests of members.

2.3.2 The decline of activism

Fairbrother's thesis has been critiqued both theoretically and empirically. Gall (1998), argues that Fairbrother is concerned with process and union form, not outcomes and that Fairbrother wrongly sees the workplace as isolated and separated from wider political and economic forces. Indeed Gall (1998) maintains that union renewal is far from sufficient to guarantee any chances of success in defending, let alone advancing, members' interests and that the workplace cannot be separated from its wider economic and political context.

Gall is not alone in critiquing Fairbrother. McIlroy (1995:138) dismisses the renewal thesis, pointing out that it is 'drawn from a small number of case studies'. Smith and Morton (1993) argue that the frontier of control has moved in the employer's favour and that unions are being excluded. In some high profile cases in the public sector, unions were derecognised, eg at GCHQ (see 2.1.1 above) and in some NHS ambulance trusts. In addition, Smith and Morton (1993) argue that even where trade unions were not excluded, they have been marginalised.

Similarly, Foster and Scott (1998) argue that public sector unions' power has waned: because of competitive tendering their influence over service conditions, staffing levels and working practices has declined. Fitzgerald and Stirling (1999), looking at the fire service, suggest that it is more appropriate to characterise union activity in terms of resilience rather than renewal.

In addition, Waddington and Kerr (1999), who obtained responses to a postal questionnaire from 1,026 Unison members, found no indication of union renewal. Turning specifically to the NHS, Carter and Poynter (1999) looking at MSF and Unison found that, while MSF's workplace organisation exhibited strengths and weaknesses, Unison's workplace organisation was fragile, with a dearth of activists. Similarly, Bryson *et al* (1995) looking at the level of trade union influence in the NHS, found considerable evidence of trade union marginalisation in many, but not all, of the 19 NHS trusts studied. A more complex picture emerges from the empirical work of Lloyd (1997) based on case studies of four NHS trusts. She finds that whether stewards depended on the full-time official varied both by hospital and by union; that there was significant variation in union organisation and that union/management relations were influenced by particular individuals, whether it was the branch secretary or the trust's chief executive or human resources director.

Contrary to Fairbrother's view that full-time officials inhibit the growth of activism, Heery and Kelly (1990) and Kelly and Heery (1994) found that stewards both in the public and private sectors welcomed full-time officers and that officer/steward relationships were harmonious and consensual, with a high degree of interdependence. Similarly, Kessler and Heron (2001) studying the Royal College of Nursing (RCN) found that in general stewards were of the view that their full-time officers were helpful and that neither full-time officers nor managers were major barriers to union renewal. Furthermore Colling (1995), looking at contracting out in local government, points out that local stewards may be unable to cope with local bargaining without the help of the full-time union official.

2.4 Values and ethos

2.4.1 Definitions

Another area of debate centres on public service values and ethos, which are admittedly nebulous concepts. The Organisation for Economic Co-operation and Development (OECD) (1996:14) defines values as ‘the individual principles or standards that guide judgement about what is good and proper’; and ethos ‘as the sum of ideals which define an overall culture’. The Public Administration Select Committee of the House of Commons (2002: para 4) defines ethos ‘as a principled framework for action, something that describes the general character of an organisation, but which, more importantly, should also motivate those who belong to it’. It includes such characteristics as impartiality, accountability, trust, equity, probity and service.

The OECD sees potential problems for public servants as private sector management practices are adopted. Such practices determine pay and job security, recruitment and training and thus organisational culture. It says (1996:40):

... there is a delicate relation between employment security and performance incentives. A position tenured for life may lead to complacency and the possibility of poor performance. On the other hand contract or short-term employees may have fewer incentives for being concerned about the long term consequences of their actions.

2.4.2 Values undermined

While the OECD warns of potential problems, Chapman (1994; 1997) and Fairbrother (1994) argue that already the public service ethos has been undermined by private sector values of risk taking and entrepreneurship. For instance Chapman (1997:30) says that civil servants now ‘work in units which, far from displaying a team spirit

with a common Civil Service ethos, compete with each other, issue contracts to each other and, in so doing, charge what are thought to be business-like rates for their services’.

Horton and Farnham (1999) essentially echo this view. They say that the public sector culture of mistake avoidance, caution and systematic rule application is changing to a culture that lays emphasis on performance, value for money, the tasks to be done, and competition between individuals and between organisations.

More equivocally, the Public Administration Select Committee (2002), while admitting that the public service ethos has been undermined by compulsory competitive tendering (CCT), considers that the ethos has not altogether been eroded. It warns, though, that it may be further strained by an externally imposed measurement culture, by the profit motive where public services are increasingly provided by the private sector and by a contract culture. As to the latter, Deakin and Walsh (1996:33) argue that the introduction of markets into the public sector should not just be seen in terms of costs and performance. The ‘concept of contract is as much a metaphor and the basis for a new rhetoric as formal legal mechanism’.

A particular problem stems from private sector managers brought in to run public services. The Trosa report (1994: para 4.7.11) found that chief executives of Civil Service executive agencies recruited from the private sector did not realise that on occasion, they would have to make compromises between efficiency preoccupations and political requirements. Similarly, Sir John Bourn, when Comptroller and Auditor General, said that private sector managers brought in to run public services often had an inadequate grasp of the importance of accountability to Parliament and were often surprised to learn that they were subject to scrutiny for their handling of public money (Willman, 1994).

Values relating to equality are one particular aspect of public sector values. This is because equity and fairness are a hallmark of traditional public sector values and equal opportunities, both from the point of view of the public sector as employer (the focus here) and as a provider of services, can be justified on such grounds. Indeed Labour governments introduced the Race Relations Acts of 1965, 1968 and 1976 on social justice grounds, as did Barbara Castle who introduced the Equal Pay Act 1970 when Employment Secretary. Similarly in the 1970s left-wing local authorities such as Camden, Islington and Lambeth, as well as the Greater London Council (GLC), embraced equal opportunities on social justice grounds. Indeed, the GLC introduced contract compliance, ie compliance with equal opportunity practices and procedures, as a condition of securing a contract (Corby, 2000c).

From the 1980s, however, equal opportunities in the public sector have increasingly been justified according to the so-called business case (Dickens, 1994; 1999). The business case centres on competition in the labour market and added value. Organisations, it is argued, can secure higher quality recruits if they recruit and select on the basis of merit, not stereotype. Another strand of the business case argument centres on organisational effectiveness. Organisations make better decisions if their managers are diverse and reflect their users' ethnic mix. Of course business case arguments based on organisational self-interest may be persuasive but they are contingent and partial. Economic rationality can point away from equal opportunities as well as towards it. For instance, where organisations experience labour market pressures they might opt for contracting out rather than recruiting from non-traditional sources, or opt for a higher rate of labour turnover rather than establishing a workplace nursery.

The primacy of cost considerations and the business case over the social justice case is perhaps best encapsulated in the Local Government Act 1988. By this Act, the Conservative government outlawed contract compliance with regard to gender and circumscribed it in respect of race.

2.4.3 Values alive and well

Despite the above, however, other research suggests that public service values and ethos are alive and well. Steele (1999) conducted a telephone survey of 400 senior managers in the public, private and voluntary sector. Public sector managers were from the NHS, local government and the police. She found that the main driving force for private sector managers was the outcome of their work for the prosperity of the organisation in which they worked. The main driving force for public sector managers, whatever their age, was the outcome of their work for users. Similarly, an Audit Commission study (2002), which looked at reasons for entering public sector work, found that 'making a positive difference' was the most important reason and the least (seventh) important reason was good job security.

Moreover, social justice arguments for equality have not entirely been abandoned by public sector organisations. For instance the Cabinet Office, reporting in 1993 on the progress made under its programme to achieve equal opportunities for ethnic minority civil servants put forward two rationales: organisational effectiveness and social justice (Cabinet Office, 1993). Similarly, the NHS Executive when setting out an equalities framework for the NHS in 2000, put forward two rationales (the business case and social justice) arguing that the two were intertwined (NHS Executive, 2000).

2.5 A watershed in 1997?

2.5.1 Significant change

The final area of debate is whether 1997 marked a watershed. In that year New Labour replaced the Conservatives who had been in government for 18 years and certain constitutional changes ensued, notably devolution in Scotland and Wales and the creation of the Greater London Authority. This work, however, concentrates on public sector employment relations and in particular on whether Labour, like the previous Conservative administrations, continued to espouse private sector norms.

Newman (2002), while recognising that there are significant areas of continuity between Conservative and New Labour governments, arising from a shared neo-liberal approach to the public sector, stresses the discontinuities. She argues that the Conservatives' NPM and New Labour's so-called 'modernisation' can be distinguished. The latter, unlike NPM, stresses joined-up government, tackling social exclusion, evidence based policy and best value which modify older NPM discourses of efficiency and quality. Under NPM, she says, managers are free to make decisions within the legislative and policy frameworks set by politicians. Under the modernisation agenda managers are the agents for delivering the aspirations of service users. While NPM's emphasis on performance remains, she says, modernisation's emphasis extends to the necessity of capturing the support of public service staff to ensure long term change.

Furthermore, under NPM consumer views were ascertained after user experience through market research and the establishment of complaints procedures. Under the modernisation agenda organisations are encouraged to co-operate with each other and to co-operate with consumers through their participation in service design and planning. Newman (2002) concedes that there are contradictions between central

goal setting and partnership and between economic and social goals and that the discourse of modernisation is still emergent, but nevertheless NPM and modernisation can be distinguished.

Bach, (2002), also emphasises the discontinuities. He admits that New Labour did not reverse any of its predecessor's privatisation policies (eg the part privatisation of National Air Traffic Control Services) and has extended the role of public/private partnerships (PPP). Also New Labour has introduced new inspectorates (eg the Commission for Health Improvement) and 'enthusiastically embraced most of the public sector managerial changes instigated by Conservatives' (Bach, 2002: 326). He notes, however, that New Labour significantly invested in the public services, particularly the NHS, after the 2001 election. Moreover, in respect of public sector pay, he says:

In contrast to [the Conservatives'] ideological commitment to individualised forms of pay determination..., the emphasis under Labour has shifted to a focus on effective performance management systems which may include a link to pay on an individual or team basis (Bach, 2002:334).

Bach (2002) points to the Makinson (2000) report on team based pay and the new performance system for school-teachers which has a performance pay threshold, not a series of performance pay steps. This view is supported by more recent developments. The so-called *Agenda for Change* pay agreement for non-medical staff in the NHS has only two 'competency gateways' in each pay band, but all the other incremental steps (typically seven to nine) are based on service (IDS, 2003). In the Civil Service too, many departments/agencies effectively have severed 'the link between basic salary and individual performance, which was the touchstone of civil service pay systems' (IDS 2003:39).

IDS (2003) also points out that public sector employment has grown under New Labour, whereas it diminished under the Conservatives. When the Conservatives took office in 1979 there were 7 ½ million public sector employees. In 1997, when the Conservatives left office, there were just under 5 million public sector employees. In the three years since 1997 there have been rises each year in the number of public sector employees, mainly because of the creation of new jobs in the NHS and education (Hardwidge, 2002).

Bach (2002) also mentions the fact that public sector bodies under New Labour (unlike many private sector organisations) are undertaking equal pay audits designed to ascertain and then remedy gender pay gaps and that equal pay considerations have come to the fore in a number of public sector pay deals. In addition, under the Race Relations (Amendment) Act 2000 public bodies are obliged actively to promote race equality and to produce race equality schemes applicable to service delivery and employment.

Other elements of change are New Labour's espousal of the value of public services and the importance of working with public service trade unions. Whereas the Conservatives marginalised trade unions, New Labour said:

[The Government] recognise the contribution [public service trade unions] can and do make to achieving shared goals. We will continue to work in partnership with them. Public service has for too long been neglected, undervalued and denigrated. It has suffered from a perception that the private sector was always best and the public sector was always inefficient. The Government rejects these prejudices. (Cabinet Office, 1999: 55).

Duncan (2002) too stresses the discontinuities. He recognises that there have long been tensions in public sector employment relations, particularly cost control versus managerial autonomy, irrespective of the political party in government. Nevertheless, he argues that since 1997 there are some signs of the restoration of the

model employer concept. He points in particular to the restriction of the use of short-term contracts in the NHS and the restoration of union rights at GCHQ.

An important area where there are discontinuities is in respect of the employment relations effect of contracting out and competitive tendering. The Conservative Government transposed the Acquired Rights Directive (77/187EEC) into UK law by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE). Essentially under TUPE when there is a transfer, the transferee has to adopt the transferred employees' terms and conditions agreed with the transferor. The public sector, however, was excluded. At the same time the government began to encourage contracting out in the NHS and the Civil Service and in 1988 legislated to provide for contracting out in local government. In the wake of certain legal decisions (Lewis and Sargeant, 2002), it was held that public sector employees could be covered by TUPE but uncertainty still prevailed. New Labour has ended the uncertainty by issuing a Statement on staff transfers in the public sector. This says that TUPE should apply and where it does not in strict legal terms, its principles should be followed (Cabinet Office, 2000). Moreover, although pensions (unlike other terms and conditions) are not safeguarded under TUPE, the annex to the Statement requires that contractors (ie the transferee) offer ex-public sector employees an occupational pension scheme broadly as favourable as their former one.

Nevertheless, although erstwhile public sector employees were protected, the contractor (ie transferee) could employ new staff on less favourable terms, thus establishing what has been called a two tier workforce. Under a Code of Practice (2003) contractors now must offer new staff 'employment on fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred employees'. Although these provisions, which are to be written into the

terms of the contract, do not apply to pensions, joiners must be offered 'reasonable pension provision'. At the time of writing this Code only applies to local government contractors. It is, though, an important example of Labour spreading public sector practices to the private sector, whereas the Conservatives sought to spread private sector practices to the public sector.

2.5.2 Little change

As we have seen in the previous sub-section, some academics have taken the view that on balance the discontinuities more than balance the continuities. Others, however, take a somewhat different view. Thus Horton and Farnham (1999:252) say that 'the evidence to date is that public management is safe in Labour's hands' and that NPM is now the accepted orthodoxy in British public services. They concede, however, that NPM is now underpinned by a softer ethic based on co-operation and the new mantra of 'partnership'.

Moreover Horton *et al* (2003) focusing solely on staff participation and involvement in the Civil Service, the NHS and local government find some movement to greater partnership between management and the unions particularly in the Civil Service and the NHS. Their examples include the national partnership agreement in the Civil Service signed in 2000 and the creation of the NHS social partnership forum in 2001. Nevertheless, they contrast the enthusiasm for partnership among union leaders nationally with the scepticism among local union representatives.

Unlike Horton *et al* (2003) whose conclusions are equivocal, Carter and Fairbrother (1999) are firmly in the 'little change' camp, arguing that little altered when the political complexion of the government changed in 1997. While there has been some reconsideration and refocusing of some initiatives such as competitive tendering, by Labour, 'the basic principles remain unchallenged' (Carter and

Fairbrother, 1999:133). They cite the continuation of public service structures such as executive agencies, NHS trusts and Local Management of Schools, as well as privatisation. Moreover, they say, the ideology based on commercial criteria has survived and ‘has effectively ended discussion of the state as “model employer”’ (Carter and Fairbrother, 1999:141).

A study of Labour’s so-called best value (BV), which replaced the Conservatives’ compulsory competitive tendering (CCT) in local authorities, also suggests that 1997 was not a watershed. Although there are differences, (essentially CCT was determined by cost but BV is determined by performance), BV has led to more, not less, externalisation. In a survey in 2002 of 389 BV ‘lead officers’ 14 per cent of respondents indicated that there had been a slight (less than 20 per cent) increase in outsourcing, with 6 per cent saying that there had been a significant (more than 20 per cent) increase. In contrast only three per cent reported that there had been a slight or significant return of services in-house (James *et al*, 2003).

Sachdev (2002) focuses on the public finance initiative, now called public/private partnerships (PPP) initiated by the Conservatives and developed by Labour. He argues that judged on the evidence of the employment relations effects of PPP, notably in the prison service, Labour has continued the Conservatives’ approach with downward pressure on wages and pensions.

3 The contribution of the published work

3.1 The research question

In this third section the focus turns to the contribution of the published work attached to this submission. As set out in section 1.1, the research question was centred on examining the effect of ‘marketisation’ and the adoption of private sector norms on

public sector practices. The research was based on fieldwork conducted from 1991 to 2001 in respect of three main employment relations issues: management/union relations, pay determination and equal opportunities,

- in the Civil Service compared to the NHS,
- in employing bodies within the Civil Service (ie executive agencies) and in employing bodies within the NHS (ie NHS trusts).

In answering this question my work has been located within four debates: whether the government is still a model employer, whether there has been trade union renewal, whether the public sector ethos has been undermined to a significant extent and whether the change of government in 1997 was a watershed. The debates are outlined above but before embarking on demonstrating the work's originality, the main elements of the methodology employed are briefly outlined. (For a more detailed discussion, please see the published work.)

3.2 The research projects and fieldwork

The published work stems from a number of research projects which are detailed below. As can be seen, some projects extended over several years and were run concurrently. Others involved fieldwork which was concentrated in time.

- a) 1991-1997 Research into employment relations in the Civil Service funded by Manchester Metropolitan University. This involved repeat fieldwork over time.
- b) 1991-1997 Research into employment relations in the NHS funded by Manchester Metropolitan University. This involved repeat fieldwork over time.
- c) 1994-1996 Research into equal opportunities for women in the NHS funded by Manchester Metropolitan University.

- d) 1996-1998 Research into employment relations at Government Communications Headquarters. (Essentially self-funded.)
- e) 1996-1999 Research into equal opportunities in the public services (Essentially self-funded.)
- f) 1998 Research into employment relations in the Prison Service funded by HM Prison Service.
- g) 2000-2002 Research into pay and grading in the NHS funded by Department of Health.

3.3 Methodology

The research is primarily based on qualitative data collected in selected case study sites. A qualitative approach was deemed appropriate in order to understand the context, what was happening and why. This methodological approach provided relatively fine grained data and captured the rationales, possibilities and constraints in some detail. It should be noted also that some of the Civil Service research was longitudinal; the same cohort was used both in respect of research published in 1994 and in respect of further research published in 1998. In the NHS research some, but not all, of the NHS trusts were revisited over several years.

In four Civil Service executive agencies nine interviews were conducted in 1991, 25 interviews in 1992 and 19 in 1996. Not only were the same agencies revisited but also mainly the same job-holders were re-interviewed. In HM Prison Service, 21 interviews were conducted in six prisons and management and union headquarters. As to NHS trusts, there were 18 interviews in three trusts in 1994 and 57 interviews in 10 NHS trusts in 2000-01. The interviews were held with Human Resources (HR) managers, lay union representatives, full-time senior union officials, line managers and finance directors. In addition, negotiations were observed in two

NHS trusts in 1994; a national level dispute hearing for the prison service was observed in 1998 and 16 focus groups comprising a range of non-medical staff were conducted in seven NHS trusts in 2000. This qualitative approach was supplemented by two questionnaire surveys in NHS trusts, one in 1992 centring on negotiating procedures in the first 57 NHS trusts. (There was a response rate of 88% to a questionnaire sent to the HR manager.) The second survey focussed on equal opportunities in respect of nurses and midwives: 93 questionnaires were sent out to management with a 72% response rate and 282 questionnaires were sent out to staff representatives with a 36% response rate. In terms of desk research, published and unpublished documents were studied, the latter including collective agreements and HR statistics.

3.4 The main themes

3.4.1. Continuity or change?

As indicated in section 2.2, there is academic debate about the extent to which the government is still a model employer or has adopted private sector norms. This author takes the position that there are important differences *within* the public sector, with greater change in some sub-sectors than in others (Corby, 2000a). Evidence from the research indicates that if one compares the Civil Service with the NHS, the model employer tradition has suffered far more erosion in the former, than in the latter. For instance in the Civil Service there was the outlawing of strikes at GCHQ and HM Prison Service; decentralisation of bargaining from national level to departments/agencies and the widespread adoption of performance pay. In addition some Civil Service executive agencies, including two followed by this author

longitudinally (Her Majesty's Stationery Office and Recruitment and Assessment Services) were in fact privatised.

In contrast, there was far less change in the NHS. For instance nowhere were strikes outlawed. There was no outright privatisation (though contracting out was imposed on both the Civil Service and the NHS). Despite government attempts to decentralise bargaining in the NHS, only a small minority of NHS trusts took advantage of their right to set their own terms and conditions (Corby and Mathieson, 1997).

One reason for this is that there are more mediating forces in the NHS than the Civil Service, so that government could enforce changes on its direct employees without the need for legislation, for instance to create Civil Service executive agencies. In the NHS there was a need for legislation to set up NHS trusts. Furthermore, while ministers directly controlled departments/agencies, their control of NHS trusts was mediated not only by the NHS executive and its regional offices, but also by NHS trust boards.

The author's work, however, goes further than comparing sub-sectors. *Within* the Civil Service and *within* the NHS there are examples of employing bodies essentially continuing the model employer tradition and examples of employing bodies breaking away from the tradition. (For an overview, see Corby, 2000a).

Two articles (Corby, 1994; Corby 1998a) examined four executive agencies over several years (1991-1997):

- Recruitment & Assessment Services (RAS),
- Her Majesty's Stationery Office (HMSO),
- Vehicle Inspectorate,
- Employment Service.

The findings suggest that in Vehicle Inspectorate the model employer tradition was alive and well. Management/union relations were consensual. To take a few examples: the chief executive personally encouraged union membership; the trade union side was given a specific budget to pay for representatives' travel expenses and to recompense local managers for a loss of a member of their staff on union business; the trade union side secretary was given both a lap top computer and temporary clerical help during the consultation period on the agency's future in 1992-3 to aid the union's ability to communicate with staff at a time of uncertainty.

On the other hand, there was a break with model employer traditions in the other three executive agencies. For instance despite recognising the appropriate Civil Service unions, RAS in 1991 experimented with a non-union body (the personnel strategy group) which devised a new appraisal system and suggestion scheme before withering away. When privatisation was proposed in 1995, RAS formed a new non-union body, the staff representation group. In fact RAS was privatised in 1996. At HMSO, union representatives complained that consultation became increasingly limited in subject matter and in depth. For instance, they were only given half a day to comment on changes to travel and subsistence allowances (Corby, 1994). HMSO too was privatised in 1996.

In Employment Service, management adopted a conscious policy to limit collectivism, for instance reducing facility time, reducing the scope of negotiable matters, reducing the frequency and membership of Whitley committees and making consultation a sham. For instance union representatives were consulted on a new personnel handbook but the management circular to staff had been written and inadvertently distributed *before* the joint consultation meeting (Corby, 1994:60).

A break with the model employer tradition was also a feature in HM Prison Service. After a history of turbulent industrial relations, partly fuelled by a rising prison population without corresponding staffing increases, the organising of industrial action was outlawed by statute in 1994 (Corby, 1998b). At GCHQ, changes could be made by an Order in Council; there was no need for legislation. In 1984 industrial action and even union membership was banned despite a very effective campaign by the Civil Service trade unions supported by virtually all the press (Corby, 2000b).

In the NHS also, there are variations between employing bodies within a sub-sector. For instance one NHS trust ('Multiservice 1') introduced its own competency based grading system in 1994 without inviting the unions to take part in the development of the system. On the other hand another trust ('Multiservice 3') sought to work closely with the unions and did not depart from national pay determination. Moreover, even though 'Acute Teaching 2' departed from the national pay arrangements for theatre staff in 1998, it only did so after working closely with the unions (Corby *et al*, 2001). To take another example, Northumbria Ambulance trust derecognised its TUC unions and instead recognised a no-strike non TUC staff association (and later in turn derecognised it). Similarly, Lincolnshire Ambulance Trust derecognised its unions, but United Leeds Teaching Hospitals continued with a pre-existing pluralist tradition even when it became a trust (Corby, 1992a; 1992b).

The attached published work gives more detail of differences within sub-sectors but how are such differences explained? The main explanatory variable was found to be the values of the dominant players: the chief executive of the agency/trust, and in the case of the Civil Service where the government is the direct employer, ministers; and in the case of NHS trusts, the board chairperson. Thus in the period

1991-1995 six Civil Service executive agencies were privatised of which three came under the remit of Michael Heseltine, then President of the Board of Trade. When Michael Heseltine was succeeded by Ian Lang, who was less wedded to policies of public sector marketisation, the threat of privatisation was lifted from the agencies under the remit of the Department of Trade and Industry. Michael Heseltine, however, then became Deputy Prime Minister and four out of six Cabinet Office agencies were privatised in 1996 (Corby, 1998a).

Similarly, 'Community' was one of the few trusts to break away from national bargaining and, it is argued, this was no coincidence. The board chairman was a former Conservative minister who encouraged the trust to act in accordance with Government urging (Corby *et al*, 2001).

Perhaps the most vivid example of the importance of the values of the dominant player relates to GCHQ. Because of its function (intelligence gathering), prime ministers have taken a special interest in it, although theoretically it is the responsibility of the Foreign Secretary. When Margaret Thatcher was prime minister, union membership was outlawed and other concomitant changes were effected at GCHQ in 1984, including the creation of a staff association (the GCHQ Staff Federation) and the removal of the right of GCHQ staff to go to an employment tribunal for unfair dismissal. John Major, when prime minister, removed a management veto on the constitution of the Staff Federation and restored the right of GCHQ staff to go to an employment tribunal for unfair dismissal, other than for a trade union reason. In other words, he 'softened the edges but did not depart from the principle' (Corby, 2000b:329). Shortly after Tony Blair became prime minister, union membership and collective bargaining were restored at GCHQ and a new agreement was concluded stressing a partnership approach, demonstrating that New Labour was

not hostile to trade unions like the previous Conservative governments. Yet the right to take industrial action at GCHQ remained curtailed, in accordance with New Labour's manifesto before the 1997 election that there would be no return to the pre-1979 position in respect of strikes (Corby, 2000b)

Turning to chief executives (CEs), the CE of Recruitment and Assessment Services which set up a non-union body came from the private sector. The chief executive of Employment Service, which narrowed the scope of Whitley, although a career civil servant, adopted a conscious policy to be more 'robust' to the unions, as he put it (Corby, 1994). In the NHS when the chief executive of Bradford Hospitals Trust left in 1991, his successor put a number of radical draft employment policies on the back burner (Corby, 1992b).

Furthermore, the research both in the Civil Service and the NHS showed that while the unions could temper the pace and extent of change, they could not fundamentally shift management's stance (Corby and Higham 1996; Corby 1998). So to sum up: the debate about whether the government ceased to be a model employer has to be nuanced. Any judgments should not be made across the public sector as a whole, or even a sub-sector. Different employing bodies within each sub-sector must be examined. Furthermore, whether or not the government is still largely a model employer or instead has adopted private sector employment relations approaches depends primarily on the values of the dominant players.

3.4.2. Trade union renewal

The work by this author provides no support for the union renewal thesis (section 2.3). Case study research into three NHS trusts (Corby and Blundell, 1997:52) found that trust status, which was accompanied by some decentralisation of management decision making, had led to an increase in union membership 'because there was now

more going on locally', according to stewards. Attendance at branch meetings, however, was generally low whether it was in respect of small staff organisations like the Chartered Society of Physiotherapy, where the branch covered a large geographical area, or the large staff organisations like the Royal College of Nursing or Unison, where there were large concentrations of members on one site and workplace branches. Moreover, stewards valued the support received from full-time officers and their chief problem was the competing demands of their work and their union duties (Corby and Blundell, 1997).

My research into the Civil Service too, does not provide support for the union renewal thesis. Although in theory decentralisation of pay bargaining from national to agency level should give a greater role to workplace unionism and the opportunity to challenge local management, this was not necessarily the case. For instance lay union representatives at Employment Service reported that pay bargaining was largely a sham as 'we don't really have negotiations' (Corby, 1998b). Moreover, lay union representatives at both Vehicle Inspectorate and HMSO commented that the appearance of decentralisation was belied by the reality. There was behind the scenes strict central (Treasury) control, but the union representative could only talk to agency managers who were not the decision makers (Corby, 1998b). Accordingly far from union renewal, the research overall found that there was often a degree of union impotence. (See also Mathieson and Corby, 1999)

3.4.3. Values and ethos

Section 2.4 discussed whether public sector values and ethos had been undermined by private sector norms. The published work attached concentrates on the rationale for equal opportunities in the public sector. It finds that from the 1950s, the rationale for equality for women was based primarily on a social justice perspective and that far

from adopting private sector norms, the public sector blazed a trail (Corby, 1999a). For instance in 1955 the government introduced equal pay for men and women in the Civil Service, ie fifteen years before there was legislation on equal pay. In 1990, ie five years before the Sex Discrimination Act, a Civil Service committee chaired by Kemp-Jones made recommendations to enable female civil servants to combine a career with their domestic responsibilities and its recommendations were virtually unprecedented in Britain. In the early 1980s, the Civil Service introduced ethnic monitoring for its employees, again well ahead of most private sector companies (Corby, 1999a).

The published work, however, shows that this lead on equality in the Civil Service has been eroded by a shift in emphasis from social justice values to business case arguments and cost considerations, with local managers being budget holders (Corby, 1997b). For instance Peter Mandelson, when Trade and Industry Secretary, said that an organisational focus on ethnic minorities was 'not linked to social altruism but to hard commercial return value' (Race for Opportunity, 1998:1 cited in Corby, 2000c:40). A union representative at HMSO was of the view that the reason why there was not an extension of nursery facilities was lack of money in the budget (Corby, 1994). A regional manager at Employment Service in 1996 said that 'we now use words like "business agenda" but before that would have sounded not only strange, but silly' (Corby, 1998).

Studies in the NHS find little evidence for a social justice rationale for equality in the 1960s and 1970s, but on the contrary a tradition of discrimination; (see for instance Baxter, 1988; the King's Fund 1990). In any event, the business case for equal opportunities became the dominant discourse in the NHS from 1991 when Bottomley, then Health Secretary, signed up to Opportunity 2000, a business led

voluntary campaign on behalf of the NHS. Research by the author showed that the business case rationale for equality in practice militated against the adoption of equal opportunities at workplace level while at the same time the social justice case was essentially disregarded. For instance according to Unison, managers often cited staffing levels/constraints of the service as reasons for not introducing part-time work or job sharing. (Corby, 1997a). So to sum up, in terms of equal opportunities, public sector values have largely, but not entirely, been superseded by private sector norms.

3.4.4. Was the election of a Labour Government in 1997 a watershed?

As discussed in section 2.5, there has been debate about whether the change in the political complexion of the government resulted in a change in employment relations in the public sector with a scaling down of private sector approaches. The present author maintains that on the whole 1997 was not a watershed. The Labour government has retained many of the employee relations institutions and procedures bequeathed by the Conservatives, such as decentralised pay bargaining in the Civil Service and developed and extended others. For instance, it has extended the Private Finance Initiative; it has extended governmental control over public service professionals, (eg the Commission for Health Improvement) and target setting and measurement (Corby and White, 1999). In addition the government still outlaws strikes in the Prison Service and GCHQ, albeit by 'voluntary agreement' rather than by law (Corby, 2000b; 2002). Moreover, focusing on the NHS, the government abandoned General Practitioner fundholding and established primary care trusts, but the purchaser/provider split exists in practice, although not in name (Corby, 1999b).

Nevertheless, the arguments at this juncture are not clear cut (Corby and White, 1999). Partly this is because it may still be too early to come to a definitive

conclusion. Partly also, views on this may be a reflection of an optimistic or pessimistic prior perspective; ie whether one sees the glass as half full or half empty.

3.4.5. Conclusions

In summary, the published work submitted for this PhD which looks at employment relations in the Civil Services and the NHS, and the extent to which private sector norms have impacted on public sector practices, contributes to debates in four areas. First, whether the public sector has retained its model employer tradition; second, whether the decentralisation of management decision making in the public sector has led to trade union renewal at the workplace; third; whether the public sector ethos with its emphasis on impartiality and fairness has been eroded; and fourth, whether 1997 and the change of government was a watershed.

This author's research has made an important contribution to these debates. As outlined in this section (with full findings in the published work) the research indicates first that the government departed from the model employer tradition adopting private sector norms in some employing bodies in the Civil Service and the NHS, but not in others; there was no evidence of trade union workplace renewal despite decentralisation in the public sector on similar lines to the private sector; the public sector ethos, certainly when focusing on equal opportunities and based on interviews with managers and union representatives, was largely eroded; and 1997 was probably not a watershed in terms of government approaches to public sector employment relations, though it is too early to reach a definitive judgment.

Indeed further research is needed. This author has just concluded research carried out for the Advisory, Conciliation and Arbitration Service (ACAS) on the extent to which the resolution of public sector disputes can be differentiated from private sector disputes. Empirical research (eg a large-scale survey) could also

shed further light on whether public sector employees themselves consider that the public sector ethos has been eroded. In addition, a more definitive view of whether in 1997 the trajectory of change in public sector employment relations significantly altered will be obtained when the next Workplace Employment Relations Survey is conducted in 2004-05.

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Statement on work published jointly with other authors

Statement on work published jointly with other authors

Most of the work submitted has been sole authored. There are three journal articles, one report and one chapter in a book where I was not the sole author and these are discussed below:

Journal articles

Corby, S. and Mathieson, H. (1997) 'The National Health Service and the limits to flexibility', Public Policy and Administration, vol. 12, no. 5, 279-293.

H. Mathieson was a colleague at my previous workplace and contributed to the conclusions of this article. As part of the submission for the Research Assessment Exercise, it was important this his contribution be credited.

Corby, S. and Higham, D. (1996) 'Decentralisation of Pay in the NHS: Diagnosis and Prognosis', Human Resource Management Journal, vol. 6, no 1, 49-52.

D. Higham was a full-time personnel officer in an NHS trust. She conducted some of the fieldwork for this published work when she was a part-time MA student whose dissertation I supervised.

Corby, S. and Blundell, B. (1997) 'Trade Unions and Local Bargaining in the NHS' Health Manpower Management, vol. 23, no 2 49-54.

Bob Blundell was a full-time officer with what was then NALGO. He conducted some of the fieldwork for this published work when he was a part-time MA student whose dissertation I supervised.

Reports

Corby, S., Millward, L., White, G., Druker, J., Meerabeau, E. (2001) Innovations in Pay and Grading in NHS Trusts, University of Greenwich.

This report emanated from a study carried out for the Department of Health. I was the lead researcher and spent 80 per cent of my time on the project. L. Millward was the full-time research officer. G. White spent 20 per cent of his time on the project. J. Druker managed the project (eg finances/staffing) and E. Meerabeau provided advice.

Books/chapters in books

Corby, S. and White, G. (1999)Employee Relations in the Public Services, Routledge.

I edited the book with G. White. Together we wrote the introductory chapter but the chapter on equal opportunities in the public services was sole authored by myself. The chapter on public service trade unions was written by H. Mathieson, my ex-colleague, and myself.

Refereed Journal Articles

Corby, S. (2002) 'On parole: prison service industrial relations', Industrial Relations Journal, vol. 33, 4, 286-297.

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On parole: prison service industrial relations

Susan Corby

The voluntary and statutory measures to prevent prison officers from taking industrial action are examined in the context of the measures adopted to prevent industrial action by other groups of public servants. The paper concludes that the government does not have an overall strategy on strikes in essential public services, though it applies the most restrictive provisions to prison officers.

Prison service industrial relations, though often problematic, particularly for government, are an under-researched area which this paper begins to redress. It starts by looking at the background to prison service industrial relations and examining the voluntary procedural measures aimed at resolving disputes. Secondly, it looks at the restrictions on industrial action in prisons imposed under the Criminal Justice and Public Order Act 1994. Thirdly, it uses interview data to look at the difficulties which both management and the union identified. Fourthly, it reviews the provisions introduced by the Home Secretary in 2001. Finally, it considers the measures that the government has taken to prevent industrial action by prison officers in the context of such measures for other groups of public servants.

The paper concludes that the government has adopted a range of approaches to industrial action in essential public services, and no two groups of public servants are treated exactly the same. It argues, however, that the government applies more restrictions to prison officers than to other public servants.

Background

HM Prison Service was established as an executive agency of the Home Office in April 1993 (Cabinet Office, 1994). Covering England and Wales, it is responsible for both directly managed and contracted-out prisons. With an average prisoner population in the financial year 1999-2000 of nearly 65,000, it employed 43,000 full-time equivalents (FTEs) and of these 30,738 (70 per cent) were prison officers (HM Prison Service, 2000).

From the 1970s to the time of writing, the prisoner population has risen without corresponding increases in staff numbers. It is only possible, however, to make accur-

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ate calculations for after the Prison Service became an executive agency. Before then, prison staff numbers were included in those of the Home Office. In 1993, HM Prison Service employed 39,000 FTEs (Government Statistical Service, 1996) and, in February 1993, it had a prisoner population of 41,000 (Black, 1995), a ratio of one member of staff to 1.05 prisoners. In 2000, it had one member of staff to 1.5 prisoners.

The Prison Officers' Association (POA) is the recognised union for prison officers, prison auxiliaries, night patrol and stores people. It had 31,845 members in Great Britain on 31 December 2000, according to unpublished figures by the Certification Officer, and has joint recognition with the Prison Governors' Association (PGA) for junior governor grades (IG 1/1996, 1996). There is a small breakaway union, the Prison Service Union, which had 4,103 members in Great Britain on 31 December 2000, according to the Certification Officer, but it is not recognised.

Prison officers and their families often live in a relatively closed community, centred on the penal establishment and the prison officers' club (Black, 1995). This, and the potential dangers of the job, have frequently resulted in strong bonds between officers, especially where they live in Prison Service quarters.

Industrial action in the prison service was virtually unknown until the early 1970s. During the 1970s, however, public service trade unions and their members 'banished their traditionally moderate image' when governments tried to control public expenditure (Winchester and Bach, 1995: 30). The POA was no exception. According to Black (1995: 67), the steady deterioration in the industrial relations climate in prisons owed much to the rise in the prisoner population without corresponding increases in prison service staff. This led to disputes about staffing levels and a number of incidents of local industrial action. Moreover, in 1986 the POA organised national industrial action, a ban on compulsory overtime, which resulted in serious disturbances and rioting by prisoners.

The resolution of the dispute included a formal disputes procedure, the so-called Cubbon formula. It also included new terms and conditions, entitled Fresh Start, which were introduced from 1987 in an attempt to break the overtime culture, which had arisen in response to the increase in the number of prisoners, and in an attempt to improve efficiency. Under Fresh Start, there was a joint commitment to team working, restructuring of grades, a phased reduction of basic weekly hours, a limit on the amount of paid overtime and improvements in basic pay (HM Prison Service, 1987).

The implementation of Fresh Start, however, was often problematic, essentially because it only set a framework: governors and local POA branches had to agree on new shift systems and working practices. Furthermore, in practice the Fresh Start provisions in respect of hours were often not realised. Many prison officers did not obtain a basic working week of 39 hours (net) by 1992; nor were they given time off in lieu for hours above 48 per week (ie. basic hours plus nine hours of paid overtime), largely because the prison population continued to rise (Black, 1995).

In 1989, the Prison Service and the POA replaced the Cubbon formula with a new disputes procedure but Lord Woolf and Judge Tumin (1991: 368) found that it had not achieved any substantial reduction in industrial action, and industrial relations were in a 'sorry state'. They recommended a new procedure in which the POA would explicitly agree not to take industrial action until the procedure was exhausted. Accordingly, the Industrial Relations Procedure Agreement (IRPA) (1993) was concluded. Where a proposed change was disputed, a 'failure to agree' (FTA) could be registered locally. If the matter was not resolved by a local hearing, there would be a hearing at area level and then at national level. The procedure contained a status quo clause, which could be overridden in a 'clear operational emergency', and time limits of 21 days per stage.

The IRPA was amended to include a jointly agreed note on provisions to meet the time limits (eg. the governor must inform the area manager immediately on registration of a FTA), and the operational director was made responsible for overriding the status quo, rather than a lower-level manager as before. It was also agreed that the operational director as the budget holder, rather than someone from headquarters, would chair the dispute hearing at the third and final stage.

The Criminal Justice and Public Order Act 1994

Shortly after the new procedure to deal with local disputes had been agreed, the POA threatened national industrial action, and an injunction was sought. In *Home Office v Evans* 1993, it was held that, because under Section 8 of the Prison Act 1952 prison officers had the powers and privileges of a constable, they were in the 'police service'. This meant that they were excluded from the statutory definition of 'worker' and could not be a party to a 'trade dispute' under the Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992. Nor was the POA a 'trade union', as it was not an organisation consisting 'wholly or mainly of workers' (TULRCA, Section 1).

The Criminal Justice and Public Order Act (CJPOA) 1994 redefined the legal position in the wake of the judgment. Section 126 of the Act reversed the 'police service' exclusion of prison officers from employment protection legislation and provided that organisations representing prison officers were trade unions and were always deemed to have been so. Section 127 banned industrial action by creating a duty owed to the Secretary of State that no-one shall induce 'a prison officer: (a) to withhold his services as such an officer; or (b) to commit a breach of discipline'.

A breach of discipline was defined as a 'failure to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code'. Furthermore, the Act empowered the Secretary of State to obtain an interim injunction preventing industrial action on the grounds that it was unlawful and to seek damages. Finally, Section 128 empowered the Secretary of State to establish pay determination machinery (Morris, 1994).

These provisions of the CJPOA have been criticised on two main grounds. The first criticism has focused on the breach of international labour standards. The UK has ratified the International Labour Organisation's (ILO) Convention 87 on Freedom of Association and Convention 98 on the Right to Organise and Collective Bargaining. The police and the armed forces are the only exceptions expressly specified in that Convention. The UK has also ratified Convention 151 on Labour Relations (Public Service), which expressly excludes the police, the armed forces, policy making or managerial public employees or those 'whose duties are of a highly confidential nature' (Article 1). There are, therefore, no specific exclusions relating to prison officers (Hendy *et al.*, 1999).

Although none of these Conventions explicitly confers the right to take industrial action, the ILO has derived the right to strike from the right to organise. Also, the ILO Committee of Experts (1983: 66) has said:

If strikes are restricted or prohibited in the public services or in essential services, appropriate guarantees must be afforded to protect workers who are thus denied one of the essential means of defending their occupational interests. Restrictions should be offset by adequate impartial and speedy conciliation and arbitration procedures, in which the parties concerned can take part at every stage and in which the awards should in all cases be binding on both parties. Such awards, once rendered, should be rapidly and fully implemented.

The CJPOA, however, prohibited prison officers from striking without providing off-setting conciliation and arbitration arrangements.

The second criticism of the CJPOA has been based on pragmatism. Although industrial action was rendered illegal, it has taken place. For instance from May 1997 to February 1998, there were six occasions when prison officers locally took industrial action and in three cases, Wormwood Scrubs, Wandsworth and Lindholme prisons, the POA was threatened with an injunction (Thatcher, 1998). In 1999, an injunction was successfully sought by the Secretary of State to bar the POA from calling meetings in working hours 'to protest at a below-inflation pay offer' (Labour Research, 1999: 9). In August 2000, there were walk-outs and a work-to-rule by POA members at Brixton in response to a decision to market test (Burns, 2000). Perhaps these occurrences of industrial action are not surprising. In 1991, Lord Woolf and Judge Tumin (1991: 368) pointed out that in France 'the fact that prison officers are forbidden by

law from taking industrial action has not prevented industrial action by prison officers'.

The research

Against this background, research was carried out in 1998 based on 21 interviews in six prisons, to include those where there were harmonious industrial relations and those where there were not and to encompass different types of prisons: remand, local, dispersal (ie. high security) prisons and young offenders' institutions. Interviews were held with six prison governors, six POA branch chairmen (generally together with other POA branch committee members), and POA and PGA national officials, and line and headquarters managers. In addition, a national FTA meeting was observed, together with the management side pre-meeting and documents regarding disputes were examined. Three main findings are reported here: the use of the IRPA, time limits and felt fairness.

First, on the use made of the IRPA, the data indicate a surprisingly large number of unresolved disputes. On 31 December 1997, there were 171 FTAs outstanding in England and Wales. The local disputes covered both major and minor issues. On the one hand, FTAs were registered on the regrading of health care officers, shift systems and (most commonly) staffing levels. On the other hand, FTAs included issues which (at least at first sight) do not appear major: for instance, the site of a health care centre and the closure of the mess on bank holidays. A national union official said that there were 'no more than 12 jails, may be a bit more, which cause persistent industrial relations headaches' and another national union official said:

There are common problems within the service which manifest themselves as disputes in one establishment and which are obviously resolved in others . . . In most establishments there are compromises reached.

A prison governor recalled 'one incident where we displeased the local branch and in one day they served about 10 FTAs'.

Some POA officials and governors were of the view that industrial relations problems might be partly attributable to the inadequacy of the training of governor grades. A governor said:

I was a rare animal in that I joined the Prison Service from university as an officer. I spent 4½ years as an officer and I became a trainee assistant governor and it took two years to qualify: 18 weeks at college plus two six-week secondments to the probation service and the police as well as management of serious incidents . . . It takes two weeks now to translate somebody from a principal officer into a governor.

The second finding was that the IRPA's strict time limits, 21 days per stage, were virtually never observed. For instance, at one open prison, two disputes were registered in 1994 but were awaiting national level meetings over three years later. All the managers interviewed complained that the time limits were not met. 'They're a joke', was a typical comment. The time limits were interrelated with the status quo clause: as long as a matter was going through the procedure, the status quo operated. The POA saw the status quo as the 'only weapon' that they could lawfully use after the ban on industrial action in 1994. They could no longer lawfully stop a matter by industrial action, but they could delay it by prolonging the procedure.

A governor remarked 'close one door [making industrial action unlawful], they'll [the POA] find something else'. For instance one manager cited the removal of the dog section from a prison pursuant to the removal of Category A prisoners. The POA branch registered a FTA, and the governor considered that 'because they want to keep the dogs . . . for as long as possible . . . we are having the greatest difficulty in finding dates for meetings'. Another governor said that if the dispute was about staffing levels:

three quarters of a year has passed before the FTA has gone through procedure and meanwhile I am still paying people with a budget I haven't got. Everybody moans about why most governors

have cut probation and education staff. Well it's quite simple. It's the easy option . . . but it is not necessarily the best way of organising the prison.

The third finding related to a universal and deeply felt complaint by the POA that they were unfairly treated. If a dispute went to national level, the operational director chaired the meeting, but he was part of management. (Indeed, at the national level FTA meeting observed by the author, the chair led the management-side pre-meeting.) If the branch did not like the chair's decision, there was nothing they could do, as they could not lawfully take industrial action. 'You don't get a fair crack of the whip', 'there isn't a level playing field', 'it doesn't matter how good our case is, we don't win', 'it's a paper exercise' were some of the POA comments about national level meetings. Essentially, POA officials wanted to recover their right to strike and to have access to arbitration. If they had arbitration, then they would not need to exercise their right to take industrial action. As a POA branch chairman said:

Whatever this arbitration body is, it has to be independent and I'm quite happy to live by what they come up with. I think at the end of the day [its decisions] should be binding. Otherwise we're going to go down the line of never addressing any problem.

Most managers were against arbitration, regarding it as problematic in a 'highly operational service' and some argued that an outsider would not be able to understand the Prison Service. A minority of managers, however, favoured arbitration. One said:

I have always seen the IRPA as being a bit fraudulent because at the end of the day the chairperson . . . works for the department and therefore he could never come to the proceedings with clean hands and even if he did, no-one would believe he or she did . . . With arbitration you are less likely to see disputes because people will feel they have had their day in court, as it were.

The new provisions

When the Labour government came to power, the then Home Secretary, Jack Straw, was asked by the POA to repeal the relevant provisions in the CJPOA. In his reply, the Home Secretary reminded the POA that when in opposition he had made no commitment to such a repeal, though his predecessor, the then shadow home secretary, Tony Blair, had (Hendy *et al.*, 1999). Mr Straw wrote in an unpublished letter (Straw, 1998):

The Prison Service is a uniformed, disciplined service. It has to be a 24 hour, 365 day a year service. If disruptive industrial action takes place within the Service it can have wholly unacceptable consequences. The safety and security of the public can be put at risk through the diversion of large numbers of police away from *their* role—that of fighting crime—to that of acting as gaolers; the courts can be disrupted; control and good order within prisons can be lost; and prisoners can end up being denied humane treatment through being locked in their cells.

Nevertheless, the Home Secretary recognised that there might be scope for independent arbitration and that the issue of revised pay determination arrangements had yet to be resolved (Straw, 1998). Three years later, on 9 February 2001, the Home Secretary in a Parliamentary Written Answer announced a three-strand approach: first, the establishment of a mechanism for pay determination; secondly, a new legally binding 'voluntary' agreement; and thirdly, the proposed repeal of Section 127 of the CJPOA (Straw, 2001).

The first strand entailed the setting up of a new pay review body (PRB), the Prison Service Pay Review Body (PSPRB) in 2001 to determine the pay of 1,100 governors, 24,000 prison officers and 5,900 related grades in England and Wales. It can also determine pay for those groups in the Northern Ireland Prison Service (IDS, 2001).

The PRB system involves an independent standing body making recommendations to the minister on the appropriate level of remuneration after taking evidence from interested parties, visiting workplaces to meet employees and perhaps commissioning independent research (White, 2000). Indeed, Winchester and Bach (1995:

323) have called the PRB process 'arm's length bargaining'. Conservative governments established all the other five pay review bodies. The PSPRB is the only PRB to have been established by a Labour government and only the PSPRB and the school teachers PRB have a statutory underpinning. (This resulted in the Secretary of State being unable to introduce a system of performance-related pay for teachers in 2000, without the imprimatur of the PRB.)

White (2000) points out that the PRB system is a peculiarly British method for the determination of pay for public servants. Halfway between fully fledged collective bargaining and unilateral imposition by government, the system has some similarities with compulsory arbitration but differs in that the final outcome rests not with arbitrators but with the government. As Seifert (1992: 56) says in respect of nurses, though the comment applies to prison officers too: 'The pay review body initiative can be viewed as a form of arbitration to prevent, rather than to settle, disputes of interest.' On the other hand, a speaker at the Prison Service special delegate conference on 27 February 2001 welcomed the PSPRB and said: 'we can't do worse on pay than we've done'.

The second strand of the government's three-strand approach was a new IRPA (2001) agreed by the Prison Service and the POA. Unlike most collective agreements, it is stated that 'the parties intend that this agreement shall constitute a legally enforceable contract'. Also the agreement goes further than outlawing strikes. It outlaws disruption. It says:

(11) The POA agrees that it will not induce, authorise or support any form of industrial action by any of its members relating to a dispute concerning any matter, whether covered by this agreement or otherwise, which could have the effect of disrupting the operations of the Prison Service . . .

(12) For the purposes of this agreement the operation of the Prison Service shall include any work that contributes to the operation of the Prison Service.

(13) In the event of a dispute between the parties as to whether action which is in progress, or is or may be intended or proposed, would have the effect of disrupting the operations of the Prison Service, the question will be decided by the Secretary of State whose decision will be final.

A written and reasoned explanation will be given to both parties as soon as is reasonably possible.

If there is a breach, 'the Prison Service may take action in court, including seeking injunctive relief'.

Turning to the detail, the new procedure has a status quo clause which applies 'except in cases of clear operational emergency as sanctioned by the director general or the deputy director general'. There is provision for conciliation by the Advisory, Conciliation and Arbitration Service (ACAS) and arbitration. Importantly the agreement states:

The parties fully understand and accept that the Secretary of State has the power to overrule the award of the arbitrator for reasons of national security or public interest . . . To exercise that power the Secretary of State shall give a reasoned explanation to the House of Commons (when Parliament is in session) or to the Prime Minister (when Parliament is not in session) and shall publish that reasoned explanation.

The new IRPA sets out to avoid many of the pitfalls of the old agreement, particularly the overuse of the procedure, the protracted nature in practice of the dispute resolution process and the lack of impartiality in dispute resolution. When a FTA is registered, it proceeds automatically to conciliation by ACAS, which commences within 14 days of ACAS being informed. If the matter is not resolved by conciliation, the only other stage is a unilateral reference to arbitration, but there is a screening process. Access to arbitration requires the approval of either the general secretary of the POA or the deputy director general of the Prison Service. If there is no agreement at the conciliation stage and no reference to arbitration, 'the management's position will be deemed to have been accepted'.

The agreement provides for pendulum, not conventional arbitration. Lewis (1990) points out that pendulum arbitration has been used in the USA in a number of local jurisdictions to resolve industrial disputes in respect of public-sector workers such as prison guards, fire-fighters, hospital staff and teachers, who are legally prohibited

from striking. The rationale for pendulum arbitration is that it counters the perceived tendency of conventional arbitrators to split the difference between the parties. Also, pendulum arbitration encourages the parties to negotiate seriously for fear of losing entirely at arbitration. It thus overcomes the 'chilling' effect of conventional arbitration, ie. the reluctance to bargain realistically and the 'narcotic' effect, ie. the habit-forming tendency to resort to arbitration. On the other hand, pendulum arbitration, because it circumscribes the arbitrator's discretion, can be inflexible (Industrial Relations Review and Report, 1986). Milner (1993) suggests, however, that pendulum arbitration does not significantly deter disputes compared with conventional arbitration except in multi-stage procedures and if used with conciliation. The new prison service procedure employs conciliation but is not multi-staged.

The third strand of the new provisions is the Secretary of State's signalling of his intention of repealing Section 127 of the CJPOA, which makes it illegal for prison officers to take industrial action, 'when parliamentary time allows'. In the meantime, he undertook to use the provisions of the procedure agreement, instead of Section 127 of the CJPOA. This change, however, may be largely cosmetic. The so-called 'voluntary' procedure, which replaces Section 127, is a legally binding 'no disruption' agreement under which the Secretary of State can seek injunctive relief. In addition, the Secretary of State is putting the new industrial relations system on parole. He is replacing Section 127 with a 'reserve statutory power' and 'it is clear on all sides' that Section 127 will be used in the event of a breakdown of the procedure agreement (Straw, 2001).

Interestingly, the PSPRB and the new 'voluntary' agreement only apply to public-sector prison staff. Private-sector prison officers, however, were covered by Section 127 of the CJPOA. Perhaps policy makers consider that disruption by private-sector prison officers is unlikely and, if there were to be industrial action in private prisons, the Secretary of State could resort to 'reserve statutory powers'.

A key question is why did the POA, which campaigned against the CJPOA long and hard, agree to legally binding no disruption arrangements. Certainly the new provisions are not the result of a unilateral act by government. They are the result of joint agreement, a symbolic distinction. Also, there are sweeteners: unilateral access to arbitration and a PRB. According to a study of public service pay from 1970 to 1992 by Elliot and Duffus (1996), groups whose pay has not been determined by collective bargaining (ie. pay review bodies/indexation formulae) have consistently achieved larger increases in average earnings than other public servants. (Elliott and Duffus, however, consider that this may not be a result of the method of pay determination but rather the industrial relations strength of those groups.)

Sweeteners apart, the POA's industrial relations position is being eroded, so perhaps it was not able to turn its back on a no-disruption agreement. In October 2001, there were 126 state-run prisons and nine privately run prisons (Brown, 2001). At none of these private prisons does the POA have recognition for collective bargaining at the time of writing.

Moreover, the POA has been unable so far to use the new union recognition provisions of the Employment Relations Act 1999 to obtain recognition from the Central Arbitration Committee (CAC). This is because the CAC must reject an application as inadmissible under Schedule A1 of TULRCA 1992, if there is already in place a collective agreement in respect of any of the workers in the proposed bargaining unit, even if the union which is party to the agreement is not independent and does not have majority support. Thus the POA in 2000 submitted an application to the CAC for recognition for collective bargaining in respect of those employed at a privately run prison (Parc, Bridgend) in posts 'up to and including unit manager who have direct contact with inmates'. The POA stated that 145 of the 250 employees concerned were members of the POA, but the CAC could not accept the application. The employer had signed a recognition agreement with the non-independent Securicor Custodial Services Staff Association.

A provisional assessment

From 1 June 2001 to 28 February 2002, there were 18 FTAs under the new agreement. Of these, seven were settled after ACAS conciliation, six were on-going, one was withdrawn and four were referred to arbitration. In one of these cases, there was a disagreement about whether a matter fell within the scope of the new agreement. The matter was settled by having an arbitration hearing to decide that procedural issue. One result is that the Director General has since written to the POA general secretary to say that questions of scope may (but not 'will') be determined by the arbitrator.

Undoubtedly, the new agreement has come under strain. Partly, this is because the government decided to stage the first award of the PSPRB, and the prison population has continued to rise without corresponding staffing increases. Furthermore, industrial action has occurred sporadically. For instance, injunctions were granted after officers at several prisons left their workplace during lunch breaks (Adams and Burns, 2002). As an interviewee said: 'the agreement is still in place—just'.

Strikes in essential services

The final part of this paper sets the provisions preventing and deterring prison officers from taking industrial action in the context of such provisions relating to other public service groups who provide essential services. It should be noted, however, that there is no statutory or commonly agreed definition of what services constitute essential ones.

Governments have adopted a number of strategies which have resulted in the restriction of strikes in essential public services, as Deakin and Morris (1998) argue. One strategy was privatisation. Another strategy was the introduction in the 1980s and 1990s of legislation considerably restricting the ability of trade unions to organise effective industrial action, which arguably has had a particularly adverse impact on the public services. For instance, the ban on secondary action has restricted unions in the civil service, as they can no longer lawfully organise service-wide industrial action as there are no service-wide collective agreements. (For a full discussion, see Morris, 1991.)

A further strategy adopted by UK governments to curtail industrial action in certain public services has been the modification of collective bargaining by some form of independent pay determination mechanism, such as a PRB. In this context, the Prison Service PRB is not unique. Although the first three PRBs were not established in response to industrial action (the PRBs for doctors and dentists, the armed forces and the senior public servants such as judges and senior civil servants), the later ones were. Thus the government established PRBs for nurses and school teachers in 1983 and 1991 respectively, on the condition that they would not take industrial action, though such action by those occupational groups is not illegal. For instance Kenneth Clarke, when Education Secretary, said in 1991 to the House of Commons: 'This proposal [to set up a PRB] is made on the basis that teachers . . . will not in future take industrial action.' When asked if this implied a 'no strike' agreement, the Education Secretary acknowledged that the new PRB would not require such a commitment from the unions but that the government would examine its remit if industrial action occurred (cited in White, 2000: 86).

Whatever the theoretical position, in practice the pay review bodies have largely, but not entirely, prevented disputes. The main exception is in the National Health Service in 1995 after the PRB for nurses and paramedicals recommended local bargaining to top up the national award. The PRB's remit, however, continued unamended (Corby, 1996).

It is important to note that the PRB for nurses coexists with a considerable amount of collective bargaining (Burchill, 2000), an approach likely to be followed in the prison service. In contrast, the school teachers' PRB has a much wider remit (Fredman and Morris, 1992). It covers teachers' statutory conditions of employment which are

defined in the School Teachers' Pay and Conditions Act 1991 as remuneration and 'such of their other conditions of employment as relate to their professional duties and working time' (Section 1(2)). So there are differences between the pay review bodies.

Interestingly, the unions for staff in the ambulance service, who comprise a uniformed and disciplined service to use the Secretary of State's description of the prison service (see above), were refused a PRB by the previous administration, despite a protracted industrial dispute in 1989/90; as were the Association of University Teachers in respect of academics in the old universities. Presumably, government rejected the calls for PRBs for both these occupational groups because they are not thought to be sufficiently militant to warrant the preventative establishment of a PRB. Also the universities are, strictly speaking, not in the public sector. They are private, not-for-profit corporations.

As with nurses and school teachers, industrial action by fire-fighters is not illegal. To reduce the possibility of strike action, however, collective bargaining is tempered: there is an independent chair of the negotiating forum for fire-fighters and an indexation formula to determine pay increases based on statistics on the average earnings of male manual workers as shown in the annual New Earnings Survey. This formula was agreed over 20 years ago, after a national strike. Also fire-fighters, unlike nurses and school teachers, have unilateral access to arbitration, and this is another mechanism which, in practice, limits a union's resort to industrial action. Indeed, since the indexation formula was introduced, there has not been industrial action by fire-fighters at national level, but there has occasionally been local industrial action, eg. Essex in 1997. Moreover, troops have been used to extinguish fires, when the fire-fighters themselves were on strike (Morris, 1986), in an attempt to limit the effect of industrial action in essential public services. Presumably the Home Office is prepared to use troops to replace fire-fighters, perhaps because for much of the time they are not on active service, but not to redeploy the police to replace prison officers (see Straw's letter of 28 January 1998 quoted above).

A further strategy is to make industrial action unlawful, and this strategy has been adopted by the government in respect of the police and the armed forces,¹ as well as for prison officers (see above). Those in the police and armed forces, however, do not have a right to be represented by a trade union. (The Police Federation is not a trade union in law.) To compensate for these restrictions, the police have a Police Negotiating Board (PNB), which is the negotiating forum for questions relating to police pay and conditions in Great Britain and Northern Ireland. There is an official side and staff side and an independent chair and the PNB is serviced by the Office of Manpower Economics (as are the PRBs). To obviate disputes, there is a formula to determine pay increases based on the inter-quartile range of pay settlements and unilateral access to the Police Arbitration Tribunal. The armed forces have a PRB which sets remuneration and some other charges, eg. charges for meals and accommodation (White, 2000) but, unlike the police, they do not have a pay formula, nor unilateral access to arbitration.

In addition, there are staff at Government Communications Headquarters (GCHQ). Unlike those in the police and the armed forces, the illegality of industrial action by staff at GCHQ does not rest on statute. It rests on a legally binding 'no disruption' 'collective agreement to ensure staff relations are conducted peacefully and without disruption to operations at GCHQ' (unpublished, 1997) and the wording of the agreement in many areas is replicated in the new agreement between the POA and the Prison Service. For instance, both agreements are underpinned by a 'partnership approach' and say that 'the overall intention is to create a climate . . . in which there will be no occasion or necessity' for industrial action. Both say that in the event of a dispute about whether industrial action would have the effect of disrupting oper-

¹ Less well-known is a third group of public servants: postal workers. They can be prosecuted under the Regulation of Investigatory Powers Act 2000 for intentionally intercepting a communication in the course of its transmission.

ations, 'the question will be decided by the Secretary of State whose decision will be final'. Both agreements have a status quo clause, unilateral access to arbitration and the Secretary of State can override the arbitrator's award subject to the furnishing of a reasoned explanation.

There are, though, some notable differences. First, the Secretary of State can only override the arbitration award for GCHQ staff for 'overwhelming reasons of national security or public interest' (author's emphasis). In the POA agreement, the word 'overwhelming' is not included. Secondly, the GCHQ agreement limits the union's financial liabilities to an aggregate of £10,000 per union in respect of any or all breaches 'arising out of, or incidental to a single dispute or connected series of disputes'. In the Prison Service agreement, the union's liability for breach is not limited. Other differences relate to the fact that the Secretary of State is to have reserve statutory powers in the event of POA disruption, unlike GCHQ staff, for whom legislation was never necessary. Their union membership ban in 1984 was affected by Order in Council (Lanning and Norton-Taylor 1991). Moreover, GCHQ staff now have collective bargaining, but prison officers (as noted above) have a PRB to recommend remuneration, although bargaining is not precluded over other matters.

Thus, the provisions preventing industrial action are more far reaching in respect of prison officers, compared with other groups of public servants in that there is belt and braces: a legally binding collective agreement with unlimited liability for the union and reserve powers for the Secretary of State under statute. In no other public service group is there a twofold approach to outlawing industrial action. This is a reflection of reality. Prison officers have often taken industrial action both before and after it was illegal. In contrast, the armed forces and the police are not known for their militancy and neither are GCHQ staff, who did not take industrial action even when their rights to be union members were withdrawn in 1984 (Lanning and Norton-Taylor, 1991). Moreover, although industrial action has been taken by fire-fighters, school teachers and nurses, this has not been frequent when compared with the prison service.

Conclusions

It has been shown that prison service managers and POA officials identified significant problems with the pre-2001 industrial relations procedure, particularly the 'clogging up' of the procedure with relatively minor matters, the protracted nature of the procedure in practice and the absence of any provision for the impartial resolution of disputes. Moreover, neither the procedure nor the CJPOA prevented disruption. Accordingly, in 2001 the government introduced a three-prong approach: reserve statutory powers, a legally binding no-disruption agreement and a PRB. Yet these new provisions, too, have not succeeded in preventing disruption. Moreover, one underlying source of strain, the continuing rise in the prison population without corresponding increases in staffing, has not been removed.

The final part of this paper placed the industrial relations restrictions on prison officers in the context of those applying to other public servants who provide essential services. In short, the extent of the restrictions imposed by the government seem to be based primarily on a pragmatic assessment of the likely effects of industrial action on the service concerned and the likelihood that the particular occupational group will take industrial action. As the table shows, though there are similarities between these key occupational groups, there are also important differences. The government has proceeded on a case by case basis, applying more restrictions to prison officers than to other public service workers.

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Table 1: Industrial action and essential public servants

Group	Industrial action illegal?	Determination of remuneration	Determination of other terms and conditions	Arbitration (unilateral access)
Ambulance staff	x	Collective bargaining	Collective bargaining	x
Armed forces	Criminal offence	PRB	PRB and Queen's regulations	x
Fire-fighters	x	Indexation formula subject to agreement by negotiating body ¹	Negotiating body ¹	✓
GCHQ staff	Legally binding 'no disruption' agreement	Collective bargaining	Collective bargaining	✓
Nurses and paramedics	x	PRB	Collective bargaining except for stand-by, on-call and London allowances	x
Police	Criminal offence	Indexation formula and Police Negotiating Board ¹	Police Negotiating Board ¹	✓
Prison officers	Legally binding 'no disruption' agreement and statutory reserve powers	PRB with statutory underpinning	Collective bargaining for non-PRB matters	✓
School teachers	x	PRB with statutory underpinning	PRB except for certain local matters	x

¹In these bodies there is an official side and staff side, which meet together under an independent chair

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The GCHQ Union Ban 1984-1997: the unions' strategy and the outcome

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In 1984 the Conservative government banned trade union membership at Government Communications Headquarters (GCHQ), the electronic intelligence gathering centre whose headquarters are at Cheltenham. The ban provoked considerable public opposition, criticism by the media and members of parliament from all parties, as well as condemnation by the International Labour Organisation, but the unions had to wait for over thirteen years, i.e. until a Labour government was elected, before union rights were restored. This restoration, however, was only achieved on the basis that the unions made concessions, notably curtailing their freedom to take industrial action.

This article examines the strategy the unions adopted to reverse the ban, looking at various dimensions: objectives and ideology, the role of trade unionists and third parties, the use of the law and the non-independent staff association, finding that the civil service unions adopted a moderate, not a militant stance. Its conclusions discuss the historical significance of GCHQ arguing that the ban symbolises both the Thatcher government's hostility to collectivism, as well as the Major government's anti-unionism and new Labour's stance on industrial relations. We begin, however, by placing the GCHQ ban in context and looking at union strategy.

BACKGROUND

GCHQ was founded at the end of the Second World War, succeeding a series of code breaking organisations dating back to the First World War, and is a civil service department responsible to the Foreign Secretary. In 1984, just before the ban was imposed, in addition to its headquarters in Cheltenham it is thought to have had eleven stations in the UK, four outside the UK and some 7,000 employees.¹ (Precise details are not revealed by governments.) It recognised the civil service unions (six just before the ban), all affiliated to the Trades Union Congress (TUC) and it was covered by civil service-wide institutions, such as the Civil Service Arbitration Tribunal and the Whitley system (joint management/union committees).

As in the wider civil service, industrial relations at GCHQ was characterised by joint management/union agreement over a wide range of matters, with consultation often merging with negotiation, and there was employer support for union membership. For instance the government as employer, in its handbook for the new civil servant, issued to all staff including those joining GCHQ, encouraged entrants to join the union appropriate to their grade and play an active part in its affairs and gave facility time, i.e. paid time off for union representatives, relatively generously. Indeed, just hours before the government announced the ban, GCHQ lay union representatives held their customary session on an induction programme, encouraging recruits to become union members.

Furthermore, apart from a five month dispute in 1981, pay was largely jointly determined in a consensual manner.² Some GCHQ staff, such as administrators, clerical staff and secretaries, enjoyed the same pay as their counterparts elsewhere in the civil service, while other GCHQ staff, who had no counterparts elsewhere, were classed as departmental staff. Furthermore, from 1970 civil servants in the senior three grades, whether at GCHQ or not, had their pay determined by the government on the recommendations of the Top Salaries Review Body,³ to which the relevant civil service unions gave evidence.

TRADE UNION STRATEGY

Although according to Boxall and Haynes⁴ the notion of trade union strategy is still in its infancy, the issue is not altogether neglected in the literature. For instance Bacon and Storey,⁵ Boxall and Haynes,⁶ Guest⁷ and Lucio and Weston⁸ have constructed typologies. These, however, place union-employer relationships at centre stage but after the ban was imposed at GCHQ, the unions had no relationship with the employer. Accordingly, a broader approach would seem to be required. Beaumont⁹ draws on the North American literature to point to a basic dichotomy between a co-operatist and militant union strategy. In much more detail, but in a similar vein, Kelly¹⁰ distinguishes between militant and moderate trade unionism, defining these concepts in a multi-dimensional way: goals, membership resources, institutional resources, methods and ideology. The goal dimension, he says, centres on the scale and scope of the demands, with militant trade unions demonstrating ambition and few concessions, whereas moderate trade unions seek accommodation and offer some or many concessions. As to the second dimension, membership resources, he argues that a militant union is likely to emphasise membership mobilisation as part of its strategy of confronting employers and the state with collective power while a moderate union will place more reliance on legislation and goodwill to achieve its objectives. The third

dimension, institutional resources, centres on the fact that militant trade unions are likely to insist on a single union channel of representation whereas its moderate counterparts will actively support non-bargaining channels such as consultative committees. The fourth dimension, methods, entail militant unions relying on the threat or use of industrial action and moderate unions only infrequently threatening or using industrial action, preferring peaceful methods of conflict resolution such as third party intervention. His final dimension is ideology. He says:

a militant union can be thought of as one whose leaderships (at various levels) stress conflicts of interest between workers and employers and promote a corresponding adversarial ideology. The language of common interests, partnership and collaboration is, by contrast, the language of the moderate union.¹¹

Below, Kelly's analysis is used to look at the civil service unions' approach to the GCHQ union ban but first the union ban itself is briefly described.

THE BAN: AN OVERVIEW

On 25 January 1984 the then Foreign Secretary, Sir Geoffrey Howe, told the House of Commons that to obviate the risk posed by industrial action, the Conservative government had decided to withdraw union recognition at GCHQ and that staff would not even be permitted to be union members. To this end the government was going to remove staff's statutory protection against dismissal, including dismissal for being a member of a union or participating in trade union activities.¹²

~~Simultaneously all GCHQ staff were informed in writing that they had~~ until 1 March 1984 to decide whether or not they wished to remain at GCHQ under the new conditions. If so, they had to sign what was called Option A. In return they would receive £1,000 for their loss of the right to take a claim of unfair dismissal to an employment tribunal and could join a staff association whose constitution would have to be approved by the GCHQ director. Those who did not wish to remain could sign Option B, indicating that they wished to be considered for a transfer elsewhere in the civil service. Those for whom a transfer could not be found, or those who refused both Option A and Option B, would have their employment terminated at a date determined by the GCHQ director.¹³

As noted above, there were at that time six civil service unions with members at GCHQ and when the ban was proposed, they acted together nationally under the Council of Civil Service Unions (CCSU). First they negotiated with the government, seeking to persuade it to drop its proposal, but these negotiations broke down after a few weeks. Second, they tried to stop members signing away their union rights. Although the

CCSU guaranteed to make up the take-home pay and pension for anyone sacked from GCHQ for being a union member shortly before the ban was imposed, less than 200 out of 7,000 staff refused to relinquish their union rights. Of these some took early retirement, others found jobs outside the civil service or were transferred to another part of the civil service and fourteen were eventually dismissed in 1988/89.¹⁴

The ban lasted for over thirteen years, during which time there was unsuccessful legal action both in the British Courts and the European Commission of Human Rights (see below) and the mobilisation of political support. After the 1997 general election when new Labour replaced the Conservatives, it restored union membership rights to GCHQ staff within days of taking office and then recognised the civil service unions at GCHQ. Finally the fourteen staff dismissed because of their union membership were given in total some £500,000 to compensate for lost pension rights.¹⁵

Consideration will now be given to the unions' strategy, looking at the key events in more detail.

THE OBJECTIVES AND IDEOLOGY

One dimension of militancy/moderation, according to Kelly,¹⁶ is the union's goals. When the Foreign Secretary announced the ban in January 1984, the CCSU adopted a moderate approach. First it issued a statement of case¹⁷ rebutting government claims that previous industrial action had adversely affected national security. (GCHQ staff had taken industrial action in connection with a limited number of departmental disputes, notably in 1969 and 1979 and in connection with civil service-wide industrial action in 1981). Importantly also, the unions in their statement of case declared their willingness to foreswear industrial action in the future, rather than seeking the restoration of trade union rights as before.

Then, in what turned out to be a vain attempt to deflect the government from going ahead with the ban, the CCSU, after discussions with the Cabinet Secretary, produced a draft 'no disruption' agreement. This made further concessions, including an undertaking that GCHQ staff would take 'no action which would or might interfere with the uninterrupted operation of essential security and intelligence services' and agreed 'that it is for the government to determine what are essential security and intelligence services in GCHQ'. Moreover, the CCSU proposed that this wide undertaking, much wider than a no-strike clause, would have legal force, as it would be 'included in the conditions of service of staff' and that full-time union officials would 'take no part' in GCHQ negotiations. The quid pro quo was vague: GCHQ management and the GCHQ trade union side would consult together to provide agreed machinery to resolve

disputes.¹⁸ Yet, as noted above, these significant concessions did not dissuade the government.

Interestingly, this draft agreement with its compromises is not dissimilar to the agreement eventually concluded under new Labour in 1997. The latter provides for no disruption to 'the operations of GCHQ', a wider phrase than the earlier 'essential security and intelligence services' and leaves it to the Foreign Secretary to decide whether the intended or proposed industrial action would be disruptive under an agreement that is legally enforceable. The unions obtained some improvements upon the earlier draft, notably that full-time officers, subject to security vetting, can participate fully in GCHQ's industrial relations; that the Secretary of State has to provide 'a contemporaneous reasoned explanation' for a decision that industrial action would disrupt operations; and, importantly, there are unilateral rights of access to arbitration with a status quo clause. The arbitration provision, however, is qualified as 'the Secretary of State, with the concurrence of the Minister for the Civil Service, has the power to overrule the award of the arbitrator for overwhelming reasons of national security or public interest'.¹⁹

Of course objectives are closely related to ideology. A militant union has an ideology of conflicting interests. A moderate union has an ideology of partnership. The civil service unions fell very much into this latter camp. Thus the draft agreement which they proposed in 1984 says:

The general objects of the Civil Service National Whitley Council are to secure the greatest measure of co-operation between the State, in its capacity as employer, and the general body of civil servants ... Both sides attach importance to the improvement of industrial relations throughout the civil service.²⁰

The eventual agreement, reached in 1997, is equally consensual. It says:

The spirit of this agreement is the adoption of a joint partnership approach to solving industrial relations issues, respecting the interests of all parties involved.

THE ROLE OF TRADE UNIONISTS

According to Kelly,²¹ the militant union will mobilise both its own membership and that of other unions and frequently threaten and take industrial action, while the moderate union will place more reliance on third parties and the legislation. In the GCHQ case, the unions' stance was moderate. They sought to raise consciousness but fought shy of industrial action.

Turning first to GCHQ staff, the CCSU started to produce regular information bulletins for members, entitled *Warning Signal*, organise meet-

ings and set up an office in Cheltenham. But the government announced the ban at a time when staff were badly organised, particularly in clerical and non-specialist grades. There was an overall union density of only 58 per cent,²² considerably lower than the 81 per cent overall density in the public sector at that time.²³

Moreover the unions, pinning their hopes on a volte-face by the government, did not really start persuading members to retain their union membership irrespective of the ban and whatever the consequences until too late, i.e. a week before the ban was imposed. Not surprisingly therefore, most staff accepted the union ban. Yet, as the Foreign Secretary admitted to the House of Commons Select Committee on Employment before the ban was imposed, if a significant number of staff were to refuse to leave their unions, ministers would have no option but to reconsider their position.²⁴

The unions, however, did not exploit this weakness. The CCSU realised that if it did not guarantee to make up the take-home pay and pensions of anyone dismissed for union membership, then only a minority would refuse to accept the ban. It also considered that if it gave a guarantee *and* if large numbers of union members then refused to accept the ban, the government would probably back down and the unions' guarantee would prove to be cost free. It feared, however, that if it gave a guarantee and if a sizeable number of staff refused to accept the ban, but not sufficient numbers to make the government back down, then the CCSU would be saddled with large costs. In the face of these difficult choices, the CCSU delayed. At the eleventh hour, when most of the 7,000 staff had already decided to accept the ban, it finally gave the guarantee, but by that time there were less than 200 *refuseniks*.

As to their members outside GCHQ, the civil service unions pointed out that what had happened at GCHQ could happen in other security sensitive areas such as the Ministry of Defence and the Home Office and union officials spoke at civil service union conferences and meetings, as did GCHQ trade unionists who had refused to accept the ban. The latter also spoke at meetings of trades councils and branch meetings of non-civil service unions. The CCSU recorded the key events of the ban in a booklet²⁵ which, together with other GCHQ memorabilia (mugs, keyrings, T-shirts), was sold at union conferences where a so-called road show, with display boards, was erected and staffed by a retired GCHQ union member.

Yet despite this consciousness-raising, the CCSU did not begin to plan for industrial action until negotiations with the government had broken down, i.e. nearly a month after the ban was announced and shortly before it was imposed. 'Amazingly much time was spent discussing whether industrial action should be called for starting at 9am, mid-morning or

lunch-time.²⁶ In the event, the civil service unions called out their members for one day, excluding GCHQ staff, who were expressly told not to strike. The rationale was two-fold: first, GCHQ union members had not been renowned for their militancy and there was a fear that the strike call would not be widely supported. Second, it was argued that as the CCSU had offered a 'no disruption' agreement at GCHQ, it would be inconsistent to then call for disruption, even though the agreement had been rejected by the government.

There were also attempts to mobilise members of non-civil service unions and here the TUC had an important role, there being close collaboration between the CCSU and the TUC throughout, the latter acting out of both principle and expediency. As a commentator said:

The TUC can hardly believe its good fortune ... Mrs Thatcher has given the unions a ready-made platform from which to remind the country of the value and importance of the trade union movement.²⁷

Moreover, the TUC soon realised that the GCHQ union ban would unify the unions, unlike the miners' dispute of 1984-85. For instance at the 1984 TUC Congress the moderate Electrical, Electronic, Telecommunications and Plumbing Union (EETPU) and the militant National Union of Mineworkers (NUM) both voted for a campaign against the union ban, although the EETPU voted against the NUM's motion calling for total support of the mineworkers in their dispute against the National Coal Board, then a nationalised industry, and in effect the government.²⁸

The TUC's actions before the ban was imposed included hosting a rally of the members of executive committees of affiliated unions and, to coincide with the civil service unions' strike, calling a 'day of action' for all trade unionists. As well as attendance at rallies, there was some sporadic strike action by members of affiliated unions, including railway and engineering workers, an exception to the conventional wisdom that others would not take sympathy action (then legal), unless those on whose behalf they would be taking action (in this case GCHQ staff) were on strike themselves.

After the ban was imposed, the TUC organised an annual march and rally in Cheltenham, linking it with seminal events in labour history, particularly the Tolpuddle martyrs. For instance a TUC postcard explained that the GCHQ union ban was imposed 150 years after the conviction of the martyrs and that Cheltenham, where GCHQ has its headquarters, was the first town to petition the House of Commons for the martyrs' release. It also compared Mrs Thatcher's support for *Solidarnosc*, the union in the then Communist Poland, with her union ban in Britain.²⁹

It was not until 7 November 1988, shortly before the first dismissals

of the remaining GCHQ trade unionists, that there was again industrial action, but it was more limited than 1984's for a number of reasons. First, legislation had been passed which resulted in ballots being a prerequisite for lawful industrial action. Strike ballots were held but were only won by some of the civil service unions. Moreover, the EETPU, as promised in 1985, balloted its members in electricity supply to strike in support of GCHQ trade unionists, but lost the ballot. Although some members of affiliated unions outside the civil service, e.g. the Tilbury Dockers, struck ignoring the ballot provisions,³⁰ the TUC merely urged trade unionists to attend the marches and rallies held that day, a more muted call than in 1984. Indeed they called it 'GCHQ day', eschewing the more militant term 'day of action' used in 1984. In short, industrial action was not in the forefront of the campaign to reverse the ban.

THIRD PARTIES

From the time when the government announced the ban, the civil service unions tried to win over third parties, particularly the media and politicians, portraying the ban not as a union issue, but as a civil rights issue. Thus, together with the TUC, they coined a slogan 'civil rights for civil servants', produced a poster linking the union ban in 1984 with Orwell's book *1984* and advertised in the press to rally support. Indeed, even newspapers normally supportive of the Thatcher government gave sympathetic coverage.³¹

In addition political support was sought and obtained. Thus before the ban was imposed there was a lobby of Parliament and the House of Commons Select Committee on Employment, which contained a majority of Conservative MPs, criticised the government's action in its report issued on 17 February 1984. After the ban both Labour, the Alliance (before the break up of the Social Democratic Party) and then the Liberal Democrats pledged on a number of occasions to allow GCHQ staff to be union members once again. Both the Liberal Democrats and Labour, however, wanted safeguards for national security on the lines of the 'no-disruption' agreement proposed in February 1984 by the CCSU and the exact form of the political commitment varied slightly over the years.

THE LAW

As a moderate body, the CCSU also sought to use the law. First it brought a judicial review case which it won in the High Court, which held that GCHQ staff had a 'legitimate expectation' to be consulted. It lost, however, in both the Court of Appeal and the House of Lords, essentially on

the grounds that it was for the government, not the courts, to decide whether national security was involved and, if the government said that it was, this outweighed any other obligations.³² After this the CCSU took the case to the European Commission of Human Rights in Strasbourg under the Convention on Human Rights³³ but the Commission decided that the case was inadmissible. Although article 11 of the Convention guarantees the right to freedom of association, GCHQ staff fell within the article's exclusion of 'members of the administration of the state'.

Only in the International Labour Organisation (ILO) was the CCSU successful. The complaint was lodged by the TUC and the ILO's Committee on Freedom of Association held that the ban was not in conformity with convention 87 which guarantees the basic right of all public servants (except the armed forces and the police) to form and join organisations of their own choosing. It urged the government to negotiate with the CCSU to reach an agreement which would satisfy its security concerns as well as its obligations under international law. The ILO's Committee of Experts³⁴ adopted a similar stance but, as there was no satisfactory response by the government, the matter was considered by the Conference Committee on the Application of Standards in 1989, 1991, 1992 and 1993 and the government narrowly escaped being subject to the ILO's ultimate sanction, a 'special paragraph'.³⁵ In response to repeated ILO calls for the government to have meaningful discussions with the unions, the then Prime Minister, John Major, met civil service union leaders at the end of 1993 and the beginning of 1994 but no agreement could be reached.³⁶ In the last resort, the ILO can only chivy and cajole. Its rulings are not legally enforceable, so at the end of the day the CCSU obtained a moral victory only.

THE STAFF FEDERATION

Most staff signed Option A once the ban was imposed. Only about 150 staff refused to give up their union membership,³⁷ so the six civil service unions joined together to form GCHQ Trade Unions. This was an organisational arrangement, not a structural one. Members still belonged to their civil service unions but campaigned under the GCHQ Trade Unions umbrella. For instance members met weekly and staffed a table in the GCHQ canteen at Cheltenham with union information available to any employee who might want to read it.

In 1985 GCHQ management set up a staff association, Government Communications Staff Federation (GCSF), and gave it sole negotiating rights on departmental issues. GCSF subsequently applied for a certificate of independence which was refused in 1989.³⁸ Its appeal to the Employment Appeal Tribunal, opposed by both the Certification Officer and the

CCSU, was dismissed on the grounds that its continued existence was dependent on the director of GCHQ.³⁹

To meet these concerns, and to go some way to meeting ILO criticisms (see above), the Major government in 1995 abandoned a management veto on the constitution of GCSF, which applied again for a certificate of independence. This second application, however, was rejected too. The Certification Officer pointed out that there were still considerable restrictions: for instance GCSF's officers must be employees of GCHQ; it could not recruit members from elsewhere and its officers and members, if dismissed for a trade union reason, could not benefit from the legal mechanisms available to others in such circumstances.⁴⁰

Before the 1997 general election, new Labour's employment spokesman said that if Labour were to form the next government, although it would allow GCHQ staff once again to join civil service unions, it would only grant them recognition if they recruited sufficient members and that the GCHQ staff federation would also be recognised 'if it has more than 50 per cent support from GCHQ employees'.⁴¹ Probably in view of this, when the civil service trade unions were allowed back to GCHQ in 1997 after the restoration of union rights, one of the civil service unions merged with GCSF. By that time, many GCHQ staff had never been members of a civil service union and the majority were members of GCSF. Accordingly the civil service unions, after campaigning against GCSF for over twelve years, for instrumental reasons decided not to engage in a recruitment war, but to welcome it into the fold.

AN EVALUATION

Undoubtedly the TUC and the civil service unions adopted a moderate approach to the GCHQ union ban, for instance the methods used and the ideology put forward. The restoration, albeit limited in that all the pre-1984 union rights were not regained, owed much to the public relations campaign which convinced the public and new Labour that this was a human rights issue, and not just a union issue.

The major alternative to this moderate approach would have been a campaign based on industrial action. Would union rights have been restored earlier and/or without restrictions on GCHQ staff's right to take industrial action if a militant approach had been adopted? Kelly suggests 'that militancy is likely to prove a better guarantor of union survival and recovery' than moderation and that without a defence of the right to strike and the maintenance of the willingness of the membership to take collective action, unionism will depend on employers and the state for its survival.⁴² Moreover, public support might have held up even if GCHQ staff had taken industrial action. What GCHQ workers do (intelligence

gathering) does not impact directly on the public which could support industrial action without suffering as customer or consumer.

Blackwell and Lloyd⁴³ point out that some civil service union officials argue that the reason why the dismissals of GCHQ trade unionists were delayed until four and a half years after the ban's imposition owed much to the industrial muscle of the EETPU. They suggest that the EETPU general secretary's promise in 1985 at the TUC Congress to ballot electricity supply workers for industrial action held the government back after threatening dismissals of GCHQ trade unionists six times. In fact, the government only carried out the dismissals after the EETPU had left the TUC. Blackwell and Lloyd thus argue that the threat of industrial action had a seminal role in the events of the ban and, by implication, argue that, if more widespread action had been taken, the ban might have been reversed by the Conservative government.

Both the TUC and CCSU, however, judged that a militant approach, whatever the theoretical arguments, was not a practical possibility and could be counter-productive. First, GCHQ union members had never been known for their militancy unlike, for example, their fellow civil service trade unionists in social security. Secondly, industrial action at GCHQ could have played into the government's hands. It would have been easy to present GCHQ strikers as unpatriotic and endangering national security. Thirdly, both civil service trade union leaders and many of their members were strike-averse at that juncture. They were still licking their wounds following their resounding defeat after their twenty-one week dispute in 1981, when the government had borne significant costs rather than give in to the unions' demands. Fourthly, the TUC considered that trade unionists outside the civil service were only prepared to take token industrial action against the ban. Even the EETPU's general secretary's threat of industrial action by electricity supply workers if a GCHQ trade unionist were to be dismissed, was not a strike threat against the ban *per se* and it was a strike threat for the future, not the present.

Also union power and union popularity are inversely related, according to Edwards and Bain.⁴⁴ They used responses to a Gallup question, posed annually since 1954: 'Generally speaking and thinking of Great Britain as a whole, do you think that trade unions are a good thing or a bad thing?' to construct a measure of union popularity. They found that net union popularity varied inversely with strikes (number of days lost) and price inflation, both associated with union power. In short, extrapolating this thesis, the civil service unions were able to popularise successfully the GCHQ union cause, enlist public opinion and influence politicians from all the parties because they did not exercise power.

However one assesses the pros and cons, which are by no means clear cut, the stance taken by the unions, with its emphasis on eventual reversal

by politicians, was not unprecedented. For instance, under the Trades Disputes and Trade Unions Act 1927, civil service trade unions were prohibited from affiliating to outside bodies, in practical terms the TUC, but rather than taking industrial action, they disaffiliated their 130,000 members. Then the TUC and the Labour Party sought to win over public opinion against the legislation 'with 650 bookings of national speakers alone, covering a total of 1,150 meetings and demonstrations'⁴⁵ but, despite this, the prohibition lasted almost two decades. '[The Act's] repeal, amid some fanfare, was among the first legislative acts of the post-war Labour government in 1946,'⁴⁶ just as the repeal of the GCHQ union ban was among the first acts of the 1997 Labour government.

To take another example, six men from Tolpuddle, Dorset who had formed a society and established contact with the Grand National Consolidated Trades Union, were tried in 1834 on grounds of taking secret oaths and sentenced to seven years' transportation. There were nationwide meetings, demonstrations, petitions, questions in the House and even *The Times* criticised the trial.⁴⁷ As Fox notes: 'Passionate principle and political expediency combined'⁴⁸ and the slogan, 'one law for rich, and another for the poor', was coined. In March 1836, with Lord John Russell as Home Secretary in place of Lord Melbourne, and with campaigning continuing, the government gave the Tolpuddle men a free pardon and eventually brought them back to England.

SIGNIFICANCE

Like Tolpuddle, GCHQ now bulks large in labour movement history but what is its historical significance? Lord Wedderburn places the GCHQ ban firmly in the context of the Thatcher administration's labour law philosophies based on the writings of Hayek and Friedman.⁴⁹ These writers hold that the market is the most efficient way of allocating goods and services and wherever possible public services should be provided by market mechanisms or proxies for them. As trade unions interfere with the operation of the market, their power should be weakened. The Thatcher government operationalised these philosophies by ministerial decree – as in GCHQ; by law – a series of acts restricting unions' powers to take industrial action; by deflationary economic policies which led to higher unemployment, limiting trade unions' bargaining power; and by actions which adversely affected public sector unions, for instance the privatisation of the utilities and compulsory competitive tendering in local government. Moreover, the government's stance encouraged some other employers in both the public and private sectors to derecognise unions⁵⁰ or to follow partial union exclusion policies, i.e. the marginalisation of

unions while recognising their continued right to operate. For instance, some employers adopted strategies based on the management/individual link rather than the management/union link, such as individual performance-related pay and staff attitude surveys, or limited the issues to be determined jointly, asserting managerial prerogative. (Space precludes a further listing of instances of union exclusion policies but see Smith and Morton.⁵¹)

The GCHQ ban was recognised by many commentators as encapsulating the government's hostility to trade unions both as employer and as policy maker and an extreme reflection of a much wider shift in the decollectivisation of British industrial relations in the 1980s. For instance, The Workplace Industrial Relations Survey (WIRS 1990)⁵² said:

While the immediate significance of that change [the ban] affected a very small number of workplaces, it suggested to the trade unions that the traditional strong endorsement of trade union membership for civil servants might not endure.

Furthermore, in his biography of Mrs Thatcher, the *Guardian* columnist Hugo Young considers that the GCHQ ban was a harbinger. It 'expressed an attitude, announced a determination and enforced a priority which previous governments shrank from'.⁵³

Yet the significance of the GCHQ ban goes further as it also epitomises the industrial relations approach of both the Major administrations 1990-97 and the new Labour government from 1997. The Major government had discussions with the civil service unions at the end of 1993 about the lifting of the ban but it was not prepared to allow the civil service unions to return to GCHQ, even if there were constraints. An agreement could not be reached. The Major government, however, removed the management veto on the constitution of the GCHQ staff federation and lifted the general ban prohibiting members of security and intelligence services having access to employment tribunals in respect of unfair dismissal claims other than for a trade union reason, though this did not affect the ban on union membership.⁵⁴ In other words the Major government softened the edges but did not depart from the principle.

Finally, the restoration of union rights at GCHQ epitomises the approach of the Blair administration to industrial relations. In its manifesto for the 1997 general election the Labour party said:

In each area of policy a new and distinctive approach has been mapped out, one that differs from the old left and the Conservative right. That is why new Labour is new ... In industrial relations, we make it clear that there will be no return to the ... trade union law of the 1970s. There will instead be basic minimum rights for the individual at the workplace, where our aim is partnership not conflict between employers and employees.⁵⁵

Similarly, a year after the general election in the foreword to the White Paper, *Fairness at Work*, the Prime Minister, Tony Blair, said:

[The government] steers a way between the absence of minimum standards of protection at the workplace, and a return to the laws of the past ... It matches rights and responsibilities ... There will be no going back.⁵⁶

As noted above, the 1997 agreement which once again recognised the civil service unions at GCHQ states in terms that the signatories will adopt a 'joint partnership approach'; is legally binding; and the unions undertake not to disrupt the operations of GCHQ. In short, the agreement symbolises new Labour's approach to industrial relations, not hostile to unions like the Conservatives, but based on workplace partnership, yet with the unions' former powers to take industrial action curtailed.

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In addition to the more conventional examination of published and unpublished documents, this article draws heavily on the author's participation in the events. From 1981 to 1989 she was Assistant General Secretary of the Association of First Division Civil Servants (FDA) and, just before the ban, the FDA had a branch at GCHQ which was over thirty years old and consisted of 110 members. Immediately the government announced the ban, the Council of Civil Service Unions set up a GCHQ Campaign Committee on which all the unions with branches at GCHQ were represented, so that they could speak and act with one voice. The author represented the FDA on the CCSU's committee for its first five years and thus had a direct role in developing the civil service unions' strategy.

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Employee relations in the public services: a paradigm shift?

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Since the early 1980s there has been a reshaping of the public services through contracting out, privatisation, purchaser/provider splits and the private finance initiative, which has resulted in the injection of market principles or proxies for them and the structural blurring of the public/private sector divide. These structural changes have impacted on employee relations but the key question is ~~in what ways has there been change and what is the extent of change. Has there~~ been transition towards or transformation to a market orientation?

According to the Concise Oxford Dictionary a transformation is a metamorphosis, which is a change of form or a change of character. According to Bach (1999a) transformation is purposeful and sustained, while Ferlie *et al* (1996, p.33) argue that transformational change is multi-dimensional, multi-layered and fundamental. Transformation can be contrasted with transition, where strong elements of continuity persist and the process is incremental and teleological. According to the Concise Oxford Dictionary transition is the process of changing from one set of circumstances to another. It is an interim stage.

This article, which draws mainly from the civil service and the National Health Service (NHS) falls into five sections. The first section takes an overall view of the transformation/transition debate in respect of public service employee relations. The second section takes the debate further by breaking down employee relations into specific issues and evaluating the areas where change has taken place. The third section considers whether the process of change is being reversed under the Labour government. The fourth section looks beyond this to *within* the public services. In the fifth section conclusions are drawn.

The argument developed here is that complex and uneven trends can be seen in the changing nature of employee relations both between the different public service organisations themselves and within each public service organisation. Whereas on the whole transformation is a more appropriate term for the civil service, there are variations in the extent of change between civil service executive agencies. Similarly, whereas on the whole transition is a more appropriate term for the National Health Service, there are variations between NHS trusts.

The overall debate

The first section looks at the big picture, ie the overall debate, and there are proponents of the transformation thesis and proponents of the transition thesis. Fredman and Morris (1989) were among the first to put the case for transformation. They argue that the state as employer was distinctive before 1979, perceiving its role as that of the model 'good' employer encouraging trade union organisation, committed to collective bargaining, offering a high degree of job security and using its position as a major purchaser of private sector services to require contractors to apply 'fair wages' (ie the Fair Wages Resolution) when carrying out central government work. In a context of accountability within a democratic political system and hierarchically structured organisations, public service employee relations were organised centrally and were largely consensual in nature. Thus there was a high degree of centralised rule making; bargaining arrangements at national/multi-employer level; a commitment to conciliation and arbitration to avoid industrial conflict; an emphasis for many public servants upon pay comparability with the private sector; and a high level of union involvement in the determination of terms and conditions and joint agreement through a well developed 'Whitley' system (joint management/union committees). Indeed, the scope of consultation was wide and consultation often merged into negotiation as, unlike most parts of the private sector, the two processes of negotiation and consultation were not defined and distinct. Moreover, the provision of facility time to union representatives (time off for industrial relations and trade union duties) was relatively generous compared with many private sector companies. This resulted in a plethora of public service unions organised sectorally and occupationally, often competing with each other for members, especially in respect of nurses and school teachers.

According to Fredman and Morris (1989) from the 1980s Conservative administrations departed from the State's role as model employer, applying private sector employment practices, undermining job security and national collective bargaining, ceasing to encourage trade union membership and rescinding the Fair Wages Resolution. They admit that pre-1980 there were pockets of low pay in the public services and that the structure of collective bargaining and job security has not totally been undermined post 1979. Nonetheless, as noted above, Fredman and Morris come within the transformation camp. In a similar vein Hepple (1982) argues that a traditional model has been replaced by a 'new' model.

More recently Carter and Fairbrother (1999) have entered the debate concluding that there has been 'historical transformation of the public sector'. They argue that up to the 1980s a model employer philosophy prevailed, albeit in partial and uneven forms, 'premised on relatively opaque employment relations'. During the 1980s and 1990s, relations between management and employees became more transparent as 'waged relationships' and 'the "model employer" has been replaced by "economy, efficiency and effectiveness" and, more recently, by "best value" and "best [private sector] practice"'. In this process collective conditions and national bargaining were undermined (Carter and Fairbrother 1999:142).

Colling (1997) takes a more qualified view, essentially arguing for transition. He points out that pre-1979 there was low pay and discriminatory employment procedures in large parts of the public sector along with elaborate systems of negotiation, consultation and arbitration which made the sector an exemplar. Accordingly the role of the State as model employer was complex and contradictory. Post 1979 'the influence of market forces continues to be intertwined with more traditional political pressures. Current management practice consequently exhibits continuities from the past as well as innovation' (Colling, 1997, p.673). Morgan *et al* also fall within the transition camp. They say that if 'the notion of the "good" employer is informed by a relative standard and comparison with the private sector, then the distinctiveness of the public sector is still apparent, notwithstanding recent change' (Morgan *et al*, 2000, p.107).

A similar view that there has been transition is taken by Bach and by the Conservative government, though the arguments are different. Bach (1999b), focussing on nurses' pay, argues that continuities with the past remain because the notion of the State as model employer always lacked substance and national terms and conditions have shown their resilience in the face of government attempts at change. The Conservative government, taking a different approach, argued that there were continuities with the past because it remained committed to upholding the model employer tradition. For instance, its White Paper on the civil service was entitled *Continuity and Change* (Cabinet Office, 1994). Moreover, its further White Paper on the civil service entitled *Taking Forward Continuity and Change* 're-emphasises the Government's commitment to maintaining the civil service as a good employer, ensuring equality of opportunity, maintaining a predominantly career civil service and to the training and development of all staff' (Cabinet Office, 1995, p.2).

The issues

So far the transition/transformation debate has been considered by looking at the public services multi-dimensionally. In this second section the transition/transformation debate is examined in respect of six particular issues: collectivism, job security, pay comparability, pay decentralisation, industrial action and ethos to determine in what areas there has been change.

Collectivism

Pre-1979 collectivism was a feature of public sector employee relations as noted above, but Smith and Morton (1993; 1994) argue that the government's stance in favour of collectivism was reversed from 1979. First, there were instances of union derecognition for collective bargaining. Probably the starkest example is Government Communications Headquarters (GCHQ), the intelligence gathering centre, mainly based in Cheltenham. In 1984 the Government not only withdrew union recognition there, it established new conditions of employment whereby those who wished to remain at GCHQ had to give up their union membership and their right to go to an employment tribunal to claim unfair dismissal

(Lanning and Norton-Taylor, 1991). Although the GCHQ union ban only affected a small number of civil servants (some 7,000), it demonstrated that the Conservative government was no longer going to endorse union membership for civil servants and in fact it then amended the Handbook for the New Civil Servant to remove its encouragement of entrants to join the union appropriate to their grade. According to the Workplace Industrial Relations Survey: 'the proportion of workplaces in central government where managers said that management strongly recommended trade union membership halved between 1984 and 1990' (Millward et al, 1992, p.361).

There are other, less publicised, instances of union derecognition in the public services for instance in a few small NHS trusts such as Northumbria Ambulance, Lincolnshire Ambulance, Essex Ambulance, and Mulberry Trust, and in a national museum, the National Maritime. In addition to organisation-wide derecognition, there has been grade specific derecognition. For instance senior academic and managerial staffs at the new universities (Farnham and Giles, 1996) and NHS managers were taken out of collective bargaining and given personal contracts.

Furthermore, joint management/union regulation of pay for nurses and the professions allied to medicine, school teachers and some 2,000 senior civil servants in grades 4 and 5 gave way to unilateral regulation of pay by government, albeit on the recommendations of pay review bodies (PRBs) which preserve the principle of collective pay determination and give the unions a role in giving evidence (White, 1999).

As well as the derecognition of trade unions for collective bargaining, partial union exclusion policies, ie the marginalisation of unions while recognising their continued right to operate, must be considered (Smith and Morton, 1993). A prime example of this is the removal of the prison officers' right to strike under the Criminal Justice and Public Order Act 1994, though the Prison Officers' Association continues. Union marginalisation can also be seen in the operation of ~~agreements on collective bargaining and consultation procedures, which despite~~ espoused policies, have reduced the role of trade unions. For example, a survey in 1997 found that most NHS trust managers had a fairly restricted view of what constituted collective bargaining (Carr, 1999). In the civil service Gagnon (1996) found that the role of trade unions in designing pay arrangements and setting pay rates in civil service executive agencies diminished during the early 1990s.

Another strand of union exclusion policies is the operation of what are commonly called human resource management policies which are based on individualism, not collectivism and result in the bypassing of unions. In the 1980s, 'a raft of devices which reach out to the employee on an individual basis' came to the fore in the public sector (Storey, 1989, p.22). These included team briefings, staff newspapers and attitude surveys which emphasise the individual /manager link rather than the union representative/manager link.

Allied to this there was a significant growth of individual performance related pay (IPRP) from the 1980s for virtually all civil servants, senior police officers (Horton, 1996), senior academics and managers in the new universities

(Farnham and Giles, 1996) and virtually all staff in a few NHS trusts (Marsden and French, 1998). IPRP is inimical to collective bargaining. Unions can only negotiate the amount of the pay-bill to be devoted to IPRP, monitor its distribution and support members in the appeals procedure but the individual's pay packet is dependant on management, not union action (Kessler, 1995).

Nevertheless despite these inroads, the level of collectivism in the public services still remains high. Public service unionism has remained relatively healthy, even though the period since 1979 witnessed a decline in union recognition and union density (the proportion of actual members expressed as a percentage of potential members) in the private sector. According to the Workplace Employee Relations Survey (WERS) 1998, union density in the public sector was 57 per cent, compared to 26 per cent in the private sector (Cully *et al*, 1999). Over the period 1979-1996 membership of unions organising predominantly or exclusively in the public services declined by under 2 per cent. The comparable figure for the economy as a whole was 40 per cent (Mathieson and Corby 1999).

Job security

The second of our six issues is job security. As noted above a feature of public service employment pre-1979 was *de facto* job security compared to the private sector and this also entailed promotion from within. There is evidence, however, that in the last decade public service job security has been dented. For instance, the public sector's use of non-permanent contracts now exceeds their use in the private sector. WERS found that in 1998 almost three quarters of all public sector workplaces had some employees on fixed term contracts, compared to a third of private sector workplaces (Cully *et al*, 1999). Similarly, the Labour Force Survey found that in spring 1996, 10 per cent of employees in the public services were on temporary contracts compared with 6 per cent in the private sector (Sly and Stillwell, 1997), while the Cranet survey found that in 1995 at least 20 per cent of employees were on fixed term contracts in a third of higher education establishments (Hegewisch, 1999). There has also been a significant rise in the use of casual staff in the civil service. The ratio of casual civil servants to permanent civil servants was 1:92 in 1979, but it had increased to 1:25 in 1998 (Government Statistical Service, 1998). In the NHS too, the number of employees on short-term contracts rose in the first half of the 1990s (Seccombe and Smith, 1996, Incomes Data Services, 1997, p.164).

On the other hand, in many respects job security still remains a feature of public service employment. Although since 1979 there have been job losses in the public services, they have largely been achieved without *compulsory* redundancies. In the main they were achieved by employees transferring to the private sector whilst providing the same services as before, by natural wastage and by early retirement and voluntary redundancy schemes. Private sector workplaces making workforce reductions opted for compulsory redundancies in 32 per cent of cases, while the comparable figure for public sector workplaces was 15 per cent according to WERS 1998 (Cully *et al*, 1999). Moreover, index

linked pensions are a feature of the employment of public servants but are virtually unknown in the private sector.

Furthermore, although in the 1990s private sector appointments to senior civil service positions became less unusual than hitherto, by no stretch of the imagination are these numbers large. In 1996-97, 96 senior civil service posts were subject to open competition, with 27 (28 per cent) filled by recruits from the private sector (Civil Service Commissioners, 1997). Indeed Kemp (1994), who criticised the Conservative Government for its failure to transform the civil service, has been proved correct. He argued that although departments would be asked to consider advertising senior posts, most would continue to be filled internally as before.

Pay comparability

The article next focuses on the third of our six issues, pay comparability. This was a feature of the pre-1979 model, but was essentially ended by the Conservative government. First, the government ended internal links, eg NHS ancillary workers with local authority manual workers and NHS administrators with civil servants (Mailly *et al* 1989). Second, in 1981 it abolished the Standing Commission on Pay Comparability set up in 1979 and which carried out reviews of 26 groups of public servants (White, 1999). Third, it ended comparability for civil servants. In 1981 the government abolished the 25 year old Priestley system for civil service pay. This provided 'fair comparisons' with outside staff obtained by pay research (Royal Commission, 1955). In its place it established the Megaw system in 1982, which downgraded comparability by using criteria based on pay movements not pay levels in most years and brought to the fore recruitment, retention, motivation and affordability (Blackwell and Lloyd, 1989). The Megaw system was undermined by pay policies from 1992, and terminated in 1996 when national pay agreements and formalised comparability procedures ended.

Yet although pay comparability has ended in some areas, the indexation of the pay of fire-fighters and the police, which began in 1977, continues although the police's formula changed in 1994 (Incomes Data, 1995).

Pay decentralisation

Pay comparability centres on the criteria for pay decisions. The fourth of the six issues, pay decentralisation, concerns the level at which pay is determined. A feature of the pre 1979 public service model was national level pay determination. In the civil service, since 1996 national pay determination has been superseded by agency/department determination. Yet this 'delegation' of civil service pay to agencies and departments has gone hand in hand with largely covert central control. First, Treasury controls the running costs, which includes the pay-bill, of departments/agencies. Second, before negotiations with the unions take place, Treasury has to agree management's negotiating plan and then if the negotiations result in some differences, management must seek Treasury agreement yet again (Talbot, 1997). Interestingly, the word 'delegation', not 'decentralisation' is used in official documents and as Talbot (1997, p.24) says:

'This is certainly different from the old centralised pay and grading decision system, but whether it amounts to a "decentralised" system is all-together more questionable'.

The only other public service where decentralised pay determination is significant is in further education, where the majority of colleges have departed from national arrangements and negotiated their own agreements (Incomes Data Services, 1997).

The civil service and further education apart, the shift away from national pay determination has remained limited in the public services (Bach and Winchester, 1994). According to the Workplace Employee Relations Survey 1998 'In most of the private sector bargaining took place at either the company or workplace level. Multi-employer bargaining was mostly a public sector phenomenon' (Cully *et al*, 1999).

Thus from 1991 although NHS trusts were given the power to set their own terms and conditions, irrespective of the national provisions, most trusts did not do so. It is estimated that only about 10 per cent had their own pay systems for which all non-medical staff were eligible (Incomes Data, 1997). This was primarily because of the continued existence of the pay review bodies for nurses and paramedicals and doctors and dentists, which continued to set rates ~~nationally and effectively provided a benchmark and because of legal restrictions~~ allowing employees to remain on the national pay rates (The Transfer of Undertaking (Protection of Employment) Regulations). With government encouragement, the PRB for nurses and paramedicals in 1995 recommended that national pay rises be topped up by locally determined pay but this led to an industrial dispute resolved through a complex agreement which included an uprating mechanism whereby national pay rates would be adjusted annually to reflect the overall outcome of the previous year's local negotiations. This provision for local pay to top up national rates ended in 1997 just before the general election (Incomes Data Services, 1997).

Admittedly in many public services, there is more flexibility than previously but as a national agreement continues, this represents transition, not transformation. Under the Local Management of Schools from 1988 head-teachers are empowered to determine the number and grades of staff (Farnham and Giles, 1996). At senior civil service level too, there has been a transition to flexibility, yet national level pay determination continues. In 1996 the Senior Salaries Review Body replaced specific grade rates with broad pay bands and senior civil servants are on individual performance related salaries for which the PRB sets the range of possible increases (White, 1999). Furthermore, local authorities were allowed to opt out of the national agreement and some 30 did so (Incomes Data Services, 1997)

Industrial conflict

The penultimate issue in this section is industrial conflict. Up to the 1970s, as noted above, public service industrial relations were consensual, with arbitration often used to resolve disputes. Public sector unions were renowned for their

moderation (Winchester and Bach, 1995), unlike private sector unions where the number of strikes was a cause for concern (Royal Commission, 1968). However, 'during the years following 1969, strikes spread to previously strike free groups, especially among public employees' (Coates and Topham 1988, p.238) and even to senior civil servants (O'Toole, 1989) culminating in the so-called Winter of Discontent.

Data analysis indicates that 'the proportion of strikes accounted for by the public services grew steadily from 6.7 per cent in 1980 to 43.6 per cent in 1993, falling back to 32 per cent in 1996... In the period 1980-89 the number of working days lost in the public services as a proportion of working days lost in the economy as a whole was 19 per cent, but the figure was 42 per cent in the period 1990-96' (Mathieson and Corby, 1999, p.218).

Ethos

Finally in this section ethos, admittedly a nebulous concept, is examined. There is a division of opinion about whether there has been transformation or transition in terms of ethos. Chapman (1994) and Fairbrother (1994) argue that traditional public service values of due process, risk aversion, impartial administration and political accountability are giving way to private sector values of risk taking and entrepreneurship. On the hand, Steele (1999) found that public service managers had different values from private sector managers. The former's main focus was outside the organisation: service users and the community as a whole but the latter's main focus was the organisation itself: its prosperity and performance targets.

New Labour

In the first two sections there was consideration of employee relations in the public services during the period 1979-1997 in comparison with the pre-1979 period. The third section considers what has been the extent of change since 1997 and specifically the extent to which there has been a return to the pre-1979 employee relations position, reversing a market orientation.

First, there has been a partial return to collectivism. Unions have obtained increased consultation rights, eg the right to vet bidders' employment records under the Private Finance Initiative and to be consulted on market testing in the civil service 'as soon as a review which might lead to change is mooted' (Cabinet Office, 1997). Also the public service unions, like their counterparts in the private sector, will be able to use the new statutory recognition procedures enshrined in the Employment Relations Act 1999. In the civil service the Cabinet Office has urged departments and agencies once again to ensure that civil servants' letters of appointment and department staff handbooks state clearly that union membership is officially encouraged, restoring the pre-1986 position (Institution of Professionals, Managers and Specialists, 1998). In addition, new Labour is committed to working in partnership with the public service trade unions to enhance the quality of public services (Department of Health, 1999; Cabinet Office 1999).

On the other hand, the Fair Wages Resolution, whereby private sector

companies providing goods and services for central government had to set fair wages and recognise the freedom of their workers to be union members, passed in 1946, but rescinded by the administration led by Margaret Thatcher in 1982, has not been restored. Similarly contract compliance, whereby potential local authority contractors had to meet certain industrial relations and equality standards, outlawed by the Thatcher administration in 1988, has not been made lawful again. Individual performance related pay, which gives unions a very restricted role in pay determination, is being extended to school teachers (Department for Education and Employment, 1999). Prison officers' right to strike has not been restored and although the Labour government in 1997 restored union rights at GCHQ, it only did so on the basis of what is in effect a no-strike agreement. This provides that there is no disruption to the operations of GCHQ and it is for the Foreign Secretary to decide whether the proposed industrial action would be disruptive under an agreement which is legally binding (Corby, forthcoming).

Second the decentralisation and fragmentation of pay looks set to continue in some public services. The 1997 local government single status agreement allows authorities to choose their own job evaluation system. The Schools Standards and Framework Act 1998 creates Educational Action Zones (EAZs): a group of schools working with various other organisations such as private companies and voluntary bodies. After consulting teaching staff within an EAZ, schools may apply to the Secretary of State for exemption from the pay and conditions set nationally. If the exemption is granted, the terms of employment become those which the school's governing body prescribes (Morris, 1999). On the other hand, the Department of Health is negotiating with the unions a new national system which will apply to all NHS trusts, whether or not such trusts have up to now had their own pay systems.

Third, the trend towards greater public service job insecurity has been intensified, not reversed. For instance the Labour government wants to 'make greater use of short-term contracts' for the civil service (Cabinet Office, 1999, p.61). Another facet of job insecurity is the emphasis on standards. Whether or not such standards are justified, threats against bad teachers and new performance indicators in the NHS and the civil service may heighten perceptions of insecurity. Such perceptions may also be heightened by the Labour government's plans for an expansion of recruitment to the civil service above the basic grades. It has said: 'we will bring more people into the civil service from outside. We will hold more open recruitment competitions for people at various career stages' (Cabinet Office, 1999, p.61).

Fourth, the reconfiguration of values and ethos among public service employees towards a market orientation is unlikely to have been halted by the change of government in 1997. The Conservative governments pioneered the use of performance indicators, Citizen's Charters Initiatives, inspectorates, target setting, benchmarking and auditing. These techniques have been enhanced by the new Labour government. For instance the Citizen's Charter has been revamped under the title Service First. Furthermore, the public sector benchmarking

project, first developed and then widely used by leading private sector companies, was piloted in central government in 1996 and, with the encouragement of New Labour, is being adopted more widely in central government, as well as by some local authorities. Indeed, the business of inspection and auditing has become the fastest growing area of public expenditure (Timmins, 1999, p.15). To sum up, there has not been a return to the pre-1979 era, although some aspects, notably consultation with the trade unions, have been restored. Indeed, Tony Blair said before the 1997 general election that there could be no going back (Labour Party, 1997).

Within public services

The first three sections looked at the public services as discrete entities. This fourth section considers differences *within* each public service. Looking at different executive agencies with the civil service, Corby carried out a longitudinal study of four agencies (Corby, 1993/4; Corby 1998), and additionally considered another (Corby, 1997). Two – HMSO and Recruitment and Assessment Services, were privatised and thus subject in full to the commercial pressures of the private sector. Employment Service and Benefits Agency adopted a union exclusion approach. For instance when the Employment Service and the Benefits Agency were established they negotiated new procedural arrangements which reduced the Whitley machinery: fewer meetings, less union representatives, fewer sub-committees and less facility time (time off for industrial relations and union duties) compared to the pre-agency arrangements (Corby, 1997). Similarly there has been a change towards private sector values. For instance in 1996 a regional manager of Employment Service said: 'We now use words like "business agenda" but before... that would have sounded not only strange, but silly' (cited in Corby, 1998, p.202). On the other hand there was transition, but not transformation, in Vehicle Inspectorate. There were changes, for instance in pay bargaining and organisational structure but 'the continued encouragement of union membership, consensual management/union relations and the only partial spread of a new culture, testified to the change being limited and incremental' (Corby, 1998, p.203).

This pattern of differences with civil service executive agencies is also found in another longitudinal study over the period 1995 to 1999. Clifford (2000) looked at four civil service agencies: Employment Service, Vehicle Inspectorate, Royal Mint and the Information Technology Service Agency. There were few employee relations differences where there were major cost implications, eg pay and grading, but there was evidence of divergence in other areas. For instance Employment Service and Royal Mint made significant changes to work organisation, particularly in the scope of collective bargaining and union security, with Employment Service having an anti-collectivist policy. In a similar vein and focussing only on pay, Gagnon and Kessler (1999, p.18), who examined 30 agencies and seven non-departmental public bodies, found that 'diversity [was] apparent despite the operational constraints of [pay delegation] and beyond the contingencies deriving from structural factors beyond the organisation's control'.

A picture of differences *within* a public service is also shown in the study of pay in three NHS trusts by Corby and Higham (1996). Whereas a new pay system with progression based on individual performance was adopted at one trust (St Helen & Knowsley Community NHS trust), the two others continued to follow the national arrangements as before (Christie Hospital and The Foundation). In short, different management styles and employment relations patterns can be found *within* different civil service agencies or different NHS trusts. This is because management values have a significant part to play in shaping the employee relations approach (Corby 1998; Corby and Higham, 1996):

This, however, can be taken further. Clifford (2000, p.34) shows how the use of casual labour varied by region in the Employment Service, while Foster and Hogget (1999) find differences in employee relations between local offices within a single region of one part of an executive agency.

Conclusions

To conclude, we return to the question posed in the title ie has there been a paradigm shift? It has been argued here that there has been change in the role of the state from model employer pre-1979 (though this model did not apply uniformly or comprehensively) to market orientation. Looking at the transition/transformation debate issue by issue, however, this article has indicated that the most radical employee relations developments post 1979 have taken place in the civil service, for instance on pay decentralisation, the outlawing of strikes at GCHQ and HM Prison Service and the widespread use of performance pay. As to ethos, interestingly Steele's findings are based on the views of public service managers in local government, the NHS and the police (Steele, 1999), whereas those who found an erosion of the public service ethos focused on the civil service (Chapman, 1994; Fairbrother 1994). Also Kessler *et al* (2000), who looked at two local authorities (a shire county and a borough), two NHS trusts (community and acute) and Customs and Excise and Benefits Agency found that in employment relations 'change seems to have been much more pervasive and profound in civil service agencies than in NHS trusts and local authorities' (Kessler *et al*, 2000, p.33). The argument here, therefore, is that the conclusion of Carter and Fairbrother (1999) that the 'model employer' in the public services has been replaced by 'economy, efficiency and effectiveness' is too simplistic as it fails to take account of the heterogeneity of the public services.

This unevenness in the degree of change is, perhaps, not surprising as public services vary in the extent of their relative autonomy and whether or not there are mediating forces. In the civil service, where the transformation thesis has greatest application, the government is the direct employer and change can be effected without legislation, for instance to market test and create executive agencies, unlike the competitive tendering legislation for local authorities and the legislative creation of NHS trusts. In the NHS the mediating forces include both the boards of NHS trusts and community health councils. In local government,

where the mediating forces are strongest, councillors have their own political mandate distinct from central government. This transformation of the civil service to a market orientation is, however, noteworthy. As Bogdanor observes, 'while the British civil service is widely admired and copied abroad, it is doubtful if the same is true of British management [in the private sector]' (Bogdanor, 2000, p.23).

Yet one must also look within each public service organisation as change has been uneven. Only in some parts of the civil service and a few NHS trusts has there been a paradigm shift and studies by Corby and Higham (1996) and Corby (1998) suggest that management values are a significant factor in explaining differences. In short, there is a new paradigm but it does not apply equally across the public services or even within them.

This new paradigm has public policy implications. First, pay decentralisation reinforces the structural fragmentation of services and this may complicate the process of democratic accountability as it diffuses responsibility from the minister to, for instance, the chief executive of a civil service executive agency or NHS trust. Unlike the minister, such people are not directly accountable to the electorate through parliament. Second, the quality of advice to minister may deteriorate if public servants feel less secure in their jobs and therefore are less inclined to speak frankly.

Third, there is now a greater emphasis on service to the customer which is measured in myriad ways through performance indicators. This has already led to a shift in the development of public policy. It may also lead to greater weight being placed on experience in service delivery in respect of promotions to senior policy posts and is increasingly resulting in the bringing in of private sector managers to run public services. They, as the Trosa report (1994, para 4.7.11) found, do not realise that on occasion they may have to make compromises between efficiency preoccupations and political requirements. Further research may throw light on the significance of these public policy implications.

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Industrial relations in Civil Service agencies: transition or transformation?

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Change in four Civil Service agencies is examined here, from their launch in 1988 to the general election in 1997. The extent of that change, judged on five indicators, is found to vary. In three agencies there was transformation but in one agency, where industrial relations remained consensual, there was not.

This article explores industrial relations in Civil Service executive agencies, the semi-autonomous units which deliver a discrete government service. Separated structurally, financially and operationally from their parent department, each agency is headed by a chief executive who, within the context of a framework document, is set annual financial and service targets by a minister. At 1 April 1997 there were 110 agencies, dubbed Next Steps agencies, after the title of the report which recommended their establishment. In addition, Customs and Excise, Inland Revenue, the Crown Prosecution Service and the Serious Fraud Office operated on Next Steps lines. In total, these bodies covered 77 per cent of the Civil Service: 364,163 permanent staff[1].

Earlier research concluded that Next Steps agencies were turning out to be "a very large step indeed" in respect of industrial relations[2]. This research, five years later, bears out the earlier conclusion which, if anything, was an underestimate. Change has

affected structures, individual roles, career patterns, pay bargaining, management/union relations and culture, but change has neither been uniform nor strategic in every agency.

The context

From 1979, the Conservative government reshaped the public sector by, *inter alia*, privatising public corporations and utilities, deregulating transport and introducing competitive tendering throughout the public services. It also re-organised public services (the Civil Service, the National Health Service (NHS) and education), substituting a quasi-autonomous, multi-divisional structure for a unitary organisation, separating operational responsibilities from strategic and monitoring ones. The aim was to improve efficiency, to give priority to the needs of customers rather than producers and to bring in market disciplines or proxies for them. Moreover, these changes were consistent with the Conservative government's objective of bringing industrial relations in the public sector into line with that of the private sector[3].

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Turning specifically to the Civil Service, until the late 1970s its industrial relations were characterised by strong control from the centre (the Treasury and then the Civil Service Department), a high degree of centralised rule-making, a high level of unionisation and joint agreement through a well developed 'Whitley' system, over a wide range of matters, with consultation often merging into negotiation. In addition, the government sought to be a model employer providing de facto job security, relatively generous sick pay and pension arrangements, pay set primarily on the basis of 'fair comparisons' with the remuneration of staff outside the Civil Service[4] and unilateral access to arbitration to provide impartiality between government and unions. Although Civil Service pay settlements were sometimes modified on grounds of public policy, these were regarded as temporary aberrations[5].

From 1979, the Conservative government sought to improve the efficiency of the Civil Service, curb public expenditure and, as part of this process, reform its industrial relations. First, the Prime Minister set across-the-board staff reduction targets. Secondly, cash limits replaced volume planning. The cash limit included a pay assumption which, if breached, required that the additional costs be funded by job losses, higher productivity or service reductions. Thirdly, power was devolved from the centre to departments: both financial control through the Financial Management Initiative and personnel management control. This resulted in the centre no longer prescribing Civil Service-wide rules but instead providing a framework[6]. Fourthly, the government ended the 'fair comparisons' system of pay determination in 1981[7]. After a 20 week dispute and a Committee of Inquiry[8], all the Civil Service unions concluded new agreements with the Treasury providing less emphasis on comparability than hitherto and introducing flexibility, through performance pay and pay additions to cater for recruitment and retention difficulties.

Notwithstanding these developments, the report by Sir Robin Ibbs in 1988, entitled 'Improving Management in Government: The Next Steps', heralded more far reaching changes[9]. In summary, the report argued that the Civil Service was too diverse in its activities and too vast (then 600,000 people) to be managed as a single entity with common rules for personnel management. It also

argued that the Civil Service focused on policy considerations at the expense of service delivery. To rectify this, the report recommended that the executive functions of departments should be discretely designated and restructured to form semi-autonomous units, termed executive agencies. These would operate within a policy and resources framework, detailing the agency's objectives and so called 'freedoms' to depart from the standard provisions and with annual targets set by the responsible Minister in consultation with the Treasury.

By April 1997 there were 110 Next Steps Agencies employing three-quarters of all civil servants. The agencies vary in size from 35 staff at Wilton Park to 75,000 in the Benefits Agency. Their activities vary from the familiar, such as issuing passports, to the recon-dite, such as repairing marine turbines. Agencies also vary in their financial regimes, depending on the extent to which their costs are met by receipts, and in the extent to which they are involved in policy making[10].

Initially the Government did not see agencies as a half-way house to privatisation[11]. The Citizen's Charter white paper in 1991, however, introduced the principle of choice and competition into the provision of public services, wherever possible[12]. Closely linked with this was the Competing for Quality initiative, under which departments and agencies were required by the centre to identify annually activities for market testing (ie. allowing competing Civil Service and private sector bids), or strategic contracting out (ie. allowing private sector bids only, not in-house ones)[13]. In addition, periodic 'prior options reviews' of every agency considered whether the job needed doing at all and, if so, whether the status quo should prevail or whether the agency should be privatised or contracted out in full or part.

In 1994, the government relaxed the frequency of prior option reviews (normally every five years instead of three), and dropped its requirement for annual timetables for market testing. However, department and agency heads now have to develop annually three-yearly efficiency plans and from 1994 to 1999 there is a freeze on paybill costs, so any pay increases have to be offset by productivity improvements. Between April 1992 and March 1996, nearly £3 billion of activities were reviewed under the Competing for Quality programme, producing a

reduction of over 26,000 Civil Service posts[14]. Under so called prior options reviews, sixteen agencies employing nearly 8,000 civil servants were privatised by April 1997, as well as parts of agencies and departments[15].

The extent of change

Undoubtedly, there has been change in the Civil Service over the last decade. Unlike other public services, the government is the direct employer and there are no mediating forces. But the key question is the extent of change. Ferlie et al move "beyond the simple dichotomy usually drawn between incremental and fundamental change", with the latter often termed transformatory or radical. Furthermore, they argue that "a weakness in much of the literature on organisational transformation is that it is general and does not define empirical assessment criteria for judging whether change on this [radical] scale is occurring". To rectify this, they measure change by using a number of indicators so that they can assess empirically the extent and depth of change. Their indicators encompass system wide, top-down organisational restructuring, intra-organisational restructuring, a reconfiguration of individual roles and changes in power relations, modes of service delivery and the creation of a new culture and organisational meaning[16].

Their perspective is drawn from organisational behaviour, applied empirically to the NHS. However, it can be usefully adapted for industrial relations and applied empirically to the Civil Service. Moreover, the approach of Ferlie et al. is consonant with that of Kessler and Purcell, who also eschew a simple dichotomy and propose a multi-level analysis. They argue that change in employment relations is a complex process. Those from a public administration tradition have looked at the softer issues surrounding organisation development and culture change, while those from an industrial relations tradition have concentrated on institutional mechanisms, with particular attention given to the process of pay determination. They identify three levels where change can take place: level 1: the organisation's scope of activities; level 2: its structure; and level 3: employment relations; and they argue that decisions at higher levels influence decisions at lower levels[17].

Accordingly, a dichotomy is eschewed and

this article uses a number of empirical indicators drawn from organisational behaviour and industrial relations, operating at a variety of levels. The indicators were chosen after discussion with union officials and managers and covered areas identified by interviewees as follows:

1. structure, including organisational and intra-organisational structural change;
2. pay determination, including the level of bargaining, and the extent to which pay is contingent;
3. management/union relationships including management style and the degree of joint consultation and facilities for union representatives;
4. civil servants and their role, including the legal basis of their employment and career patterns;
5. the ethos of the agency.

The article ends by looking at the manner of change: whether change has been strategic or opportunistic and at possible explanations for differences in the degree of change in the case study agencies, pinpointing the values of the dominant players as the main determining factor.

Methodology

This article is a longitudinal study over the period 1988 to 1997. Its origins stem from the author's involvement as a senior trade union official with the setting up of the first agencies and it draws on primary source material, including unpublished material, from departments, agencies and trade unions. It is based mainly, however, on a series of semi-structured interviews in four agencies with chief executives, personnel directors, local managers, full-time union officers and lay union representatives. The same postholders (who in some cases were the same people) were interviewed except where the post had disappeared under restructuring, in which case the nearest equivalent was interviewed. In addition, in 1990 and 1992, as the agencies were being, or had recently been set up, the departmental civil servants and union officials concerned with their establishment were interviewed. In 1996, this was no longer considered relevant. Nine interviews were conducted in 1990 (when only three of the four agencies had been established), 25 interviews in 1992 and 19 in 1996. In addition to these formal, taped and transcribed inter-

views, lasting up to two hours, informal interviews, carried out with up to a dozen management and trade union practitioners primarily involved in agencies other than the four researched in depth, placed the case studies in the Civil Service context.

Civil service agencies differ greatly and, to reflect this, each of the four agencies selected represented one of the four groups identified in the Efficiency Unit report[18]. Its typology, based on the extent to which an agency is integrated into its parent department and the extent to which its functions are governed by statute, is as follows:

- agencies fundamental to the mainstream policy and operations of their department;
- agencies executing statutory (usually regulatory) functions;
- agencies providing specialist services to departments or other agencies;
- peripheral agencies not linked to any of the main aims of a department, but nevertheless reporting to its minister.

Employment Service (ES), launched in 1990, was the mainstream agency studied and, with 31,395 staff on 31 December 1996, was the third largest agency. It pays benefits and allowances to the unemployed who are entitled to them and has a national network of over 1000 job centres where job vacancies are displayed. Vehicle Inspectorate (VI), launched in 1988, was the first agency to be established and was the regulatory agency studied. It has three main functions: to enforce the law on roadworthiness, vehicle weight and drivers' hours; to perform annual tests on heavy goods vehicles and public service vehicles; and to supervise MOT testing of motorcycles, cars and light goods vehicles. On 31 December 1996 it had 1,485 employees and a national network of vehicle and traffic examiners, as well as some 90 goods vehicle testing stations. Recruitment and Assessment Services (RAS), launched in 1991, was the case study agency providing specialist services to departments and other agencies. It provides recruitment and selection services, including fast stream recruitment. Its 140 employees worked in offices in Basingstoke and London. Her Majesty's Stationery Office (HMSO), launched in 1988, was the peripheral agency studied. It prints official documents for government and Parliament, including the Highway Code, the Budget Red Book and Hansard and provides printing ser-

vices and office supplies to departments and agencies. In 1996 it had 2500 staff and, although its headquarters were in Norwich, it had printing operations in London, Manchester, Cardiff, Edinburgh and Belfast, seven bookshops in the UK and a distribution centre at Bristol. Vehicle Inspectorate and HMSO were trading funds which allows them to exercise some flexibility in the management of their resources[19]. Key data on the agencies are given in Table 1.

Of course, this research has limitations in that generalisations to all agencies must be treated cautiously. It is based on case studies of four agencies and the findings do not apply to other, let alone all agencies. Nevertheless, despite these drawbacks the case study method, especially on a longitudinal basis, enables an examination of how processes change over time and the significance that people attach to them and is, therefore, appropriate to this research.

The findings

Structure

Organisational structure shapes the employment relationship and the launch of the agencies amounted to a large, top-down structural change. The Civil Service, a unitary organisation, became fragmented into units operating at arm's length from their parent department. Recently however, there have been more dramatic changes, with the boundaries between the private sector and public sector altering. Thus, on 1 October 1996, HMSO became the Stationery Office and was sold to the National Publishing Group, a consortium led by the venture capitalists, Electra Fleming. The privatisation of HMSO was effected only after a bill was passed to ensure that the printing of a range of parliamentary documents could be contracted out and despite concerns expressed by Members of Parliament from all political parties and the Speaker of the House of Commons about standards of service and the security of sensitive documents[20]. On 1 October 1996 Recruitment and Assessment Services was sold to Capita. That sale also caused controversy: the House of Lords voted against the government's proposals, when apprehensions were voiced by several former ministers and permanent secretaries that high standards of probity in Civil Service recruitment would be jeopardised[21].

Table 1: Key data on agencies

Name	Employment Service (ES)	Vehicle Inspectorate (VI)	Her Majesty's Stationery Office (HMSO)	Recruitment & Assessment Services (RAS)
Parent department (1996)	Education & Employment	Transport	Cabinet Office	Cabinet Office
Agency type	Mainstream	Regulatory	Peripheral	Specialist services
Structure	Agency established 2.4.90	Agency established 1.8.88	Agency established 14.12.88 Privatised 1.10.96	Agency established 2.4.91 Privatised 1.10.96
Staff in post (1996)	31,395	1,485	2,500	140
Union density	50-60%	Over 80%	Over 80%	30%

Sources: Next Steps Agencies in Government Review 1996, Cm. 3579, London: The Stationery Office, 1997; Union density figures derived from interviews.

The other two agencies, although not privatised, have not been isolated from the private sector. As the Conservative government noted: "there is no absolute frontier between the public and private sectors"[22]. Although certain activities of Vehicle Inspectorate were market tested, they remained in-house but its training function now provides services in conjunction with a number of private sector organisations in the transport training field. At Employment Service a large number of areas were market tested or strategically contracted out between 1992 and 1997, resulting in about a fifth of these activities going out. There have also been intra-organisational structural changes since 1992, to decentralise. ES replaced its 60 areas with 150 districts. In 1993/94 Vehicle Inspectorate reorganised from a unitary structure into three divisions: vehicle testing, road transport enforcement and corporate affairs. In 1995, ie. before privatisation, HMSO created 14 business units in place of five divisions. Only Recruitment and Assessment Services, prior to privatisation, made no major structural changes.

Pay determination

Pay determination is at the heart of industrial relations. So, if there has been fundamental change, one would expect to see it here. In 1992, of all the agencies only HMSO, and three smaller ones (outside this study) had their own pay arrangements. The Treasury, however, then realised that it could control

paybill costs without getting into the detail and, as a result, pay delegation in the last few years has been swifter and on a greater scale than many envisaged. First, the government announced that it expected the larger agencies to take responsibility for pay bargaining by April 1994. Accordingly, Employment Service introduced a new pay structure for senior managers in 1993, for middle managers in 1994 and for clerical and support staff in 1995[23]. Also in 1995 Vehicle Inspectorate introduced an agency specific pay regime. Then, in 1994 the government announced that Civil Service wide pay bargaining would end from April 1996 and that every department/agency would be responsible for its own pay determination[24]. Accordingly, Recruitment and Assessment Services had its own deal, though as a small organisation with privatisation looming, this did not entail a job evaluated regrading, as in the other agencies.

In addition, HMSO decided to replace its agency pay regime with 13 pay agreements in 1995. This was partly because its major union for industrial (blue collar) staff, the print union, the Graphical, Paper and Media Union (GPMU), agreed to go down the road of local agreements and also because management was keen to relate the pay of industrial staff to local labour markets. As a result, complexity ensued. For instance, although some non-industrials were covered by a local agreement, other non-industrials (over half) were covered by the central agreement, an

occupational agreement which applied irrespective of location. 'A right mish-mash', conceded the outgoing HR director.

- Nevertheless, although terms and conditions and the bargaining level have changed dramatically for civil servants over the last four years, this has not led to a devolution of power from the Treasury to agencies. Indeed, many interviewees reported that not only was there control over agency pay, but that it was excessive and increasing. As the personnel manager at Vehicle Inspectorate said:

We used to work direct to the Treasury on pay. Now [1996] there is an intermediate layer: the Department, whom we have to satisfy in terms of their pay policy and their executive agencies' division who look after our business plan.

The trade union side secretary at VI said that when, after negotiations, they wanted to shift $\frac{1}{2}$ per cent of the pay increase away from satisfactory performers towards better performers, agency managers had to go back to the department. A Public Services, Taxes and Commerce Union (PTC) representative at HMSO thought that Treasury control increased when privatisation loomed. He said:

The last year was a shambles. Management wasn't allowed to do anything ... Negotiations were being dictated by Treasury.

While agency pay bargaining may, in reality, have had little or no effect on the distribution of power between Treasury and agency managers, its effect on relationships between agency managers and unions at the agency is more complex. It has given unions at operational unit level a *raison d'être* and all the four agencies set up new procedures for dealing with pay bargaining, either on the basis of a single table as at Vehicle Inspectorate and Recruitment and Assessment Services, or three bargaining units at Employment Service and numerous bargaining units at HMSO when it decentralised pay in 1995. Nor have the formal consultation arrangements been eroded further recently. In 1991 ES had significantly reduced the role of Whitley Councils (management/trade union committees) with the result that at national and regional level they met less frequently and had fewer sub-committees than hitherto, but it had not made changes since. VI had actually increased its consultation arrangements, setting up divisional Whitley Councils when it restructured into divisions in 1994.

There were no changes to HMSO's Whitley structures. At RAS, ever since the agency's launch in 1991, there was no Whitley Council. At that time, the two main unions, the Civil and Public Services Association (CPSA) and PTC, were inactive. When the union branches were reconstituted and union representatives elected, management instituted informal joint meetings, instead of a formal Whitley structure.

On the other hand, the agency pay deals have given a central role to performance pay. Effectively, this has meant that management unilaterally, rather than jointly with the unions, has decided the exact size of an individual's pay increase, albeit within jointly determined parameters. For instance at ES all increases were performance related and the distribution of the annual budget for pay rises took place under so called equity shares: each category of performer within each pay band receiving a particular share of the budget. At VI there was a pay spine with satisfactory performers receiving one increment and the better performers receiving more increments. In the senior Civil Service, jobs having been evaluated, were placed in pay bands with pay increases based on the individual's performance. As the size of increase is not laid down and as the pay bands overlap, there is considerable room for management discretion.

Management/union relationships

Even though there have been few recent changes to formal industrial relations structures, in three of the four case study agencies the union representatives considered that, in practice, the unions' viewpoints were given increasingly less consideration by management. At HMSO (before privatisation in October 1996), the full-time union official from the Institution of Professionals, Managers and Specialists (IPMS) said: "in recent years local management have felt much more able to say 'no' to things". Nevertheless, under HMSO's facility time (time-off) arrangements in 1996 there were four full-time representatives for the 1800 non-industrial staff, in addition to the union representatives (GPMU and GMB) for the industrial staff and union density was over 80 per cent.

At Employment Service also, management/union relations changed considerably. According to the chief executive in 1996, they were more 'robust' than they were four

years ago. A regional manager at ES in 1996 said:

They are extremely slight ... They are symbolic ... The holding of the 'meeting' is the main objective as far as the unions are concerned ... apart from pay bargaining.

He pointed out that pay delegation had actually given management and unions matters to discuss but this had made the relationship more conflictual, particularly when the CPSA went on strike over pay from November 1994 to February 1995. The PTC representative agreed. He reported that pay bargaining had given the unions "something to hold on to", that management/union relations were "still declining" and that the union viewpoint was almost always ignored. He instanced the new procedures for short term absence, where management disregarded the union's view but subsequent events (the rise in long term absence), he claimed, proved that the union had been right. A CPSA representative at ES thought that pay bargaining was largely a sham as "we don't really have negotiations". But this adversarialism at ES is not one-sided. The ES section of CPSA was taken over by 'Left Unity' in 1994 and became more militant.

ES management has adopted a conscious policy to reduce facility time. The chief executive said that time off for trade union activity was less than 0.1 per cent of the pay-bill, compared to the Treasury norm of 0.2 per cent. Apart from three people, everyone else was on not more than 60 per cent facility time. The PTC representative compared these provisions unfavourably with facility time at Benefits Agency and a CPSA representative said that, even where union representatives were entitled to facility time, managers prevented them from taking it. He said:

'Operational needs' were always a consideration. It can be applied sensibly. What we now find is that if they don't want you to attend a particular meeting, or if they think you have too much facility time, they will decide in advance that 'operational needs' will be cited, whatever the real situation in the office.

Another symptom of this hardening relationship, according to a CPSA representative, was the fact that previously most area managers met with union representatives but their replacements, district managers, were less likely to do so. The PTC representative also said that encouragement by management to be a union member was "a thing of

the past". In theory, he said, the unions had slots on induction programmes, but that only happened in practice if the union representative was "on the ball". He also cited the staff handbook. Up to the late 1980s, the handbook for the new civil servant encouraged staff to join the union appropriate to the grade and play an active part. Then it was changed to say that the civil servants were encouraged to play an active part in the union, if they decided to join. Now, he said, management wanted to take any reference to union membership out of the ES handbook. Management, for their part, said they were "neutral" on union membership and that there had been a conscious move away from the position where the first that managers knew was when their union representatives told them. A regional manager said:

Previously senior management was considering the changes with the unions. Now it is considering with line management first whether the changes are sensible and can be implemented.

A CPSA representative at ES was in no doubt that this new approach meant that the union was not being "properly consulted". He cited the example of the head office review of services, which had implications for jobs, when the unions were informed after managers and at the same time as the staff. Nevertheless, managers and union representatives agreed that union density had barely altered since the agency's launch, though the former put it at about 50 per cent and the latter at about 60 per cent.

Management style and management/union relationships at ES were very different from those at Vehicle Inspectorate, which remained consensual, despite some difficulties surrounding pay bargaining. Indeed, the staff side secretary at VI interviewed in 1992 had become the personnel manager by 1996. He maintained that management/union relationships remained sound. The new staff side secretary agreed, saying that relationships were "as good as we could possibly hope". The chief executive encouraged union membership and, when asked at a staff meeting about the position of non-unionists, said firmly that VI negotiated with the unions and that he was a union member. The unions have a slot on induction programmes and, in 1994, the trade union side was given a specific budget for facility time to pay representatives' travel expenses and to recompense local managers for the loss of a member of

their staff. These arrangements were designed to make it easier to ensure that allotted facility time was actually taken. Not surprisingly, given the context, union density was over 80 per cent.

At Recruitment and Assessment Services management/union relationships have never featured prominently in the employment relationship. RAS was formed from the Civil Service Commission, where union membership was low and, typically, union density at the agency has been 30 per cent (though it reached 50 per cent at the time of privatisation). In 1991, a non-union body, called the personnel strategy group, was formed and devised a new appraisal system and staff suggestion scheme but then withered away. When privatisation was proposed at the end of 1995, a new non-union body, the staff representation group was formed. Without a formal constitution and run by volunteers, it obtained recognition from the board for the purpose of dealing with staff concerns over privatisation and, for instance, interviewed the short-listed bidders. The union representatives attended staff representation group meetings but as one admitted: "they've made our role slightly more difficult". Although Capita (the new owner) said that it was prepared to recognise the group, as well as the unions for collective bargaining, in fact only the unions were recognised. The chairman of the staff representation group resigned on promotion to the board of RAS and the group itself became moribund. Nevertheless, the unions seem set to play a reduced role. The new recognition agreement does not, in terms, recognise them for collective bargaining on pay. Nor does it rule it out. The company and the unions recognise "each other as partners in the workplace ... [and] the total amount of money available for distribution under any pay settlement shall be determined by the company following consultations and negotiations with the trade union side"[25]. At the time of writing it is not known how this will affect Capita's relations in practice with the unions.

This erosion of collectivism can also be seen at senior levels. From 1996, some 2300 senior civil servants were removed from collective bargaining, whether on a Civil Service-wide or department/agency basis, and their pay is now determined by the Senior Salaries Review Body. (Previously the Review Body only determined the pay of the

top 650 civil servants, but now its remit covers almost 3000 civil servants[26]).

Civil servants and employment

Change has impacted on individuals' roles. This has taken two forms: first a change to the legal basis of Civil Service employment and secondly to career patterns. Until 1991, there was uncertainty as to whether civil servants had a contract of employment, or had an appointment under Crown prerogative. Indeed, the balance of legal opinion favoured the latter. However, in 1991, the High Court decided that a civil servant is employed by the Crown under a contract of employment[27]. In 1994, it then became government policy to issue individual written employment contracts to senior civil servants (some 3,000 staff)[28]. As Deakin and Walsh say, "the concept of a contract is as much metaphor and the basis for a new rhetoric as formal legal mechanism"[29]. No longer does civil servants' legal status set them apart from other employees and their employment is now seen as a market based one, rather than cloaked by the traditions and conventions of Crown service.

Until recently, a career in the Civil Service was a career for life but now, according to the Cabinet Office, this is a 'false expectation'[30] and evidence supports this assertion. First, the number of casual staff was 20,012 in 1996, nearly three times the number in 1979[31]. Of course, staff numbers at ES wax and wane with the level of unemployment, with casual staff being recruited during downswings, as they are expected to be required only temporarily. Nevertheless, a PTC representative pointed out that the use of casuals in 1996 "had never run as high". The Civil Service Commissioners, in their 1995-96 annual report, reminded departments and agencies that casuals should be employed only where there are "genuine, short term operational needs"[32]. As a result, ES is set to reduce its numbers of casuals but, according to the PTC representative, it was increasing its recruitment of fixed term appointees. The latter are counted in the figures for permanent staff and cannot be easily identified.

Secondly, internal promotion from the basic grades has given way to open recruitment above them, with outsiders sometimes filling posts. Of the posts of 131 chief executives or chief executives designate in October 1996, 90 vacancies had been filled by open

competition, resulting in 33 posts being filled by outsiders[33]. Interestingly, in 1996, the chief executives of the four case study agencies were all civil servants, although the previous chief executive of Recruitment and Assessment Services was from the private sector. Below chief executive, there was evidence of specialist posts being filled from the private sector: for instance the head and assistant head of marketing at RAS, while HMSO's HR director said: "we have definitely recruited more people from the private sector in the last four years than we did before". Overall, open competition for the senior Civil Service rose from 69 in 1994-95 to 96 in 1996-97, though this is probably only a "drop in the ocean" of the senior Civil Service[34].

There was some dispute about whether the more fragmented Civil Service hampers career development moves. According to the chief executive of RAS, prior to privatisation, there were regular transfers between RAS and the rest of the Civil Service while the chief executive of ES cited the movement of staff from Benefits Agency to ES and vice versa when the Job Seeker's Allowance was launched in 1996. Most managers and all trade unionists, however, argued that it was becoming harder to move from one agency to another since Civil Service-wide pay bargaining had ended. A regional manager at ES said that the differing terms and conditions were partly a reason for the reduction in moves, but the main reason derived from the fact that most agencies were trying to reduce staff. Symbolically perhaps, the Civil Service Staff Transfers and Trawls Unit closed in 1995. It co-ordinated moves so that staff surplus to a particular department were matched with vacancies anywhere in the Civil Service[35].

Ethos

Finally, the findings deal with the ethos in which civil servants work, admittedly a nebulous concept. According to the Organisation for Economic Co-operation and Development (OECD) ethos is "the sum of ideals which define an overall culture"[36]. A MORI report in 1995, based on a survey of attitudes from 1026 members of the Association of First Division Civil Servants (FDA), found that a majority of respondents felt that the Civil Service "had lost its way". Most of the management initiatives were seen as counter-

productive and there was a fear for the unity of the Civil Service, its political neutrality and the quality of its services[37]. Furthermore, in 1992, earlier research found that the managers interviewed took the view that agency status had led to a greater focus on business performance[38]. In 1996, most managers thought that the change towards a more commercial culture had continued. The HR director of the Stationery Office, after two weeks of privatised status, said:

There's a culture change at the minute, that's for sure. We thought we were financially orientated before, but we are even more so now in only a few weeks.

A regional manager at Employment Service said:

We now use words like 'business agenda' but before ... that would have sounded not only strange, but silly ... There has been a gradual change ... Even though I don't know when we got there, I know we are there now.

Similarly the chief executive of ES, who had been working closely with Benefits Agency over the introduction of the Job Seekers Allowance, said:

When I see Benefits Agency working in old style mode, I see what a distance we have come. If we are having a discussion with them about doing something different or changing working practices, they say they have to ask the unions first.

Interestingly, the CPSA representatives at ES agreed. They had worked closely with their counterparts at Benefits Agency over the Job Seeker's Allowance and the latter were given more information and sooner than the former. However, the PTC representative at ES qualified the extent of culture change. He thought that there had been a culture change at head office and regional headquarters, but he was not sure that it had permeated to district offices.

An even more qualified picture comes from Vehicle Inspectorate. Several managers said that the total quality programme had taken root in only one division. In the other two, as one manager said, staff "may whistle the party tune, but don't sing it".

Discussion and conclusions

Three of the four agencies (HMSO, Recruitment and Assessment Services and Employment Service) underwent what can be termed transformational change across several of the

indicators selected. Not only was their establishment as agencies the result of structural change in the Civil Service, HMSO and RAS underwent further structural change as they were privatised. Pay determination altered drastically with bargaining at agency level replacing Civil Service-wide bargaining, HMSO having led the way in 1990. Although relationships did not alter between Treasury and agency managers, the character of management/union relationships changed markedly in two case study agencies (Employment Service and Recruitment and Assessment Services) and there was culture change. Only in respect of career patterns/roles was the change less than dramatic.

In Vehicle Inspectorate, however, there was transition not transformation. There were changes, for instance in pay bargaining, a new legal status for civil servants and restructuring. But the continued encouragement of union membership, consensual management/union relations and the only partial spread of a new culture, testified to the change being limited and incremental.

Table 2 categorises the indicators of change under three broad headings: transformation, transition, no change. Although the Table depicts the indicators as discrete types, the categories are in fact blurred, merging into one another. Essentially what has been argued is that the extent of change varies. Agencies differ and, moreover, none of the

four case study agencies falls neatly under a single heading. Each indicator needs to be considered separately but, in summary, three of the four agencies experienced transformation in several respects.

Turning from the extent to the manner of change, a key issue is whether it is strategic, ie. long term and planned or opportunistic, ie. ad hoc and reactive. The changes to structure and to the levels of pay determination were strategic and the result of Government policy decisions. As to civil servants and their role, the Conservative Government acted strategically in issuing contracts to senior civil servants and opening up the Civil Service to external recruitment. When it comes to management/union relations, the decision making moves from Government to agency managers. In two agencies, managers had a strategic, ie. long term and planned, approach to their relations with the unions. Thus, a confidential paper at Employment Service, written before the agency was launched, discussed ways in which the consultative role of trade unions could be eroded over time, facility time controlled and a management communication system, outwith the industrial relations structures, could be developed[39]. Similarly, Vehicle Inspectorate seems to have acted strategically in deciding to support the role of the unions. For instance, before there was any agency pay determination, the chief executive said that he did not want pay to be an issue in the

Table 2: Indicators of change

	Transformation	Transition	No Change
Structure	Privatised	Established as agency Market-testing	Integral part of department
Pay determination	Devolved to all agencies/departments	Devolved to some agencies	Centralised, bargaining applying Civil Service-wide
Management/ Union relations	Unions marginalised	Conflictual	Consensual
Career patterns/roles	No transfers across the Civil Service. Open recruitment for most posts	Contract of employment. Limited transfers across the Civil Service. Some open competition for senior posts	Crown servants with a job for life
Ethos	Commercial values	Commercial values in part	Public service values

agency and the open approach of management to the unions, according to interviewees, was countenanced from the top from the agency's launch. Moreover, it was at the chief executive's instigation that the trade union side secretary was appointed as personnel manager when a vacancy arose in 1994.

In contrast, management at Recruitment and Assessment Services seems to have acted opportunistically. For instance, there is no evidence to suggest that the decision by the agency's first chief executive not to re-establish a Whitley Council was a strategic one, taken to erode the unions' position, although that was a result. Similarly, the succeeding chief executive's decision to recognise the staff representation group for discussions on the privatisation proposals seems an opportunistic response to what he perceived as a gap in staff representation at a crucial time. The fact that this caused problems for the unions was not a consideration, but neither was it a motivator. The two chief executives argued that all staff should have a voice, irrespective of whether they were union members, and did not accept that their approach, by providing an alternative mechanism, would undermine the unions. At HMSO, also, the two successive chief executives seem to have reacted opportunistically, wanting good relations with the unions as far as it was compatible with their business objectives.

Nevertheless, although some agency chief executives operated strategically and some operated opportunistically, this does not explain the differences in the extent of change. So from what do these differences stem? First, agency type does not seem a satisfactory explanation for *all* the dimensions of change, though it is a factor in privatisation. Using the Efficiency Unit's typology[40], of the four types of agency, no mainstream agency has been considered for privatisation. Some statutory/regulatory agencies have been so considered; for instance Companies House, Patent Office and VI itself, but none have been fully privatised, although some staff in Companies House were transferred to the private sector in 1996[41]. The agencies that have been privatised are the peripheral ones, such as Transport Research Laboratory, the Laboratory of the Government Chemist, and HMSO, and agencies providing specialist services to other agencies or departments, such as the Occupational Health and Safety

Agency, the Chessington Computer Centre and RAS. Yet agency type does not explain other changes. Thus, management/union relations do not seem to be influenced by agency type. For instance, Benefits Agency has more consensual management/union relations than Employment Service, although both are large, mainstream agencies.

A more persuasive explanation is the values of the dominant players. Kochan, Katz and McKersie in their seminal book on industrial relations in the USA place management choices at the centre of their analysis[42]. Transposing private sector organisations to Civil Service agencies, instead of the manager there are players at three levels: the government, the responsible minister and the agency chief executive. This explanation, unlike agency type, seems to operate on a number of dimensions. First the government's decision affected structure—the establishment of agencies, the devolution of pay bargaining and the issuing of contracts to civil servants. As to the responsible minister, when Michael Heseltine was President of the Board of Trade from 1990 to 1995, three of the six agencies privatised were agencies of the Department of Trade and Industry (DTI). When he was succeeded by Ian Lang the threat of privatisation was lifted from such DTI agencies as the Insolvency Service and Companies House. Michael Heseltine then became Deputy Prime Minister and four out of the six Cabinet Office agencies were privatised in 1996, including two of the case study agencies: HMSO and RAS. Also, Michael Heseltine, as deputy prime minister, was considered by both civil servants and officials in Civil Service trade unions to have been a driving force in opening up the senior ranks of the Civil Service to external recruitment, thus affecting the career patterns of civil servants. In contrast, the then Transport Secretary, John McGregor, after much consideration of whether to privatise VI, decided against it. Also chief executives, their orientations and values shaped intra-organisational structures, management/union relations and ethos.

A factor in management/union relationships, but not the other indicators, is the trade unions in the agency. The level of union organisation affected management/union relations, particularly Whitley structures, as can be seen from the low density at RAS, where the Whitley Council died. It may also explain why managers at ES, where union

density ranged between 50 per cent to 60 per cent, were more able to take a hard nosed attitude than at VI and HMSO, where density was over 80 per cent and the facility time arrangements were relatively generous.

As the State is the employer, the 1997 general election marked the end of a chapter: the government changed from Conservative to Labour. It did not, however, mark a watershed as many key elements remain unaltered. Thus, the Civil Service quasi-autonomous agency structure continues and a few candidate agencies remain to be launched[43]. Labour has accepted the Conservatives' public expenditure plans for 1996-98, along with their freeze on public sector pay bills[44]. It has continued to delegate pay bargaining to agency/department level. There is no indication that it will abolish the link between pay and performance. It has continued the privatisations which the previous government had planned, for instance the Benefits Agency medical service, some 700 benefit offices, the bulk of the Passport Agency and National Savings [45]. It has continued to market test and to review every five years whether the agency should move into the private sector in full or in part.

Nevertheless, the Labour government's approach is not ideologically driven. For instance the new guidelines on market testing say twice that the government's approach is "pragmatic, not dogmatic"[46]. Agencies' five yearly reviews although taking account of all possibilities, no longer have a presumption in favour of privatisation[47] and the cabinet minister responsible for the Civil Service said that the government had no plans to privatise agencies[48]. Above all, the Labour government has been friendlier to the unions: it has enabled unions to return to Government Communications Headquarters (GCHQ) and is promoting so called partnership between management and unions, ie. consultation and joint discussion (for instance over racial equality), while ministers are more accessible.

On the union side too, the merger of PTC and CPSA, effective March 1998 to form the 230,000 strong Public and Commercial Services Union (PCS) may have an impact on industrial relations. First the union side at agency level will be strengthened and more united. Secondly, the provision for the election of PCS group lay officials by individual postal ballot, instead of election by delegates at group conference, may lead to changes, for

instance perhaps resulting in a decline in the influence of Left Unity at Employment Service.

At this juncture, however, it is not known whether there will be a significant shift in Civil Service industrial relations. Only further research could ascertain developments, as well as critically evaluating these conclusions.

Note

Since this research was carried out, the chief executive of Employment Service retired; the chief executive of Recruitment and Assessment Services transferred back to the Civil Service in the wake of privatisation and the chief executive of HMSO became corporate development director of the privatised Stationery Office under a new chief executive. As mentioned above, the Public Services, Taxes and Commerce Union (PTC) merged with the Civil and Public Services Association (CPSA) to form the Public and Commercial Services Union (PCS) from March 1998.

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The National Health Service and the limits to flexibility

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The National Health Service (NHS) employs over one million people and staff costs account for around 70 per cent of the £44 billion a year of government money devoted to healthcare. Accordingly, the way that the NHS is organised and, in particular, the deployment and remuneration of staff is a matter of both importance and political debate.

The NHS and Community Care Act 1990 ushered in a decentralised, quasi-market structure. Accordingly, the NHS is now no longer a rigid unitary organisation with a clear chain of command from the Health Secretary to the unit manager. It is a looser, more flexible one. It is separated into purchasers (health authorities and General Practice fund-holders) and providers such as NHS hospitals, known as trusts, or private sector hospitals; and purchasers can choose from whom to buy health care. The trust chief executive is responsible to the trust board, which is the employer of staff working in the trust (previously such staff were employed by the health authority) and the owner of assets, such as buildings and land (previously vested in the Health Secretary or owned by the health authority). Thus, theoretically at least, trusts have operational autonomy but are subject to Government policy. They have to meet certain financial and other targets eg on waiting lists, set by the Health Secretary and the NHS Executive monitors the trusts' performance against these targets. In short, like many private sector companies over a decade ago, the NHS in the 1990s is no longer a unitary organisation (U-form) but has a quasi autonomous, multi-divisional form (M-form), with operational responsibilities separated from strategic responsibilities (Williamson, 1975).

This flexibility, however, is not just on an organisational or macro level. It extends to unit or micro level. Over a decade ago, Atkinson (1984) developed the concept of the flexible firm. In this model, the organisation's workforce is segmented. At the centre is a stable, 'core' group of full-time, permanent employees and around it is an elastic 'periphery' of employees on a variety of non-standard contracts. The 'core' workers provide functional flexibility through

a combination of training led adaptability and the elimination of rigid demarcations. 'Peripheral' workers provide numerical flexibility, thereby containing labour costs. Both core and peripheral workers are subject to pay flexibility, eg performance pay. There has been debate about the extent to which the so-called flexible firm is an explanatory model or a blueprint for change (Pollert, 1988) and whether it has given rise to a strategic review of staffing or to fragmented and uncoordinated responses, but this debate has primarily centred on the private sector.

This article looks at the extent of flexibility in the NHS. First, it considers management's use of the language of flexibility. Secondly, it looks at structural flexibility in an organisation with a political dimension. Thirdly, labour force strategies of trusts are measured against the Atkinson 'flexible firm' model: i.e. functional flexibility, numerical flexibility and pay flexibility. Finding little flexibility in practice, the article discusses the reasons for this and ends by relating the Atkinson model to the broader context of human resource management in the NHS.

The language of flexibility

There is evidence to suggest that the language of flexibility has gained credence among NHS managers and that flexibility is seen as a desirable management goal. For instance, the NHS Management Executive (NHSME) from 1990 trumpeted the "new powers and freedoms" of trusts. It said:

Whilst remaining fully within the NHS, trusts differ in one fundamental respect from directly managed units – they are *operationally independent*. Trusts have the power to make their own decisions – right or wrong! – without being subject to bureaucratic procedures, processes or pressures from higher tiers of management.

With independence, trusts have the freedom to:

- acquire, own and dispose of assets to ensure the most effective use is made of them...;
- create their own management structures;
- employ their own staff, determine their own staffing structures and set their own terms of employment (NHS Management Executive, 1990: 2).

In fact, this document is disingenuous. Hospitals, both before and after trust status, could largely create their own management structures whilst hospitals' ability to set their own terms and conditions of service is severely limited by law and the Transfer of Undertakings (Protection of Employment) Regulations 1981. Be that as it may, the above quotation gives a flavour of the language used.

Moreover, the language of the flexible NHS structure is linked to the language of the flexible firm, ie the Atkinson model. For instance an influential paper for general managers of trusts by Trent Regional Health Authority (1989: 2), circulated widely, says that "self-governing status for hospitals offers a route of escape from this legacy of inflexibility and inertia. It also removes a defensive option from managers who may in the past have been able to rationalise their immobility by simply pointing to the unresponsive monolith..." It then goes on

to proclaim the need for trusts to consider two groups of staff, core and non-core, so that they are able to respond to the new volatility of health care, where purchasers conclude contracts in a quasi-market. This categorisation of core and non-core, it says, is already familiar in industry and commerce, creates flexibility, by minimising open ended commitments, and "may probably represent the biggest area of opportunity for achieving a successful enterprise, by reducing costs, improving productivity, creating and rewarding incentive".

Another influential paper by Dyson (1992) was also circulated widely, revised in a number of editions and distributed at workshops held by the NHSME. Perhaps its wide currency owed much to its optimistic tone. It claimed that a trust could improve remuneration, enhance staff commitment, obtain higher morale and substantially reduce unit labour costs by adopting a flexible firm model. In other words, the circle could be squared. In particular, Dyson asserted that changes in labour utilisation, together with numerical flexibility entailing new working patterns and new staff contracts, would result in outcomes beneficial to the trust, its staff and its patients.

Against this background, many an application document by hospitals for trust status aimed to create a flexible workforce and assumed that this was unproblematic.

Structural flexibility

Rhetoric apart, what has been the reality? Turning first to organisational structure, the Conservative Government's promise that each trust would have "the freedom to develop its own human resource strategies [and] set its own pay levels" (NHS Management Executive, 1990: 3) has been belied by events. Thus, instead of leaving it to trusts to decide their approach to remuneration of staff, the Conservative Government pursued a policy of interference, which has been more than exhortatory. It has been directional. This policy lacked coherence because at times trusts were urged to take forward performance pay and local pay, in line with the Government's ideological approach, and at times urged to be cautious and avoid political controversy. But although lacking coherence, the Conservative Government intervened on trust pay. For example, the then Health Secretary, Virginia Bottomley, urged trusts to adopt performance pay, even for those in lower earning categories (Financial Times, 1993), and the NHS Executive funded workshops on performance pay and gave money for pilot schemes. In 1994 the chief executive of the NHS Executive wrote to all trusts asking them to have local pay machinery in place by February 1995 (Langlands, 1994). Then, when the nurses' pay review body report for 1995 recommended a national award of 1 per cent and expected that on top of that there would be local agreement for a further rise of between 0.5 to 2 per cent, the HR director of the NHS Executive visited all trusts to "advise" trust personnel directors to award between 1.5 and 2 per cent locally (Huddart, 1995). Following a long dispute in 1995, management and unions at national level agreed a complex system of "local pay in a national framework" (Incomes Data Services, 1997). But interference from the centre continued. Thus in October 1996, for instance, the

HR director of the NHS wrote to all trusts stressing that at least half of them should have reached a local settlement by mid-November.

Ministerial interference in the trust's human resource policy has extended to issues other than terms and conditions. For example, the Conservative Health Secretary, Stephen Dorrell, ordered trusts to make cuts in their management costs for 1996/97 by an average of 5 per cent (Suzman, 1995). Then the Labour Health Secretary, Frank Dobson, ordered further cuts in management costs for 1997/98 totalling £34 million, in addition to £46 million planned previously by the Conservative Government (Brindle, 1997). Moreover, in their guidance for the business planning process 1997/98, the NHS Executive, *inter alia* requires trusts to include measures to "improve communications with staff, the public and the media...[and] develop NHS organisations as good employers" (NHS Executive, 1996).

Functional flexibility

As to the introduction of functional flexibility, the short answer is that this has occurred only at the margins. Most trusts have either created, or are in the process of creating, functional flexibility amongst ancillaries by removing job barriers. Such workers have a low level of skill and have been brought together in a generic grade which encompasses, for instance, portering, laundry, transport, post and cleaning. However, ancillaries only comprise 9 per cent of all NHS staff in the UK (Incomes Data Services, 1997).

Indeed, the majority of staff are professionally or technically qualified and the NHS has an intricate and long established pattern of demarcations. The largest professional group in the NHS is nursing where movement towards more functional flexibility has been slow. For example, although nurses in some countries can give anaesthetics, in the UK they cannot. Admittedly, with the passing of legislation in 1992, particular categories of community nurses can prescribe most dressings and certain medicines from a limited list. But this is narrowly drawn. Only health visitors or district nurses who have had appropriate training may write prescriptions for items, most of which can be bought over the counter and, until 1998 at the earliest, this only applies in certain areas and is not country-wide (Royal College of Nursing, 1996). Also, after training, nurses now give intravenous injections, exercise phlebotomy skills, or even use electro-cardiac equipment and practice nurses in General Practitioner (GP) clinics now perform tasks previously carried out by GPs. Moreover, the job of the individual midwife has enlarged. Most midwives now suture episiotomies, give epidurals and work both in the hospital and community. (Previously, the same tasks were performed by midwives collectively, but each individual only performed a part.) Unison, the largest trade union in the NHS, reports that nine out of ten nurses, midwives and health visitors, who responded to a survey which it commissioned from Gallup, agreed that registered nurses and midwives were carrying out a wider range of duties and responsibilities, including duties previously assigned to medical staff (Unison, 1996: 16). It is stressed, however, that although there has been some move towards functional flexibility, it is limited.

There is also little functional flexibility among paramedical staff. Some physiotherapists have increased their skills to become extended scope practitioners, particularly in GP practices, or specialist clinicians, for instance working in orthopaedic teams in some of the large teaching hospitals, but there is little cross-skilling. Where there is, for instance between physiotherapists and rehabilitation nurses or physiotherapists and osteopaths, it is marginal. As to doctors, changes towards more functional flexibility are barely perceptible, even though some doctors recognise that many procedures currently performed by doctors could be better and more cheaply done by nurses or technicians (Shaw, 1997).

Indeed, the trend is not towards more functional flexibility, ie multi-skilling and job enlargement, but away from it, ie the reduction of the tasks performed by the worker, as expounded by Taylor (1911). Indeed Dyson's paper (1992) conflates functional flexibility and Taylorism, under the umbrella of what he terms "reprofiling", without explaining that these two approaches are different. Under a Taylorist approach, a new category of support worker has been introduced to carry out some of the jobs hitherto performed by professional and technical staff. Thus, for instance medical laboratory assistants are now employed to take on some of the tasks previously performed by medical scientific officers, such as mounting, cutting and staining in histopathology departments. Physiotherapy assistants, of which there are now some 3000, support the work of the 14000 physiotherapists and nursing auxiliaries and health care assistants (HCAs) support trained nurses and midwives. Currently such support staff, whatever their nomenclature, comprise 28 per cent of the nursing and midwifery workforce (Health Service Management Unit, 1996). There are pressures, however, to extend their numbers. For instance some trusts have a 40 per cent target for the proportion of support workers to qualified nurses and midwives. These pressures arise both from supply problems of suitably qualified nurses, particularly in London and in some areas eg operating theatres, as well as the desire to contain labour costs.

In addition, ambulance trusts have adopted Taylorism, splitting ambulance staff into two categories: driver/attendants, to carry out basic work, and paramedical ambulance staff, to carry out enhanced duties (NHS Management Executive, 1993). Although the latter have received pay improvements, the former are paid less than basic ambulance staff, and overall the trust's paybill is reduced. However, ambulance staff are only 2 per cent of all NHS staff in the UK (Incomes Data Services, 1997).

Numerical flexibility

Numerical flexibility to enhance the core of permanent full-time staff can be supplied in a number of ways. Those with indefinite contracts may work part-time. Alternatively, staff can be employed on fixed term contracts, rather than indefinite ones. Thirdly, staff can work for the trust on a casual basis, essentially either being supplied to the trust from an agency or from a so-called bank, ie a register of staff available for duties as and when necessary.

Dealing first with part-time work, this has long been significant in the NHS

Looking at whole time equivalent (WTE) figures, in hospital services and comparing 1990 with 1994, the increases vary from the modest – 27 per cent in 1990 to 30 per cent in 1994 for administrative and clerical staff – to the remarkable: 0.2 per cent in 1990 to 33 per cent in 1994 for maintenance staff. Amongst the largest category, nurses and midwives, the number has grown from 15 per cent to 31 per cent. (Department of Health, 1996).

There is some evidence that the motivation for the employment of part-timers is cost containment, the provision of an extra pair of hands at a low level, rather than the desire to have family friendly policies for all grades. For instance, there is evidence that part-timers receive less training than full-timers (Jackson and Barber, 1993) and part-time nurses tend to be concentrated in the lower grades. Only three per cent of senior nurse managers worked part-time, compared to almost three in five enrolled nurses, according to a survey by Seccombe and Patch (1995) and job-sharing is rare among nurses and midwives in the NHS. A survey by Corby (1991) indicates that only one per cent of nurses and midwives are in a job-share.

Unfortunately, the number of staff on fixed term contracts cannot be readily identified separately using NHS data but the Labour Force Survey suggests that the number is rising. For instance five per cent of nurses had fixed term contracts in 1992, compared to seven per cent in 1994, according to Seccombe and Patch (1995). They also found that the use of fixed term contracts was most common amongst newly qualified nurses. (Over a third of those on fixed term contracts were newly qualified.) This may reflect a desire by trusts to place newly qualified nurses in guaranteed employment, to retain them in the workforce until a permanent, ie indefinite contract, becomes available. Buchan (1994), carrying out case studies in twelve trusts, reported that managers indicated that they expected to maintain or increase the use of fixed term nursing contract staff as a reaction to current and future uncertainties, rather than as a proactive attempt to adopt a flexible firm model. As to other professional groups, the Chartered Society of Physiotherapists, although it had no hard data, was of the view that the number of physiotherapists on fixed term contracts had risen, but maintained that this was from a low starting point.

The use of casual staff is another way of providing numerical flexibility. Casuals are used to cover for absent staff, to match peaks in workload and to reduce paybill costs, as they usually do not receive pension and leave entitlement ~~and are placed on the lowest increment.~~ There has been a significant growth of casual nursing and midwifery staff in hospital and community health services. Commonly working as so-called bank nurses or midwives, such staff signal to the trust their availability for work in principle. When the trust is short staffed (eg because of sickness) it contacts a person on the bank to see if that person can come into work when needed. Looking at whole time equivalent (WTE) figures, in 1990 there were 6,580 bank nurses and midwives, but almost double that number (12,900) in 1994. This rise was only partially offset by a decline in the use of nurses and midwives from employment agencies in the private sector:

6,710 WTEs in 1990 compared with 4,400 WTEs in 1994 (Department of Health 1996). Buchan (1994) in his survey, found that there was a north/south divide, with the use of casuals generally higher in the south. Seccombe and Patch (1995) found that often nurses on indefinite contracts work on a bank in addition to their main employment: just under a quarter (23 per cent) of all the nurses responding to their questionnaire fell into this category.

It had been thought that bank nurses were not covered by the employment protection rights contained in the Employment Rights Act 1996 and thus there were no legal constraints on dispensing with their services. The case of *Clark v Oxfordshire Area Health Authority*, however, where the Employment Appeal Tribunal ruled that the bank nurse, Clark, was an employee not a worker, throws this into doubt (Incomes Data Services, 1996:14). At this juncture, it is not clear whether this will lead to a reduction in the use of bank nurses.

In fact, managers have obtained unit cost savings by methods other than functional and numerical flexibility. They have made once and for all changes to shift patterns to match staff levels to workload and to reduce the overlap period between shifts.

Pay flexibility

Previously staff working in hospitals were employed by the health authority but trusts employ their staff directly and can set their own terms and conditions, irrespective of the national arrangements. However, this autonomy is constrained by the Transfer of Undertaking (Protection of Employment) Regulations (1981), known as TUPE, and the 1977 directive from which the regulations stem. Accordingly, staff, remaining in the same job but having the trust as their employer can continue, for as long they choose, to receive the terms and conditions set nationally either by Whitley or by the pay review bodies for doctors and dentists or for nurses, midwives and health visitors and professions allied to medicine (PAMs). In other words, only a minority (new employees and promotees) are not covered by TUPE. Unless the trust's pay arrangements are markedly better, most staff covered by TUPE will opt to remain on nationally determined terms.

Incomes Data Services (1997) calculates that 31 per cent of staff are now on trust contracts, although the proportion varies markedly by trust: from 2 per cent to over 80 per cent. However, most of these trust contracts shadow the national arrangements in all but minor respects. Looking at nurses, in their evidence to the pay review body for 1997 the unions estimated that 24 trusts had introduced local pay structures for nursing staff and, of these, only 14 were markedly different from the national pay structures. As to healthcare assistants (HCAs), this is a category of staff which was introduced into the NHS in 1991 and has never received nationally determined terms and conditions. Some HCAs are on trust contracts which shadow the national arrangements eg employed on pay rates equivalent to nursing auxiliaries or ancillaries, whereas others are on bespoke pay structures. (Unison estimates that three-quarters of its HCA members are employed on trust pay rates which shadow national rates.) Indeed,

radically new pay structures are essentially largely to be found only in ambulance trusts, but such trusts are a small proportion of all trusts (seven per cent). In addition, senior managers in all trusts are on genuinely local pay arrangements. Accordingly, for pay purposes there are three groups of staff. Those whose pay is determined nationally; those on trust contracts which mirror the national arrangements and those who are on genuinely local pay structures.

Turning to the first group, those whose pay is determined nationally, there is little flexibility, even though the Conservative Government pushed for local variation. However, in the face of union opposition, it was largely unsuccessful. Thus an agreement in 1995 for a complex system of "local pay in a national framework" failed to operate as it was set up to do and there was little local variation. Accordingly the nurses' pay review body recommended an increase to national scales of 3.3 per cent for 1997, the highest award that this body has made for five years and which leaves little scope for local bargaining. This award, together with the new Labour Government's support for national arrangements for terms and conditions, will almost certainly put a brake on the trend to local pay determination for all groups in the NHS.

Turning to the second group, those on trust contracts which mirror the national pay rates, the comments above apply and there is little flexibility. As to the third group, those on genuine local pay structures, there is considerable flexibility. They have new grading systems, mostly based on job evaluation, and have essentially abolished service related incremental progression (a feature of the nationally determined pay scales) in place of progression through performance. This varies from progression according to individual performance and progression according to the overall performance of the trust, or a mixture of the two. However, the number of staff on genuinely local arrangements is small. The authors estimate that such staff comprise less than 10 per cent of all NHS staff. In addition, such staff apart, the use of performance-related pay remains very limited. In most trusts it applies only to senior managers, but even here it may be on the decrease, as a handful of trusts are abandoning it (Pringle, 1996: 1). Doctors, however, continue to be eligible for merit awards. This system for doctors dates back to the inception of the NHS in 1948, but was revised in 1995 to incorporate more transparency and input from senior managers.

Discussion and conclusions

The NHS is a politically contested area, funded by the taxpayer and under the remit of the Health Secretary, who in turn is answerable to Parliament. In this context, an M-form organisational structure for the NHS is problematic and the freedom of trusts to pursue the human resource strategies of their choosing, as promised by Government, is mediated by political expediency and public expenditure considerations. Accordingly, whatever the language, trusts' flexibility is circumscribed in practice. Indeed, examples have been given of the Health Secretary ordering trusts to cut their management costs and the Human Resources Director of the NHS Executive influencing the reward strategies of trusts. Perhaps, it was either naïve or disingenuous of the Conservative

Government to lead trusts to expect that they would be allowed *carte blanche* in respect of human resources, given that their costs are primarily staff costs.

Related to this is the continued subordination of the personnel function. When the Conservative Government was trying to "sell" its NHS reforms in 1990, it said that trust status would provide the opportunity for flexibility and considerable local autonomy in human resource management (HRM). Hospital level personnel managers welcomed this. If the NHS has a more flexible structure, personnel staff have the opportunity to become strategists rather than administrators, devising manpower and reward policies unhindered. In short, they can increase their status vis a vis the powerful doctors, the chief executives (from whose ranks they are largely excluded) and the finance directors, who have become more important in the so-called internal market of healthcare. In fact, this occupational tactic is likely to be unrealised. Guest and Peccei (1994) found that personnel managers do not dominate in the key labour force areas of productivity, quality and flexibility. Other senior managers do. Symbolically, under the 1990 Act, there are five seats for executive directors on the trust board and, of these, four seats are held *ex officio* by the chief executive and the finance, medical and nursing directors. How the remaining seat is filled is unspecified, although a survey found that in 60 per cent of trusts the senior personnel person was on the board (NHS Management Executive, 1993).

However, not only have we found limited movement towards flexibility at organisational level, this article also calls into question the appropriateness of Atkinson's (1984) flexible firm model at NHS trust level. There is evidence of the prevalence amongst core workers, such as nurses and paramedicals, of employment practices, ie numerical flexibility, associated in the model with the peripheral workforce. Two points stem from this. First, can the part-time worker be usefully distinguished from the full-time worker, as Atkinson suggests? Both perform the same duties. Both may have been employed in the hospital for many years. Both work only a small proportion of the time when the trust, which provides a 24 hour/seven days a week service, is open. Secondly, numerical flexibility, in the form of part time work for most categories of healthcare staff whether 'core' or 'periphery' and the use of bank nurses is not new. It has long been a feature of the NHS, albeit the 1990s has witnessed a marked increase. In short, as Pollert found nearly a decade ago when criticising the Atkinson model, there has been an intensification of existing trends rather than "a radical break towards a new employment model" (1988: 296). Buchan (1994) found that some managers were aware that numerical flexibility did not necessarily constitute an easy option because, for instance, the use of bank nurses could reduce the continuity and quality of patient care and the use of fixed term contracts for qualified nurses could lower morale. Nevertheless, numerical flexibility amongst nurses was being pursued.

Moreover, instead of a functionally flexible blurring of rigid job demarcations, there is evidence of Taylorist work organisation: nurses supplemented by support workers, and thus a narrowing of the tasks performed by each grade and cost reduction. As to the occupational group at the centre of the NHS, doctors,

tually no progress in terms of functional flexibility has been achieved. In fact, there is little evidence of a radically new labour market model in the NHS, a flexible firm.

Farnham and Horton (1996: 338), dealing with the public services generally, argue that both 'push' and 'pull' factors drive organisations towards greater flexibility. 'Push' factors include decentralisation and cost pressures. 'Pull' factors include the demands for non-standard working arrangements from those wishing to combine work with their domestic caring responsibilities and the obligations on employers to have regard to equal opportunity considerations. However, while 'push' factors such as cost pressures can drive the growth in numerical flexibility, they can as easily lead to Taylorist job design as to functional flexibility. As to 'push' factors, arguably they are no longer so prominent in the recession of the 1990s, as they were in the late 1980s, when there was much talk of the demographic time-bomb.

Turning from the public services generally to the NHS in particular, the lack of progress on functional flexibility must at least partly be ascribed to the role of the professional bodies and unions. Some three quarters of NHS staff are professionals. Their professional bodies control entry, qualifications, roles and standards. The dominant ethic of the professions is operational autonomy and staff owe as much, if not more, allegiance to their professional bodies than to their employer. In this context, it is perhaps not surprising that moves towards functional flexibility have taken place in non-professional areas, such as the multi-skilling of ancillaries, while professional demarcation lines have only been altered at the margins. Moreover, although managers have sought increasingly to use support workers to supplement the work of professionals, this has been resisted by the Royal College of Nursing and the Royal College of Midwives. They take the view that the nursing and midwifery roles are holistic, not task based. (If a nurse gives a patient food, she can watch that a balanced diet is followed. If a midwife helps a post natal mother to the toilet, she may be more inclined to speak about her breast feeding problems). This holistic approach is reflected in the refusal of the Royal Colleges to take nursing and midwifery support workers into membership. If such a step were taken, they would have to argue for the growing use of support workers and compromise their views as to the role of the nurse and midwife.

The lack of progress on pay flexibility can be attributed both to management and to the unions in the NHS. Case studies suggest that if pragmatism and instrumentalism are the touchstone, there is little management rationale for departing from the national arrangements (Corby and Higham, 1996). After all the introduction of local pay structures can be expensive because of design and assimilation costs and, in the few trusts where such pay structures have been adopted, management values, rather than a pragmatic response to the labour market, have been the driver. In addition, the unions mounted an effective campaign to preserve national pay determination. In response, the Conservative Government showed a reluctance to take on the unions in an election year and the new Labour Government has affirmed its support for national pay determination.

Finally, it should be realised that the problematic nature of the flexible firm model in the NHS cannot be separated from the problematic nature of the human resource management (HRM) model in the NHS. Storey distinguishes between the 'hard' and 'soft' versions of HRM. The hard model emphasises "the quantitative, calculative and business-strategic aspects of managing headcounts resource in as 'rational' a way as for any other economic factor. By contrast, the 'soft' version traces its roots to the human-relations school; it emphasises communication, motivation, and leadership" (1991: 8). Expanding on this, Legge (1995: 66-67) says that the soft version entails treating "employees as valued assets, a source of competitive advantage through their commitment, adaptability and high quality (of skills performance and so on)". The soft version of HRM is a necessary underpinning for the core workforce in the Atkinson model. Their functional flexibility is delivered through a combination of training led adaptability and the elimination of hitherto rigid job demarcations and is crucially dependent upon employee co-operation with change. The hard version of HRM, with its cost containment approach, is a necessary underpinning for the peripheral workforce in the Atkinson model.

Trust managers, if their statements are any guide, are aiming for the soft version of HRM and developmental policies, as the most appropriate HR contribution to strategic business objectives. For example, in outlining its human resource strategy in its application for NHS trust status, St James's University Hospital, (undated) says:

Our staff resource is constantly reviewed and evaluated so that:

- it is used effectively and flexibly to maintain and improve service quality
- the potential of staff is recognised, developed and rewarded.

All staff are properly trained and confident to undertake the job expected of them to an identified standard.

Similarly, the annual report of the St Helens and Knowsley Community Health Trust (1994) says that the trust is:

committed to leadership and positive action. Through the introduction of flexible employment relations practices, Trust terms and conditions and the development of Opportunity 2000, this has already started to happen. A learning culture now prevails in an atmosphere of self and service development.

Perhaps an espousal of soft HRM is to be expected. Trusts are caring organisations, which have inherited relatively rigid internal labour markets and powerful trade unions, but need to obtain employee co-operation to increase labour flexibility. Yet the empirical evidence on flexibility tends to suggest that hard HRM may more often reflect the reality on the ground. Nor is this likely to change in the foreseeable future. On the contrary, with the budgetary constraints on the NHS continuing, together with the so-called new deal on doctors' hours, i.e. their progressive reduction, the pressures towards cost containment look set to increase.

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Opportunity 2000 in the National Health Service: a missed opportunity for women

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Opportunity
2000 in the NHS

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Opportunity 2000 is a nationwide, Government and business-supported voluntary campaign aimed at increasing the quantity and quality of women's participation in the workforce by the year 2000. In the NHS, Opportunity 2000 initially took the form of eight goals to be achieved in England by the end of 1994 as milestones towards the year 2000. These goals concentrate on improving the quality, and not the quantity, of women's work as the NHS is the largest employer of women in Western Europe.

This article shows that the NHS is failing to meet at least some of its Opportunity 2000 goals and, overall, the position is patchy. The reasons for failure partly relate to the context, including the autonomy of trusts in an NHS restructured on quasi-market lines, and partly to the failure of NHS managers to implement Opportunity 2000. Partly, however, the NHS Opportunity 2000's lack of success stems from inherent flaws: for example its business case rationale is less than convincing to many health professionals who attach a high value to ethical considerations. Also, partly, reasons for failure relate to factors common to other equality programmes, whether or not they come under the Opportunity 2000 banner, such as a value system which sees the male career pattern as the norm. Accordingly, the article concludes that movement towards equality for women in the NHS is only likely to be made if there is a different approach to goal setting.

Context

Women comprise 79 per cent out of a total NHS staff of just over one million. There is a marked concentration of women in four occupations: nursing and midwifery (90 per cent female), professions allied to medicine (88 per cent), administrative and clerical (84 per cent) and ancillary staff (74 per cent). Nursing and midwifery, with some 500,000 employees, is the largest occupational group in the NHS. Women, however, are not well represented in all NHS occupational groups. They form a small proportion of doctors (26 per cent), ambulance staff (21 per cent), works staff (7 per cent) and maintenance staff (5 per cent). Moreover women are in a minority in senior positions. For

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instance, only 17 per cent of unit general managers and 15 per cent of consultants were women in 1990-91. In other words there is occupational segregation by gender to a significant extent.

Many NHS female employees work part-time: 76 per cent of female ancillary staff, 41 per cent of female nurses, 42 per cent of female administrative and clerical workers. According to the Equal Opportunities Commission, part-time workers are concentrated in the lower paid occupations and the lower graded posts in the occupational hierarchy (Equal Opportunities Commission, 1991).

There have been a number of research studies in the last few years highlighting the differences in promotion rates for men and women in the NHS. For instance a Department of Health Working Party on women doctors and their careers (Department of Health, 1991a) found that women progress more quickly than men up to senior house officer level but this trend is reversed at registrar level and beyond. Davies and Rosser (1986) found that men are promoted to nursing officer much faster than women; 8.4 years as opposed to 17.9. The Institute of Manpower Studies (IMS) found that, although only 10 per cent of nurses are male, they fill 40 per cent of senior nurse posts (Hutt, 1985).

Studies also indicate the problems women find in combining NHS work and parenthood, even in midwifery (somewhat ironically, given its child-centredness) (Corby, 1991a). The IMS found that, whereas 90 per cent of male chief nursing officers (CNOs) have children, only 14 per cent of women CNOs do (Hutt, 1985).

Goss and Brown (1991) produced a report for the NHS Management Executive in 1991 identifying a number of barriers to women's progress including the limited availability of part-time and flexible working at senior levels, the limited availability of appropriate child-care provision, the convention in many senior jobs that long hours are required, the culture which tends to use male career patterns as the norm and the widespread use of patronage and head hunting for senior posts. The report recommended a strategy, including raising the profile of equal opportunities in the NHS, embedding equal opportunities into management practice and monitoring and evaluation (Goss and Brown, 1991).

In the same year, the Equal Opportunities Commission produced a report into women's employment in the NHS based on a survey of health authorities in England and Wales and health boards in Scotland. It found that, although equal opportunities policies were common, equal opportunity practices were not being implemented effectively. For instance, most health authorities did not plan or evaluate progress, while almost a quarter included potentially unlawful discriminatory questions on their job application forms. It recommended a national corporate plan with equality targets and the establishment of an NHS equal opportunities unit (Equal Opportunities Commission, 1991).

Against this background, the Health Secretary, Virginia Bottomley, in a speech in June 1991 said the NHS must "become a byword for good 'women-friendly' employment practices" and promised monitoring, good practice documents and conferences (Department of Health, 1991b). Then the

Department of Health, on behalf of the NHS in England, signed up to Opportunity 2000.

Opportunity 2000 is a business-led, voluntary campaign to increase the quality and quantity of women's participation in the workforce by the year 2000. It does not push the moral case for equal opportunities for women, as it believes the business case is strong enough (Incomes Data Services, 1993). These include industry's concerns (despite the recession) over demographic changes, the trend away from low skilled towards professional and related occupations and the need to attract the best people irrespective of gender.

The campaign was launched by the Prime Minister, John Major, and some saw it as a cynical attempt to gain women's support prior to the 1992 general election. Be that as it may, Opportunity 2000 fits in with important strands in Conservative party thinking, including a predilection for voluntary measures rather than legislation, an emphasis on business needs rather than the social or ethical dimension and a concern with the top, i.e. increasing the number of women managers, rather than the bottom, i.e. eradicating women's low pay rates.

Formed in October 1991, it had 275 member organizations three years later. On joining, an organization commits itself to carrying out a staff audit, setting goals and monitoring progress with the goals based on the organization's starting-point and circumstances. The goals do not have to be numerical targets and, in fact, only a minority set numerical targets (Opportunity 2000, 1994).

The NHS established a women's unit as part of the NHS Management Executive (NHSME), now called the NHS Executive, which in turn set eight Opportunity 2000 goals, of which four are numerical. The goals were to be achieved by 1994 as a milestone towards the year 2000 (NHS Management Executive, undated). At the same time as the NHS was setting goals on equality for women, it was, however, being reorganized and this reorganization may have an adverse impact on the framework and/or climate for NHS equality. As a result of the NHS and Community Care Act 1990, there is a split between the purchasers and providers of health care, and the purchaser (e.g. the health authority) can choose the provider with which it wishes to enter into a quasi-contractual relationship to buy services. Provider units, i.e. hospitals, ambulance services, and community health units, can acquire self-governing trust status and in fact by April 1994 over 96 per cent had done so. A trust, subject to employment law constraints, has autonomy on personnel matters, but this autonomy at best does not sit easily with a comprehensive, NHS-wide equal opportunities programme strategically directed at the top.

Thus, the NHS women's unit can only cajole, support and provide funding for innovative projects. It cannot order and control, although each trust is required to produce monitoring statistics and an action programme for the NHSME's women's unit each June. For instance the women's unit, on seeing a job advertisement by a Mersey trust, wrote to the trust to say that the job should have been advertised as suitable for job sharing. The trust noted the

comments but its subsequent advertisement for the same kind of job made no reference to job sharing.

This increasing decentralization is exacerbated by two further matters. First, although trusts have to abide by national, so-called Whitley agreements for existing staff (unless staff choose to change to trust terms), the agreements themselves are becoming much looser. Thus, for instance, in the area of equal opportunities the General Whitley Council (GWC) has concluded so-called enabling agreements. The GWC, for instance, "commends" the establishment of an appropriate range of child-care facilities, "recommends" that managers should consider the possibility of job sharing and "believes" that retainer schemes should be drawn up. These enabling agreements cannot be imposed directly locally. They only set parameters for local negotiations.

Second, decentralization is reflected in and will be exacerbated by the demise of the regional health authorities (RHAs) in England. They have, in the main, played a proactive part in equality. For instance, they developed their own action plans for achieving the Opportunity 2000 goals and administered management training schemes and could thus encourage purchasers and providers to put forward applicants from under-represented groups. Their number and their functions, however, were reduced in April 1994, prior to their abolition in 1996 (Department of Health, undated).

Moreover, the quasi-contractual process and the need for efficiency in the quasi-market may pose problems for an equality programme which inevitably carries a cost. For instance, there are resource implications in starting a crèche, producing and publicizing an action plan and administering a career break. Although the NHS makes "half a billion pounds' annual investment in training", essentially units bear only a small proportion of this cost as much training is carried out above unit level (Department of Health, undated). In other words there is little financial incentive for trusts to adopt measures to aid retention. As Willis (1991) says:

Equal opportunity issues may be lost under the pressure to succeed in contracting. Hard issues such as business planning may well take precedence... Another danger faces the levels of management where women have traditionally predominated, for example nursing officers... [These] levels could well be stripped out in order to achieve a flatter managerial organization in the form of clinical directorates, so cutting off another career route for many nurses without necessarily creating an alternative.

Research design

The aim of this article is to assess the progress the NHS in England is making on Opportunity 2000. To that end, information was collected in 1993/94, i.e. over two years after the setting of the initial goals, in two northern regions: North West and Yorkshire, and two southern regions: Oxford and Wessex. (The regions' names and boundaries are those which applied pre-April 1994.) The Thames regions were deliberately excluded because health care reorganization and hospital closures are taking place in London. If equality issues were not properly addressed there, this may not be typical of the NHS elsewhere. On the

other hand, two regions chosen are close to London and are arguably more affected by the business case for equality, particularly the need to retain staff, as southern areas have had much higher labour turnover rates than northern areas (Corby, 1991a).

Progress on the first four numerical goals was assessed by reference to the statistics gathered regionally. Progress on the remaining goals, however, could only be accurately assessed by looking at what was happening at unit level. So questionnaires were sent out in November 1993 with repeats to non-respondents in January 1994. The questionnaires centred on nursing and midwives for two reasons: first, three goals specifically relate to them and, second, they comprise not only the largest occupational group in the NHS but also the largest occupational group for women.

The questionnaires were sent out to management, i.e. the Opportunity 2000 contact, normally the personnel manager. However, so that perceptions of action towards equality would not just be gleaned from one perspective, questionnaires were also sent to union representatives/stewards of the three main nursing and midwifery staff organizations in the four regions: the Royal College of Nursing (RCN), UNISON and the Royal College of Midwives (RCM), asking virtually the same questions.

A total of 93 questionnaires were sent out to management and 67 were returned, giving a response rate of 72 per cent. Questionnaires were sent out to 282 staff representatives and 101 were returned; a response rate of 36 per cent.

The higher response rate from management may be due to the fact that both the RCN and the RCM in many cases had not yet altered their structures to fit in with the new NHS structures and so the staff representatives could not easily complete the questionnaire. As to UNISON, the union had just been formed from an amalgamation of three unions and was in the throes of considerable re-organization.

The goals

Jewson and Mason (1986) classify equal opportunity agendas as either liberal or radical. The liberal conception, they say, stresses bias-free competition, the removal of collective barriers to individual talent and an emphasis on training. In contrast, the radical approach is concerned primarily with outcomes. Cockburn (1989) takes issue with this dichotomy and classifies equal opportunities agendas as of shorter or longer length. Both the Opportunity 2000 campaign, in general, and the NHS Opportunity 2000 goals, which mix liberal rationales with target setting, support her view that the dichotomy does not apply. Four of the eight NHS goals for 1994 are numerical, i.e. connected with outcomes, and one of the goals is concerned with training. In fact, the goals set for the NHS are longer rather than shorter to use Cockburn's preferred frame of reference. Yet they cannot be what Cockburn calls "a project of transformation", i.e. they are not that long, not least because (as we have seen) the goals were set by the NHSME, which has no power to transform trusts.

Bearing this in mind, let us now see how the respondents were measuring up to the goals as follows.

Goal 1: Increase the number of women in general management posts from 18 per cent in 1991 to 30 per cent in 1994

North West RHA defines "general management posts" as chief executive or unit general manager. Their figures indicate that women formed 12.3 per cent of general managers/chief executives in the North West in December 1991 but by June 1993 the position had slipped back to 8.6 per cent. The figures for Wessex, which uses the same definition, are somewhat better. The percentage of women rose in 18 months from 6.5 per cent to 15 per cent by July 1993.

However the Wessex RHA 1993 progress report points out that "the turnover in general manager posts is now extremely low. For this reason the statistical target...will not be met by 1994". The North West RHA makes the same point. Only in the Oxford region, where the definition of general management posts was unclear, was the 30 per cent target achieved by 1993, a year early, while Yorkshire adopts the definition of senior manager and gives a 26 per cent figure for 1993.

Goal 2: increase the number of qualified women accountants in the NHS (revised in 1992 to include a 35 per cent target by 1994)

Some regions reported that they had achieved this goal by 1993. Thus Oxford had 38 per cent qualified women accountants and Wessex had 36 per cent. North West had 26 per cent in December 1992 – an increase of four percentage points in six months. Yorkshire RHA does not give figures. As substantial numbers of women are studying accountancy, progress is likely to continue.

Goal 3: increase the percentage of women consultants from 15.5 per cent in 1991 to 20 per cent by 1994, necessitating an annual increase of 10 per cent. Accelerate the rate of increase in the number of women consultants in surgical specialties from the current 9.7 per cent to 15 per cent per annum

The percentage of women consultants in the North West was 15 per cent in June 1993, as it was in Wessex. In the North West, women comprised 3.7 per cent of consultants in surgical specialties. Both regions point out that it will not be possible to achieve this goal by 1994 because turnover is low. In contrast, in the Oxford region women formed 19 per cent of consultants in 1993, though only 5 per cent in surgical specialties. It says "there has been no improvement in this difficult area", while Yorkshire RHA does not seem to have produced specific figures.

Goal 4: increase the representation of women as members of authorities and trusts from 29 per cent in 1991 to 35 per cent in 1994

All four regions report that this target had already been exceeded by 1993.

Goal 5: introduce a programme allowing women aspiring to management positions to go through a development centre with a view to establishing their own personal development needs

In the questionnaire, respondent managers were asked to give the number of full-time and part-time nurses/midwives in junior management positions (grade G and above) who had made use of a diagnostic process or a development centre for women into management. There were only 18 (27 per cent) who responded to this question and the aggregate number of nurses/midwives going through a development centre was 265.

Goal 6: introduce initiatives on recruitment and retention to ensure that the number of qualified nurses and midwives leaving the profession does not rise (The quit rate nationally is estimated at 5.7 per cent per annum.) According to management respondents, in 50 per cent of the units there were written agreements on a retainer/career break scheme. In 70 per cent of units there was a written agreement on job sharing and in 82 per cent of units there was a written carer leave agreement. A total of 47 nurses/midwives were on career breaks out of 22,541 nurses/midwives covered by written agreements, i.e. 0.2 per cent. The equivalent figure for carer leave was 0.8 per cent.

Also information was collected on workplace nurseries from the NHS Women's Unit. This showed that 182 units in England (over 40 per cent) had crèches in 1993. They all closed at around 6 p.m. and at weekends, although hospitals are open round the clock (NHS Management Executive, 1993).

Goal 7: ensure that following maternity leave or a career break all women, including those returning to nursing part-time or as a job share, are able to return at a grade commensurate with their leaving grade and to work of a similar status

Management respondents reported that half the units (34) had job sharers. These came to 354 in aggregate out of 34,038 covered by such an agreement, i.e. 1 per cent. (See also p. 31 below.)

Goal 8: monitor the time taken for nurses to reach management positions to ensure that men and women have equal access to these positions

No information was collected on this as it was felt that the short time that had elapsed could give an unfair picture.

Discussion

This research, therefore, suggests that the only goal that was surpassed was goal 4 – women as members of authorities and trusts. This may be because the Secretary of State appoints the non-executive chairman and up to three out of five non-executive directors of each trust (the RHA appoints the others.) Moreover this finding ties in with the NHS context. As we have shown above, the NHS women's unit has little power to direct trusts, which have a large degree of autonomy, except on the matter of board appointments.

The other goal, which many are meeting, was goal 2 – women accountants. Otherwise these findings suggest that the goals are often not being met and further analysis shows that there is no significant difference in responses according to region or according to whether the unit is acute or not.

This failure to achieve all the goals can be grouped in categories: the NHS context (discussed above) which provides infertile ground for an equality programme; the shortcomings of NHS managers in implementing Opportunity 2000; flaws inherent in Opportunity 2000 in the NHS; and factors applying to equality programmes generally.

Turning to the category relating to shortcomings in implementation, Opportunity 2000 in the NHS should be seen as a cultural change and equal opportunity messages need to be conveyed comprehensively and adequately, as Hammond and Holton (1991) point out. The NHS women's unit in 1991 asked authorities and trusts to "produce an action plan which shows how they will achieve these goals" (NHS Management Executive, undated). In many units this is not being done: 17 per cent of respondent managers said their unit did not have a local action plan. Where units had local action plans, questions were asked about how they were publicized: copy given to all staff, copy given to staff representatives, notice on notice-board, other. Essentially, management reported more methods of publicity than staff representatives where samples were either matched or unmatched. It is worth noting that the variation between management and staff representatives on whether a copy of the local action plan was given to the latter varied by 16.5 percentage points!

A UNISON representative commented "There has been no discussion/information about Opportunity 2000 via the employer". An RCM representative said that, before she received my questionnaire at the end of 1993, she had not known about Opportunity 2000 and thanked me for bringing it to her attention.

An RCN representative said: "I have seen posters on notice-boards in some parts of the hospital advertising Opportunity 2000 ... Altogether the grass roots staff have received little information, including us as stewards". Related to this, Opportunity 2000 is being given a low priority. For instance, when the newly appointed human resources director of the NHS, Ken Jarrold, gave an interview to Personnel Management in April 1994 outlining his plans, he did not mention Opportunity 2000 (McLachlan, 1994). It could be argued that Opportunity 2000 is the preserve of the women's unit but this leads to equal opportunities being marginalized and seen as separate from mainstream personnel matters.

The lack of priority given to Opportunity 2000, however, can also be seen from the responses to the questionnaires. Management respondents said 27 units (40 per cent) did not collect figures on the number of job sharers. An RCN representative said redundancies and changes in shift patterns were her priority. An RCM representative said: "We as a Joint Staff Negotiating and Consultative Committee have been so busy trying to get agreement on recognition, discipline procedures, etc., I have to confess that Opportunity 2000 has taken a lower place."

There is a notoriously low take-up rate of women-friendly employment measures in many organizations. For instance, less than 10 per cent of eligible women in 88 per cent of 182 Opportunity 2000 organizations used job share arrangements (Opportunity 2000, 1994). Even judged by that benchmark, however, this research, which shows 1 per cent take-up of job share arrangements, indicates a low rate for the NHS. Undoubtedly, women-friendly employment practices cause problems for NHS managers. A UNISON representative said that "staffing levels/constraints of the service" were often used by management as reasons for not implementing Opportunity 2000, while an RCM representative said that a community midwife was refused job sharing because of the cost implications – job sharing would necessitate an extra telephone and car user.

Nevertheless the numbers of nurses/midwives refused job sharing or part-time work in their old grade after maternity leave or a career break was very small. Even on the staff representatives' figures (which were higher than management's) 27 nurses/midwives were refused informally and six were refused formally but this comprised 0.1 per cent of nurses/midwives employed in units where there were written arrangements/agreements. The equivalent figure for carer leave was 22 refusals.

However, there is some evidence of what under the Northern Ireland Fair Employment Act they call the chill factor, i.e. people do not apply because they think they will not be successful.

An RCM representative said: "Girls who do request certain hours have been told that work comes first.... One girl has actually been told that she (the manager) chose not to have children".

The manager's approach may not be unusual. As cited above, the IMS found that 90 per cent of male chief nursing officers (CNOs) are married and have children, whereas 86 per cent of female chief nursing officers are either single or married without children (Hutt, 1985).

Another example of the chill factor was given by an RCN steward. She said: "There has only been one grievance taken about refusal of carer leave. It was a builder. Nurses have been put off by managers' attitudes ... and so take either holidays or sick-leave."

The study looked at the number of staff refused permission to go on the retainer/carers break scheme, to work part-time or job share, or refused permission for carer leave who then took out a grievance. The number is tiny. Five put in grievances on part-time work or job sharing out of 33, three out of 22 in respect of carer leave, and none in respect of a career break. This suggests that either the initial refusal was perceived as fair, so a grievance was not instituted, or the chill factor operates. Support for the latter view comes from a comment by a Unison representative who said: "The nursing members are prone not to pursue any grievances, though this does not mean that nurses are not being refused".

Interestingly there is evidence that persistence pays. An RCM representative said: "Management haven't been encouraging and it's taken a lot of hard work

on the part of prospective job sharers and the steward". Moreover in four out of the five cases where staff took out grievances in respect of a refusal of job sharing or part-time work, the grievance was upheld. This suggests that opposition is at the level of the immediate line manager.

So far we have looked at how Opportunity 2000 in the NHS is not being implemented. In essence, we have said that, if only the programme was properly communicated and implemented, then goals would be achieved and problems obviated. This article would argue, however, that this is not an adequate explanation. There are also problems inherent in the NHS's Opportunity 2000 itself. One flaw relates to the lack of specificity in the goals. For instance "general management posts" in goal 1 are not defined. As a result some RHAs (on the advice of the NHS women's unit) define them as "chief executive or unit general manager" but others do not. Similarly "qualified" accountants in goal 2 is not defined, although there are many accountancy qualifications (Baker, 1993). From responses to the questionnaire, it seemed many managers were unsure what the term "development centre", as used in goal 5, means.

Goal 6, which calls for the introduction of initiatives to ensure that the numbers of nurses and midwives leaving the profession do not rise, is open to considerable interpretation. Does this goal mean having arrangements in writing or implementing initiatives? Do managers not need to introduce initiatives if labour turnover is static? If nurses move from the NHS to the private sector, they are not lost to the profession, so does that mean initiatives are unnecessary (Buchan, 1992)?

In other words, the way the goals are formulated gives considerable leeway to those who supply statistics and both the NHS women's unit and local personnel managers have an interest in presenting matters in the most favourable light to demonstrate progress. As one personnel manager said: "We all know how to fill in NHSME forms to give the right impression."

In a similar vein a trust personnel director said that he had cited the same woman's career step each year for three years but the words he used could be taken to mean three separate women's career steps.

Another flaw in Opportunity 2000 stems from the fact that the NHS gives out mixed messages about nurses and midwives. As we have seen, three of Opportunity 2000's goals relate specifically to them. Yet the female nurse uniform, with its cap, dress and black tights/stockings, as opposed to the male nurse uniform of tunic and trousers, conveys a message of women nurses as sex objects and reinforces the female stereotype. However in *Burrett v. West Birmingham Health Authority*, the Employment Appeal Tribunal (EAT) found that the employer did not discriminate against a female nurse by requiring her to wear a cap as part of her uniform, although male nurses were not so required. Both male and female employees were required to wear uniforms and thus this did not amount to less favourable treatment. The EAT was not convinced by Ms Burrett's submission that a nurse's cap was demeaning. The editor of *Industrial Relations Law Reports*, however, has criticized this decision[1].

Finally, we deal with factors which limit the effects of many an equal opportunity programme, not just Opportunity 2000 in the NHS. Such programmes are often justified on the grounds that they make business sense but in the NHS, in particular, business case arguments may carry little resonance. After all, the NHS is posited on principles of social justice. Its purpose is to provide health care to all, regardless of ability to pay. Although the business case carries weight with ministers and may carry weight with unit chief executives, it does not necessarily convince health-care professionals, whose codes of conduct embody an ethical dimension.

Leaving aside, however, the particular characteristics of the NHS, the business case argument has its limitations, as Dickens (1994) points out. First, she says, the impact is uneven since the business case is dependent on the business cycle. Allied with that, the business interest may be perceived differently at different levels in the organization. Economic rationality in terms of cost benefit can point away from equal opportunities, as well as towards it. An illustration of Dickens's point is provided by an NHS personnel manager, who explained a lack of measures to improve the retention of female staff by saying: "As a trust we have virtually no turnover of qualified nurses".

Dickens also points out that business case arguments rarely deliver a thoroughgoing approach and may encourage action only in areas where it is clear that equal opportunities and business needs immediately coincide. The fact that none of the NHS's Opportunity 2000 goals specifically relates to ancillaries, a significant and female-dominated group at the bottom of the NHS hierarchy, supports her argument.

Opportunity 2000, both in the NHS and elsewhere, and equal opportunities programmes more generally, emphasize the aspect of women in management. In the NHS we have seen how the only goal achieved a year in advance of the target date relates to women non-executive directors. Other initiatives taken by the NHS women's unit include a publication entitled "Women managers in the NHS: a celebration of success" (Proctor and Jackson, 1992) and their link-up with Ashridge Management College to produce an NHS women's career development register.

Of course, equality programmes for women are aimed at breaking down occupational segregation by gender and moving women into traditionally male-dominated areas, such as maintenance and management. But do women managers make a difference to organizational policies and practices? Some are of the view that, if there are more women in management, more women will be involved in organizational policy and decision making with the result that organizations will reflect the needs and interests of women. However, radicals take the view, as Walby (1990) points out, that, even when women achieve very senior positions and a lot of power, their ability to effect change for and on behalf of women is limited, as discrimination is rooted in the social and structural. Others, such as Coyle (1993), argue that women who have gained power under the system may only want to change it marginally. Even feminists in senior positions are likely to be primarily concerned with the imperatives of

running a cost-effective service. The refusal by the female Director of Midwifery Services to grant a community midwife a job share (mentioned above), because it would entail an extra telephone and car user, is consonant with Coyle's argument.

A third factor, common to all equal opportunities programmes for women, centres on the value system that sees women as the problem. The male career pattern is seen as the norm and organizational structures are based on the arrangements which suit men, not women. Equal opportunity programmes, (for instance part-time work or career breaks), are designed to organize the women round the work, rather than the other way round. They are interventions in existing androcentric practices. Yet as Cockburn (1991) points out, they are a mixed blessing for women. Women generally welcome measures to promote flexible work. They help them combine work and the family but confirm them as the domestic sex. Thus women enjoying such measures are seen, at best, as having dual demands on their time arising from their paid work and their work at home and, therefore, different from other (mainly male) employees and, at worst, as second-class employees.

Although this value system lies at the root of many an equal opportunity programme, its existence in the NHS in general and in nursing in particular, is remarkable. Nursing is predominantly a female profession (see percentages above). As Davies (1990) notes, historically it was built on the career path of a single woman who lived and devoted herself to the job. The transition, however, has been to the male career path and not to the path of the woman with domestic responsibilities, even though only 10 per cent of nurses are male. There is some resignation by managers, she says, that part-time work and episodic contributions are inevitable given that the profession contains so many married women but such work is rated less highly than full-time, uninterrupted work. Thus part-timers are concentrated in lower grades (Corby, 1991b) and are assumed by many managers to be less committed to work than full-timers, compared with whom they face additional barriers to career progression and have less access to training (Jackson and Barber, 1993). As Davies (1990) says: "Today's nursing it would seem reflects conventional career thinking and values conventional careers in a context where such careers have always been impossible for many of those involved."

Summary and conclusions

This research has shown that the NHS has failed to meet at least some of its Opportunity 2000 goals. The reasons for this partly relate to the NHS context including the autonomy of trusts, the increasing flexibility in Whitley agreements and the quasi-market with its emphasis on cost saving. This, essentially, is incompatible with an equal opportunities programme strategically directed from the NHS centre. But the reasons also relate to the failure of NHS managers to implement the programme, to communicate it and to give it a high priority. Moreover there is evidence of a chill-factor which discourages staff from applying for flexible work.

Partly, however, the NHS Opportunity 2000's lack of success stems from inherent flaws. Some of its goals are ill-defined. At best they are open to a variety of interpretations and at worst to manipulation by trust personnel managers. Also, while a number of goals relate to equal opportunities for nurses, Opportunity 2000 fails to tackle the sex stereotypical uniform of the female nurse.

In addition, the programme's justification on business grounds is a limitation. The NHS is based on ideas of social justice in which many may see a clash between ethical and business values and the business case itself is contingent on the business cycle. Moreover, almost invariably, equal opportunity programmes for women are managerialist. They aim to increase the number of women in management, presumably relying on them to make changes which will be beneficial for other women employees and ignoring the institutional, structural and cultural impediments to equality. Lastly equal opportunities programmes for women, including those in the NHS, founder because the value system views the male career pattern as the norm and women as the problem. Measures to enable women to work part-time or take career breaks may be valued by them, but underline their domestic responsibilities.

These findings lead on to a general consideration of the usefulness of goal and target setting in achieving movement towards equality. Kandola and Fullerton (1994) say:

In our survey, targets were the least successful of initiatives undertaken by organizations. Targets are problematic not only in the way they are currently established (which often seems to be a combination of wishful thinking and maximum PR coverage) but also in the basic thinking and philosophy behind them.

In contrast, Welsh *et al.* (1994) say: "There is some evidence that organizations who have targets and timetables are more likely to be successful in improving ethnic minority representation than those who do not".

Moreover, in Northern Ireland under the Fair Employment Act, where goals and timetables are promoted by the Fair Employment Commission (FEC) (1994), there has been "a degree of progress".

Against that background, this research suggests that essentially Kandola and Fullerton's strictures can be levied against the NHS's Opportunity 2000 targets. As Welsh *et al.* (1994) say, however, there is a "whole raft of factors" determining success, while in Northern Ireland there is a strong statutory framework, which even enables the FEC to require an employer to set goals and timetables. Accordingly, the author concludes that the setting of goals and targets is a necessary, but not sufficient condition of success. They are more likely to be achieved where there is a supporting statutory framework; where the goals themselves are clearly defined; where managers at all levels are perceived by union representatives to be committed to them; where the rationale for the goals is consistent with the values of actors and where those setting goals and monitoring achievements have power at all levels of the organization.

Cockburn (1991) found that equality achievements in the public sector have been disappointing and she outlines the measures that need to be adopted if there are to be far-reaching changes. This more recent research on the NHS suggests her analysis remains valid.

Note

1. [1994] Industrial Relations Law Reports 7. The editor points to the House of Lords decision in *R.v. Birmingham City Council ex parte Equal Opportunities Commission* where it was held that, in order to establish "less favourable treatment", it is enough that members of one sex are denied "a choice which...is valued by them and which (even though others may take a different view) is a choice obviously valued, on reasonable grounds, by many others". The facts in the Burrett case show that the choice not to wear a cap was valued by Ms Burrett and others in the hospital.

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Equal Opportunities and Flexibilities in the United Kingdom's Public Services

Are They Compatible?

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The United Kingdom's public services, which employ more women than men, led the way in equality initiatives from the late 1970s, at a time when personnel management was centralized and terms and conditions were determined prescriptively and in detail. Accordingly, equality policies and practices were introduced into a centralized system. From the late 1980s, changes have been aimed at giving local managers more discretion on personnel and pay issues and providing working patterns which depart from the full-time, life-time norm when budgetary constraints have tightened. This article looks at the impact of these changes, or so-called flexibilities, on equality and finds that pay flexibility and contractual flexibility have had a detrimental impact. The evidence with respect to structural flexibility and temporal flexibility, however, is less clear-cut. The article concludes that equal opportunities and flexibilities in many, but not necessarily all, respects are not compatible in the United Kingdom's public services.

The public services, as employers, should reflect the gender and ethnic mix of the communities they serve if they are to be (and be seen to be) shaping and implementing policies which are sensitive to the needs of service users. In fact, United Kingdom public service employers in the early 1980s were at the forefront of introducing equal opportunities policies and practices, but this was at a time when personnel management was centralized and terms and conditions were determined in detail. In the 1990s, however, there have been many changes in the United Kingdom's public services to provide for more personnel management flexibility. This article looks at the effect of

these changes on equal opportunities and concludes that in the main they have been detrimental. This has been exacerbated because flexibilities have been introduced at a time when the public services are subject to budgetary constraints.

Equal opportunities is used in this article in respect of equality for women, ethnic minorities and disabled people. The focus, however, will primarily be on gender because that has been most studied. As to the term "flexibility," it is important to note that it conveys approval. Its opposite is rigidity, a pejorative word. So flexibility is a value-laden concept; it is also a catch-all term. For the purposes of this article, therefore, flexibility is unbundled into four parts:

structural flexibility, with devolution of responsibility from the centre to line managers in localities; *pay flexibility*, with scope for local management discretion in determining an individual's reward; *contractual flexibility*, so that work is no longer synonymous with a lifetime career; *temporal flexibility* with hours varying weekly or departing from the full-time standard pattern.

It is emphasised that this article does not focus on the progress, or lack of progress, in equal opportunities in the United Kingdom's public services. Undoubtedly, some progress has been made over the last decade. For instance, in the civil service the proportion of women at senior levels (the top five grades) has doubled in the 10 years to 1994 (Cabinet Office, 1995a) and there has been an increase in the proportion of ethnic minority staff in management grades in the three years to 1993 (Cabinet Office, 1993). This article, however, is not concerned with progress as such. Rather, it is concerned with the impact of personnel management flexibilities in the United Kingdom's public services on equal opportunities. Before exploring this question, the background against which these flexibilities have been introduced is briefly summarized.

Background

Until the early 1980s, personnel management in the United Kingdom's civil service, local government, the National Health Service and education was centralized. In the civil service, for instance, there was a high degree of centralized rule making and joint management-union agreement through the so-called Whitley system (i.e., joint committees). All areas of personnel practice, including recruitment, staff appraisal, promotion and inefficiency procedures were centrally prescribed, as were pay and grading systems. Each grade had a

salary structure and length of service in the grade automatically determined the incremental point on the pay scale, with virtually no discretion for local managers. There were similar national level and prescriptive arrangements for local government, education and the National Health Service (Farnham & Horton, 1996). For instance, if a local nurse manager wanted to give a nurse an extra increment, (e.g., for overseas service) and this was not prescribed, the manager had to apply to the Minister for a variation order.

Many local authorities from the mid-1970s, and then the civil service, developed equal opportunity policies and set up equal opportunities units to implement them. Staffed by specialists, these units aimed to introduce and manage measures, carry out monitoring and other studies and spearhead equal opportunities initiatives, such as creches for working parents, training for managers and special courses for disadvantaged groups (e.g., women into management courses). For instance, in the civil service an equal opportunities division was set up centrally in the Cabinet Office (Management and Personnel Office) with equal opportunity officers in departments (Corby, 1983).

Partly such units were established because there was acceptance that local and national government employers had to set an example. The national government was against further regulation, rejecting arguments for strengthening the law against discrimination, maintaining that voluntary action by employers was best. Thus it needed to show, as employer, that it could make this approach work. In local government, a concern for equal opportunities was partly driven by councillors' response to local electorates in multiracial areas and values of fairness and justice. In addition,

under the Race Relations Act 1976, local authorities have a particular responsibility to eliminate racial discrimination and promote equal opportunities in carrying out their functions. In this context, centrally-based equality officers in national and local government held line managers to task if they did not comply with centrally imposed measures. Interestingly the two employment codes of practice for sex and racial equality at work, issued under statute, assume that equal opportunities policies are implemented from the centre by specialists in a uniform, organization-wide personnel system. Neither code contains many recommendations directed at line managers.

In the 1980s, this centralization, into which an equal opportunities dimension was inserted, started to be dented. Thus, in the civil service a report on personnel work (Cassels, 1983) resulted in a change from central prescription to framework guidance from the centre to departments. In local government, and the National Health Service, agreements centrally between management and unions became looser to allow scope for local variations.

Further structural changes hastened the devolution of personnel management. In the civil service, so-called executive agencies, operating at arms length from departments, were set up beginning in 1988 to carry out a specific management task. Some 68% of civil servants (Cabinet Office, 1996) now work in these agencies. Both agencies and central government departments have considerable freedom in personnel matters including, from 1991, authority to recruit not only clerical staff but also junior and middle management grades and, from 1996, authority to set their own pay and grading systems. These systems, all of which employ some form of performance pay, give local managers a key role as performance

appraisers. In education, a new system of local management from 1988 gave school governors powers of staff recruitment and dismissal. Moreover, certain schools (grant maintained) were given virtually total personnel management powers (Farnham & Giles, 1996). In local authorities, certain services were restructured as direct service organizations and became semi-autonomous. In the National Health Service, from 1991 onward, hospitals were restructured as semi-autonomous trusts and were given considerable freedom on personnel matters, including the right to determine their own pay and grading regimes (Corby, 1991a).

The effects of these changes on equal opportunities, some argue, are beneficial. Good practice is no longer prescribed from the centre and responsibility for equal opportunities is no longer shared, often unclearly, between the centre and the locality. Instead, responsibility for good and fair practices is concentrated firmly in the hands of local managers who deal with employees on a day-to-day basis. As the report of the advisory panel on equal opportunities in the senior civil service put it, line managers traditionally considered "personnel responsibilities in general and equal opportunities in particular to be someone else's problem. The new approach reinforces the responsibilities of line manager" (Cabinet Office, 1995b, p. 25). In the new scenario, the centre has an advisory role, issuing codes and manuals on recruitment and selection and mandatory areas for inclusion in local action plans, whilst equal opportunities committees are a forum for the exchange of information and the dissemination of good practice. Moreover, these changes have gone hand in hand with new working patterns. Previously, when full-time permanent work was the norm, women could not easily combine a job with

domestic responsibilities. New flexible working patterns in the public services, such as part-time work, can help women in their dual role of employee and carer (Mueller, 1987).

On the other hand, others argue that these changes do not further equal opportunities. No longer can the center drive policies forward and local managers may not be fully aware of the equal opportunity dimensions of their personnel activities. Moreover, because they are essentially rated by the extent to which they meet short term financial targets, line managers may pay scant regard to measures which are costly, but fair, subordinating the longer term imperatives represented by equal opportunities.

Cost considerations are at the fore at present, as political pressures are resulting in budgetary constraints across the United Kingdom's public services and, in practice, the brunt of cost cutting falls primarily on women. This occurs because the public services are labor intensive—around 70% of their costs are labor costs and the workforce is predominantly female. Over 50% of civil servants and nearly 80% of employees in schools and the National Health Service are women (Farnham & Horton, 1996). Financial retrenchment entails lower staffing levels, reductions in full-time, permanent work and organizational delayering. As women and ethnic minorities are concentrated at the base of organizations and at the lower levels in each occupational hierarchy, a reduction in promotion opportunities because of delayering means there is less likelihood of changing the organization's gender and race managerial profile. Changes to more flexible working patterns can act to the detriment of women; for instance, if they do not work sufficient hours to earn enough to be eli-

gible for state benefits or if they are increasingly insecure because they are employed on fixed term contracts they are disadvantaged by change.

Furthermore, reduced staffing levels tend to lead to increased workloads. Coyle (1995) found in her study of five organizations (three in the public services) that, whilst part-time work is increasing, paradoxically excessively long working hours for managers have become the norm. Partly this is due to work intensification where organizations have become flatter; partly, long working hours have come to be an indicator of commitment. As a result of these developments many women have "to make a stark choice between their careers and their families" (Coyle, 1995, p. 60). Finally, in a climate of cost reduction, equality measures may suffer. For instance, positive action training, outreach work, monitoring and workplace nurseries carry a substantial cost. As one local authority manager noted, there is a "danger of equal opportunities initiatives being seen as a 'luxury'." (Opportunity 2000, 1995, p. 29). There can be offsetting benefits, such as reduced turnover and absence, but these are not easily quantifiable, while increased worker loyalty is even harder to gauge (Holterman, 1995).

The Evidence

Flexible Structures

In fact, evidence of the effects of devolution on equal opportunities is limited. Coussey (1997), on the basis of her research into two local authorities and two civil service executive agencies, concludes that devolution has not been detrimental to equal opportunities. All the organizations she studied had comprehensive equal opportunity policies for ten or more years. In this context, managers had a high level of

awareness and carried forward equal opportunities. Partly, this was because managers understood the importance placed corporately on equality by top managers and, in local government, elected councillors. Partly, this was because equality had been incorporated into the public service ethic of fairness.

Other research is less sanguine. Thus Oswick and Grant (1996) looked at 14 public service organizations. They found reductions in the proportion of equal opportunity advisers to generalist personnel managers. They also found that often the personnel department, as a support function, was charged out as an "on cost" to other areas. Accordingly, many locality managers viewed personnel support as a commodity which they could decide to purchase. Among eight specializations, equal opportunities and training were generally felt to have suffered most, whilst labor relations and management services had experienced only moderate reductions.

Turning solely to the civil service, this decline in equal opportunities specialists is supported by information from the assistant secretary of the Council of Civil Service Unions in April 1996. She cited the closure of the equality unit of ten people in the Department of Transport and the reduction in the equality unit in the Cabinet Office with a loss of a third of its staff.

In addition, the civil service also provides examples of the problems of delegation linked to financial considerations. Thus ethnic origin follow-up surveys, hitherto organised centrally but now delegated to departments and agencies, have been shelved for three years from 1996 in the Department of Social Security and its three agencies. According to the Social Security Minister, Alistair Burt, in a written answer to Parliament on 22 April 1996, the deci-

sion was taken in the context of a cost reduction exercise "as there is no separate resource allocation for equality monitoring." Similarly, although by April 1994 over 45 civil service nurseries had been set up, the Benefits Agency closed its Brixton nursery in South London in 1995 because it did not meet value for money criteria, according to unpublished correspondence with the Council of Civil Service Unions.

Staying with the civil service, a consultant's report into promotion procedures, which looked at seven departments and agencies, found, among other things, that many line managers were unaware of the potential for discrimination in staff appraisal reports, and that there were departmental variations in the provision of training for line managers, information to candidates for promotion and briefings for promotion board members and chairs (Stewart, 1993). Updating this research, the consultant (Stewart, 1996) points out that most of the recent changes to promotion procedures have resulted in greater delegation to line managers which will allow for even greater variations.

Turning to local government, research for the Equal Opportunities Commission (Escott & Whitfield, 1995) into 39 local authorities in England, Scotland and Wales found that although they all had equal opportunities policies, the application of those policies varied considerably. When interviewed, managers of direct service organizations (DSOs), (i.e., semi-autonomous units within local authorities) appeared to have a poor understanding of equal opportunities and in only a small minority of cases had DSO managers sought to improve employment opportunities for women, black and disabled people. Moreover, systematic and comprehensive monitoring of employment in DSOs was rare.

There is also anecdotal evidence that governors in some of the 27,000 schools in Britain are unaware of the equal opportunity dimensions of recruitment and selection, and unfamiliar with equal pay policies. Local education authorities offer training for school governors, but they are unwilling to insist on attendance in case this provokes school governors to embrace "opting out" (i.e., breaking away from local control completely).

As to the National Health Service, Corby (1995) in her research into gender equality, found a number of instances where line managers sidelined equality or subordinated it to cost considerations. Among other things, she cites the refusal by a director of midwifery services of two community midwives' requests for job sharing because the hospital would have to foot the bill for an extra telephone and car user. The Commission for Racial Equality (1996), looking at the appointment of ethnic minority doctors to senior positions in the NHS, found great cause for concern as in almost every case there was a big gap between policy and practice. The devolution of the selection process from 14 regional health authorities in England to over 500 NHS trusts, it said, may have exacerbated the problem.

To sum up, although research evidence does not all point in the same direction, it appears that devolution is having a detrimental effect on equality at least in some areas, especially as it is being introduced when local managers are having to meet tight financial targets.

Flexible Pay

Whilst the evidence as to whether or not flexible structures have had a detrimental impact on equal opportunities is limited, there is more extensive evidence on flex-

ibility in payment systems. As noted above, from the late 1980s there has been an increase in local managers' discretion on pay. First, managers were able to give merit pay or *performance related pay*, as it is often called, which is firmly in place in the civil service. From 1993 it formed a part of the service-wide pay arrangements for all non-industrial groups and, from April 1996, pay is not determined centrally but by departments and agencies and in some 250 bargaining units. So far, performance related pay is a feature of all these deals; only the proportion differs. Thus some departments and agencies (e.g., Customs and Excise) have all merit pay systems wherein an individual's pay progression is entirely based on a performance appraisal rating, while others (e.g., Employment Service) mix performance related pay with cost of living increases (Incomes Data Services, 1995).

In other public services, performance related pay is less significant. Only a quarter of local authorities operated a performance related pay scheme in 1994 for at least some staff, mostly the more senior managers, and in education few governing bodies made use of a scheme to reward "teaching excellence" (Local Government Management Board, 1994). The National Health Service applies performance related pay to managers, but overall it "has gained very little hold" (Incomes Data Services, 1996, p. 83). A handful of trusts (i.e., hospitals) which have their own pay systems for most staff have made performance related pay an integral part of their new arrangements.

There is some evidence that merit pay schemes discriminate against women. Bevan and Thompson (1992), looking at three private sector organizations and one local authority, found that bias tends to enter the merit pay process when appraisal

ratings are translated into merit pay awards. Typically women do worse than men. These findings are reflected in the civil service. Figures supplied by the Cabinet Office (Council of Civil Service Unions, 1991) indicate that as the grade rises, the balance of performance markings change, with more staff marked as performing significantly above the requirements of the grade at higher levels than at lower levels of the civil service. As there are significantly fewer women than men, and fewer ethnic minorities than whites at higher levels, their overall mean performance awards are lower than whites.

Looking at three of the higher civil service grades alone (grades 5,6,7), on the basis of figures supplied by the Treasury to the First Division Association, the senior civil servants' union, there is no overall inequality evident in the assessment of the performance of men and women, but such assessments do not provide for automatic performance pay. In fact, 41% of men and 25% of women received performance related pay in 1991, a gap of 16 percentage points, compared with a gap of 20 percentage points in 1990. Turning to those on their scale maxima (i.e., removing any distortions because of recent promotions or appointments), the gap between men and women in respect of the receipt of performance pay remains significant: 19 percentage points for grades 6 and 7 and 12 percentage points for grade 5 in 1991 (First Division Association News, 1991). Against this, the Cabinet Office (1995, p. 46) says that the performance related pay awarded from July 1992 to August 1993 for grades 5 to 7 "showed in aggregate virtually no variation between men and women staff in those grades who were given the same box markings."

As to race discrimination, although information is limited, data on performance ratings across the civil service indicate that

lower proportions of ethnic minority than white staff received performance markings in the highest two boxes on a five-box scale. A Commission for Racial Equality study, in which three departments participated, revealed that the performance ratings of ethnic minority staff in some grades were significantly lower than those for white staff (Cabinet Office, 1993). In addition, a Department of Transport study (Civil Service College, 1995) found that in every grade ethnic minority staff received a significantly lower proportion of higher box markings than other staff.

Profit related pay is another feature of flexible pay. Common in local government, there is evidence that women have less chance than men to benefit from such schemes. A survey by the Local Government Management Board (1995) found that the 216 schemes which 113 local authorities operated were most common in ground maintenance, refuse collection (both male dominated) and sports and leisure management (where no sex dominates). Schemes occurred least often in catering, a female-dominated activity. Moreover, the share of profit related payment for each manual employee was most commonly based on the qualifying hours worked. Less than a fifth of local authorities used straight flat payments. As part-time workers are predominantly female, while men predominantly work full-time and do overtime, this reinforced gender differentials. Finally, most local authorities monitored their schemes with respect to the total annual cost of payments, but few (27%) monitored them with regard to equal opportunities.

Performance related pay and profit-related pay apart, gender differentials may creep in under the new pay systems in the civil service. Instead of relatively narrow,

service-wide salary scales for grades, each department or agency is introducing its own pay regime and in so doing, is mainly adopting broad pay bands which provide wide scope for management discretion.

According to the Local Government Management Board (1994), there is considerable flexibility in local government pay scales. Local authorities can fit their remuneration policies to their local labor markets, thus providing local variations within a national framework. In its survey the Board found (1994, p. 32):

...virtually every authority has modified aspects of the national agreement or applied them in ways which are individual to that authority. No two authorities in the sample had identical remuneration policies.

Industrial Relations Services (1992, p. 26) found in its research that the arrangements for deciding which employees should receive additional discretionary pay adjustments, seemed particularly ad hoc and their distribution by gender was generally not monitored. They also found (1991, p. 78) that with more flexible pay practices had come a more guarded approach to the timely disclosure of information, a crucial factor in enabling employees to assess whether their employer's pay practices provide equality. The European Court of Justice in the Danfoss case (*Industrial Relations Law Reports*, 1989, p. 532) said that where a pay system lacked transparency and merit pay resulted in differentials between men and women, there was a potential breach of the Equal Pay Directive. Moreover, in the light of the decision of *Scullard v (1) Knowles (2) Southern Regional Council for Education and Training*, a public service female employee, relying on Article 119 of

the Treaty of Rome, may be able to compare herself with a male, who has a different employer, but works in the same "service" (*Industrial Relations Law Reports*, 1996, p. 344).

Flexible Contracts

Traditionally, public servants have had the opportunity for a lifetime career. In the 1980s, this feature of the public service changed and significant numbers became employed, after tendering, under contracts lasting three to five years. *Compulsory competitive tendering* in local government has occurred mainly since the Local Government Act 1988, when six areas were initially subject to compulsory competitive tendering: building cleaning, refuse collection, street cleaning, school catering, grounds and vehicle maintenance. Then sports and leisure management were added from 1991 and a proportion of white collar areas in construction and property services and corporate services from 1994. As long ago as September 1983 district health authorities in Britain were instructed to put out to tender the work of domestic, laundry and catering staff. In the civil service, in the 1980s, so-called market testing, (i.e., tendering) was largely concentrated on support services. From 1991, this was extended to clerical and executive operations, specialist and professional skills and facilities management. In Northern Ireland, competitive tendering was introduced in education, health and personal social services from the late 1980s.

There is evidence that tendering has adversely had an impact on women, with the Equal Opportunities Commissions (EOCs) in Britain and Northern Ireland undertaking research. The British research (Escott & Whitfield, 1995) was based on 39 local authorities and four services: build-

ing cleaning and education catering which have predominantly female workforces; refuse collection which has a predominantly male workforce; and, sports and leisure management which employs equal numbers of men and women. The research found that average hours worked in the predominantly female services of building cleaning and education catering declined by 25% and 16%, respectively as a result of the tendering process. Contractual hours remained the same in the predominantly male refuse collection areas but actual hours worked by full-time employees in this service increased. Female part-time employees were most affected by the decline in hours in catering and cleaning. In addition, female employment fell by 22% and male employment by 12%, but most of the local authorities surveyed reported an increase in their use of temporary workers, most of whom were female. There was evidence, also, that the number of disabled workers employed decreased.

Pay levels in the predominantly male refuse collection service increased, but in the predominantly female catering and cleaning services they either stayed the same or declined, particularly for part-time employees. An increasing number of part-time workers, nearly all women, earned less than the Lower Earnings Limit for National Insurance and were thus excluded from a range of state benefits, such as statutory sick pay and state pensions.

Data from the 20 contracts in Health and Education Boards examined by the Equal Opportunities Commission for Northern Ireland (1996) paint a similar picture. The majority of services selected for tendering were female-dominated. There was a 37% female job loss, compared with a 2% male gain. There was a significantly greater reduction in working hours and a

larger decrease in wages for women than for men. Part-time workers, nearly all women, were particularly affected. Finally none of the boards or National Health Service's trusts monitored the impact of competitive tendering on gender.

Research into competitive tendering in National Health Service catering in England is in line with the Northern Ireland findings. Kelliher (1996, p. 69), carrying out four case studies in 1991, found that in one case:

where trade union membership was high, and where considerable concessions were secured, managers adopted the tactic of protecting the terms of the mostly male, full-time cooks, who represented the strongest base of the trade union and gaining concessions from the mostly female, part-time catering assistants, many of whom were not active trade union members.

Elliott and Duffus (1996) looked at New Earnings Survey data for full-time manual workers aged 21 and over in occupations most exposed to competitive tendering in the National Health Service and local government from 1985 to 1992. Their research is only partly consonant with that summarized above. The evidence, they say, suggests that employment must have borne the brunt of adjustment as sample numbers in several of these occupations fell sharply. However, both men and women enjoyed substantial rates of growth in their real hourly earnings and women do not appear to have fared any different from men. They add, though, a note of caution as these are preliminary results. Moreover, they only looked at the earnings of full-timers, not part-timers.

As to other aspects of contractual flexibility, there has been a growth in the num-

ber of casual staff and a decline in the number of permanent staff. For instance, on the April 1, 1996 there were 494,290 permanent civil servants compared with 735,430 in 1979. In 1996 there were 20,010 casual civil servants, "nearly three times the level of 1979" (Adonis, 1996, p. 4). The Cabinet Office has supplied the author with a gender breakdown of nonindustrial civil servants. In 1994, 51% of women were permanent and 57% were casual. In other words, there is a greater proportion of female nonindustrial civil servants working as casuals, than permanents.

Similarly, in spring 1995, women teachers comprised 69% of all permanent and 85% of nonpermanent staff, and in local government female manual workers comprised 70% of permanent employees, but 77% of nonpermanent ones. Only among nonmanuals in local government, excluding police, fire and teachers, were women to be found in roughly the same proportions among permanent and nonpermanent staff—64% and 62% respectively.

Flexible Working Time

Whereas the increases in the flexibilities described above have essentially had a detrimental effect on disadvantaged groups, the increase in temporal flexibility can help women combine work and domestic responsibilities. In the civil service, the first recorded career break was in 1984. Now virtually every government department and agency operates a scheme. For instance, 663 women took part in the Inland Revenue scheme from 1990 to 1994. In addition, flexible working hours schemes are now found in the civil service and local government, though to a much lesser extent in the National Health Service.

As to part-time working, the impact on equality can be favourable. Over 18% of

female civil servants worked part-time in 1994 compared to 6% in 1984. Women and part-timers are concentrated in the lower civil service grades; nevertheless, significant proportions of women work part-time in senior grades as well as junior ones. In 1994, 5133 women worked part-time as administrative assistants, (i.e., clerical workers). This represented 19% of women in the grade. Also in 1994, 62 women worked part-time in grade 5 (i.e., senior civil servants). This represented 18% of women in the grade (Cabinet Office, 1995, p. 73). Figures from the National Health Service, however, are not so encouraging. Many nurses and midwives work part-time or job share—44% and 37%, respectively, according to a 1991 survey (Corby, 1991b). They are concentrated in the lower grades, however. Nurses working part-time or job sharing constituted 49% of nurses in the bottom six clinical grades, but only 16% of those in the top three nursing grades.

Conclusion

Movements to personnel management flexibility are not confined to the public services. They extend to the private sector as well. The impact on equality in the public services is more marked, however, for three reasons. First, by-and-large, the public services have led the way on equal opportunity initiatives, so there is more to be lost. Second, the public services employ more women than men, unlike the private sector, so any set-backs to equality affect far greater numbers of employees. Third, the public services traditionally have been more centralized and prescriptive than the private sector, and so the new flexibilities represent more of a change of direction in the public than the private sector.

This article has shown that equal opportunities and personnel management

flexibilities at best do not sit easily with each other. At worst such flexibilities adversely affect equality. Not all the evidence points in the same direction, however, and some temporal flexibilities, such as part-time work, help women combine work with domestic responsibilities. In short, although more research is needed to answer the question categorically, it appears that equal opportunities and flexibilities, in many respects, are not particularly compatible in the United Kingdom public services.

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Trade unions and local bargaining in the NHS

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Abstract

Examines some effects of NHS Trusts moving away at varying speeds, from complex national arrangements for determining terms and conditions towards local bargaining. Notes that while there has been some research into the extent and nature of this decentralization, the impact on trade unions has largely been ignored. This research suggests that, far from marginalizing stewards, senior managers have involved them in joint discussions. Although there has not been a renewal of local trade unionism, there has not been a decline, as membership has held up. Moreover, stewards have coped remarkably well with their enhanced roles, even though faced with the increasing and conflicting demands of their work and their union duties, compounded by problems in obtaining time off work because of lack of cover.

NHS Trusts are moving away at varying speeds from the complex arrangements nationally for determining terms and conditions towards local bargaining. Yet while there has been some research into the extent and nature of the decentralization of NHS terms and conditions [1], the impact on trade unions has largely been ignored.

In fact, many public sector trade unions have voiced opposition to local bargaining, in part because they perceive this as one of a range of government strategies to undermine their influence and also because it entails major organizational change. But rhetoric apart, what has been the impact upon lay representatives, i.e. the stewards, and their relations with managers, their members and union officers? Do hospital managers have more involvement with stewards than in pre-Trust days, or are they seeking to exclude, or marginalize them? Has the development of local bargaining led to a renewal of local trade union organization, or has it led to a decline, as stewards are unable to cope with the new pressures?

This research into three NHS Trusts indicates that senior managers, far from marginalizing stewards, have involved them in discussing terms and conditions of service. For their part, most stewards believed that they were better informed than ever before and were getting to grips with their enhanced roles, despite facing problems in obtaining time off work for union duties.

Context

The Conservative Government has repeatedly urged NHS Trusts to use their freedom to devise their own terms and conditions, so departing from the national arrangements. This freedom, though, is constrained in four ways:

- (1) by the continued existence of national level pay determination mechanisms, i.e. the pay review bodies and Whitley system;
- (2) by legislation – The Transfer of Undertakings (Protection of Employment) Regulations, TUPE, under which staff, formerly employed by the health authority but now employed by the Trust, can continue to receive nationally determined terms and conditions for as long as they choose, provided they stay in the same job;

- (3) by Trusts' financial pressures, which makes them unwilling to incur the design and assimilation costs of a new pay system; and finally,
- (4) by the 1995 pay agreements which laid down complex procedures for a mix of national and local awards.

Nevertheless, despite these constraints, there is a clear trend towards local bargaining [2].

What is less clear is how this has impacted on trade unions in the NHS. A number of writers, such as McIlroy[3] and Smith and Morton[4], looking at areas mainly outside the NHS, argue that the frontier of control has moved in the employer's favour and that unions are being excluded. Indeed, in the NHS, there have been some well-publicized cases of union derecognition, mainly in Ambulance Trusts. In addition, Smith and Morton argue that even where unions are not excluded they are marginalized, for instance when managers substitute consultation for negotiation, fragment pay bargaining by using private contractors and awarding performance pay to employees, and communicate directly with the workforce, rather than through stewards.

Other writers, however, have pointed out that the attitude of the British manager typically is pragmatic. As Bailey[5] says, where trade union organization is part of the culture, its continuation is more likely to be accepted by managers, who will want to establish good bargaining relationships with their stewards whom they perceive as providing leadership and control for their members. In line with this, Terry[6] points out that it may not be as simple as a shift in the balance of power towards the employer. It may be that rather than management imposing changes, there may be a common interest in business survival. (An example of Terry's thesis is management/union agreement in an NHS Trust that staff should not publicly discuss the Trust's difficulties or mistakes, as it might result in lost contracts.) Similarly, Marchington and Parker[7] argue that managers may see local stewards as a useful way of communicating with employees, have better things to do than cope with derecognition and not want to make enemies.

Purcell[8] maintains that where there is local bargaining, members take a greater interest in union affairs. Also Fairbrother[9], looking at Civil Service executive agencies,

argues that the breaking up of national pay determination provides an opportunity and stimulus for trade unions to move to more participatory arrangements. In contrast, Colling[10] points out that local stewards may be unable to cope with local bargaining and the union officer, with perhaps one or two key stewards, will take over responsibility for bargaining.

As to the relationship between union officers and stewards, on the one hand, Hyman[11] takes the view that it is often characterized by conflict. Union officers and stewards are in opposite corners, the former representing their own interests and that of their union bureaucracy and the latter representing the interests of members. On the other hand, Heery and Kelly[12] found that stewards welcomed full-time officer intervention and support. As to stewards and members, Hyman[13] argues that their interests may diverge. Where stewards have become an elite, supported by management, with substantial time off and facilities – in effect incorporated into the employer's structures – they may become distanced from those they represent.

Methodology

In an attempt to determine which, if any, of these often competing theses were applicable to the NHS, case studies were carried out in three general acute Trusts in north west England: so-called Town Hospital, City Hospital and Country Hospital. Town Hospital, with 450 beds and 1,500 employees, is actually two hospitals several miles apart. The main one was opened in 1988, replacing three existing hospitals. City Hospital is on one site, with 600 beds and 2,400 employees. Country Hospital has some 700 beds in the main hospital, with a few at the infirmary nearby. It has 2,400 employees, most based at the main site. The three hospitals became Trusts in successive waves. Country Hospital was a first wave Trust, Town Hospital a second wave Trust and City Hospital a third wave Trust.

In all three Trusts, tailor-made pay regimes had been introduced for health care assistants (HCAs) and senior managers. Country Hospital, however, had said publicly that it wanted to introduce its own pay system for staff, though it had not yet done so. Nevertheless, there was more local bargaining activity there

than at City Hospital, with Town Hospital having the least local bargaining.

Although these Trusts recognize between 13 to 15 staff organizations, interviews were held with local trade union representatives from only six unions. These were Unison, which organizes various occupational groups in the NHS, including nurses, professions allied to medicine, ancillaries and administrative and clerical staff; the Royal College of Nursing (RCN); Royal College of Midwives (RCM); the Manufacturing, Science and Finance Union (MSF) which organizes laboratory technicians, speech therapists and other paramedicals; the Chartered Society of Physiotherapists (CSP); and the Society of Radiographers (SOR). The unions chosen varied in size from Unison, the largest UK union to SOR with 12,000 members. They varied as to whether they organized one occupational group, like RCN, RCM, CSP, SOR, or several, like Unison and MSF, and whether they were TUC affiliates, like Unison, MSF, CSP, SOR, or not, like RCM and RCN. Interviews were also conducted with a senior manager in each Trust who had responsibility for and experience of industrial relations and full-time union officers from MSF and the RCN. In addition, there was participant observation of management/union meetings.

Management and unions

There is no evidence of managers in the case study Trusts seeking to exclude unions and the formal position of the unions remained intact. Town Hospital made it clear from the beginning that it intended to continue to recognize all its trade unions. City Hospital was perceived by many of the stewards as having been very anti-union for a time. Since the appointment of a new Trust Board chairman, the atmosphere was considered to have improved. At Country Hospital, management had even paid for the staff side members to go on a training course on bargaining skills provided by outside consultants, in addition to the training provided by the unions. Yet although the Trust had originally planned to negotiate with the stewards, it had changed its mind and wanted union officers at negotiating meetings, perhaps because it realized stewards would be unlikely to say yea or nay without the imprimatur of the full-time officers.

At all three Trusts, management and unions jointly had redrafted various

procedures, for instance covering discipline and grievances, and set the pay of HCAs. In fact, however, local negotiations and consultation were less about pay and more about workforce flexibility, as senior managers gave a high priority to reducing labour costs. While HCAs had started off in hotel services, the employers involved in this research were expanding the role of the HCA into nursing and paramedical areas. The unions representing health professionals, conscious of the implications for their members, were responding in various ways, including insisting on detailed discussions of the functions of HCAs and, in the case of the CSP, altering their rules, so that such staff could be taken into membership. Other moves to workforce flexibility, which gave rise to joint discussions, included changing the shift arrangements for nurses, altering skill mix by replacing staff who left with staff on lower grades and removing traditional demarcation lines between maintenance staff. In short, all the respondents agreed that there was far more negotiating going on at hospital level than before.

There was evidence of management wanting to separate issues for consultation from those of negotiation, with separate committees and with seats on the negotiating committee for only some stewards. In practice, however, it was acknowledged by both staff and management interviewees that it was often difficult to make a separation and that issues which started off as consultative ended up being negotiated.

Formal structures apart, views as to the influence of the unions were not unanimous. Management emphasized the frequency with which issues were jointly agreed, but often stewards had reservations as to the limits of both consultation and negotiation. As a Unison steward at Country Hospital said:

I think at the end of the day if they want something, they will enforce it.

Similarly the CSP steward at City Hospital said:

They only want you to say the things they want to hear.

Moreover, stewards' views as to whether they knew more of what was going on were mixed. Many felt that they knew senior managers better, principally because there were more joint meetings now than there had been pre-Trust. All three Trusts gave financial information to the staff side and those who attended

joint meetings most regularly said they felt more aware than previously of what was going on in the Trust as a whole, and welcomed the better information. Many of the stewards, however, saw limits to management's efforts to inform them more. As an RCN convenor put it:

I don't think they tell us everything. I think they tell us what they want us to know and nothing else.

All three Trusts used various forms of direct communication with the workforce, unlike pre-Trust days, and most commonly team briefing. The senior managers interviewed identified a number of reasons for using such methods. For instance, at Town Hospital, there had been complaints in the past that staff learned more of what was going on in the hospital from the local press than from their managers. At City Hospital, the chief executive saw direct communication as part of a culture change and getting staff "on board". As far as the stewards were concerned, management communications with the workforce were not seen as a threat to their position or as undermining the local joint machinery or their own links with members. Some stewards felt that team briefing often did not work because line managers were not committed to it. They also commented that much of the financial information given by managers to staff appeared not always to be understood. Moreover, most stewards were confident that, in any dispute, members would still believe what their union put out, rather than anything from management.

Stewards and members

Superficially, Trust status seems to have led to some union renewal. Only one steward said that membership had declined and attributed this to hospital closures; while many stewards reported that membership had increased. They said that staff, who had not joined before, were signing up because there was now more going on locally. Also staff were feeling increasingly worried about their jobs.

Stewards' views, however, were rarely backed up by membership data. Moreover, all admitted that attendance at branch meetings was generally low. This was the case both for the small staff organizations like the CSP, where the branch covered a large geographical area, and the large staff organizations where

there were many members concentrated in a geographically small area. For instance, the RCN branch for City Hospital had 1,200 members working at the Trust or near it. It was supposed to have general meetings every two months, but members did not turn up. In fact, all the stewards pointed out that members only turned up when an issue directly affected them. For example, a Unison branch secretary said:

The only time we've had a good response was when they threatened to close some wards virtually overnight ... People coming in on their days off, the place was absolutely packed out.

The ratio of stewards to members varied widely. On the whole, the smaller staff associations had a better ratio: at City Hospital the ratio for the RCM was 1:15 but for the RCN 1:300. At Country Hospital, SOR had 1:28 members, while Unison had 1:67 members. The smaller organizations, with fewer members at a particular location, seemed to be able to find at least one person to act as steward, but the larger unions, with far greater numbers of members at a hospital, had considerable difficulty finding enough stewards to give them a comparable ratio. In general, the ratio of stewards to members appears to be greater for large unions in NHS Trusts than in establishments of a comparable size in other sectors, where the average ratio is 1:32 [14].

Stewards had little in the way of facilities, other than access to a telephone and time off to attend meetings and meet members. None of the Trusts had a written facilities agreement and, although there were employer-provided offices in two Trusts, stewards rarely used them because they were inconveniently located and stewards lacked time. In fact, stewards from all the staff organizations reported difficulties in obtaining time off to carry out their union duties, although there was no evidence of formal restrictions on facilities. In part, this was because in each of the Trusts, workloads had increased for many staff. Also, while budgets had been devolved to directorates, line managers had not necessarily been allocated any funding to pay for cover while stewards were carrying out their union work. Senior managers argued that they were, in fact, quite reasonable and, if there was a problem, it was at middle management level, but because of devolution they could not intervene. In practice, however, senior managers intervened when it suited them. According to the stewards at City Hospital,

senior managers having convened a meeting, would agree to write to directorate managers, when stewards pointed out the difficulty of getting time off.

The problems appeared greatest for stewards who had direct patient contact. The RCN convenor at City Hospital said:

I've got an arrangement with management for time off - 14 days a year for RCN, but the staffing levels on the ward are not allowing me to do it, plus they don't finance me...it's a big problem, terrific.

Similarly, the CSP representative at Town Hospital said:

...your time is spoken for the whole time you are at work. You haven't got a minute. I find it very very difficult when I've got to interview somebody or got to make a phone call or I've got to deal with something. I find I take it home and do it at night.

However, pressures of work were not the only problems stewards faced when dealing with members. Some members were reluctant to be seen talking to the union. As the MSF representative at City Hospital said:

If they see someone walking round and see the rep with them, they think what is going on? ...Often they won't come in work time...unless it's really important, like a disciplinary.

Stewards and union officers

Stewards generally agreed that since Trust status they had had more contact with their union officer. Most union officers became more directly involved around the time the Trust was set up, when there was uncertainty as to what arrangements were going to be made for recognition and negotiating. Subsequently the attendance of union officers at joint meetings had reduced, but still remained higher than pre-Trust. As one union officer put it:

In the past there was no point going. They were talking about car parking, or the colour of the toilet paper... But these days they are important.

On the whole, the stewards were happy with, and valued, the support they received. Often they commented that they understood the other pressures on the union officer. They would have liked more support, but understood why it was not always possible.

For their part, the union officers interviewed, who came from the three largest staff organizations, had all experienced an increase in their workload. They felt this to be the

result of a number of factors. First, the more competitive healthcare climate resulted in more pressures on staff and thus more workplace issues and disciplinaries. Second, stewards often felt they lacked experience in their new expanded role, where more issues were determined locally and thus wanted full-time officer support. An RCN union officer thought there was a vicious circle. He said: [Stewards] have a lack of confidence...and because of that they feel the need to be supported by a full-time officer, which is why I keep turning up. But then whilst I continue to turn up, they'll never develop the confidence.

Nevertheless, all the full-time officers interviewed felt that, given their lack of resources and experience, stewards were coping remarkably well.

Stewards rarely met together, either with other stewards from their own union, where there were any on site, or with stewards from other unions. Even where a large union, for example Unison or RCN, had a number of stewards working at a Trust it was rare for them to get together. MSF stewards at City Hospital had not met for two years because people did not turn up. Stewards tended simply to represent their own group of members. As to stewards from the different unions on site meeting together, the only organized contact was at the pre-meetings for the local joint negotiating or consultative committee and there was no evidence of the kind of joint shop steward organization that is common in other parts of the public or private sectors. Because stewards were attending more meetings with management, they were meeting other stewards more frequently than before but, even so, it was rare for the staff side to work together. Moreover, a few stewards expressed concern that if, in future, different groups of staff were offered different pay awards at local level, this could split the staff side.

Conclusions

This research has shown that far from excluding unions, managers are discussing a far wider range of issues with them than before. Typically management sought to distinguish between negotiable and consultative issues but, in practice, the distinction was often blurred. Although private contractors have been used for hotel services, there is little or no evidence of managers attempting to mar-

ginalize unions. Performance related pay has not been pursued to any significant extent. (Indeed one Trust was firmly opposed to it). In addition, stewards did not regard managers communicating with the workforce direct as a threat.

Nevertheless, the position of stewards must not be over-estimated. Many stewards thought their influence was limited in that they could only shape, not alter, the agenda. They also felt under pressure as, far from being incorporated into the employer's bureaucracy, they were faced with the conflicting and increasing demands of their work and their union duties. As to stewards' relationship with their union officers, this was not characterized by conflict. On the contrary, stewards were grateful for the support which union officers provided, especially given the apathy, in general, of members.

Of course, this research has limitations. It is based on three case studies and any findings do not necessarily apply to other, let alone all, Trusts. Nevertheless, what comes over loud and clear is first the pragmatism of managers, seeking to involve stewards, not marginalize them and, second, the ability of stewards to cope with their enhanced roles, despite the pressures on them.

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DECENTRALISATION OF PAY IN THE NHS: DIAGNOSIS AND PROGNOSIS

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The Government's moves to shift NHS pay determination from the national level to trusts has proved highly contentious. For instance, members of the Royal College of Nursing (RCN) and the Royal College of Midwives (RCM) have voted to abandon their rule prohibiting industrial action. The Government claims that trusts must be free to determine pay in accordance with their circumstances, especially as their paybill comprises over 70 per cent of their costs. The unions, in contrast, argue that trust level pay determination is a step along the road to the break up of national health care provision and, with a plethora of bargaining units replacing national arrangements, is expensive and a waste of NHS resources.

Against this background, our research suggests that trust management's approach to pay determination is value driven and not a pragmatic response to the trust's circumstances, for example, its financial or labour market position. Moreover, while management's approach is the primary determinant, other factors, especially the cohesiveness and vigour of the staff-side and the power of the medical profession, can temper the pace, manner and extent of change.

We also make a prognosis and conclude that although trusts will make moves towards local pay determination, many will not have fully fledged pay systems in place before 1996/97, the period leading to the next general election. Before examining our findings, however, we place them in context.

The context

Since 1979 the Conservative government has reshaped the public sector by, *inter alia*, privatising public corporations and utilities, deregulating bus transport, introducing compulsory competitive tendering in local government and reorganising a number of public services. The driving force behind these restructurings has been to improve managerial efficiency, to give greater priority to the needs of customers rather than producers and to bring in market disciplines or proxies for them. Moreover, these changes, although not led by, are consistent with the government's overall industrial relations objectives throughout the public sector. These include breaking up large organisations with uniform pay structures and detailed conditions, to form smaller units responsible for setting terms and conditions. As a result, pay determination is devolved to a multiplicity of localities where public sector unions, with their centralised structures, have tended to be weak. Other government objectives include movement from nationwide prescription to local arrangements, reflecting local labour market characteristics, and the empowerment of managers, so that they can become operators, not administrators and reward staff according to performance, not length of service.

Turning specifically to the NHS, 1.2 million people worked in it in 1993 (Winchester and Bach, 1995: 306) and over 70 per cent of its costs are staff costs. Its industrial relations are characterised by centralised rule making through a complex Whitley structure, with one general and ten functional councils and pay review bodies for doctors and dentists, nurses, midwives and health visitors and professions allied to medicine. As is common in the public sector, it also has a well-entrenched pluralist approach and a relatively high level of union density. According to Labour

Force figures, union density in 'hospital activities' in 1994 was 61 per cent (Corcoran, 1995). Even measured against public sector norms, the NHS has a complex trade union structure, with over 20 trade unions or staff associations having certificates of independence.

In the 1980s, the Conservative government sought to improve managerial efficiency in the NHS by implementing the recommendations of the Griffiths report (NHS Management Inquiry, 1983) and introducing market concepts through competitive tendering. However, the National Health Service and Community Care Act 1990 set in train more fundamental changes. Its key feature is the separation of the purchasing of health care, by the district health authority (DHA) or general practitioner (GP) fundholder, from the provision of health care, which, essentially, is carried out by trusts. These vary from a hospital or group of hospitals to an ambulance service or community services, or any combination, and have a degree of autonomy on financial matters and much greater autonomy on personnel matters. They employ all their staff directly and can set their own terms and conditions, devising their own industrial relations procedures and pay determination arrangements, except for those covering junior doctors (Department of Health, 1990).

This autonomy on personnel matters, however, is constrained by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) and the 1977 directive from which the regulations stem. Accordingly, staff remaining in the same job, but having the trust as their employer, can continue to receive terms and conditions set nationally, either by collective bargaining or as a result of pay review body recommendations for as long as they so choose (Department of Health, 1990). In other words, only a minority (new employees and promotees) are not covered by TUPE. Moreover, all collective agreements with the old employer, (generally the DHA), including those covering union recognition, transfer to the new employer in respect of existing staff.

The DHA, however, never recognised staff organisations for negotiations on the main terms and conditions, as these were determined nationally. It only recognised them for individual representation, consultation and negotiations on minor matters, *eg* shift bonuses and schemes. In effect, this provides virtually a clean slate in respect of any arrangements for local pay determination. (As will be shown below, however, the NHS's pluralistic traditions ensures that this 'clean slate' is *de jure* not *de facto*.)

Research in trusts' early years suggests that changes were limited. Corby's (1992) analysis of the first 57 trusts established in 1991, found that few had made significant and far-reaching industrial relations changes. Only two had said they would not recognise unions and half a dozen had introduced a local pay regime open to most staff. In contrast, others intended to keep to the national arrangements. The majority, however, had set up machinery to handle local bargaining, but had not made use of it to determine pay. They had established local bargaining committees on a so-called prime union model whereby all the unions active in the trust are recognised for representation and collective bargaining, but a smaller number have seats on the main negotiating body. Yet despite setting up structures, the research showed that management and unions had mostly just tinkered at the edges, for instance converting the two NHS statutory days of holiday into annual leave entitlement. Surveys by Industrial Relations Services (IRS, 1993) and the NHS Management Executive (NHSME, 1993) confirm this picture. The latter found only eight trusts out of 68 had adopted local pay systems and a further 11 were moving towards them.

Bach and Winchester (1994: 279), looking at education as well as the NHS, suggest that one of the factors accounting for the resilience of national pay arrangements is the government's

"rhetorical support, rather than consistent policy". Indeed, this lack of consistency is notable. Thus, for instance, in 1991 Eric Caines, then human resources director of the NHSME, saw the creation of trusts as signalling the end of national pay arrangements (*Financial Times*, 1993a), as did his then deputy, Peter Johnson (*PM Plus*, 1991). Yet the health secretary, Virginia Bottomley, said in 1992 that the pay review bodies would "continue to provide a benchmark" (*Guardian*, 1992). In April 1994 Eric Caines's successor, Ken Jarrold, said that some sort of national pay framework could continue indefinitely (*PM Plus*, 1994). In June 1994, Alan Langlands, chief executive of the NHSME, seeking to square the circle, said that "he recognised the importance of the national dimension" but asked all trusts "to have local pay machinery set up by February 1995" so that they could be in a position "to ensure that a significant proportion of pay in 1995-96 will be based on local needs and achievements in the context of the recommendations of the review bodies" (Langlands, 1994).

Bach and Winchester (1994) also highlight economic factors. Local pay arrangements which are sufficiently attractive to staff to entice them away from Whitley or the pay review bodies are expensive, at least in the short term. The management resources needed for local pay bargaining are an added expense. Trusts, in order to compete, are seeking to save money, not spend it, so in the main they are not seeking to adopt a local pay regime. Instead they are pursuing cost saving measures, such as multi-skilling, the transfer of some tasks to the less skilled, and revised payments and arrangements for shift working and on-call.

Kochan, Katz and McKersie (1986) point out in their seminal book that traditional industrial relations theory treats management as reacting to union demands, pressures and initiatives. But, they say, in recent years there have been numerous indications that the causal flow has been reversed. Accordingly, they place management's strategic choices at the centre of their analysis. They also point out that their theoretical framework is based on the key premise that industrial relations processes and outcomes are determined by a continuously evolving interaction between the environment and organisational responses, with market forces shaping the environment. While market forces do not have independent effects or operate in a deterministic fashion, they set in motion a series of responses. Thus they see "managerial values acting as a lens through which environmental pressures or opportunities pass in the process of producing organisational responses" (1986: 55). This article aims to see to what extent this theoretical framework, derived from the private sector in the USA, can be applied to the NHS, a public sector organisation in the UK. Accordingly, unlike previous studies (Corby, 1992; IRS, 1993; NHSME, 1993) which concentrate on the degree of change, this research seeks to shed light on the factors that have led one trust to embrace pay devolution and others not to do so.

The research

Earlier research (Corby, 1992) found that NHS trusts could be classified as 'radical', 'traditional' or 'middle of the road' in respect of the extent to which they departed from the established NHS industrial relations arrangements. Accordingly for this research, three trusts were chosen corresponding to these types. St Helens and Knowsley Community NHS trust which adopted its own pay spine from 1 April 1994 has been chosen as a 'radical' trust. Unlike some radical trusts, such as Homewood, Dorset Mental Health and Northumbria Ambulance Service, where management introduced local pay arrangements unilaterally, the St Helens and Knowsley pay spine was negotiated with a prime union body. Nevertheless, looking at substantive outcome, rather than procedure, St Helens and Knowsley can be classed as 'radical'. At the

opposite end of the spectrum The Foundation NHS trust (formerly The Mental Health Foundation of Mid-Staffordshire NHS trust) was chosen as an example of a 'traditional' trust in view of its firm commitment to national terms and conditions. Christie Hospital NHS trust in Manchester was chosen as a 'middle of the road' trust. It has a prime union negotiating body but has made only a few substantive changes.

Although differing in their industrial relations approaches there are, nonetheless, similarities between these three trusts. None are in London or the south east where traditionally NHS labour market pressures have been greatest (Corby, 1991: 174). By NHS trust standards, none are large. The average number of employees in a survey by the NHSME (1993) was 2,303. According to their 1993/94 annual reports, staff numbers at St Helens and Knowsley Community trust are 587, at the Christie Hospital (a specialist cancer unit) 953, and at The Foundation (a mental health trust) 580. St Helens and Knowsley is a second wave trust, (April 1992) and the other two are first wave trusts (April 1991). So each has had sufficient time, if it so chooses, to initiate changes. Moreover none of these three trusts are general acute hospitals and this is significant for a number of reasons. First, the number of trade unions and occupational groups in general acute units tends to be higher, so increasing the industrial relations complexity. Thus St Helens and Knowsley recognises eight trade unions, and The Foundation and Christie recognise nine.

TABLE 1: *The case studies*

Name	St Helens & Knowsley Community Health NHS trust	The Foundation NHS trust	Christie Hospital NHS trust
Function	community health	mental health	cancer treatment
Location	Merseyside	Mid-Staffordshire	Manchester
Date became trust	1 April 1992	1 April 1991	1 April 1991
Trust finances 1993/94			
Surplus/(deficit)	£8,000	(£1,713,000)	£455,000
Rate of return	6.3%	6%	7.3%
EFL	£279k used £227k	£2891k used £2893k	£118k used £118k
Trust finances 1992/3			
Surplus/(deficit)	£30,000	£170,000	(£321,000)
Rate of return	6.5%	8.1%	2.9%
EFL	£686k used £681.9k	£12k used £9k	£1,504k used £1,500k
Employee numbers			
31/3/94 total	587	580	953
medical/dental	29	25	64
nursing/midwifery	297	338	275
admin./clerical	125	70	186
IR arrangements			
Recognised unions	8	9	9
Negotiating body	Negotiating forum	Joint staff committee	Negotiating sub-committee
Union density*	4 staff side seats 4 FTO seats 47%	1 rep. from each union + FTOs by agreement 87%	6 seats + FTOs by agreement over 50%
Local labour market			
Unemployment	14.5%	8.8%	9.9%
Economic activity	Under 58%	61-63%	58-60.9%

* management estimates
Abbreviations: EFL = external financing limit
FTO = full time officer

Sources: annual reports; *Employment Gazette*, 1994; collective agreements.

By contrast, general acute hospitals have up to 18 unions (IRS, 1993: 11). Secondly, unlike general acutes, there is relative technological stability. For instance day case surgery is not an issue. Table one gives further details.

Interviews were conducted in Spring 1994 at all three case study trusts, 18 face-to-face interviews in all, nine with lay union representatives including all three staff-side secretaries and nine with managers including the most senior personnel person in all three trusts. In addition, meetings of the St Helen's and Knowsley negotiating committee and the Foundation joint consultative committee were observed and the face-to-face interviews were supplemented by a further nine telephone interviews.

Of course, this research has limitations in that generalisations to all trusts must be treated cautiously. It is based on three case studies and any findings from these specific examples do not necessarily apply to other, let alone all, trusts. Nevertheless, despite these drawbacks, the case study method enables us to examine the approaches of the actors in these three trusts and analyse the factors influencing the adoption of local pay regimes.

THE CASE STUDY FINDINGS

Management's values and strategies

The key factor determining whether a trust adopts a radical, traditional or middle of the road stance on industrial relations is the approach of the chief executive and human resources director.

Thus at The Foundation, a commitment was given to remain within the national arrangements well before the organisation became an NHS trust. Although adopting trust status involved restructuring the unit's relationship with the DHA, the chief executive said he wanted the trust's industrial relations to exhibit stability and continuity. Procedurally, a joint consultative committee was established in the trust, with recognition for all the unions active within it. Its functions remained essentially the same as those which existed pre-trust and, according to the director of human resources, its mode of operation was one of 'co-operation', as in pre-trust days.

Much of the management team, and in particular the chief executive, maintained that the increasing degree of flexibility that Whitley allowed in recent years, precluded the need to make changes through local bargaining. Indeed the chief executive suggested that the system was not only increasingly flexible, but that it could be manipulated. If he had ever felt the need to "interpret" Whitley, all he had to do was request an exemption, which was granted. His desire for flexibility, however, appeared to be limited. Healthcare assistants, who are not covered by Whitley, were paid according to Whitley scales. In the only noticeable departure from Whitley, porters were paid at the basic rate when off sick, irrespective of when the sickness fell. Apparently this was done in consultation with the staff-side and full-time officers.

Indeed, the Foundation sought to reduce paybill costs by seeking to make ancillary staff more multi-skilled, for instance porters taking on some of the less skilled work of ambulance drivers, rather than by departing from nationally determined terms and conditions. According to Bach and Winchester (1994: 276), such an approach can be achieved more quickly, and with less staff-side resistance, than local pay determination.

Every manager interviewed believed fervently that the trust had made the right decision to remain with the national arrangements initially. However, some line managers, in contrast to

the chief executive, felt that certain parts of Whitley were too restrictive, particularly as regards ancillary staff. Moreover, they argued, change was inevitable and might in some respects be advantageous. The personnel director, however, expressed caution. She took the view that while full-time officers were developing an intelligence network across a range of trusts and lay representatives were being trained in bargaining skills, management was becoming increasingly isolated, devoid of any such network and concerned about the threat of competition from other trusts, rather than co-operating with them. This could enable the unions to play off trusts against each other for pay purposes.

In contrast to The Foundation, St Helens and Knowsley's senior managers were open about their plan to move away from national arrangements and control their pay bill from the outset. As the director of nursing services said: "Our intention to go for local pay bargaining was clearly stated in our application [for trust status]". Following what the staff-side secretary described as "a very difficult 12 months" and "a dictatorial chairman with a 'you will' attitude", management abandoned its plans to introduce a new pay regime unilaterally from April 1993. Instead, it agreed to establish two committees: one for negotiation, the other for consultation. The negotiating committee, at the time of writing, has four staff-side seats, four seats for full-time officers and four seats for management. It agreed a new pay spine, based on Hay job evaluation, and covering all staff from cleaners to consultants, with effect from 1 April 1994, starting from £6700, slightly above the lowest national NHS rate. Assimilation increases averaged 5.97 per cent, so existing staff who opted for the trust's pay scale received, on average, twice the national average increase (*Pay and Benefits Bulletin*, 1994).

The chief executive was always firmly in favour of the development of a local pay regime and in 1993 was instrumental in the appointment of a new director of human resources specifically with the brief of moving away from the national terms and conditions. Moreover, the chief executive's stance was supported by the line managers interviewed.

Also, in contrast to The Foundation, management at the Christie Hospital welcomed the autonomy on personnel management issues inherent in trust status. While they believed Whitley was not altogether disadvantageous, they placed importance on the choice they now had as trust managers to implement changes. Nevertheless pragmatism was the main touchstone. The personnel manager said:

We could spend vast sums of money establishing a new set of terms and conditions and creating a two tier system in the process [trust and national terms]. As a basic principle we felt this was unacceptable and would cause trouble among staff groups. We therefore opted for gradual change.

This gradual change has included a new contract for those on trust terms, which the staff-side secretary described as "not a million miles away from Whitley", the simplification of terms for professional and technical groups (PTA and PTB) but again, according to the staff-side secretary, "basically more or less what was in Whitley" and the conversion of an NHS statutory day of holiday to two extra days of annual leave entitlement. This pragmatic approach, owes much to the new personnel manager, appointed in 1993 and, according to the staff-side secretary, the opportunistic stance of the chief executive who does not have "a well developed industrial relations strategy".

Although, as we have shown, the three chief executives had different stances on pay determination, all shared the same work background: the NHS, as did two of the personnel directors. The HR director at St Helens and Knowsley had previously worked in the private

sector and believed it was this experience which was a key factor in the chief executive's decision to appoint her. Interestingly, also, her job title of HR director, as opposed to personnel director, symbolised change rather than tradition.

In all three trusts, the chief executive's stance fits in with the trust's financial position. Trusts have three financial duties: to break even on income and expenditure, to make a rate of return of 6 per cent on net assets and to stay within the external financing limit (EFL) set by the Department of Health. According to its accounts (1993, 1994) St Helens and Knowsley achieved all its financial duties in 1992/93 and 1993/94 and introduced its own pay regime, even though, essentially because of TUPE, a local pay regime is costly at least in the short run. Christie, according to its accounts (1993, 1994), fulfilled its financial duties for 1993/94 but not for 1992/93, when it had a deficit of £321,000 and a rate of return of 2.9 per cent, though it stayed within its EFL. The Foundation fulfilled all its financial duties in 1992/93 but not in 1993/94, when it had a deficit of £1,713,000 and its external financing requirement was £2,000 more than its EFL, though its rate of return was 6 per cent. This deficit, according to The Foundation's annual review (1994, 15) was "due to the way in which the NHS values property". Nevertheless, it is not surprising that both Christie and The Foundation eschewed a radical approach on pay.

In fact other trusts which have comprehensive pay regimes have a healthy surplus. Thus, Northumbria Ambulance had a surplus of £155,000 in 1992/93, while South Tees, Homewood and Mulberry had surpluses of £1,284,000, £1,401,000 and £204,000 respectively, according to a written answer in response to a parliamentary question put down by Alan Milburn MP. We would argue, however, that while the trust's financial health seems to be a necessary condition for instituting a pay regime, it is not a determinant. Thus, St Helens and Knowsley announced their intention of introducing their own pay arrangements before trust status was achieved and, as soon as the unit became a trust, embarked on their introduction. Also the 10 trusts which had the largest surpluses in 1992/93 did not have their own pay regime by 1994 (Milburn, 1994).

This data apart, managers in all three trusts seemed keenly aware that, under the annual contracting process, the financial environment was unstable. At the Christie Hospital, a specialist cancer unit, there was particular concern: 1993/94 was the final year of block contract funding and as Christie's patients came from many DHAs, it was having to negotiate more sophisticated contracts with many more purchasers than the other trusts studied.

We also looked at the local labour market. The government has frequently extolled the virtues of local pay determination in the belief that employers would be able to vary pay rates, paying lower rates in areas of high unemployment and higher ones in areas of low unemployment (Kessler and Bayliss, 1992: 202). In this scenario, one would expect a tighter labour market for the trust that paid more than the national rates and a slacker one for the two trusts which observed them. In fact, in April 1994, in Merseyside, where the 'radical' St Helens and Knowsley is located, the claimant unemployed rate was 14.5 per cent. In Staffordshire, where the 'traditional' Foundation is located, the claimant unemployed rate was 8.8 per cent and in Greater Manchester, where Christie is located, 9.9 per cent (*Employment Gazette*, 1994).

Similarly, results from the Labour Force survey indicate that the economic activity rate in autumn 1993 was under 58 per cent in Merseyside, 58–60.9 per cent in Greater Manchester and 61–63.9 per cent in Staffordshire (Ellison and Newman, 1994). Moreover, trusts such as South Tees, West Cumbria and Northumbria Ambulance, which have their own pay regimes, do not operate in tight labour markets. Homewood in Surrey is a notable exception. (The personnel director of West Cumbria argues that although the trust's own pay regime was costly initially,

in time trust pay rates will reflect the local labour market as new staff are normally appointed on grade minima which are below the national minima [*IDS Management Pay Review, 1993: 8*]).

The local labour market, however, is only part of the picture. Clerical staff, nursing auxiliaries and ancillaries, *ie* those in non-NHS specific jobs, are drawn from it. The majority of staff are in NHS specific jobs. Those in nursing, scientific and paramedical grades are often drawn from a regional labour market, while doctors are drawn from a national one. So consideration must be given to staff shortages. In fact, they were minimal. St Helens and Knowsley, both before and after introducing its bespoke pay regime has experienced some difficulties filling the posts of orthoptists and speech and language therapists, (1.2 per cent and 4.0 per cent respectively of the trust's employees). Christie reported that the posts of theatre nurses were hard to fill, (1.5 per cent of their employees) and The Foundation has found senior occupational therapists' posts hard to fill (2 per cent of their employees).

Finally we considered the industrial relations complexity of the unit. Evidence suggests that local pay regimes are more often found in those trusts where there are relatively few occupational groups, particularly ambulance trusts (NHSME, 1993). Moreover, St Helens and Knowsley, a community trust which, therefore, provides only some NHS services, was able to introduce its pay regime after a job evaluation exercise lasting six months. In contrast, the personnel manager at Christie said that the wide range of staff groups, all on different terms and conditions, deterred management at her trust from moving towards a local pay regime. She pointed out that the trust has scientists on NHS rates and scientists on Medical Research Council rates doing virtually the same work. The relationship, however, is not straightforward and the industrial relations complexity of the unit does not adequately explain the chief executive's stance on pay. For instance, The Foundation, a mental health trust, has relatively few occupational groups, but does not have its own pay regime, while West Cumbria, which provides the full range of NHS services, does.

Staff-side organisation and unity

We have already seen that the personnel director at The Foundation expressed concern about the strength the staff-side might have in local negotiations. Evidence that such concerns are not misplaced can be found at both Christie and St Helens and Knowsley.

At the latter, the staff-side displayed cohesiveness and vigour and showed that that they were more than capable of responding to and deflecting the aims of management, so moderating both the pace and manner of change. As previously mentioned, the trust board originally intended to introduce a new pay spine by April 1993, one year after achieving trust status, as a result of consultation, not negotiation. The staff-side were united in their objections to consultation only. Although unable to achieve their objective of a joint negotiating and consultative committee, they succeeded in securing two separate committees, so that the new pay spine could be negotiated. Partly as a result of this initial procedural conflict, the new pay spine took two years to introduce. Although management said the original one year timetable was unrealistic, the actual job evaluation exercise only took six months, according to the director of human resources.

In fact the staff-side at St Helens and Knowsley aided by full-time officers, particularly from the Manufacturing, Science and Finance Union (MSF) and the Royal College of Nursing (RCN), displayed both cohesiveness, vigour and competence. For instance a staff-side representative on the negotiating committee effectively challenged some complex financial information on the

impact of an offer on the pay bill, with the result that the finance director had to carry out recalculations to rectify a genuine management mistake. Although a small incident, it served to demonstrate staff-side competence.

More importantly, the unions managed to reduce the impact of the local pay deal. They proposed that any existing employee securing a different internal position could have the option of remaining with the national arrangements unless the post was classified as managerial (eg above the nursing/midwives grade H). Management agreed to this. They were concerned that it would be too expensive to assimilate all existing employees who moved jobs onto the trust pay spine and their priority was senior managers and newcomers. As a result only 15 per cent of all employees were on the trust's terms and conditions at the time of writing.

The staff-side secured this key change even though trade union density at St Helens and Knowsley is 47 per cent, a figure lower than the NHS average of 61 per cent (Corcoran, 1995). Trade union membership, however, is still a significant feature of industrial relations at the trust and, in practice, union density appeared to be of far less importance than the awareness and vigour of the staff-side. With the advice and assistance of full-time officers and training provided nationally by the trade unions, the local representatives appeared to be both confident and capable in their new bargaining roles. According to the staff-side secretary: "Our full-time officers have been good and our members vocal, putting in grievances particularly in the Knowsley part of the trust, though they have not taken industrial action." She also said that the staff-side's strength owed something to the fact that it had managed to present a united front to management.

Similarly the staff-side at Christie Hospital have effectively challenged management but there is a key difference. In St Helens and Knowsley the staff-side were able to moderate the pace of change and its manner of introduction. At the Christie Hospital, where management was in favour of gradual change, the staff-side have been able to temper its manner and extent. First, the staff-side succeeded in influencing the constitution of the Christie Forum, the negotiating body on the prime union model which contains most, but not all, the unions recognised in the hospital. It gained an extra staff-side seat. Secondly, it managed to secure negotiating rights for all staff, whereas management originally wanted to exclude newcomers. Thirdly, the trust contract was, according to the staff-side secretary, "initially presented as a *fait accompli*" but following staff-side opposition, not only was the contract negotiated by the forum, but it ended up as not significantly different from the national arrangements.

Turning from the manner of change to its extent, the staff-side were able to deflect management from converting the two statutory days of holiday into two days of annual leave entitlement. Following negotiations an agreement was reached whereby one statutory day was exchanged for two days of annual leave entitlement. Also the staff-side successfully resisted management's attempt to reduce the redundancy entitlement for those on trust contracts to the statutory minima. Although it agreed to some procedural changes (eg concerning the selection criteria, which had never been spelled out in Whitley), it succeeded in retaining the redundancy payments as laid down by Whitley.

The staff-side secretary, like her counterpart at St Helens and Knowsley, attributed these successes partly to the fact that the staff-side had so far managed to present a united front. She said: "Unions have sometimes differed at pre-meetings but not at joint meetings in front of management." Overall, trade union density at the Christie Hospital is only slightly higher than at St Helens and Knowsley at just over 50 per cent, though with over 75 per cent for grades

represented by MSF. Although lower than the 'hospital activities' average of 61 per cent (Corcoran, 1995), it does not seem to have had a detrimental impact on the effectiveness of the staff-side. Arguably this is because, as at St Helens and Knowsley, union membership at Christie Hospital remains significant.

At the latter the full-time officers played a less interventionist role than at the former, appearing at negotiating meetings only when the staff-side felt the need to demonstrate particular vigour. However, the more consistent involvement of full-time officers at St Helens and Knowsley may have been due to the fact that a pay deal was being negotiated. Indeed, all the staff-side secretaries interviewed expressed satisfaction with the level of full-time officer support received. Furthermore, the staff-side secretary at St Helens and Knowsley pointed out that even when there was no Unison lay representative in the trust, the full-time officer from Unison sometimes appeared at certain key meetings.

Our research findings are consistent with those from the Workplace Industrial Relations Survey of 1990 (Millward, Stevens, Smart and Hawes, 1992: 144) that paid union officials had more contact with senior white collar representatives in the late 1980s than before and, where lay representatives were failing to emerge, paid union officials were more often providing the representative function for the local membership in 1990 than previously. Our research is also consistent with the findings of Heery and Kelly (1990) looking at full-time officers in a range of unions and operating in a variety of sectors. They found that stewards see their full-time officers as offering support and, for both utilitarian and ideological reasons, the latter support the former, reinforcing the capacity of stewards to contest management decisions.

This case study evidence also emphasises the significance of the unity of the staff-side. We have earlier referred to the comments of the staff-side secretaries at St Helens and Knowsley and at Christie. Moreover, both staff-side secretaries were keen to cover up weaknesses in the workplace organisation of other unions (the RCN at Christie and Unison at St Helens and Knowsley) rather than exploit them. This contrasts with the position a decade ago when there were examples of TUC affiliated unions refusing to sit down with non-affiliates (Seifert, 1992: 310). It is impossible to gauge, however, how deep-rooted this new unity is. The different unions often have distinctive approaches. Arguably the British Medical Association (BMA) and Unison, for instance, or the RCN and MSF, do not have a shared vision, rather they face common problems.

Nonetheless, earlier research suggested that radical changes were instituted quickly where the staff-side lacked unity or was ineffective. Northumbria Ambulance, (Corby, 1992: 38) for instance, was able to make radical changes quickly because management succeeded in playing off the TUC affiliated unions against one another and, more importantly, was able to play off the non-TUC affiliated union (the Association of Professional Ambulance Personnel) against the TUC affiliated unions. At Mulberry, another 'radical' trust, the chief executive indicated that the staff-side had not offered any effective resistance. By contrast, at Cornwall Community trust and West Dorset Community trust, the unions united and mobilised to the extent that management withdrew a radical agenda.

Harrison, Hunter, Marnoch and Pollit (1992) emphasise the power of the medical profession within the NHS. Their clinical autonomy, which gives them alone control over admission, diagnosis, treatment and discharge, undermines management control of budget costs and gives them power *vis a vis* managers. (Indeed, after this research was completed, the chief executive of The Foundation departed after a vote of no confidence in him by the trust's

consultants.) Moreover, in representing the profession at the top of the NHS hierarchy, the BMA has successfully intertwined the professional with the trade union interests of its members. Thus it has criticised performance related pay for hospital doctors as "a clear threat to the role of the doctor as patient's advocate" and local variations in pay as distorting "career choice and uniform availability of high quality care around the country" (BMA, 1994). As the *Financial Times* (1994a) pointed out in respect of the 1994 BMA annual conference, the debate on doctors' pay "could have been taking place at any trade union conference - except that the objections were voiced in the language of professional and public concern".

In addition, the medical profession has been zealous in guarding its position as a discrete group within the NHS and the BMA is anxious to ensure that medical staff negotiate independently wherever possible (*Financial Times*, 1993b). The BMA lay representative at St Helens and Knowsley said: "While it may be appropriate to have single table bargaining for the majority of staff groups within the trust, the doctors should be represented separately in their own functional group." The incorporation of doctors on to the single pay spine at St Helens and Knowsley, therefore, would appear to represent a considerable achievement for the trust. Nevertheless, it did not succeed in its attempts to harmonise holiday entitlement at five weeks. The doctors succeeded in retaining their annual leave of six weeks.

Typically in a general acute hospital, doctors and dentists comprise 9 to 10 per cent of the trust's employees. At St Helens and Knowsley medical and dental staff represent 4.7 per cent of employees. This compares with the The Foundation's figure of 4.3 per cent and Christie's 6.7 per cent. At the latter, the BMA, although participating in the main negotiating body, manages to channel many issues into the separate doctors' sub-committee which in practice operates autonomously.

According to the NHSME (1993), of the eight trusts which had comprehensive pay systems including single pay spines in 1993, four were ambulance trusts which do not employ doctors. The remaining four trusts employ relatively few doctors as in the learning disabilities' trusts, such as Homewood and Mulberry. Consistent with these findings are the comments of Harrison *et al* (1992: 106) on a study of the care of AIDS patients. They point out that management made inroads into clinical freedom because there were relatively few doctors: community care, rather than medical treatment in isolation, is given. In fact, apart from Pembrokeshire trust, where management adopted what the unions call an exceptionally provocative stance, there are as yet no local pay arrangements covering doctors in general acute units. For instance, South Tees Acute Hospital in January 1994 introduced unilaterally a trust pay and grading system. At the time of writing, however, it is only at what it calls 'phase one' which entails a single pay spine for all except doctors. Similarly, West Cumbria trust's pay arrangements currently do not cover doctors.

The stance of the BMA in highlighting its distinctiveness and in its attachment to the national pay determination arrangements can be contrasted with that of MSF which, because of its experience in the private sector, is not averse to local pay bargaining in a multi-union situation. Moreover, as long ago as the mid-1970s, ASTMS (which became MSF as a result of a merger) argued strongly for local bargaining in the NHS (Seifert, 1992: 217). As to the RCN, like the BMA, it represents professional staff and is covered by a pay review body to which it has always been committed, unlike the other nursing unions. But nurses are less powerful than doctors in the clinical hierarchy. So for instance, while the pay review body for nurses in 1995 recommended only a small national award (1 per cent), with a considerable degree of local determination within

a range of up to a further 2 per cent, the pay review body for doctors recommended salary scales incorporating an increase of 2.5 per cent, without any provision for local determination. (*Financial Times*, 1995).

CONCLUSION

This research has shown how management sets the agenda and determines the extent to which the trust departs from the national arrangements for pay determination. It suggests that a healthy financial position is a necessary condition for pay devolution but not an adequate causative explanation. Management's adoption of a radical or traditional stance on pay is value driven, rather than being a pragmatic response to the local labour market, labour shortages or the industrial relations complexity of the unit. The research has also demonstrated that the staff-side can temper the pace, manner or extent of change but not fundamentally shift management's stance. The staff-side's vigour comes from full-time officer support and from the staff-side managing to stay united. It does not stem from union density or industrial action. Irrespective, however, of management's general approach to unions in the NHS, the position of the BMA has to be considered separately. The doctors are keen to retain separate arrangements and, often, managers are not prepared to confront them.

This article's findings echo those of Kochan *et al* (1986) in placing management values centre stage. Where it differs from them is in indicating that market forces do not play a key part in shaping those values. Further research, which is beyond the scope of this article, may shed light on the positive influences on those values and, in particular, the part played by government policy.

Finally, although crystal ball gazing is fraught with difficulty, we make a prognosis. We argue that it will take a number of years before many trusts have fully fledged pay systems. Partly this is because trust management continues to receive mixed messages from government. Thus, as we noted above, Alan Langlands, chief executive of the NHSME, (retitled the NHS Executive) asked all trusts to have local machinery in place by February 1995 (Langlands, 1994). Yet Ken Jarrold, the HR director of the NHS Executive, said he did not expect every trust "to be all singing, all dancing on pay" by that date (Huddart, 1994) and a few months later warned trusts against "heroics" (*Guardian*, 1995a). The director of the Institute of Health Service Management said at the Institute's 1995 annual conference that managers were uncertain whether they were supposed to be negotiating local pay deals or not and that managers had got a right to ask for a bit of clarity (*Guardian*, 1995b).

Partly the lack of progress towards trust pay regimes is because managers have more immediate priorities. For instance, The Foundation was in the throes of amalgamating with a nearby trust, to be completed by April 1996. Accordingly, the personnel director was having to give the personnel implications of the amalgamation priority over the development of a reward strategy. At Christie Hospital, the main priority in human resources in 1994/95 has been redundancies, in cytology and then more generally, achieved by non-compulsory means and also a drive to train nurses in phlebotomy and chemotherapy skills. In this context, the development of a trust pay regime has very much taken a back seat.

In 1996 or 1997 there will be a general election and government policy may change. If the Conservative party wins, the national arrangements for the determination of terms and conditions in the NHS are likely either to be scrapped or wither on the vine, thus providing an impetus to local bargaining. If the Labour party wins, it plans to retain a national framework

for pay bargaining and the pay review bodies and to introduce a national minimum wage, so circumscribing trusts' autonomy on pay (*Labour Party*, 1994: 33).

As to the unions, this research has shown how staff sides can temper the pace, manner and extent of change and this is expected to continue for a number of reasons. First, the unions' role is accepted by the NHS Executive. For instance Alan Langlands's letter (1994) talks about "local pay bargaining machinery" and the Whitley Councils' enabling agreements provide for "agreement with staff and their trade unions". Second, the large unions are increasing the support they give to their lay representatives. For instance, MSF's national executive committee has allocated resources for the collection and dissemination of information on trust pay deals and Unison is continuing to develop its stewards' training courses and has introduced computerised pay bargaining information (*Financial Times*, 1994b).

Nevertheless, even if local pay arrangements are adopted in NHS trusts, government control of trusts' pay looks set to continue. Corporate level control is a feature of private sector plant level bargaining (Kinnie, 1987). Ministers and Treasury exercise control over pay determination in Civil Service executive agencies (Corby, 1993/94). There is no reason to believe that NHS trusts would be an exception.

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HOW BIG A STEP IS 'NEXT STEPS'? INDUSTRIAL RELATIONS DEVELOPMENTS IN CIVIL SERVICE EXECUTIVE AGENCIES

Susan Corby, *Manchester Metropolitan University*

This article looks at industrial relations developments in Civil Service executive agencies. These are the new semi-autonomous units which deliver a discrete government service and are separated structurally, financially and operationally from their policy-making parent department. The first agencies were launched in 1988 following the so-called 'Next Steps' report (Efficiency Unit, 1988), but by 1 April 1993 60 per cent (350,000) of all civil servants worked in 89 executive agencies or their equivalents: 30 executive units in Customs and Excise and 34 executive offices in Inland Revenue. Moreover, agencies are unlikely to be significantly altered by a government of a different political hue for, as the all-party Treasury and Civil Service Select Committee unanimously said (1990), 'Agencies are set up to do what the Government of the day wants; they are a means to an end.'

The article concludes that the establishment of agencies has laid the foundations for radical change which is already in train. Thus there is a clear trend towards agency pay and personnel arrangements and away from Service-wide terms and conditions, towards the recruitment of agency chief executives by open competition on fixed term appointments and away from lifetime career patterns; towards an emphasis on costs and away from the good employer model; towards the limiting of the Whitley system and the growth of new employee involvement techniques and away from collectivism. Perhaps most important of all is the trend towards the privatisation of agencies. These newly emerging patterns are examined below and support the view that 'Next Steps' is turning out to be a very large step indeed.

Nevertheless, it would be simplistic to see this change as happening in a linear and straightforward way or to regard it as unproblematic. There are tensions arising on the one hand between these new patterns, which essentially centre on agency autonomy, managerial risk-taking and individualism, and on the other hand the traditional patterns which centre on Civil Service-wide arrangements, a public service culture and collectivism. These traditional patterns are reinforced by political pressures, viz. Treasury control in pursuit of governmental macro-economic objectives and ministerial accountability to Parliament, and influence the pace of change. Although similar tensions may be found in other areas of the public sector, they are much sharper in the Civil Service where the government is the direct employer and there are no mediating organisations. Moreover, the privatisation of agencies will not resolve all the tensions discussed below: it would relieve the political pressures and those relating to the public service culture, but does little to resolve the pressures arising from collectivist traditions.

Furthermore, the article suggests that the extent to which the new patterns are embedded and the tensions resolved at any particular time in any particular agency depends not only on Service-wide factors but also on agency-specific factors. These include the degree of integration into the parent department (ie agency type), the background of the agency's chief executive, and the strength of the trade union organisation in the agency.

The tensions broadly centre on three areas: the locus of power within the Civil Service, the employee relations processes, and the ethos of the agency. The article looks at them in turn. First, however, the data collection methods and the background are described.

METHODOLOGY

Essentially this article is based upon data from two sources. First, it relies on information collected by Steve Davies of the National Union of Civil and Public Servants (NUCPS) from NUCPS representatives in each agency. (NUCPS represents both management and support grades, so representatives are in touch with a wide range of issues/members.) The NUCPS information is detailed (over 100 questions are asked) and as far as possible kept up to date. Secondly, it relies on 25 semi-structured interviews carried out by the author among chief executives, personnel directors, local managers, full-time and lay union representatives, and departmental civil servants with agency responsibilities in four agencies. The agencies selected represent one each of the four groups identified in the Efficiency Unit report (1991:22). Its typology is based both on the extent to which an agency is integrated into its parent department and the extent to which its functions are governed by statute. It is as follows:

- agencies fundamental to the mainstream policy and operations of their departments;
- agencies executing statutory (usually regulatory) functions;
- agencies providing specialist services to departments (or other agencies);
- peripheral agencies, ie not linked to any of the main aims of a department but nevertheless reporting to its minister.

The author looked at Employment Service (ES) as an example of a mainstream agency, Vehicle Inspectorate (VI) as an example of a regulatory agency, Recruitment and Assessment Services (RAS) as an example of an agency providing specialist services, and Her Majesty's Stationery Office (HMSO) as an example of a peripheral agency.

These four agencies also exhibit differences in size and financial regime. Employment Service has 46,000 staff while Recruitment and Assessment Services has just under 200. VI and HMSO are trading funds.

BACKGROUND

Up to the late 1970s, essentially Civil Service industrial relations was characterised by strong control from the centre (the Treasury and then the Civil Service Department), a high degree of centralised rule-making, a high level of unionisation and union organisation, and joint agreement, through a well developed 'Whitley' system, over a wide range of matters, eg from pay to training, with consultation often merging into negotiation. Other characteristics of the industrial relations scene in the Civil Service until the late 1970s were the government view that it should seek to be a model employer; de facto job security for civil servants, with relatively generous sick pay and pension arrangements; Civil Service pay primarily set on the basis of 'fair comparison' with the remuneration of staff outside the Civil Service (Royal Commission on the Civil Service, 1955); and unilateral access to arbitration as the final guarantee of impartiality between government and unions. Although Civil Service pay

settlements were sometimes modified on grounds of public policy, these were regarded as temporary aberrations (Hepple, 1982:72).

From 1979, the Conservative Government, led by Mrs Thatcher, sought to change the Civil Service to improve its managerial efficiency. First, the Prime Minister sought to streamline the Civil Service by setting across-the-board staffing reduction targets. Secondly, she brought in Sir Derek Rayner from Marks and Spencer to head a new body, the Efficiency Unit. The Unit spearheaded so-called Rayner scrutinies (ie value-for-money audits) and then developed the Financial Management Initiative (FMI). Essentially this entailed devolving budgetary control down the line and setting up cost centres within departments.

As in areas outside the Civil Service, new devolved financial arrangements went hand in hand with new devolved personnel and pay arrangements. The Cassels report of 1983, *The Review of Personnel Work*, resulted in a change from the central prescription of Civil Service-wide management rules to framework guidance from the centre to departments. So for instance departments could devise their own staff appraisal systems but had to follow certain common denominators. In addition in 1981 the Government ended the system whereby Civil Service pay was set primarily on the basis of fair comparison with the remuneration of staff outside the Civil Service. As a result, after a long dispute, between 1987 and 1989 all the major Civil Service unions concluded new pay agreements with the Treasury, essentially based on the principle of the need to recruit, retain and motivate staff. These pay agreements gave departments flexibility (within guidelines) to provide for performance pay and for 'special pay additions' where there were particular recruitment and retention difficulties. Moreover, in 1987 the Cabinet Office produced a study document recommending greater flexibility in working patterns (Corby, 1991).

In short, the 1980s had already witnessed an emphasis on managerial efficiency, a lessening of Civil Service uniformity and some decentralisation in the setting of terms and conditions, so when the 'Next Steps' report came out in February 1988 it was going with the grain.

The report, drawn up by Sir Robin Ibbs, Sir Derek Rayner's successor as head of the Efficiency Unit, was entitled *Improving Management in Government: The Next Steps: Report to the Prime Minister*. It found that the Civil Service was too diverse in its activities and too vast (600,000 people) to be managed as a single entity.

Yet it is run as one organisation with common rules for financial management and personnel management. One problem inherent in trying to bind a very large and diverse organisation in one set of central rules is that the rules fit no particular part of the organisation. (1988:27)

Moreover, the report found that top management in the Civil Service was dominated by policy and political considerations, often with a short-term focus, rather than the executive and service delivery functions with which 95 per cent of civil servants are concerned. As a result, there was too little regard for managerial efficiency. To rectify this, the report recommended that the executive functions of government (as distinct from policy advice) should be carried out by units clearly designated within departments for a specific managerial task. Such a unit, to be called an executive agency, would be headed by a chief executive and would operate within a framework document spelling out its objectives set by the responsible minister in consultation with the Treasury. The document would also specify

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the financial and personnel freedoms judged necessary to the meeting of the agency's performance targets. Thus agencies would be structured to concentrate on value for money, ie issues of costs, staffing and quality of service.

The Government accepted the report's recommendations, thus heralding a restructuring of the Civil Service similar to that which had taken place among many large private sector companies. Such companies had substituted a unitary organisation for a quasi-autonomous, multi-divisional one (M-form), separating operational responsibilities from strategic and monitoring responsibilities (Williamson, 1975:Chap.8). Moreover, the British Civil Service's restructuring was consistent with developments in federal, state and local government in the USA which have begun to adopt systems which separate policy decisions (steering) from service delivery (rowing) (Osborne and Gaebler, 1992:35).

Some five years on there are 89 agencies with framework documents giving them certain powers for a period of three years. The agencies vary in size, from Wilton Park Conference Centre with 29 staff in one location to the Social Security Benefits Agency with over 62,000 staff and 159 district offices. Their activities, too, vary from the familiar, such as issuing passports, to the recondite such as repairing naval helicopters and marine gas turbines. They also vary in their financial regimes, essentially depending on the extent to which their costs are met by receipts (with nine operating as trading funds at 1 April 1993) and the extent to which they are involved in policy-making.

These variations among agencies in the Civil Service contrast with the relative uniformity in the semi-autonomous units in education and also in the NHS: grant-maintained schools and NHS trusts respectively. Yet there are common threads in these three public services. The driving force behind the organisational changes has been to improve managerial efficiency, to give greater priority to the needs of customers rather than producers, and to bring in proxies for market disciplines. Moreover, these changes, although not led by, are consistent with the government's overall industrial relations objectives throughout the public sector of empowering managers so that they become operators not administrators, of encouraging flexibility of labour, of rewarding staff according to performance, and of devolving decisions on personnel management and pay away from the centre downwards to a multiplicity of localities where public service unions, with their centrist structures, traditionally have tended to be weak.

TRENDS AND TENSIONS

The locus of power

Against this background, trends and tensions in agencies are examined. First the area of the locus of power is reviewed, and although the trend is away from central control (Treasury, Cabinet Office: Office of Public Service and Science, and the parent department) over pay and personnel arrangements and towards agency autonomy, there are countervailing, centripetal pressures and so tensions remain.

These tensions are heightened by the lack of a clear legal basis. Whereas in education and the NHS, semi-autonomous units were set up as a result of legislation specifying their powers and duties, Civil Service agencies were established without legislation on the basis

of non-legally binding, quasi-contractual framework documents which themselves often lack clarity (Efficiency Unit, 1991).

This lack of clarity is illustrated by the question of who is the employer. In the NHS, when a trust is established staff who continue to do the same job nevertheless have a new employer, the trust rather than, say, the district health authority, although they continue to work in the NHS and, for instance, are covered by the NHS pension scheme. In the Civil Service, when an agency is created, staff remain civil servants (ie are appointed by the Crown) and tend not to have a new employer for employment law purposes. In other words, the department remains the employer. The verb 'tend' is used advisedly, for there are exceptions: HMSO and Defence Research Agency at the time of writing.

Moreover, agencies generally exhibit a lack of clarity as to who is responsible for staff. Thus the framework document may specify, for instance, that an agency has no powers to dismiss above a certain grade, but agency managers complain that the position is unsatisfactory. Because departments in the main are legally the employers and because for the more senior grades at least there is generally no delegation from the department to the agency, the department, which often has no first-hand knowledge of the case, second-guesses the agency. For their part, union representatives complain that an appeal to departmental civil servants tends to be fruitless as they are unlikely to go against the recommendations of agency management. On the other hand, an appeal to an agency manager may not be to the real locus of power.

The Civil Service (Management Functions) Act 1992 hardly resolves this unsatisfactory legal situation. Prior to the Act the Treasury and Office of Public Service and Science (OPSS) could only grant 'discretions' to agencies or departments. The Act allows them to grant delegated authority subject to certain conditions, or no conditions at all, and without union agreement. But central department control is not lost: delegations can be revoked. So arguably the Act will make little practical difference.

The trends and tensions surrounding the locus of power are well illustrated by control over pay. Before the Next Steps report came out it was said in the press (*The Times*, 1987 and 1988) that the Treasury was seeking to prevent its publication as semi-autonomous Civil Service agencies could undermine public expenditure control.

When agencies were set up, however, the Treasury still sought to exercise control over pay but adopted subtler methods. Thus so far over a dozen agencies have set up group bonus schemes. They cover all staff employed in the agency for a time (typically a year) provided that during the year they have not been disciplined or appraised as an unsatisfactory performer. Essentially all are linked to the achievement of targets but necessarily vary in their format. (VI has, for example, a financial target known as the Aggregated Cost Efficiency target.) Most bonus amounts are fairly small. For instance, VI's basic bonus was £155 for the year 1991/2, while staff at Companies House received £400 but none the year before. Most bonuses are flat rate, though VI pays extra bonus units in addition to the basic bonus to more senior management and the Central Office of Information pays a fixed percentage of salary to eligible staff.

An agency, however, is not free to devise its own bonus scheme. The Treasury has produced guidelines for chief executives and although an agency can adapt the model, it must agree the final scheme with the Treasury which only permits minor deviations.

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Against this background the Contributions Agency decided not to go ahead with a scheme approved by the Treasury. It explained that it 'would not be worthwhile because its necessarily restrictive nature would severely limit the ability to pay bonuses at a credible level' (NUCPS, 1992a:6).

A more radical consideration is whether an agency has its own pay regime and Treasury seems to have changed its tune on this. It was not until almost three years after the Next Steps report was published that HMSO became the first agency to have its own pay and grading system, with job evaluation determining the grades and pay progression within grades dependent on the achievement of 'key targets' (Davies, 1991). By the end of 1992, three other agencies had adopted their own pay arrangements: ADAS (the consultancy and research agricultural agency), the QEII Conference Centre, and Royal Mint. In 1993, however, over a dozen other agencies, including RAS and Employment Service, are well on their way to introducing their own pay regimes, as are the two departments, Inland Revenue and Customs and Excise, which have executive units/offices.

The Next Steps Project Manager (the Cabinet Office permanent secretary responsible for launching agencies) has said: 'Larger agencies will be expected to assume responsibility for pay bargaining by April 1994' (Next Steps Agencies, 1992:6). Agency managers confirm that this is not mere rhetoric and that Treasury is exerting pressure to this end.

Before 1992 the Treasury was unwilling to allow agencies to have their own pay regime, regardless of their wishes. Now it is exhorting agencies to have their own pay regimes regardless of their wishes. So why has Treasury changed tack and overturned a long tradition of tight central control over pay? The answer is that the change is apparent rather than real. Treasury initially approves the agency's pay scheme and then each year sets the size of the pay bill, although it does not control its constituent parts. As one chief executive put it:

Treasury are now in strategic mode ... They tell Employment Service, for example, feel free to negotiate, but not a penny more than has been set. They probably realise they are better getting out of the nitty gritty. It is not just pay. It is also allowances, subsistence.

Thus because of Treasury control over public expenditure, the trend towards agency pay regimes is largely cosmetic. In addition, agency autonomy on pay has been further constrained by the Government's 1.5 per cent limit on public sector pay from autumn 1992, as part of its macro-economic policy. For instance, according to the union representative, the main reason why RAS decided to defer implementing its own pay regime for a year was the 1.5 per cent ceiling.

Mr Kenneth Clarke, the Chancellor of the Exchequer, has announced that the 1.5 per cent limit will be followed by further restrictions in 1994-5. He said:

The Government will expect any increase in pay for its own employees to be offset by improvements in productivity. There will be no formal limit on settlements and different arrangements may apply to different groups. But it will be necessary throughout the public service to recognise that growth in pay bills will not be possible ... (Clarke, 1993)

It is too early to say whether this will hold agencies back from introducing their own pay regimes or encourage them to do so, to get round the centrally imposed policy.

All the agency pay regimes approved by the Treasury so far make pay progression dependent on individual performance, an aspect that essentially managers like but the

unions do not. As it is government policy 'to differentiate between those who are making a contribution and those who are not' (Citizen's Charter, 1992:3), it is unlikely that the Treasury would approve any future agency pay regime that did not contain a link between pay and performance.

The union representatives interviewed, as well as criticising the pay/performance link, could not see that agency pay regimes would bring benefits to staff. Managers varied in their views but many welcomed the opportunity to reshape their pay and grading structures to fit the business needs.

Pay apart, most managers and all union representatives felt that there was tight central control where government policy bore on human resource management, despite the rhetoric of agency freedom. The Cabinet Office requirement for agencies to market test a certain proportion of activities was often cited by both managers and trade union representatives as an example.

On matters not relating to money or government policy, both managers and union representatives agree that agencies have considerable autonomy from their parent departments and the central departments (Treasury and Cabinet Office: Office of Public Service and Science) on matters relating to staff. For example, HMSO has its own staff appraisal system and altered the promotion arrangements for middle managers (bands 13/14) as this does not impact on government policy or public expenditure. HMSO management, however, refused a union side claim for company cars for its sales force, claiming that the Treasury would not countenance the expenditure involved.

Another source of tension in the area of central control versus local innovation over pay and personnel arrangements concerns staff movement. Traditionally staff have seen themselves as having the opportunity to move round a Civil Service in which terms and conditions have been uniform. Some union representatives, however, feel staff movement is becoming increasingly difficult, a view also shared by an outside commentator (Willman, 1991).

For their part agency managers agree that they are now being more innovative on human resource issues, in a way that departments were not. Examples cited include Vehicle Inspectorate's health screening for staff and Employment Service's probation arrangements, promotion system and dress standards. They admit that measures such as these encourage staff to regard themselves not as civil servants but rather as staff of a particular agency. Paradoxically, however, they do not think it inhibits transfers between the department and the agency or vice versa. As the Efficiency Unit report states (1991:16), 'the private sector and local government demonstrate that variety in terms and conditions does not inhibit movement of staff' and that movement 'need not depend on the maintenance of central conditions'. Secondly, the large majority of staff spend all their career in a narrow area and do not move between what are now departments and agencies.

Neither management nor union representatives quoted any statistics but both gave anecdotal evidence. A union representative from the Department of Trade and Industry said: 'Now it is up to you, not the system. You have to make a nuisance of yourself if you want to move.' Also, a union representative from the Department of Employment cited difficulties in redeploying staff from the department (where there are staff reductions) to Employment Service, a mainstream agency (where there is growth), because agency managers were increasingly insistent that staff have certain competencies.

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Moreover, management and unions agree that over time agency autonomy will increase and thus personnel and pay practices in the Civil Service will become more diverse. As a result it will become increasingly difficult for staff to transfer in and out of agencies and the tradition of a unified Civil Service will wane.

Employee relations processes

Next this article looks at the pressure point surrounding employee relations processes and particularly the tensions between collectivism and individualism. First we look at the Whitley arrangements (ie joint committees of the official side and the trade union side), secondly at the new employee involvement techniques, and thirdly at union organisation.

Government policy is to move away from Whitley covertly rather than overtly. A confidential paper drawn up by a senior civil servant says:

Although there is a clear wish at the centre to move away from Whitleyism, and in particular to exclude reference to it from the agency framework, their strategy for change is by stealth, rather than outright declaration. (Employment Service, 1989:9)

In fact an analysis of 34 agency framework documents (Greer, 1992) indicates that 23 state that the existing Whitley arrangements or an adaptation of them will continue for the present but will be kept under review. (The remainder are imprecise about the arrangements to be adopted.)

Moreover, Employment Service has embarked on a deliberate policy of reducing the role of Whitley. The agency Whitley Council is entirely separate from the departmental one, meets every six months instead of four times a year as before, has a smaller membership than before, and the number of sub-committees has been reduced. The same pattern of less frequent meetings, sub-committees largely eliminated and smaller membership is repeated in ES's regional Whitley Councils. Management sees the new constitutions as a gain. Unions do not but could not prevent their introduction.

At area level in ES there is no Whitley Council, although there are informal meetings between the area manager and union representatives. (Pre-agency there were no area Whitley Councils though most areas had them in everything but name, ie formal joint committees.) Headquarters management plans increasingly to devolve human resource issues to the area, so the industrial relations process looks set to become more informal. Exceptionally, Recruitment and Assessment Services has no Whitley Council at any level. When the agency was formed under a chief executive from the private sector who had no experience of Whitley, the Whitley Council was moribund and there were no existing consultation arrangements. Moreover, the two main unions (NUCPS and the Civil and Public Services Association-CPSA) were inactive. When the unions' branches were reconstituted and union representatives elected, management would not reconstitute the Whitley Council. Instead there are informal meetings with management once a month.

This is not the place to go into the debates surrounding union sponsorship. Suffice it to say that the action of management was crucial in this agency, just as it was in the mid-1980s when a branch of the Association of First Division Civil Servants (FDA) was about to fold. In 1991 RAS management used the opportunity to dispense with formal Whitley structures, whereas seven years before in a similar situation senior officials in the Ministry of Defence

positively encouraged staff to participate in the FDA branch to prevent its demise through apathy.

Both in RAS and other agencies, management is increasingly careful to ensure that union representatives are only given negotiating rights on basic pay rates. For instance, in respect of group bonuses Treasury (1989) advised: 'The degree to which the representatives of the staff are consulted before a scheme is introduced is left to the agency's discretion' (author's emphasis). According to the NUCPS (1992a), many group bonus schemes appear to have been set up without any form of consultation.

Employment Service has been at the forefront of seeking to limit the unions to consultation on matters previously the subject of negotiations. As an area manager in Employment Service said:

At one time we might well have said we will have to negotiate our way through this one. Now we say we have taken the views of the trade union side on board but nevertheless we have decided this is the right thing to do.

Moreover, when Royal Mint's chief executive was making little headway in securing the unions' agreement to a new management pay structure in 1992, he contemplated derecognition but Treasury urged caution. Such a step would not even have been contemplated a decade ago.

Also even consultation rights are being eroded. As a union representative from HMSO noted, 'much more is now being done by administrative action', ie unilaterally or 'without proper consultation'. An example he cited was the unions at HMSO being given a morning to submit comments on changes to travel and subsistence. An example cited by a union representative at Employment Service centred on management consultation with the unions on a new personnel handbook, which proved to be a sham: the management circular to staff had already been written and by accident distributed the day before the joint meeting.

At the same time as agencies have been limiting the scope of the Whitley machinery they have been developing a range of employee involvement techniques. These emphasise the management/staff as opposed to management/union representative link and inevitably cause tensions with the unions. Thus to gauge staff opinions at Employment Service, the agency carries out annual attitude surveys rather than leaving it to union representatives to give staff views. Similarly, management communicates with staff directly through team briefings rather than leaving it to union representatives to pass on management's message.

At HMSO there is a total quality programme that includes six corporate and 50 divisional QIPs (quality improvement projects). Although the union representatives see the terms of reference at the start, the actual work of the QIP can change over time. Moreover HMSO is now introducing QITs (quality improvement teams). Although at the moment there are only a few QITs, more are planned plus over a hundred QIPs. This will make it difficult for union representatives to keep tabs on them.

One of the problems facing management, however, is that often structures set up outside the union structure wither. Vehicle Inspectorate, for example, set up vertical slices drawn from management grades in various areas in the agency to discuss cost and quality issues. Senior management had problems, say the unions, with selecting people to serve and ensuring they were representative, and vertical slices have ceased to exist. According to

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management, they ended because they had met their objectives. Be that as it may, they are being reconstituted with new objectives but with union seats.

More centrally to human resource management, RAS set up a personnel strategy working group of about a dozen staff which spawned sub-groups dedicated to various topics such as the staff restaurant, the suggestion scheme and the staff appraisal system. There were no seats for the unions on the strategy group. Instead an office notice asked for volunteers. In theory the strategy group covered staff at all levels and in all areas, though this was never achieved. Moreover, after some initial enthusiasm, it seems to have withered. As one non-union, ex-member of the strategy group put it:

The meetings took place in working time but the work was there when we got back to our desks. Many folk began to resign from the group as jobs became more pressured as staff were cut. This had a knock-on effect because there were less people to do the work on the strategy working group and also there was the feeling that if she can't spare the time, what about me?

Thus despite managerial commitment there are practical problems with non-union, extra-Whitley mechanisms, as so far they seem not to have engendered active employee support except in the short term.

Of course, Civil Service agencies are not unique in adopting employee involvement techniques. The 1990 Workplace Industrial Relations Survey found a substantial growth in such techniques since the mid-1980s (Millward et al., 1992:180). Nor are Civil Service agencies unusual in operating a dual approach, ie collective bargaining and employee involvement techniques (Storey, 1992).

Whether collectivism or individualism predominates, however, depends to a significant extent on union organisation and practice. As we have seen, management is experiencing practical problems with non-union, extra-Whitley mechanisms but unions, for their part, are having problems adapting to the employee relations processes in agencies. The Civil Service unions have highly centralised structures appropriate for London-based Service-wide negotiations and for mainly London-based departmental Whitley Councils. Three quarters of agencies, however, have their headquarters outside London and, although unions are setting up regional offices, progress is slow. For instance, the National Union of Civil and Public Servants had just one office outside London (in Edinburgh) before the first agency. Now it has three more.

However, even if/when the unions align their structures with those of agencies, agency bargaining will pose problems for them as bargaining will be carried out away from the real source of power at the centre of the Civil Service. Admittedly Civil Service unions are not unique in this respect (Kinnie, 1987), but the comments of a union representative at HMSO provides a Civil Service perspective. He said:

We had a letter from the director of human resources in September 1992 to say that he could not yet discuss the 1992 pay review with us (effective 1 October). Because of the problems with sterling and the ERM, the Treasury had not been able to clear our paper work.

Moreover, decentralised bargaining normally makes Civil Service-wide industrial action unlawful so, for example, the 20-week Civil Service strike of 1981 would not recur under this scenario.

Union strength depends not only on structure but also on membership and local organisation. Union membership, however, is associated with size of establishment and almost a quarter of agencies have less than 250 staff. The more power is given by headquarters management in agencies to local managers working out of even smaller units, the harder it will be for the unions to organise effectively and to find lay representatives willing and able to carry out industrial relations functions.

This is exacerbated by the fact that in most agencies three or four unions are recognised for separate grades. These jurisdictional arrangements may have been appropriate for large departments in the pre-agency Civil Service. In today's Civil Service, however, they give the unions severe organisational difficulties. There are informal understandings that a particular union will take a lead on a certain matter in an agency but so far no radical solutions have been adopted (eg transfers of membership or all the unions in the Council of Civil Service Unions forming a confederation).

According to management, union membership is already falling. They quote figures of membership of NUCPS and CPSA of 48 per cent and 47 per cent respectively in Employment Service in Yorkshire and Humberside and of about a third in RAS. By comparison, union density in 1980 in central government was 60 per cent (Blackwell and Lloyd, 1989:94).

Nevertheless, although undoubtedly unions are experiencing problems, these should not be overrated. For instance, lay representatives receive facility time (ie paid time off) for both their industrial relations and union duties. Although some agencies have reduced facility time, the arrangements remain and are more generous than those provided under employment law. As to administrative help for lay representatives, unusually VI gave the trade union side secretary both a lap top computer and temporary clerical help during the consultation period on the agency's future in the winter of 1992-3 to aid the unions' ability to communicate with staff at a time of great uncertainty.

Thus collectivism still exerts a pressure on the adoption of the new patterns. Whitley, even if restricted, for the most part continues as do negotiations, though previously negotiable items are now sometimes the subject of consultation and previously consultative items are now sometimes the subject of unilateral management action. Moreover, union organisation, although weaker, remains.

The ethos

Another pressure point and source of tension within agencies is that surrounding the ethos of public service versus entrepreneurial management, with the balance shifting towards the latter since 1988. The first point considered is the career background of agency chief executives, the second is organisational culture, and the third privatisation.

Up to now civil servants have generally been recruited at basic grades and the expectation has been a career for life with promotion on merit. This, the unions argue, not only makes the Civil Service attractive to young, able candidates but also helps bolster the public service ethic as people with a private sector career background inevitably have different values, including those relating to human resource management.

Initially civil servants were appointed as chief executives of agencies without open competition. (Interestingly the term 'chief executive' is a private sector term not hitherto used in the Civil Service.) Thus there was open competition in only three of the first seven

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agencies, and five of the first seven chief executives were serving civil servants. However, there was a shift in government policy and 'increasingly open competition is the normal method of recruiting chief executives' (Goldsworthy, 1991:29). Accordingly, 55 out of 85 chief executives and chief executives designate have been recruited through open competition. Of these, thirty (over a third) have come from outside the Civil Service (Next Steps Agencies, 1992:7), though this includes other areas of the public sector and there are no statistics relating to those who have come from the private sector. Similarly, chief executives apart, a few other senior staff in agencies have come from outside the Civil Service as a result of open competition. Sir Robin Butler, Head of the Home Civil Service, seems to welcome a Civil Service 'open to recruitment of all manner of people at all stages of career' (Butler, 1991).

Most chief executives (48 out of 57) have personalised fixed term appointments and in a few agencies other senior staff, such as heads of finance and operations, have the same arrangements. At Employment Service even some career officers at executive officer grade (a junior management grade) are on fixed term contracts. This individualised, short-term relationship runs counter to the collective, long-term ethos of a permanent, career for life, Civil Service.

Also contributing to the public service/entrepreneurial tension is the organisational culture. The managers interviewed took the view that agency status had led to a greater focus on business performance. Furthermore, a National Audit Office report into VI (1992:26) found new attitudes to service provision. This, of course, is in line with the view of government which has seen agencies as a way of injecting entrepreneurship into the Civil Service.

A particular ambiguity seems to surround the role of the agency as a model for progressive labour relations policies. Prior to 1979 the government aimed to be a model employer (Fredman and Morris, 1989). It has never officially reneged on this and indeed in the context of the central department agreeing to delegations, the Cabinet Office (1992) has said: 'high quality personnel management is one of the criteria we shall use.' However, the objectives of managerial efficiency and cost saving often conflict with high standards of personnel management. To take examples from the equal opportunities area, several agencies have creches, but as a union representative at HMSO pointed out, although there were nursery facilities in Norwich (the agency HQ) there was no money in the current budget for establishing such facilities in other locations.

Similarly, at Employment Service the chief executive observed that their new procedure on promotion vacancies (essentially entailing promotion to a job rather than a grade as before) was found by in-house evaluators to be 'equal opportunities favourable'. The Yorkshire and Humberside union representative, however, pointed out that often cost considerations predominated and in a few localities no interview under the new promotion procedure was given to anyone who, if successful, would qualify for transfer expenses as that would impose a cost. This could be indirectly discriminatory on grounds of race in that, for example, black staff from predominantly black areas would be precluded from transferring to predominantly white areas.

Arguably far more significant is whether an agency stays within the Civil Service or moves to the private sector, and there are now signs that more agencies will be sold off than was

originally anticipated. In other words, there is a trend towards the privatisation of agencies. Thus National Engineering Laboratory (NEL) and Drivers Vehicles and Operators Information Technology (DVOIT) were targeted for privatisation when they were first launched in order, said the Government, to remove uncertainty. But these exceptions apart, in the main agencies were not seen as a half-way house to privatisation. Thus a Cabinet Office civil servant, who was one of the original members of the team spearheading the establishment of agencies, said that although the possibility of privatising agencies later was not ruled out, 'it was generally accepted that after the investment of considerable effort in setting up the agency, further immediate change was unlikely' (Goldsworthy, 1991:19).

Now, however, when an agency's framework document comes up for review at the three-year mark, or even at an earlier stage, the parent department undertakes a re-examination of the feasibility of abolition of the agency, contracting out the whole of the agency's functions, or privatisation, after which there is a ministerial decision. Thus the Secretary of State for Transport announced on 27 May 1993 plans to sell off the Transport Research Laboratory, an agency launched in April 1992, and the testing stations of Vehicle Inspectorate (roughly half of its remit), an agency set up in August 1988 (*Financial Times*, 1993a). In similar vein (*Financial Times*, 1993b), the Government is expected soon to move further towards privatisation of Companies House, following a management consultancy report to the agency's parent department, while the Department of Trade and Industry is considering a management buy-out for the Accounts Services Agency (*Financial Times*, 1993c).

Further ministerial decisions on agencies' futures are in the pipeline as 34 agencies were set up before 1991, ie have passed the three-year stage. Moreover, the new ministerial approach was encapsulated by Mr William Waldegrave, Chancellor of the Duchy of Lancaster, who said (1992): 'In the early 1980s people asked why should not the State manage a service. Today we question why it should.'

Privatisation will resolve some of the tensions described above. Thus it would remove the control of the central departments on agency arrangements for pay and personnel management. It would also largely resolve the tensions surrounding the ethos of the organisation. Managers, as part of the private sector, could embrace entrepreneurship while the need for the uniform provision of public services and accountability to Parliament would be obviated.

Privatisation, however, will do little to resolve the tensions in the area of employee relations processes. In the main, civil servants affected by privatisation retain their terms and conditions when they have a new employer under the Transfer of Undertaking (Protection of Employment) Regulations (Tupe). In addition, collective agreements and such recognition rights as the unions previously enjoyed transfer to the new employer (though there are problems surrounding the enforceability of these provisions) (Napier, 1993:21). Certainly the Civil Service unions are aiming to follow their members into the private sector and can already boast some success. For example, the Institution of Professionals, Managers and Specialists (IPMS) followed its members, retaining collective bargaining rights, when Amersham International and Atomic Weapons Research Establishment (Civil Service fringe bodies) were privatised. Similarly, it is in the throes of following members as Property Services Agency is split up and privatised.

SUMMARY AND CONCLUSIONS

Despite variations, all Next Steps agencies have taken steps away from traditional patterns. Such steps include chief executives increasingly being appointed as a result of open competition and the still small, but growing use of fixed term appointments, which undermine the concept of a permanent, career Civil Service. They also include a focus on cost considerations rather than progressive labour relations policies, and the development of agency-specific pay and personnel arrangements in place of rule-making by the central departments. Moreover, there is a trend towards the management/staff link (for instance through employee involvement initiatives) and away from the management/union representative link through restrictions on Whitley mechanisms. Connected with this is the assertion of managerial prerogative (as evidenced in the narrowing of negotiable issues and the erosion of consultation with unions). Perhaps most significant of all, however, is the trend towards the privatisation of agencies.

Examples of many of these trends can be found in the Civil Service outside agencies. Such examples include fixed term contracts at Scottish Office, attitude survey welcome datacomp Department of Employment, and departmental subsistence arrangements and the privatisation of the Property Services Agency which (despite its name) is not a Next Steps agency. Nevertheless, these trends are stronger and more marked in Next Steps agencies than elsewhere in the Civil Service, and managers and union representatives interviewed, whether in departments or agencies, agreed that agencies were at the leading edge of change in Civil Service industrial relations.

These trends, however, are not straightforward and there are countervailing pressures. Thus control by central departments operates against agency autonomy in the pay and personnel field as does the tradition of a unified Civil Service. Similarly, the Whitley Council system, the traditions of negotiation over a wide range of matters, and union organisation militate against new employee relations processes, and the public service culture and career patterns militate against new managerial patterns. The patterns and tensions are summarised in Figure 1. Many of these tensions would be resolved by the trend towards agency privatisation. The main exception involves the tensions surrounding the employee relations processes, essentially because of Tupe and the unions' policy of following members working in organisations which become privatised.

This trend to privatisation, which has perhaps been reinforced by the slow progress on market testing because of legal uncertainties, fits in with other elements of government policy, such as reducing the number of civil servants, to decrease public expenditure, and injecting market considerations.

At the time of writing, no Next Steps agency has yet been privatised in full or in part but ministers have made announcements to Parliament. Thus by the time of the next general election the Civil Service is likely to have been reduced in size and function. Even if a government of a different political hue, with different policy objectives, were then to put a stop to further privatisation of agencies, it is unlikely (given Labour and Liberal pronouncements on the already privatised utilities) that it would reverse privatisations of agencies that had already taken place.

Whether the government privatises an agency would seem to depend on agency type. To return to the Efficiency Unit's four-group typology (1991:22), it will be relatively easy to

FIGURE 1 *Employment Patterns and Tensions in Agencies*

Pressure Point	Traditional Patterns	Tensions	New Patterns
Locus of power	Treasury/Cabinet Office control	v	agency autonomy
Employee relations processes	Service-wide staff transfers negotiations consultations	v	discrete agency personnel practice management prerogative informal exchanges
Ethos	centralised union structures Whitley Councils	v	devolved agency structures employee involvement techniques
	career for life	v	entry at all levels fixed term appointments
	public service values/ approach part of public sector	v	entrepreneurial values/ approach privatised

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privatise peripheral agencies and those supplying specialist skills and services, and there have already been announcements about the privatisation of NEL, DVOIT and the Accounts Services Agency. There are more problems with privatising regulatory agencies, though the decision taken in respect of Vehicle Inspectorate and active consideration of privatising Companies House illustrate that privatisation can take place at least in part of this type of agency, even though legislation may be needed. Indeed, at this juncture it seems only mainstream agencies are likely to escape the trend to privatisation.

In other respects, however, neither agency type, size nor financial regime seems to dictate the extent to which the new patterns are embedded. Thus both serving civil servants and those from outside the Service have been made agency chief executives irrespective of agency type, size or financial regime. Similarly, agency type, size or financial regime does not seem to influence whether an agency has its own pay regime, and all the four agencies examined in detail above either had, or were planning, their own pay regimes. Also they were all developing employee involvement techniques with the aim of reinforcing the management/staff as opposed to the management/union link.

Moreover, in all four types of agency there are examples of managers seeking to reject traditional employee relations processes irrespective of size and financial regime. Thus the chief executive of Royal Mint (a peripheral, 1000 strong agency) sought to derecognise unions. RAS (an agency supplying specialist services with about 200 staff) does not have a Whitley Council. Driving Standards Agency (a regulatory agency with 2000 staff) limits the union side of the Whitley Council to either employees of the agency or full-time union officials, and Employment Service (a 46,000 strong mainstream agency) has reduced the role of Whitley. Of these agencies, Royal Mint operates as a trading fund.

Indeed, in these respects other agency-specific factors, such as the strength of the trade union organisation in the agency, are significant. Thus RAS was able to do without a Whitley Council because the union branches were inactive. At the same time Employment Service managers only reduced, but did not abolish, Whitley Councils, constrained, at least in part, by the level of union organisation. Although in the view of Employment Service managers, 'Whitley is a costly and time consuming ritual which provides little added value, but considerable scope for disruption' (Employment Service, 1989:2), these views have neither been published nor acted upon so far.

Finally in the view of the author, having interviewed both management and union representatives, the background of the chief executive, ie whether he or she comes from the Civil Service, is a factor in the resolution of the tensions outlined above. This is a purely subjective view and rigorous testing (which is beyond the scope of this article) has not been carried out. Nevertheless, the author takes the view that where the chief executive is a career civil servant, his or her understandings of the traditional patterns and public service values are greater. It is probably no coincidence that the Royal Mint chief executive who sought to derecognise the unions came from outside the Civil Service, as did the RAS chief executive who operates without a Whitley Council.

Two years ago Graham Mather, then General Director of the Institute of Economic Affairs (a right-wing think tank), admitted that some considered Next Steps to be a cautious advance, but he disagreed. He saw the creation of agencies as a main framework for change and said: 'The die is cast' (1992:42). Many, including those of a differing political stance,

would agree. Indeed, as Next Steps agencies prove to be a step along the road to privatisation, the Civil Service in a few years' time is likely to be very different from today's in size, scope and function.

NOTE

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Industrial Relations Developments in NHS Trusts

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This article looks at industrial relations developments in the new self-governing trusts of the National Health Service (NHS). In particular it examines the union recognition and collective bargaining arrangements which have been adopted in the 57 trusts set up on 1 April 1991, i.e. those in the so-called first wave. In addition to these procedural outcomes, it also looks at substantive outcomes.

Although this article centres only on developments in the first trusts, and is necessarily limited in scope and time, it can be argued that their significance is potentially far-reaching. The Government foresees increasing numbers of trusts being established each year as more and more directly managed units (DMUs), i.e. units managed by the health authority, become trusts. In fact 99 started in April 1992, with 153 seeking to go ahead in 1993 and the Secretary of State for Health, Mrs Virginia Bottomley, has said she expects most health care to be provided by trusts by the end of the Government's term of office[1]. Accordingly a future government of a different political hue, which wanted a reversal, would face serious obstacles.

This article finds that in many respects industrial relations in trusts is set to depart markedly from the traditional NHS model. Thus while some trusts are recognizing *all* the unions in the trust, and setting up machinery to negotiate with them all, that is not the predominant pattern. The majority of trusts are negotiating pay with only *some* of the staff organizations recognized nationally and with members in the trust. Also single table bargaining is being established in place of the separate Whitley functional councils for the different occupational groups. Many trust managers plan to use this new structure to negotiate a single pay spine with the aim of reinforcing loyalty to the trust, rather than to the profession/occupation.

In addition, examples can be found of more unitarist developments: no union recognition, a single union deal, staff representation based not on the union structure but the management structure, pendulum arbitration and limitations on the negotiating role of the full-time officer. There are also examples of pay awards being unilaterally determined by management.

Given these findings, a continuum can be conceived with traditionalists at one end, proceeding cautiously, and mould breakers at the other end, departing from a host of NHS employment practices, but with the majority of first wave trusts somewhere in the middle.

Before describing the methodology employed and the findings which have emerged, the context is briefly described: first the traditional model of industrial relations in the NHS and then the Government's statutory changes.

The author would like to thank Steven Weeks, Research Officer at the Confederation of Health Service Employees, Peter Drummond, Director of Personnel at United Leeds Teaching Hospitals Trust and Gillian Morris, Reader in Law at Brunel University for their comments on a draft, and the editor of *Employee Relations* for his help.

The Traditional Model

The NHS was established in 1948. It is funded by central government out of sums allocated annually, but the Government is not the employer. District health authorities (DHAs) and to a lesser extent regional health authorities and family health service authorities are the employers of some one million NHS staff (as are trusts from 1 April 1991). Moreover it is labour intensive: over 70 per cent of its costs are staff costs.

Terms and conditions of NHS employees are essentially determined for each functional group separately in one of two ways. On the one hand over half the NHS staff, (i.e. doctors and dentists, nurses, midwives and health visitors, professions allied to medicine) have their pay determined by the Government on recommendations of review bodies. Their other terms and conditions are determined by collective bargaining in the Whitley machinery.

On the other hand nearly all the remaining NHS staff (for example administrative and clerical workers, ancillaries, ambulance staff, scientists) have *all* their terms and conditions agreed in Whitley, which has one general and ten functional councils. The main exceptions are general and senior managers and the new health care assistants, who are outside the scope of Whitley and/or the pay review bodies, as are the craft unions such as the Union of Construction and Allied Trades and Technicians (UCATT) which negotiate direct with the Department of Health.

For some time NHS managers have criticized what they see as the inflexibilities of national pay and conditions arrangements, which they also believe reinforce occupational pressures to maintain different ways of working[2]. In fact over the last few years national agreements have grown looser to allow for local variations.

A feature of the NHS is the plethora of occupational groups and the even greater multiplicity of staff organizations with 39 recognized for Whitley purposes and 26 having certificates of independence. Inevitably this leads to fragmentation.

Trade unions in the NHS are TUC-affiliated and mainly recruit both inside and outside health care. Professional associations are on the whole not TUC-affiliated. They recruit NHS and private health care professionals and, apart from the Royal Collège of Nursing (RCN) which has 286,000 members, tend to be smaller than the trade unions. Often, however, they have a high density among an occupational group.

There is a considerable degree of rivalry among the staff organizations where more than one TUC-affiliated union represents members in the same occupational group and where in addition there is competition between the professional associations and the TUC-affiliated unions. Midwives, for example, can be represented by eight organizations. Although the Royal College of Midwives (RCM) has a high density, there is some dual membership in midwifery and other areas, i.e. staff belonging both to a professional organization and a TUC-affiliated union. Its extent, however, is hard to quantify.

There are various estimates of union density among NHS employees. The 1990 Labour Force Survey puts union density in "hospitals" at 66 per cent[3].

It is against this summary of the main elements of the traditional model of industrial relations in the NHS, that we turn to the Government's legislative changes.

The Changes

The Conservative Government's changes to the NHS are set out in the National Health Service and Community Care Act 1990[4]. These changes, the Government claims, extend patient choice, delegate responsibility to the providers of services and secure best value for money[5].

The key feature is the separation of the purchasing of health care from its provision. As a purchaser of health care services, the DHA uses the funds it obtains from the government to make non-legally binding contracts with providers — a DMU, a trust either outside or inside the district, the private sector. In addition certain general practitioner practices are fund-holders who can contract with any or all of the above.

As a central element of the Government's measures to separate purchasers and providers, the Act establishes self-governing trusts. They only provide services, unlike the DHA which both purchases services and for the time being at least simultaneously manages provider units (DMUs). Trusts vary from a hospital or a group of hospitals to an ambulance service or community services. They are directly accountable to the Secretary of State, not the DHA, and are governed by a board of normally 11 people, a chairman plus equal numbers of executive and non-executive directors. The non-executive directors are chosen "for the personal contribution they can make to the effective management of the trust and not to represent the interests of any group"[6].

Trusts provide services to NHS patients free at the point of delivery, funded almost wholly by the taxpayer. Within these constraints they have a degree of autonomy on financial matters but much greater autonomy on personnel matters. They employ all their staff directly and can set their own terms and conditions, devising industrial relations procedures irrespective of NHS national agreements (except for junior doctors).

These provisions, however, only apply to new staff. The NHS Management Executive has advised managers to assume that the Transfer of Undertakings Regulations apply (although there is some doubt in legal circles about their applicability)[7]. Therefore existing staff, i.e. staff remaining in the same job but now having the trust as their employer, can continue to receive nationally negotiated terms and conditions and/or pay rates arising from pay review body awards for as long as they choose to do so, provided they stay in the same job and, for instance, are not promoted or leave. Moreover all collective agreements with the old employer, the DHA, including those covering union recognition, transfer to the new employer, the trust, in respect of existing staff.

The DHA, however, never recognized staff organizations for negotiations on the main terms and conditions as these were determined at national level. The DHA only recognized the staff organizations in respect of individual representation and consultation and occasionally there were negotiations on a circumscribed range of matters, for example shift patterns and ancillary bonus schemes. In effect this provides virtually a clean slate in respect of any arrangements for local pay determination.

How long these transfer arrangements apply in practice will obviously depend on labour turnover. Here there are both geographical and occupational variations.

For instance, turnover for nurses and midwives in the North of England was under 10 per cent in 1991 whereas for ancillary staff in the South-east it was near 40 per cent[8].

In short, the establishment of trusts is driven by a structural reorganization of the NHS. At the same time it fits in with the Government's overall industrial relations objectives throughout the public sector. These are to decentralize pay determination from the multi-employer, national level to the single employer, local level, so that local labour market conditions can be better reflected; to empower local managers so that they can become operators rather than administrators; to devolve decision making to levels where public sector unions traditionally have been weaker; and to change organizational culture so that greater priority is given to the needs of customers rather than producers.

In response to these changes, unions have been regrouping. The Confederation of Health Service Employees (COHSE), the National Union of Public Employees (NUPE) and the National and Local Government Officers Association (NALGO) look set to go ahead with a merger which would give a combined total of 1½ million members[9]. One of the aims behind the merger is the need to service members more effectively in the growing number of trusts. As for the professional associations, one (the Society of Radiographers) has joined the TUC and the Chartered Society of Physiotherapists has applied to join, perhaps recognizing that in this new situation there is a greater need for union solidarity.

Methodology

All 57 first wave trusts were contacted, first by letter and then non-respondents were contacted by telephone to ask for their agreements on union recognition and collective bargaining machinery.

In addition, to supplement this, full time officers from four unions (COHSE, Royal College of Midwives, Health Visitors' Association and RCN) were contacted and asked for agreements and the background to them. (Of these four, two are TUC affiliates, two are large organizations and together they have members in the ancillary and nursing grades which, in numerical terms, dominate the NHS.) Also 12 trust managers orally provided background on developments in their trust.

As a result there were 50 responses (88 per cent) by May 1992, i.e. after first wave trusts had operated for just over a year. Twenty-five agreements were obtained, as well as detailed information on *de facto* negotiating arrangements in two trusts. Seventeen trusts said they had an agreement in draft, but this varied from being a few weeks away from a conclusion to very early stages. Two trust managers said they had no plans to recognize unions and four trust personnel managers said they would continue to follow the national terms and conditions and felt that negotiations with staff organizations about negotiating machinery in trusts was premature. In seven trusts it was impossible to ascertain either from management or union sources what was happening.

Also the author used these sources to obtain information on substantive outcomes but, as will be seen below, as yet there have been mainly piecemeal moves.

This distinction between procedural and substantive has been used essentially because it is a distinction observed by the parties, who draw up separate agreements in these areas. Also in many trusts, although negotiating procedures have been put in place, their use so far has been limited.

Terminology

The terms unitarist and pluralist are frequently used below by the author as shorthand for categorizing approaches. The starting point is the seminal work of Alan Fox[10], but reference should be made to the NHS context. On the one hand, all those who work in the NHS generally have a commitment to the welfare of the patient and thus it could be argued that a unitarist ideology prevails. On the other hand, many have a strong commitment to an external professional body, as well as a commitment to the organization where they work, and this could be termed pluralist.

The key distinctions, therefore, between unitarism and pluralism in the NHS centre on the legitimacy of the unions/staff associations and the traditional NHS IR arrangements, where they have a well-developed role; the perception of the need for, and value of, collective bargaining; and whether or not there is recognition that there are legitimate conflicts of interest at the workplace.

Procedural Outcomes

In many application documents of first wave trusts, and the agreements and draft agreements, examples of unitarist terminology can be found even though the agreements themselves essentially represent a pluralist outcome. The management fashion for unitarist human resource language may perhaps be an explanation. Alternatively, unitarism may reflect a more deep-seated management ideology which is hard to realize at this juncture, given the NHS's pluralist history.

In fact only two of the first wave trusts have said they will not recognize any of the staff organizations for collective bargaining on pay. At United Bristol Healthcare, staff organizations have representation and consultation rights for all staff but even if the pay review bodies and the Whitley machinery were scrapped, management says it would only consult the staff organizations on pay and not negotiate with them. So far there has not seemed to be an adverse reaction to this from the unions, perhaps because, according to management, only one third to one half of the trust's 6,500 employees are union members and so the unions are not well placed to protest effectively.

Lincolnshire Ambulance trust has gone further. The staff organizations have neither collective bargaining rights nor representation rights for employees on trust contracts. Such employees are governed by pay rates determined unilaterally by management and the trust's disciplinary and grievance procedures say an employee may be represented by a colleague or friend "not acting in a professional capacity" and this includes union officials. About one third of the trust's 330 staff (which includes 40 new employees) are on trust terms.

There are suspicions in certain union quarters that at least some of the managers in the four trusts that regard recognition arrangements for local pay

bargaining as premature, might be thinking on the same lines as the Bristol and Lincolnshire Ambulance trusts[11].

Additionally, only one of the first wave trusts has signed a single union agreement: Northumbria Ambulance Service with the non-TUC affiliate, the Association of Professional Ambulance Personnel (APAP). APAP has recognition and bargaining rights for all trust employees who have chosen to accept trust terms (excluding directors, senior managers, divisional commanders and duty officers). APAP also has facilities for its representatives and check-off. About a quarter of the 670 staff have chosen not to accept the trust conditions and continue to be covered by the consultation and representation agreements which NUPE, COHSE and the GMB had with the DHA, with their pay determined nationally under Whitley.

It is strongly arguable that Northumbria Ambulance Service is by no means typical. First it essentially contains only one occupational group, unlike an acute hospital or community trust. Second there is a tradition of single union deals in the private sector in the north-east. Third the main unions in the trust, NUPE and COHSE, seem to have been wrong-footed both by the initial unilateral imposition of a trust pay deal and then their unwillingness to respond to management approaches for a so-called beauty contest for a single union deal. It is unlikely that they would be similarly wrong-footed again.

In eight trusts there are agreements whereby the trust recognizes all the unions active in the trust and negotiates with them all. The pattern in the larger trusts is an overall joint consultation/negotiation body with standing working groups broader than the functional groups under the Whitley system but nevertheless recognizing certain occupational differences. For instance at one trust there are four groups: nursing and midwifery; scientific, professional and technical; support; medical and dental. In two trusts the composition of these groups has not been finally determined. In three trusts, both small, there are no formal arrangements for functional groups.

The predominant pattern (16 agreements and 64 per cent of respondents with written agreements), however, is for a prime union system. All the unions active in the trust are recognized for representation and collective bargaining, (with seats on a consultative/negotiating committee) but only a smaller number are on the negotiating executive (the names of the bodies vary with the trusts). So not all the staff organizations are at the main bargaining table.

When NHS managers began to consider bargaining machinery in trusts before the first trusts were established, they seemed to favour the prime union model, with all the active staff organizations having representational rights but only one organization for each functional group having bargaining rights. The rationale was that this would take account of the many occupational groups while making collective bargaining at a single table somewhat simpler[12].

Trust managers, however, have adapted that model. They have recognized all the unions for collective bargaining but specified a small number of seats on the negotiating executive. They have, in the main, left it entirely to the staff side to determine among themselves who should fill the seats and thus have the key negotiating roles. Two agreements set some parameters. They specify

that each broad functional group, such as nursing, support, should have a representative at the main bargaining table.

This adapted model saves managers from the opprobrium of decisions which are unlikely to please all the staff organizations, while also preserving managers' freedom if they wish to negotiate with an organization which is not at the single table about a minor matter affecting a discrete group of staff. At the same time these streamlined arrangements establish simplified bargaining structures (an objective of managers) and make the staff organizations bargain together. To misquote George Orwell, all unions are equal but some unions are more equal than others.

This adaptation may also be a response to union pressure for recognition of all the organizations active in the trust. Moreover *on paper* the degree of autonomy of the negotiators is circumscribed as they are selected by and are accountable to the full staff side. It is too early to conclude, however, whether this autonomy is circumscribed *in practice*. It can be argued that irrespective of any words in an agreement, negotiators at the main bargaining table can influence the direction of negotiations. As the negotiators develop expertise the gap between the prime unions and the other recognised organizations may widen.

Unusually three trusts have adapted the prime union model to follow the management structure, not the union structure. For instance East Somerset has a trust employee council (TEC) whose remit includes pay negotiations. ~~All the 18 unions active in the trust can be on the TEC on which are 14 staff~~ representatives elected from 14 constituencies essentially based on clinical directorates and locality. This led to one union (NUPE), which was active locally, filling half the seats while the RCN, which had not had a high profile locally but claimed 400 members among the trust's 1,500 employees, only having one seat. (It has been agreed that the TEC's effectiveness should be reviewed after it has operated for a year.)

One trust, Homewood, follows the prime union model in that it recognizes eight staff organizations but has four staff side seats on what is called the Homewood partnership forum. Unusually, however, in the event of failure to agree there is provision by way of a joint reference for pendulum arbitration which shall be binding. (There is some debate about whether this represents a no-strike deal.) It is noticeable, however, that Homewood apart, only three agreements mention arbitration, but of a conventional (not pendulum) kind and only as an option to be considered.

Full-time officials' roles in trusts vary considerably, and unlike many private sector agreements, trust agreements often specify the degree of involvement of the full-time officer in negotiations. For instance seven agreements say full-time officials can be on the main pay and conditions committee. In contrast three agreements (in a manner reminiscent of in-house staff associations) say that only trust employees can take part in collective bargaining in trusts. In nine agreements full-time officials can attend and speak, but not vote. (In one agreement the full-time officer can be a member of the negotiating team "initially" and in the remaining agreements the position of the full-time officer is not specified.)

Unions have tended not to oppose strongly these restrictions on full-time officers. They do not have the numbers of full-time officers necessary to service all trust bargaining and wish to encourage the development of the expertise of their lay representatives. Instead they have sought to increase the amount of paid time off available to their representatives for industrial relations duties. Also where agreements specify collective bargaining by trust employees only, this has led to some branch restructuring, for example from a DHA to a trust basis.

Substantive Outcomes

Most staff in trusts have not yet experienced any major changes to their pay and conditions of service and so far there has in the main only been a tinkering at the edges[13]. For instance the provisions relating to removal expenses have been altered (essentially to give managers more discretion) in a number of trusts, or the two NHS statutory days of holiday, instead of being taken on the prescribed days, have been incorporated into annual leave entitlement.

An important factor in the development of local bargaining is whether or for how long national terms and conditions will remain, but the messages are unclear. Cautiously, the Health Secretary, Mrs Virginia Bottomley, referring to the pay review body for nurses, said that it "will continue to provide a benchmark. We shall continue to discuss with the service, with the professions, whether there is a better way forward"[14].

Less cautiously, the then deputy personnel director of the NHS, Mr Peter Johnson, has predicted an eventual end to national bargaining and the demise of the pay review bodies, envisioning trusts unconstrained by "traditional professional boundaries... with reward systems which provide an incentive to *local* creativity" (emphasis added)[15].

A minority of trusts, however, have gone ahead and introduced more comprehensive changes to pay even though national arrangements are still in place. Often these new pay deals have been unilaterally determined by management. For instance Lincolnshire Ambulance service, as part of a move towards a two-tier service and changes to skill mix, introduced a single pay spine with effect from 1 April 1991. This included the creation of "health transport drivers" to carry out the work performed either by hospital drivers, who are ancillary staff, or by basic ambulance staff. Health transport drivers receive more pay than the former but less than the latter. On 1 April 1992 the pay spine was uplifted by 5 per cent and also certain paramedical staff allowances were incorporated into it. According to management, the pay rates on the spine reflect the local labour market.

Similarly Guy's in a non-negotiated deal, which management says reflects local labour market pressures, increased the pay of the lowest paid, with a supplement of £6 to 1,200 of the lowest paid staff (those earning less than £185 per week) with effect from 1 January 1992 plus a £30 bonus for Christmas 1991.

Other examples of unilateral determination by management are at South Devon Healthcare, where a new job evaluated pay structure has been introduced and at Northumbria Ambulance Service. There the new pay regime applies to

accident and emergency crews, managers, control and administrative staff (70 per cent of the trust's employees). They were offered, (and the majority have accepted) improved pay rates with effect from 1 April 1991 in exchange for new working arrangements (for instance seven 12-hour shifts per fortnight instead of five 8-hour shifts a week for accident and emergency staff) and consolidation of overtime and shift allowances.

In addition, both Dorset Mental Health and Homewood Trust unilaterally introduced single pay spines covering all their employees. In practice few chose to go on to this spine

Northumbria Ambulance Service, West Dorset Mental Health and Homewood have since concluded agreements on recognition and bargaining arrangements. Management argue that they did not want to avoid collective bargaining on trust pay altogether. The initial unilateral determination, however, enabled them to set the framework with a free hand. It also served to shift the balance of power away from the unions and underline the message that the unions could not count on playing a part in determining pay. For their part the unions argue that trust management soon realized there was no real alternative to collective bargaining.

Moreover although unilateral determination of trust pay is a noticeable feature, it is not the only pattern. Examples of negotiated deals include the pay/grading of clerical X-ray staff at the Wirral Trust, an ancillary bonus scheme at Royal National Orthopaedic, a performance related pay scheme at Dorset Community, and the pay/grading of telephonists at the United Leeds Teaching Hospitals Trust (albeit within Whitley parameters).

More significant is the trend in trusts towards a new single pay spine going from cleaner to consultant, using one job evaluation system for the entire spine. According to the RCN, the Hay scheme is being considered in 26 first wave trusts. Arguably a single pay spine will reinforce loyalty to the trust, whereas pay determined according to functional group will serve to reinforce professional differences. A single pay spine, moreover, (unlike functional groupings) will be a marked departure from the national arrangements and will help in the development of a new organizational culture. Also, although a single pay spine is complex, it is consistent with other objectives of trust managers, notably the breaking down of job demarcations in the interests of flexibility, harmonization of conditions and single table bargaining. Last but not least a job evaluated pay spine can be a bar to equal value claims.

Against this it can be argued that a single pay spine, especially if it accompanies harmonization of conditions, can be expensive. Not only is it complex, but it is inflexible in that it is difficult (though not impossible) for a group of staff to be singled out and there is a danger with single table bargaining that a powerful union could negotiate a relatively large pay uplift, dragging other unions along on its coat tails. Nevertheless whatever the merits of such arguments, they have largely fallen on deaf ears.

Some unions, such as COHSE and NUPE, which represent qualified and unqualified staff, support the single pay spine concept. The stance of organizations which represent only qualified staff, such as the Royal College of Midwives, is unclear.

Throughout the public sector, and trusts are no exception, there is a move towards performance related pay (PRP). Managers see this as part of a strategy

to change the organization's culture to make it more consumer-aware, to empower line managers who will be responsible for performance assessment, to foster the view that pay can be independent of union action and to target and fine tune pay according to managerial criteria[16].

Indeed a few trusts have already embraced PRP for qualified staff. For instance, West Dorset Community, although not having a formal recognition agreement with the unions, had negotiations on PRP to take effect from 1 April 1992 for individuals on or above about £15,000 a year, for example the more experienced nurses and physiotherapists. Although the unions have not recommended it, the trust will impose it for new staff and the unions will be consulted on the performance criteria. In addition three trusts are known to have introduced PRP for consultants.

Nevertheless this is an area where managers are on the whole moving slowly, as PRP can conflict with staff notions of equity and fairness. Also many see PRP as interlinked with a new pay spine with progress upwards dependent on performance not annual increments. Indeed the Homewood recognition agreement states as "guiding principles" the development of the single pay spine and the concept of performance management and performance related pay.

Just as significant in the medium and long term are the labour use strategies adopted by trusts. Roger Dyson, in a paper which has been widely circulated among NHS managers, argues that such a strategy enables the achievement of both improved remuneration and substantial reductions in labour costs, in other words the circle to be squared[17].

Already some examples can be found in first wave trusts of short-term contracts and changes in skill mix to increase the proportion of support staff to professionals. At the forefront is the Central Middlesex which describes itself as a patient-focused hospital. It has already removed job barriers between ancillaries, although at the time of writing it had yet to tackle the jobs of qualified staff.

Summary and Conceptual Framework

While some trusts are exhibiting few departures from the traditional model of industrial relations in the NHS, the predominant pattern is single table bargaining and negotiations effectively carried out by representatives of only some of the recognized staff organizations and this fulfils a management objective of streamlining.

Unitarist approaches, however, can be found with examples of a single union deal, no union recognition and limitations on the negotiating role of full-time officers.

On the substantive front, an emphasis on unitarism can also be found with examples of deals unilaterally determined by management and the introduction in a few areas of performance related pay for the individual, although there are also examples of negotiated deals.

A continuum can be conceived of mould breakers at one end, essentially adopting a unitarist approach and traditionalists at the other proceeding cautiously and essentially adopting a pluralist approach. The majority of first wave trusts

cluster towards the middle, for instance adopting a prime union system. Some trusts may be mould breaking in some respects, but not others, and thus difficult to place on the continuum (for example Homewood has pendulum arbitration but now recognizes all the unions and negotiates pay with some). Nevertheless, despite such difficulties, the concept may be useful.

This in turn raises the question of why a trust has a certain position on the continuum. There is anecdotal evidence to suggest that the approach of the chief executive, and the personnel director, is material. This can partly explain why, for instance, United Leeds Teaching Hospitals trust is proceeding cautiously but Lincolnshire Ambulance trust is not. Moreover when the chief executive of the Bradford Hospitals trust, Dr Mark Baker, left at the end of 1991, his successor put a number of radical, draft employment policies on the back burner.

Another important factor is the strength and unity of the trade unions at trust level. Health Service staff organizations have a history of competition particularly between TUC- and non-TUC-affiliated unions. Essentially competition between these two categories is unlikely to be affected by the planned merger of three TUC affiliates (COHSE/NUPE/NALGO). Some trust managers have turned this competition to their advantage (for example at Northumbria Ambulance Service). Other trust managers have capitalized on union weakness (for example at United Bristol Healthcare). In contrast, in a few cases, notably Cornwall Community and West Dorset Community, the unions have united and mobilized to the extent that trust management withdrew a radical agenda[18]. Case studies, which are beyond the scope of this article, may throw further light on this and illuminate underlying tensions and alliances between different groups/actors.

Finally a key question is whether a trust's position on this continuum is static. Although this question can only be answered speculatively, it is strongly arguable that, because of the nature of the external factors, at least some trusts may move towards the mould breaking end. The first of these factors is financial: the amount of money the trust obtains in the internal health market and the extent of the pressures on trust management for savings on staff costs.

The full rigours of the internal market were not introduced when the first trusts were established. For instance DHAs continued to be funded on the basis of the services they had provided to their residents and not on a capitation basis; DHAs and trusts mainly concluded block contracts giving patients access to a range of services, as opposed to cost and volume contracts, i.e. a given number of treatments/cases; and there were few GP fundholders. As the internal market bites, however, trust managers may look more critically at their staff costs and take a more radical approach in respect of staff numbers, utilization of staff and terms and conditions.

A major consideration will be the state of the labour market but at the time of writing it seems that there will be few recruitment and retention imperatives leading managers to want to uplift terms and conditions. Another consideration is whether the Whitley machinery and/or the pay review bodies continue. At the moment these national arrangements provide a floor for staff formerly employed by the health authority and a benchmark for the terms and conditions of new staff. But these do not seem secure.

A second factor is the legal regulation governing the transfer of staff. At present this constrains trusts but it will decline in importance over time as trusts employ new staff.

Whatever the external factors, we are entering a period in which long established IR procedures and processes in the NHS are being abandoned by trusts. At this juncture, although it is too early to gauge the precise extent of the changes, they appear to be far-reaching.

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Prospects for industrial relations in NHS trusts

Susan Corby

This article looks at management's intended strategies in the new self-governing trusts in the National Health Service. It finds that many managers are planning far-reaching changes affecting union recognition and pay systems. Because of the relative weakness of the staff organisations, they are likely to meet little effective opposition.

This article concentrates on the intended strategies of personnel managers in the new self-governing trusts (SGTs) of the National Health Service (NHS). It also considers whether the strategies are likely to be realised, given the views and approaches of the trade unions and professional associations.

The article is essentially speculative: the first trusts were only set-up 1 April 1991. Thus it cannot describe and analyse what happened and centres on stated intentions and a few early developments. Despite these limitations, however, the thinking of managers in this, the largest organisation in the country is significant for a number of reasons. First the Conservative Government sees the trusts as the leading edge of the NHS with increasing numbers being established each financial year as more and more directly managed units (DMUs) become SGTs. As the Secretary of State for Health, Mr William Waldegrave said:

It is very likely that over time, trust status will be the natural model for units providing patient care[1].

Secondly, the Labour Party has said that, if it were in government, it would bring trusts

back into district health authority control[2]. The managers themselves, however, and the cash constrained, technologically changing environment in which health care must be delivered are unlikely to alter materially. So present management attitudes in trusts and the approaches of the staff organisations will be relevant to an understanding of industrial relations in the NHS in the 1990s whatever the political complexion of the government.

This article finds that, in a number of trusts, managers are set to embark on far-reaching changes to union recognition, with only some of the staff organisations currently recognised nationally, being recognised by trusts for collective bargaining. Many trust managers also plan wide-ranging changes to skill mix and to pay systems for all except junior doctors.

Because of the relative weakness and divided nature of staff organisations in the NHS, management will more than likely be able to effect alteration with little or no effective opposition. Before looking in detail at the industrial relations plans of managers in SGTs, however, the context is briefly described: first industrial relations in the NHS and then the Government's measures.

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Industrial relations in the NHS

The NHS was established in 1948. It is funded by central government out of sums allocated annually, but the government is not the employer. Regional and district health authorities (and SGTs from 1 April 1991) are the employers of over one million NHS staff. Moreover it is labour intensive, with over 70% of costs attributable to the wages bill.

The NHS has well defined national arrangements for the determination of terms and conditions essentially through one of two ways. On the one hand over half the NHS staff have their pay determined by the government upon recommendations received from one of the three pay review bodies covering doctors and dentists; nurses, midwives and health visitors; and professions allied to medicine. Their other terms and conditions, apart from pay, are determined by collective bargaining in the Whitley machinery. On the other hand nearly all the remaining NHS staff (eg, administrative and clerical workers, ancillaries, ambulance staff, scientists) have *all* their terms and conditions decided through Whitley, (the main exceptions being the general managers and the new health care assistants).

The Whitley machinery comprises one general and ten functional Whitley councils but the inter-relationship between Whitley and the pay review bodies in practice is often complex. For instance the 1988 regrading of nurses, midwives and health visitors originated from calls for a new pay structure from the pay review body and then agreement on the nursing and midwifery staffs negotiating council on the grading process and the grade definitions, with the pay review body then taking this on board and affixing salaries to grades[3].

A feature of the NHS is the plethora of occupational groups and the even greater multiplicity of staff organisations which all have a place in the national arrangements. Inevitably this leads to fragmentation. There are 35 staff organisations recognised by Whitley but this includes trade unions, professional associations and bodies whose members essentially are not NHS employees (eg. the Company Chemists Association Ltd). In addition craft unions, such as the Electrical Electronic Telecommunication and Plumbing Union (EETPU), negotiate outside the Whitley system directly with the Department of Health.

Trade unions in the NHS are TUC affiliated and tend to be much larger organisations who recruit both inside and outside the NHS. For instance the National Union of Public Employees (NUPE) has 635,000 members drawn from the NHS and also other areas such as local government and education. Professional associations only recruit NHS and private health care professionals. The Royal College of Nursing (RCN) apart, they represent a small proportion of the NHS workforce, but often have a high density among an occupational group, eg, the Chartered Society of Physiotherapists among physiotherapists.

There is a considerable degree of rivalry among the staff organisations, where more than one TUC affiliated union represents members in the same occupational group and where in addition there is competition for members between the professional associations and TUC affiliated unions. Midwives, for example, can be represented by the Royal College of Midwives (RCM) NUPE, RCN, the Confederation of Health Service Employees (COHSE), the white collar section of the General Municipal Boilermakers and Allied Trades Union (GMB), the National and Local Government Officers Association (NALGO) and the Association of Supervisors of Midwives (ASM).

It is not known what proportion of NHS employees are members of staff organisations, largely because it is alleged that many are dual members belonging both to a professional association and a trade union and so a count of the membership of organisations does not provide a measure of density. It is thought, however, that union density in the NHS is lower than that in the public sector as a whole. For instance Bain and Price estimated it at 55% in 1974 as opposed to 75% in the public sector[4] and Portsmouth Hospitals estimated in 1990 that 50% of its workforce was organised[5].

For some time NHS managers have criticised what they see as the inflexibilities of national pay and conditions arrangements and believe many Whitley Council agreements reinforce occupational pressures to maintain different ways of working[6]. These views, however, are not shared by the staff organisations which favour a continuation of national bargaining[7].

Nevertheless, nationally determined arrangements have become much looser in the last few years. The regrading agreement for

nurses, midwives and health visitors, the agreements for speech therapists, works officers, scientists and medical laboratory scientific officers have comprised loose grade definitions and/or flexible pay points at the end of each pay scale. In addition the 1990 pay spine for nurse managers, as well as having loose grade indication factors, did not include any service related increments, only performance pay. Nor did it contain any procedure for appeals about grading beyond the unit to regional and national level, reinforcing the fact that the application of grading is determined locally. Moreover the pay review body for nurses, midwives and health visitors in 1989 recommended a pilot scheme of local pay supplements where there were local recruitment and retention difficulties and the new category of health care assistant is not to be covered by any national system at all.

This greater flexibility in national arrangements, however, has not so far led to greater joint determination locally but to unilateral management determination locally. For instance management has determined how nursing and midwifery staff fit into the new grade definitions with each individual member of staff (represented by a union official) only able to appeal against a management decision. It is against this review of the main strands of industrial relations in the NHS that we now turn to the Government's measures.

The changes

The Conservative Government's statutory changes to the NHS are set out in the National Health Service and Community Care Act 1990[8]. These changes, the Government claims, extend patient choice, delegate responsibility to the providers of the services and secure best value for money[9].

The key feature of the change is the separation of the purchasing of health care from the provision of health care, the so-called purchaser/provider split.

The government's objective is to create an organisation in which those who are actually providing the services are also responsible for day-to-day decisions about operational matters... District health authorities (DHAs) can then concentrate on ensuring that the health needs of the population for which they are responsible are met; that there are effective services for the prevention of diseases and the promotion of health; that their population has access to a range of high

quality, value for money services; and on setting targets for and monitoring the performance of those management units for which they continue to have responsibility[10].

Up to April 1991 DHAs were funded by the Health Departments on the basis of the services managed. The intention is to move towards a capitation based system for most services so that DHAs will be funded according to the size of their local population weighted, for example, according to age and morbidity rate. This method of funding is not being introduced overnight and in the financial year 1991-92 DHAs will continue to be funded on the basis of the services currently being provided for their residents.

As a purchaser of health care services, the DHA uses its funds to make non-legally enforceable contracts with providers. The main contracts are between a DHA and DMUs within the district; a DHA and other district health authorities (where for example there is special, quicker or cheaper treatment available) a DHA with SGTs (either the local hospital or one outside the district); and a DHA and the private sector. In addition certain general practitioner practices are fund-holders providing some of the services their patients need but also contracting with any or all the above and, somewhat anomalously in the context of the changes, acting as both provider and purchaser.

There are three types of contract: block contracts, cost and volume contracts and cost per case contracts. Initially, largely because of the lack of information on costs, block contracts will predominate. Essentially they are contracts to give patients access to a range of facilities and services, formalising the old arrangements where a DHA funded hospital facilities throughout the year. Nevertheless the block contracts will break new ground in that they will specify how the provider's performance is to be measured (eg. through waiting times).

Cost and volume contracts provide for a baseline of activity, defined in terms of a given number of treatments or cases, beyond which funding is on a cost per case basis. The guaranteed baseline assists the hospital in its planning and the specification of a maximum volume of cases assists the DHA in expenditure control. The cost per case contract would be used, for example, where the DHA does not have a regular contract with a specific hospital or where additional treatments are purchased from a contracted

hospital outside the terms of the contract. There is no prior commitment to the volume of cases under such a contract[11].

As well as having a new role, DHAs have an altered composition. They have been halved in size with their representative function ended and with local authorities' right to appoint members abolished. The new DHA brings together executive and non-executive members providing, the Government claims, 'effective decision making'[12].

As part of the Government's measures, the Act establishes self-governing trusts, directly accountable to the Secretary of State, not to health authorities and providing services to NHS patients free at the point of delivery and funded almost wholly by the tax payer[13]. Each SGT is governed by a board of directors of normally 11 people: a chairman plus equal numbers of executive and non-executive directors. The executive directors include the general manager, the financial and medical directors and the nurse manager. Like those on DHAs, the non-executive directors are chosen 'for the contribution they personally can make to the effective running of the hospital and not to represent any interest group'[14]. Unlike health authorities, who are obliged to conduct part of their business in open meeting, SGT boards are required only to have an open *annual meeting* at which a report on the previous year's performance and accounts is presented[15].

SGTs have autonomy on financial matters that is more far-reaching than that of DMUs[16]. For instance SGTs own and can thus dispose of or acquire assets, (important in areas where property prices are relatively high) usually retaining any surpluses after meeting financial obligations. They can use surpluses to invest in buildings or equipment and can make cases for capital development direct to the NHS management executive. (DMUs go to their regional health authority which acts as a sieve).

Nevertheless SGTs do not have unlimited financial freedom. They must make a 6% return on their assets and can only borrow funds subject to a limit set by the Secretary of State annually and in 1991-92 only a third of trusts are being allowed to borrow[17].

In fact SGTs have much greater autonomy on personnel matters than on financial matters. They employ all their staff directly. They can set their own terms and conditions, devising industrial relations procedures,

irrespective of NHS national agreements and arrangements and can apply these to new staff, although transferred staff have a right to retain national provisions (see below).

The Secretary of State for Health, Mr William Waldegrave, announced in Parliament in December 1990 that he had approved 56 SGTs to start on 1 April 1991 and approval for a further trust was announced in Parliament in January 1991. In addition 111 units are working up applications for 1 April 1992, together with two units that were going forward in 1991 but have asked for deferment and seven that were unsuccessful in the first round but are expected to reapply[18].

The first trusts vary from a hospital or a group of hospitals to an ambulance service or community services. Moreover there is geographical variation. In Mersey over half of the region's acute beds are in trusts but there are no trusts in Wales or Scotland yet[19]. The Department of Health cannot estimate how many staff were employed by SGTs on 1 April 1991 but the author calculates about 150,000 ie, about 15% of all NHS staff.

The Conservative Government foresees more and more units becoming trusts. It has said:

Health authorities will want to concentrate on their role as purchasers of health services. It will be increasingly anomalous for them also to manage provider units[20].

Transfer of staff

As in education, the Conservative Government is restructuring some employment relationships in the NHS. Staff who transfer from health authority employment to trust employment have a new employer, but otherwise they retain their existing contracts and their continuity of service. In addition they continue to be subject to subsequent changes in nationally negotiated agreements and to receive NHS pay awards.

There has been conflicting legal opinion on whether the transfer of undertakings regulations apply. It is doubtful whether SGTs come within the scope of the regulations, as they are not commercial undertakings. On the other hand the European Community (EC) directive on business transfers, from which the regulations stem, does not only cover commercial undertakings. It is strongly arguable, therefore, that the transfer of a non-commercial undertaking between

two organisations which are 'emanations of the state' could be relied upon by individuals employed by a public body, claiming that the EC directive applies directly to them over and above any UK regulations, through the principle of direct effect[21].

Perhaps that is why the Government has told NHS managers to assume that the transfer of undertakings regulations apply and therefore transferred staff can retain nationally negotiated arrangements for as long as they choose to do so, provided they stay in the same job and, for instance, are not promoted or leave[22].

Against this legal background it is important to gauge labour turnover. There are, however, both geographical and occupational variations. For instance in Brighton DHA hospitals ancillary staff turnover is 40% and nursing and midwifery staff turnover just over 20% a year[23]. In Leeds Western DHA hospitals ancillary staff turnover is 27% and nursing/midwifery turnover is 11%[24].

Union recognition

The transfer of undertakings regulations provide for the transfer of all collective agreements, including those covering union recognition. As a result, the new employer has to recognise any independent trade union (and professional associations in the health service meet the legal definition) to the same extent that the union was recognised by the former employer.

The former employer, the health authority, however, has not recognised trade unions in respect of negotiations over pay and other terms and conditions as these are almost entirely determined at national level. Indeed the health authority has only consulted with staff organisations on a limited range of matters. So if the trust wishes to seek changes to union recognition arrangements after the transfer, for instance to negotiate on trust pay rates, it is free to do so. Such arrangements would apply to new trust employees, to promotees and to existing staff who choose to accept the new arrangements.

In this context it is perhaps not surprising that NHS managers began to consider bargaining machinery in SGTs long before the first SGTs were given the go-ahead by the Government. For instance Trent regional health authority, in a paper first circulated in 1989, sets out three models for personnel

managers: single union deals, a multi-union arrangement as currently operated in the NHS and prime union recognition, whereby one staff organisation only is recognised as the prime bargaining agent for each functional group.

An accredited organisation which does not have prime union status, ie. is not recognised for collective bargaining, could be afforded recognition in respect of representation on discipline, grievance and disputes issues. Although Trent regional health authority does not explicitly recommend a model, it seems to point to the prime union system, ie. first and second class recognition[25].

North West Thames regional health authority is more explicit and detailed in its advice. For instance it says if a trust recognises all the staff organisations that have members within the trust, this could make collective bargaining unwieldy, while a single union deal takes no account of the many, different occupational groups within the NHS. It comes down in favour of the prime union model and it suggests this could be achieved by balloting staff and asking them to choose the staff organisation they wish to negotiate on their behalf. Management, however, would need to make decisions on such matters as staff groupings and ballot rules[26].

A number of trusts have indicated they wish to adopt a prime union model. These include Epsom Health Care Trust,[27] St James's University Hospital Leeds,[28] and Doncaster Royal Infirmary and Montagu Hospital Trust[29].

Moreover, Mid-Cheshire Hospitals concluded a joint agreement embodying the prime union approach shortly before the trust started up. All 15 staff organisations active within the trust are recognised for the purpose of individual representation and are entitled to lay representation on the new 'participation and consultation team'.

Collective bargaining, however, is carried out on the pay and conditions executive. It comprises management and one lay representative, nominated annually, from each of five staff representative groups: medical/dental, paramedical, admin/clerical, technical, ancillary/maintenance; and two from the largest group—nursing/midwifery; plus a lay secretary. Each staff representatives' group covers a number of occupations. For instance the paramedical group covers

physiotherapists, occupational therapists, dieticians, orthoptists and radiographers. No organisation with 5% of members of the staff covered by the group can be refused entry to the group. One full-time official for each of the six staff representative groups may attend the pay and conditions executive as an advisor, as may a representative of any organisation with more than 10% of members across the trust, which is not otherwise on it[30].

A few trusts are considering a single union deal. For instance Northumbria Ambulance Service, which has only a few occupational groups, has told staff it will 'be looking to offer a single organisation pay bargaining recognition ... for the 1992 negotiating round'[31]. And the Bradford Hospitals Trust plans seven or eight prime unions by autumn 1991 and at the same time a staff association for consultation purposes, with the staff association being involved in collective bargaining with sole negotiating rights in perhaps four or five years[32].

A number of trusts plan to recognise all the staff organisations active within the trust (eg. Leeds General,[33] Central Manchester[34]). They note the strong sense of occupational identity within the NHS and the fact that many organisations have long traditions and they want to enlist the support of all the staff organisations rather than risk alienating them. Walsall Hospitals Trust, moreover, concluded an agreement when the trust was established, on the multi-union model, recognising all the 16 staff organisations active in the trust for individual representation *and* collective bargaining through a joint staff committee[35].

Union approach

A key question is whether management will be able to introduce new recognition arrangements, such as the prime union or single union model, or whether union opposition will prevent them.

There are a number of points to note here. First, there is no tradition of solidarity among staff organisations in the NHS. They often compete for the same members and only some of them are TUC affiliated and thus covered by the TUC's rules preventing poaching, (the so-called Bridlington principles). This enables management to divide and rule, if it so chooses. Also if a staff organisation is given prime union status, it

may welcome what it sees as a competitive advantage in the membership struggle, rather than coming to the defence of an organisation not being recognised for collective bargaining. In any event this appears to have been a factor at the Mid-Cheshire Trust.

Secondly, staff organisations vary considerably in size. COHSE, NUPE, NALGO and the RCN have a large number of members in the NHS. In addition, NALGO, NUPE, and COHSE plan to merge in 1993 and their motives include the need to make economies of scale and to enhance their presence in the NHS. The new union would have a nursing membership of 215,000, as well as substantial membership among other NHS groups. Anticipating the merger, a NALGO checklist for negotiators in trusts advises branches to ensure that approaches for recognition are made jointly with COHSE and NUPE[37].

In contrast there are many small professional associations in the NHS. For instance the Society of Chiropodists has 5,500 members but estimates that only just over half work in the NHS. Even though the eight organisations which are not TUC-affiliated and represent paramedicals have formed a loose umbrella organisation, it is unlikely that they would be able to champion the recognition rights of each other effectively, because of their small size, if they were to attempt to do so.

Moreover many of these small professional associations tend not to be set up for trust bargaining: they have a national office but not local ones and, in any single trust, the organisation will only have a few members and potential members. For instance at St James's University Hospital (a large trust) there are 60 physiotherapists, a small pool of members and potential members from which the Chartered Society of Physiotherapists can draw a steward. As Lord McCarthy said 15 years ago:

I fully appreciate that most of the very small organisations can claim that they represent the specialist interests of clearly identifiable occupational groups. It seems to me that it is impossible to carry out these kinds of task (of negotiation and consultation) from the resources provided by the subscriptions of a few thousand members[38].

These comments are still valid and many of the large unions, eg. the GMB, with a small number of members in the NHS would share these problems. They would not find it cost effective to service members in trusts and

would have a small pool from which to draw a steward.

Thirdly many professional associations are ambivalent about their industrial relations function. For instance the general secretary of the RCM sees the industrial relations role as secondary to the professional one. Given this attitude it is hard to envisage the RCM putting up a prolonged fight for recognition. Nor is the RCM unique among health service professional associations. Many of them, unlike the RCM, are also certifying bodies, which give them a *raison d'être* even if they lose a large part of their industrial relations role, and have many members outside the NHS—as much as half in the case of the Society of Chiropractic and the Chartered Society of Physiotherapy.

Finally there is said to be a large degree of dual membership in the NHS, with staff belonging both to a TUC affiliated union and a professional association outside the TUC. Where this is the case staff may be satisfied if one of the two organisations to which they belong is recognised for collective bargaining. In any event it is unlikely that the issue of how many organisations gain recognition will call forth much interest among staff. They are likely to see recognition as in the organisation's interest, rather than theirs.

Claydon, looking at union derecognition, found that the key factors were 'the quality of membership support and the degree of attachment to the wider union which enables organisational resources to be mobilised in defence of collective bargaining'[39]. He did not, however, look at union specific derecognition where certain unions have bargaining rights withdrawn and transferred to another union. Nevertheless it is likely that the factors Claydon has highlighted in derecognition cases also apply to union specific derecognition. If so, trust managers are likely to meet little or no opposition.

Pay and skill mix

All the trusts are planning to move away from national pay rates, for all except junior doctors, after they have built up the necessary expertise. To this end regional health authorities are holding pay bargaining seminars and plan to produce pay data for trust managers. (Some unions are doing the same.) In addition trusts have increased the

size of personnel departments and the status of the personnel director, many of whom are on SGT boards.

But the move to local bargaining is subject to constraints. Staff who were employed by the health authority will be able to remain within Whitley and the pay review bodies, whatever offer the trust makes. Such staff are unlikely to adopt trust terms unless they are advantageous; but a deal which is advantageous to staff would raise the trust's health care costs—an important factor in the so-called internal market where contracting prevails.

It is, therefore, not surprising that personnel managers in SGTs are being advised *not* to offer better terms than the national ones for those staff that are easily recruited and retained[40]. And the Mid-Cheshire Hospitals Trust has said:

It will be an early priority of the Director of Manpower . . . to determine those staff groups whose employment packages require early attention[41].

One way of squaring the circle is to reduce the number of jobs and/or to change the skill mix and to have fewer senior staff, even though such staff receive pay above the national rates. A regional health authority manager predicts that trusts will change their skill mix and that health care assistants will take over a number of the duties presently carried out by qualified nurses. He says:

In this way the Service will be able to make best use of higher-qualified staff[42].

In other words, nursing care will be broken down in a manner reminiscent of scientific management and the writings of F.W. Taylor between skilled and unskilled nursing tasks[43]. This would depart from the practice of holistic care where, for example, the qualified midwife helps a new mother to the bathroom and builds up a relationship with her, so that the mother feels confident to talk about her breastfeeding problems upon which the midwife can then give professional advice. This breaking down of tasks between different workers also contrasts with many areas of private sector manufacturing (often a model for SGT personnel directors) where management is seeking more, not less, functional flexibility. Where unions such as COHSE and NUPE represent both nurses and health care assistants they

are likely to go along with changes in nursing skill mix, provided some of their members receive higher pay[44].

Nursing is not the only area where management in SGTs are planning changes to pay/skill mix/working practices. The Lincolnshire Ambulance Service is phasing in a two tier service over one to two years from April 1991. It plans 90 health transport drivers to carry out the work presently performed either by hospital drivers, who are ancillary staff or basic ambulance staff. Health transport drivers receive more pay than the former but less than the latter. While existing staff have their basic ambulance Whitley rate protected, new staff are being offered the trust rate.

This pay rate has not been negotiated with the unions because, says the personnel director, the trust does not want to rush in to recognition arrangements[45].

Northumbria Ambulance Service, also in a non-negotiated deal, offered accident and emergency crews, managers, control and administrative staff (70% of the Trust's employees) new terms and conditions effective from 1 April 1991 (the start date of the Trust) in exchange for new working practices. (The remainder, essentially basic ambulance staff, were not given an option and thus stay on Whitley.) Accident and emergency staff, for example, were offered a 21.3% increase in basic salary in return for working three 12 hour shifts one week followed by four 12 hour shifts the next (84 hours per fortnight), instead of five eight hour shifts a week (80 hours per fortnight). Seventy per cent of those offered Trust terms had accepted them by 1 April 1991[46].

Even where SGTs depart from national rates, they are likely to remain an important reference point for the next few years at least as they will apply to all staff in DMUs and some staff in SGTs. Leeds General, for example, says it will parallel Whitley 'very closely' for staff on trust contracts. Nevertheless it is making some changes: removal expenses and the carry-over of holiday entitlement is subject to managerial discretion not Whitley provisions and rights of appeal on grievances and disputes are limited to the trust[47].

Trust managers may also want to encourage existing staff to accept new appeal arrangements that do not go beyond the trust. The assistant chief executive for Mer-

sey regional health authority has said:

The more able and imaginative of the early NHS trusts are likely to use their freedom to seek the introduction of arrangements for appeals within the trust. In return they will be prepared to engage in constructive discussions about how outstanding appeals can be bought out and the costs recovered through adjustments to the skill mix[48].

Trusts can also keep their labour costs down (even if they provide pay above the national rates to some staff) not only by changing the skill mix but also by contracting out services hitherto provided by NHS staff. Typically in many hospitals cleaning is contracted out but further contracting out would enable trusts to make additional savings. Trent regional health authority, in its paper for managers in SGTs, says:

There would also be non-core groups who, although essential to achieve objectives, would be more vulnerable to considerations of contracting out. This group would comprise of hotel services, portering, pharmacy, laboratories, personnel administration, salary and wages, audit, supplies, financial services[49].

Pay systems

As well as planning changes to pay rates and to skill mix, many trust managers are also planning changes to pay systems. For instance they are planning to replace service-related increments with some form of performance pay, despite the administrative costs of such a move[50]. They assume that it will enhance staff motivation, although others claim that there is no research evidence to support this[51].

Personnel directors of trusts are also actively considering job evaluation schemes: both spines for groups of staff and also in the longer term a single, trustwide scheme. For instance Northern General Hospital talks about job evaluation in its application document[52] and the Royal Free Hospital Trust, London, says that in the long term it wishes to move towards 'a common system of 10-15 relatively wide and overlapping ranges', to foster rationalisation and simplification[53]. The three West Dorset trusts have already begun to place new staff on a single salary point based on the mean of the salary scale for the Whitley grade plus payments which would have been made under Whitley for weekend and shift work-

ing. These salary points are to be used as the basis for a pay spine[54].

There seems to be a consensus among management on the need for harmonisation in trusts, for instance in respect of annual leave, sick leave and hours. This is largely because these conditions have been determined by the separate functional Whitley councils and this has led to differences which management regard as undesirable[55]. However even among staff covered by the same functional council there are variations. It is realised, though, that harmonisation is expensive because in practice it entails staff on inferior conditions being harmonised upwards. So rapid moves are unlikely.

A few trusts are planning to introduce cafeteria benefits for the bulk of employees ie. the system which allows each employee individually to choose the elements in a compensation package of a given value. Cafeteria benefits are to be found in the USA covering large workforces. So far they have not taken off in the UK although some senior staff, inside and outside the NHS, have a degree of choice in their benefit package.

Already West Dorset Hospitals Trust is offering senior and middle management total choice in their remuneration package. All other employees get a choice of three fixed packages built around pay, holidays and sickness benefit[57]. It is argued that increased employee choice in respect of benefits enhances employee commitment to the trust.

NALGO, however, has voiced its opposition to cafeteria benefits in the NHS, saying they will put a strain on personnel departments and lead to inequalities among staff in the same grade, for example over annual leave entitlement[58]. Undoubtedly, however, a move to cafeteria benefits would make it difficult to build up solidarity amongst an occupational group within a trust.

Although only a few trusts are planning cafeteria benefits, SGT managers generally are looking at the whole employment package, not just pay. For instance, St. James's University Hospital, Leeds, details paternity leave, health screening, preferential loan schemes and measures to help staff combine work with a family such as job sharing, career breaks and back to work training programmes[59].

Such moves, however, can be made by DMUs and are not precluded by Whitley which has, for example, reached a framework

agreement on career breaks. Also Leeds Eastern health authority, of which St. James's is the major hospital, produced a comprehensive policy on job sharing in 1988. Hospital managers at St. James's however, have not always introduced job sharing, eg, in midwifery, despite pressure from the RCM.* In this context it is hard to escape the conclusion that many trust managers are now actively considering using the freedom that was previously allowed to them. It is too early to gauge, however, whether trust status in fact leads to a shift in managers' thinking (especially those below the top), motivating them to adopt positively the provisions that were in no way ruled out by national agreements, but which they chose, for whatever reason, not to use.

Pay leapfrogging?

There is some dispute about whether a move to trust terms and conditions will lead to pay leapfrogging. The Social Services Select Committee has said:

It is feared that in the current climate of specific skill shortages greater local flexibility will result in spiralling wage increases as self-governing hospitals compete for scarce staff[60].

Similarly the Shadow Health Secretary, Mr Robin Cook, foresees two trends: a depression of the wages and conditions of unskilled NHS staff and simultaneously competition for the labour of doctors and nurses with high qualifications[61].

Already there are signs of a spiral in the pay of chief executives, but the personnel director at the Leeds General Trust, Mr Peter Drummond, thinks the dangers of pay leapfrogging are over-estimated[62]. He points out that although midwifery sisters in Leeds have received lower pay, since 1988, than their counterparts in nearby Huddersfield, York and Dewsbury (because of the loose national grading definitions) there has not been an exodus. He says this is because non-pay factors, such as one's colleagues, boss and work environment, are important

* On return from maternity leave a midwifery sister applied for job sharing in 1989, together with a colleague. But the director of nursing and clinical services said her post was not suitable. In a letter to the RCM he said: 'The unit has a large number of staff midwives eligible for promotion and this [sister's] post is seen as suitable for staff prepared and ready for a post offering a challenging and demanding career move.'

determinants[63].

It should be noted, however, that this debate does not relate to junior doctors. Trusts, for the moment at least, are not being allowed to depart from junior doctors' national pay and conditions, although this does not apply to senior medical staff, such as consultants. The Secretary of State for Health has said:

It is in the best interests of both patients and junior doctors that all junior doctors in training [eg. house officers, registrars] continue to have national pay and terms and conditions of service regardless of whether they are employed by an NHS trust or a DMU.[64]

Conclusions

Labour law has been subject to political change but, up to now, industrial relations in the NHS has largely been untouched whatever the political complexion of the government. With the National Health Service and Community Care Act 1990, at the heart of which is the establishment of SGTs, this is no longer the case.

The Labour Party has said, if it wins a general election, it would reverse the Conservatives' so-called NHS reforms. It would end compulsory competitive tendering. It is committed to a national minimum wage, which would benefit low paid health workers, and to national agreements to 'provide the framework for local flexibility'. It would retain the pay review bodies and bring back into the management of the health authority 'any hospital or other service which has opted out of the local NHS'[65].

The Conservative Government regards SGTs as mould breakers and a number of trust managers are set to embark on widespread changes affecting union recognition, pay determination machinery, pay rates, skill mix and pay and benefit systems. In so doing, they are unlikely to meet effective resistance from the staff organisations.

Management's intentions could be thwarted if Labour forms a government. Nevertheless, even in that event, it would be surprising if at least some of the industrial relations changes, conceived in the context of self-governing trusts, do not continue to inform management thinking in the units restored to health authority control. If so, the developments set in train by the advent of SGTs could leave a lasting mark on industrial relations in the NHS.

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4 The Ethics of Equal Opportunities

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Chapman, R (ed) (2000) Ethics in Public Service for the New Millennium, Aldershot, Ashgate.

This chapter looks at the ethics of equal opportunities in the UK public service from two perspectives: the state in its role as employer and the state in its role as government. Equal opportunities is used as shorthand terminology for efforts to achieve equality of opportunity in respect of gender, ethnic origin and disability, though the terminology can be extended to cover age, sexual orientation, and religious affiliation. Inevitably, however, this chapter concentrates on gender and ethnic origin as these areas of equal opportunities have been the subject of public discussion and public policy for a much longer period of time than other areas.

There are three main arguments in this chapter. First, equal opportunities was only seen primarily as an ethical issue for a short time, essentially from the 1960s to the early 1980s. In the first half of the twentieth century government considered that it was legitimate to discriminate against women and ethnic minorities and from the mid 1980s, equal opportunities has mainly been justified on business grounds, not ethical grounds. The second argument is that equal opportunities is threatened by delegation and decentralization in the civil service and local authorities, yet the equality dimension has largely been ignored in discussions about the ethical implications of public service restructuring. The third argument is that equal opportunities is undermined by a key ethical value in public service: selection and promotion on merit. The conclusions place these arguments in a wider context because the ethics of equal opportunities illustrate many key issues in the debates about public service ethics.

An ethical issue?

Discrimination legitimate

The Organization for Economic Co-operation and Development (OECD, 1996) looking at the public service cross-nationally, says that ethos is 'the sum of ideals which define an overall culture' and ethics are 'the rules that translate characteristic ideals or ethos into everyday practice'.

Ethical standards are not, however, absolute. Thus in the first half of this century, the dominant ideology held that it was legitimate to discriminate against women (though the women's movement dates back to the nineteenth century), and discrimination against ethnic minorities was disregarded. Thus it was not until 1928 that women obtained the vote on the same terms as men (i.e. from age 21). When the Sex Disqualification (Removal) Act 1919 was passed, a proviso was inserted to allow restrictions to be placed on the mode of admission of women into the civil service and their terms and conditions of service, which essentially were inferior to their male colleagues. Treasury regulations of 1921 required women civil servants to be single or widowed and it was lawful to reserve to men particular appointments in the civil service which were based abroad (Fredman and Morris, 1989). In the early 1920s a few local authorities paid women the same as men for the same work but a case was brought against the London Borough of Poplar, alleging that an equal pay regime was a misuse of the rates. The House of Lords held that Poplar's payment systems were unlawful as they were guided by 'eccentric principles of socialistic philanthropy, or by a feminist ambition to secure the equality of the sexes'.¹

During the second world war the number of women in civilian employment rose and equal pay became an issue. A royal commission was established but its majority report, issued in 1946, supported continued inequality. Women were held to be less reliable, efficient or adaptable and lower pay was socially desirable as a stimulus to marriage. 'Given employer hostility to equal pay, trade union equivocation and a lack of leadership from the Labour government, the royal commission's view prevailed' (Pope, 1991, p.56).

Equality is ethical

Although the number of women in employment fell after the war, the figures for 1946 represented an increase of 15 per cent over those for 1939 (Pope, 1991) and the state began to act as employer. In 1946 it abolished

the marriage bar for the home civil service, though not until 1972 for the foreign service (Hart, 1998). In 1955 it introduced equal pay for men and women into the civil service on a phased basis, as did local government for its employees, including teachers. In 1970, the government set up a committee, chaired by Mrs E. M. Kemp-Jones, to make recommendations to enable women to combine a career in the civil service with their family responsibilities. Its recommendations were virtually unprecedented elsewhere in Britain at that juncture. They included the provision of part-time work and a civil service workplace nursery, as well as relatively generous maternity leave (Civil Service Department, 1971). A joint management/union group, set up in 1980 to review progress, produced a report (Management and Personnel Office, 1982) which became the basis for a programme of action on women in the civil service.

The government's stance was a mixture of pragmatism (a desire to retain trained staff) and to be a good employer. The civil service unions too, who first established an equal pay committee in 1927, mixed pragmatism (males not wishing to be undercut by women providing cheaper labour) and social justice principles (Mortimer and Ellis, 1980).

The concentration on discrimination against women broadened to encompass ethnic minorities after an influx from the late 1950s of economic migrants, mainly from the West Indies, Pakistan and India. The campaign for the removal of racial discrimination, however, was less influenced by pragmatic considerations than the campaign for the removal of gender discrimination. The former 'was not based on the trade unions, but rather on organizations of ethnic minorities and sympathetic liberals and the Labour Party and other left wing organizations' (Hepple and Fredman, 1986, p.171). Accordingly, the Labour government introduced the Race Relations Acts 1965 and 1968 on social justice grounds. These Acts did not provide individuals with a right to litigate. Instead they had to go to the Race Relations Board whose main duty was to conciliate, but they were a start.

The importance of key ministers embracing a social justice perspective cannot be overestimated. For instance Barbara Castle, when Employment Secretary, claimed that the Equal Pay Act 1970 was enacted largely because of her determination to overcome what she called 'the macho-male chauvinists in the Treasury' (Castle, 1993, p.409). Similarly Roy Jenkins when Home Secretary, after seconding a human rights lawyer, Anthony Lester, as a political adviser, sponsored what became the Sex Discrimination Act 1975 and the Race Relations Act 1976. These Acts provided individuals with the right to go to an employment tribunal, extended the concept of discrimination from direct discrimination to

indirect discrimination (a practice which is seemingly fair but is discriminatory in operation), and established the Equal Opportunities Commission and Commission for Racial Equality with strategic enforcement roles.

Meanwhile, during the 1970s and early 1980s many metropolitan authorities were proactive on equality, especially left-wing authorities such as Camden, Islington and Lambeth, as well as the Greater London Council (GLC), until its abolition in 1986. Both in their role as employer and in their role as government, these local authorities devoted much attention to fairness and justice, considering equal opportunities an integral part of this ethical stance, not only in respect of women and ethnic minorities, but also gays and lesbians. The GLC, led by Ken Livingstone, was at the forefront of the drive to equality, setting up a range of political and organizational structures to support its policies. In addition, it (and its sister organization, the Inner London Education Authority), copied the practice of contract compliance from the USA federal government. In 1983 the GLC made compliance with equal opportunity procedures and practices a condition of securing a contract to provide goods and services. It established a contract compliance equal opportunities unit to review the practices of contractors seeking retention on an approved list, thus encouraging companies to adopt an ethical stance out of self-interest. A study (Institute of Personnel Management, 1987) found that the GLC's unit had some success, resulting in significant numbers of companies changing their employment procedures and practices and the GLC's approach being copied by 19 other local authorities. The Conservative government, however, implemented the Local Government Act 1988 which outlawed contract compliance with regard to sex and circumscribed it in respect of race.

The business case

In the economic/political context of the 1980s and 1990s, arguments for equal opportunities based on moral obligations and social justice gave way to arguments based on business need. These arguments dovetailed with the emphasis in the 1980s on enterprise in a competitive global economy. In the public services they also dovetailed with the new right theories of bringing market disciplines into governmental activities, with the emphasis on efficiency and with the new public management (Corby and White, 1999).

It is important to stress that this chapter is merely saying that there was a shift in the dominant rationale and mobilizing vocabulary during the

1980s (Dickens, 1999). It is not suggesting that one can pinpoint a specific time when there was a marked change, nor that there can be only one rationale for equality at any one time. The social justice case for equality, especially gender equality as noted above, was often tempered by pragmatism. Similarly, from the 1980s although business case arguments dominated, social justice arguments were sometimes made. For instance the Cabinet Office, reporting in 1993 on the progress made under its programme to achieve equal opportunities for ethnic minority civil servants puts forward two rationales: organizational effectiveness and social justice (Cabinet Office, 1993).

The business case for equality centres on competition in the labour market. Organizations, it is argued, can secure higher quality employees if they recruit and select on the basis of merit, not stereotype; recruit from non-traditional sources such as women returners or ethnic minorities; provide family friendly measures to aid retention; and train and promote those in the lower grades where often women and ethnic minorities disproportionately cluster. Another strand of the business case focuses on organizational effectiveness. Organizations make better decisions if managers are diverse and have different perspectives because of their gender and ethnicity and reflect their customers' gender and ethnic mix. Although business case arguments are to be found now throughout the public and private sectors, their prevalence in the public sector represents a clear break with the past. The private sector has always been profit oriented and focused on business needs, while until the 1980s the ethical case provided the predominant rationale in public service.

In theory, these business case arguments, based on self-interest, are likely to be persuasive, offering a way to get equality identified as a strategic issue and trigger action. In practice, however, as Linda Dickens (1994) points out, the business case argument is contingent and partial and can lead away from equality, as well as towards it. For instance, where organizations experience labour market pressures they might opt for contracting out rather than recruiting from non-traditional sources, or opt for a higher rate of labour turnover rather than establishing a workplace nursery.

This chapter, however, does not focus on the pros and cons of the business case argument for equality. Rather it is concerned with noting the shift of the justification for equality from one primarily based on ethics and social justice to one based on the business case and added value. This new justification is most clearly seen in Opportunity 2000, a campaign to increase the quality and quantity of women's employment opportunities which is 'firmly built on the business case'. Opportunity 2000 says that its members:

are convinced that the business case for attracting, retaining and developing women will continue to be compelling well into the next century and see this as a key component of business excellence and global competitiveness (Opportunity 2000, undated).

Launched in 1991, Opportunity 2000 had 61 founding members including four civil service departments: Cabinet Office, Employment Department Group, HM Customs and Excise and Inland Revenue. In addition the Department of Health signed up on behalf of the National Health Service. At the end of 1998 there were 335 members. These included 19 local authorities and 32 civil service departments/agencies. A companion organization, Race for Opportunity, was established in 1995. Three years later, 16 of its 83 member organizations were civil service departments/agencies or local authorities (Race for Opportunity, 1998).

Business case arguments, however, do not only emanate from these campaigns. They also emanate from government and importantly have not been abandoned despite the change in the political party in power as a result of the 1997 general election. For instance, the Inland Revenue sponsored a research project focusing on how equal opportunities for the organization's employees adds value to the business and particularly resulted in improved customer service (Cabinet Office, undated). The then Trade and Industry Secretary, Peter Mandelson, said that an organizational focus on ethnic minorities is not 'linked to social altruism but to hard commercial return value' (Race for Opportunity, 1998, p.1). The White Paper, *Fairness at Work* (Department of Trade and Industry, 1998), when proposing family friendly legislation, used competitiveness and business effectiveness as the rationale.

The demise of the social justice case can also be seen in legislation. In the 1970s British equality legislation was far in advance of European Community (EC) law. Since the 1980s, however, this has changed. The UK government has seemingly become less concerned about furthering equality through legislation and more concerned that business can operate without legislative restrictions. Thus it has only legislated where it has been necessary to comply with EC requirements, for instance the amendments to the Equal Pay Act and the Sex Discrimination Act in 1983 and 1986 respectively and the parental leave provisions in the Employment Relations Act 1999. Similarly, the government did not institute the progressive Fair Employment Act (FEA) 1989 in Northern Ireland because of ethical considerations. Many large US corporations, after lobbying from Irish-Americans, refused to invest unless there was new legislation to further equality of opportunity for Catholics in Northern Ireland (McCormack and O'Hara, 1990).

Organizational restructuring and equality

The second argument is that devolution and decentralization are detrimental to progress on equality and that discussions on the ethical implications of organizational restructuring in the public services have centred on such issues as public accountability and the division of responsibilities between ministers and public servants. Rarely, however, have equal opportunities been included in such ethical considerations.

As readers know, unified bureaucracies in UK public services have been broken up into semi-autonomous units: executive agencies in the civil service, direct service organizations in local authorities, locally managed schools in education and self-governing trusts in the National Health Service. The effect on equality of these looser structures has been detrimental as the centre has been disempowered and can no longer drive policies forward. It can set a framework, disseminate good practice and act as a forum for the exchange of information but it cannot directly control. The Cabinet Office, for instance, does not carry out equality monitoring itself and although the civil service management code requires departments/agencies to monitor staff's gender, ethnicity and disability, they do not always do so comprehensively or adequately. Indeed, the Cabinet Office has expressed its concern as it is not able to assess which approaches promote equal opportunities and which get in the way. It says that departments 'report that they collect such data, but have provided little evidence to suggest that they have analysed the data, or where they have, have acted on the results of the analysis' (Cabinet Office, undated, p.10). Yet although the Cabinet Office says that it wants to improve the situation, its proposed remedy, revising the guidance on equal opportunities monitoring, is unlikely to be effective.

Allied with this organizational restructuring is delegation to the line. This increased delegation of authority is aimed at encouraging managers to manage, i.e. to be less risk averse and it has been argued that line managers' enhanced powers in such traditional personnel management areas as recruitment and promotion are favourable to equality. As the report of the advisory panel on equal opportunities in the senior civil service said, line managers traditionally considered 'personnel responsibilities in general and equal opportunities in particular to be someone else's problem. The new approach reinforces the responsibilities of line managers' (Cabinet Office, 1995a, p.25).

The research evidence, however, is less sanguine. For instance, a report on civil service promotion procedures found that many line managers were unaware of the potential for discrimination on grounds of gender,

ethnicity and disability in staff appraisal reports and that there were departmental variations in the provision of training for line managers and in briefings for promotion board members and chairs (Stewart, 1993). Updating this research, the author points out that most of the recent changes in promotion procedures have resulted in greater delegation to line managers, which will allow even greater variations (Stewart, 1996). Similarly, research for the Equal Opportunities Commission found that managers of direct service organizations, the semi-autonomous units within local authorities, appeared to have a poor understanding of equal opportunities and that compulsory competitive tendering had had a more adverse impact on women than men in terms of numbers employed, hours worked and pay levels (Escott and Whitfield, 1995).

This delegation of responsibility to line managers is taking place at the same time as cost pressures on the public services increase. This has a harmful effect on equality for four reasons. First, central equality resources are being cut back and there is less support for line managers. For instance, at Manchester City Council, separate equality units for race, gender and disability were first merged and then abolished; and in 1996, according to the Council of Civil Service Unions, the equality unit in the Cabinet Office was reduced with a loss of a third of its staff. Second, cost reductions have led to lower staffing levels and organizational delayering. As women and ethnic minorities are concentrated at the base of departments/agencies or local authorities and at the lower levels in each occupational hierarchy, a reduction in promotion opportunities means that there is a decreased likelihood of changing the organization's gender and race profile. Also, organizational delayering often results in heavier workloads and longer working hours for those still in post and as a result many women have 'to make a stark choice between their careers and their families' (Coyle, 1995, p.60). Third, funding restrictions have encouraged short-termism, leading particularly to a decrease in equal opportunities training, according to Mary Coussey, who looked at two civil service agencies and two local authorities. She found that line managers, concerned to meet their financial targets, saw reductions in equal opportunities training as a relatively easy option (Coussey, 1997). Fourth, cost pressures are leading to economies on staff costs. For instance some local authorities, such as Camden and Islington, have cut maternity benefits and leave for dependants (Incomes Data Services, 1997).

An ethical conflict

The third argument in this chapter is that the conventional ethics of the civil service, which entail the principles of recruitment, selection and promotion on merit (see Chapter 7 for an account of the establishment of these principles), and the ethics of equal opportunities at best sit uneasily together and at worst are incompatible. These tensions, however, seem not to be appreciated. Thus the OECD says:

Human resource policies promote ethics by ensuring fair and equitable treatment of employees ... Recruitment and promotion by merit reflects fairness. These processes can also meet equity criteria by ensuring that all social groups are represented in a public service (OECD, 1996, p.40).

Similarly, in the UK, the Permanent Secretary of the Office of Public Service has said in a foreword to a progress report on equal opportunities in the civil service that 'equality of opportunity for all is one of the foundations on which the civil service is based' (Cabinet Office, undated, p.2), a comment incidentally representing a misconceived view of history – see above. The report goes on to say: 'It is a fundamental principle that recruitment to the civil service is by fair and open competition and that selection is on merit' (Cabinet Office, undated, p.26). To take another example, John Major's administration re-emphasized the government's commitment to ensuring equality of opportunity and, in the same document said: 'The principle of selection and promotion on merit must represent the bedrock of a [politically impartial] Civil Service' (Cabinet Office, 1995b, p.3).

Admittedly, on its face, selection and promotion on merit go hand in hand with the civil service's equal opportunity programmes which revolve around removing discrimination. Such discrimination distorts the operation of the labour market but recruitment, selection and promotion based on fair procedures, it is assumed, will enable the best person to win and will generate a random distribution of ethnic minorities and women within the occupational hierarchy. As Nick Jewson and David Mason point out, however, this is a liberal concept of equal opportunities (Jewson and Mason, 1986). It concentrates on the rules of the game and leads to an emphasis on training to instruct employees in the formal procedures, to circumvent neglect and manipulation and to increase employees' understanding of other cultures and gender differences. To promote equal competition, liberals seek to remove obstacles to the operation of the

labour market, so they adopt family-friendly measures at the workplace, advertising campaigns to reassure candidates from disadvantaged groups that their applications will be judged on their merits, and what is in British law called 'positive action' – training open only to disadvantaged groups such as women-into-management courses and outreach work encouraging disadvantaged groups to apply. This is starting gate equality in that it brings disadvantaged groups to the start of the 'race' on an equal footing with other competitors; but the race can only be won by the fastest. Selection and promotion is on merit.

In contrast, radicals argue that the evaluation of 'ability' and 'talent' is not politically or morally neutral. Those in positions of power define desirable knowledge and skills and the liberal concept of the meritocratic rise of the talented reinforces social inequalities. Accordingly, radicals would argue that it is legitimate to intervene in the workplace to ensure a fair distribution of rewards, for instance to waive entry or promotion requirements for women and ethnic minorities. Equality is achieved when there is equality of outcomes and the removal of discrimination and starting gate equality will not produce equality of outcomes because the 'race' will not be won by the disadvantaged, even when they have been the subject of remedial measures when adult.

The civil service employs liberal approaches to further equal opportunities and insists that recruitment and selection is on merit but paradoxically measures progress on equality by equality of outcome, a radical measure. Not surprisingly, this conflation and confusion leads to disappointing results. Thus as mentioned above, the civil service adopted a programme of action for women in 1984, a liberal programme, but it regards statistical advances as 'key indicators of progress' (Cabinet Office, undated). In 1984, when the programme was launched, women comprised 6 per cent of those with responsibilities equivalent to what is now called the senior civil service. The comparable figure in April 1998 was 16 per cent, an improvement certainly, but a slow one. In 1998 only 1.6 per cent of staff at senior civil service level were ethnic minority staff, compared to 1.4 per cent in 1989, the first year civil service ethnicity data was available (Government Statistical Service, 1999). The Civil Service Commissioners, who are charged with the responsibility for maintaining the principle of selection on merit on the basis of fair and open competition, show disappointment when they say:

While we are confident that our selection procedures at all stages are demonstrably fair and objective, we would wish to see more applications for senior civil service jobs from ethnic minority candidates and more achieving success (Civil Service Commissioners, 1998, p.11).

The government's stance on equality on grounds of race and sex is different from its stance on equality on grounds of religious affiliation in Northern Ireland. Under the Sex Discrimination Act and the Race Relations Act, quotas are outlawed and only limited so-called positive action is allowed, essentially training for disadvantaged groups and outreach work. In contrast, in Northern Ireland (after pressure from USA corporations – see above), the government recognized that liberal measures would not necessarily yield significant outcomes and that radical approaches towards equality would have to be adopted under what was termed 'affirmative action'. Accordingly the FEA defines affirmative action in the following terms:

In this Act 'affirmative action' means action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic, community in Northern Ireland by means including:

(a) the adoption of practices encouraging such participation ...

Although fair participation is not defined in the Act, it is argued that it must mean equality of outcome, ie overall Protestants and Catholics are employed at all levels in proportions approximating to their number in the population and that any practice aimed at achieving fair participation, including tempering the merit principle, is lawful (McCrudden, 1992). More recently, the Patten report on the future of the Royal Ulster Constabulary recommends recruitment quotas, i.e. that recruits to the Northern Ireland police force should be drawn on a 50:50 basis from the Catholic and Protestant communities (Independent Commission on Policing for Northern Ireland, 1999).

The tempering of the merit principle on grounds of gender is also creeping into European Union law which takes priority over UK law. The European Court of Justice (ECJ) in a case centring on the civil service law of the German regional government of North Rhine-Westphalia,² held that it is not contrary to the Equal Treatment Directive for qualified women to be given preference for promotion where there are fewer women than men at the level of the relevant post. Although their decision is not clear and unambiguous the ECJ says:

As the Land and several governments have pointed out, it appears that even where male and female candidates are equally qualified, male candidates tend to be promoted in preference to female candidates, particularly because of prejudices and stereotypes concerning the roles and capacities of women in working life.

In addition, the 1997 Treaty of Amsterdam provides that:

With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any member state from maintaining or adopting measures providing for specific advantages to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

This will allow, but not require, member states to adopt radical measures to promote equality and to temper the merit principle and, for instance, would allow all women shortlists for candidates to be Members of Parliament, a practice which the Labour Party tried before the 1997 general election until an employment tribunal held that the practice was unlawful.⁹

The British civil service, however, so far has given no signs of even recognizing that the ethics of equality and the traditional ethics of the civil service may not be compatible. Thus it does not seem to have started to discuss whether the merit principle should be tempered on grounds of gender and ethnicity (unlike the public service in the USA).

The wider context

The ethics of equal opportunities illustrate key issues in public service ethics generally. This chapter first suggested that equality was only seen as an ethical issue for a short time, the 1960s to the early 1980s. Before then it was considered legitimate to discriminate and since then equality measures have largely been justified by business need and not on social justice grounds. But ethical standards are not absolute in public service and, as Richard Chapman points out, 'what is acceptable in one place or at one time may differ from what is acceptable in another place or a different time' (Chapman, 1993, p.1).

Secondly, this chapter argued that equal opportunities may be undermined by the wider public policy context of delegation and decentralization in the public services. This illustrates Lawrence Pratchett's point in Chapter 8 that ethical decision making is shaped by the institutional context. It also exemplifies the point that public service restructuring, undertaken with the aim of improving managerial efficiency by bringing in market disciplines or proxies for them, may have ethically adverse results. As the OECD says: 'governments may have to decide if

there is an implicit trade-off between ethics and efficiency and where the appropriate balance lies' (OECD, 1996, p.22). This is illustrated by compulsory competitive tendering which has had a more adverse impact on women than men. (Martin Painter, looking at the Australian experience in Chapter 11, focuses on other ethical implications of contracting out.)

Thirdly, the chapter has argued that equal opportunities is threatened by a key ethical value in public service, recruitment and promotion on merit, but again this conflict of core principles is not uncommon. Two public service standards may be equally desirable but when taken together may conflict. For instance Lawrence Pratchett in Chapter 8 points to the potential conflict between openness in public administration and accountability of the civil service to the government of the day.

The chapter also discussed the liberal and radical approaches to equal opportunities, the former focusing on process and the latter on outcomes. Both John Major's and Tony Blair's administrations have placed great stress on the measurement of outcomes for the public services but this has not always gone hand in hand with the necessary measures to achieve such outcomes, for instance recruitment quotas in the case of equal opportunities. Whether the focus is on process or on outcomes is a central debate in public service ethics and is particularly salient in the context of the Human Rights Act 1998. Judicial review of administrative actions centres on process: illegality, irrationality or procedural impropriety⁴ but, as George Szablowski explains in Chapter 5, s.6 of the Human Rights Act centres on acts of public authorities, i.e. outcomes. Also, the liberal and radical approaches to equality provide different views of what is in the public interest: should the civil service be seeking starting gate equality or equality of outcome? The problem of defining the public interest is an important theme in public service ethics as Barry O'Toole demonstrates in Chapter 6 and he gives the example of the Iran/Iraq war when one department thought that the public interest was best served by selling as much equipment as possible and another department thought that the public interest was best served by not arming a potential enemy.

In short, the ethics of equal opportunities can be considered in their own terms but they can also be seen as a microcosm for ethics in public service. They effectively are a case study of how public service ethics are shaped by wider public policy objectives but these objectives, and underlying ethical values, vary over time. Moreover, objectives, although equally commendable, may conflict, for instance the objective of bringing market disciplines into the public services and the objective of ensuring that greater numbers of ethnic minorities and women hold senior

positions in public administration, or objectives relating to process and objectives relating to outcome. To pretend that there will not continue to be ethical problems is disingenuous, but both greater transparency and a consideration of the wider ramifications of public policy objectives could lead to a greater awareness of the ethical implications. Prime Minister Tony Blair has argued for integration and 'joined up' government (Cabinet Office, 1999). This should not just focus on public policy and the delivery of public services, it should extend to underlying values.

Notes

1. *Roberts v Hopwood* [1925] AC 578.
2. *Marschall v Land Nordrhein-Westfalen* [1998] IRLR 39, ECJ. This effectively overrules a previous ECJ decision, *Kalanke v Freie Hansestadt Bremen* [1995] IRLR 660, that such positive action was contrary to the Equal Treatment Directive.
3. *Jepson and Dyas-Elliot v The Labour Party and others* [1996] IRLR 116.
4. *Council of Civil Service Unions v Minister of the Civil Service* [1984] 3 All ER 935 HL.

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11

The National Health Service

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The National Health Service (NHS) celebrated its fiftieth birthday in July 1998. It was established to deliver healthcare according to clinical need and is free at the point of use. Essentially it is funded by central government out of general taxation, receiving £45 billion in 1996-7 of which over 70 per cent was spent on the costs of its one million staff. Throughout its 50 years the NHS has been beset by tensions. There is a tension between the government's wish to constrain public expenditure and its desire to provide a free service to its citizens. This tension is exacerbated on the one hand by an unwillingness of governments to raise taxes and on the other hand by growing public expectations, medical advances and the rising proportion of elderly people in the population. There is also a tension between managers, who generally focus mainly on financial targets and efficiency measures, and clinicians, who focus on professional autonomy; between the requirements of central accountability and discretion for local managers; and between the interests of the professionals/staff who work in the NHS and those who use its services. This chapter sets out to show how the Conservative governments from 1979 to 1997 sought to resolve these tensions, the problems caused and the impact on stakeholders. It then considers the impact of the Blair government and assesses its plans for further reform highlighting the potential difficulties with these proposals. It argues that the tensions inherent in the NHS remain and that the circle is unlikely to be squared.

Background

1948-1979

In 1948 the NHS was established as a tripartite structure. One part comprised self-employed contractors to the NHS: general practitioners, dentists, pharmacists and opticians. Another part comprised local government: councils remained responsible for preventative services, ambulances, health visiting and child welfare. The third and largest part comprised hospitals. Great Britain was divided into 19 (later 20) regions, each

controlled by a regional hospital board responsible to the Health Minister under which there were groups of hospitals (occasionally a single large hospital) presided over by a hospital management committee of part-time appointees with doctors heavily represented (Harrison, 1988). Each hospital was run by a triumvirate of hospital secretary, medical superintendent and matron, but from the outset doctors 'were the most powerful group in the Service' (Harrison *et al.*, 1992: 32). Not only did consultants have a key role in the NHS, they were employed by regional hospital boards, rather than by hospital management committees like other staff, and were allowed to use NHS facilities and part of their working time for private practice. Moreover, a committee of eminent consultants gave distinction awards to almost a third of its peers (NHS Executive, 1994).

A new organisational structure was introduced in 1974 which removed the local government limb of the NHS and created 14 regions in England, subdivided into 90 areas. (The structure and terminology varied slightly in other parts of the UK.) Rather more than half the areas in England were divided into two or more districts, each based on a district general hospital. Regional health authorities (RHAs) and area health authorities (AHAs) were established as statutory corporate bodies, whereas the district level was an administrative creation, but at each of these three levels there were multi-disciplinary management teams whose mode of decision-making was by consensus (Harrison, 1988). GPs and other independent contractors, although preserving their self-employed status, were brought under family practitioner committees which were accountable to the AHA. Finally community health councils were established in each district, charged with representing the views of the local population.

This new semi-unified structure coincided with a period of relative public expenditure restraint: in 1976 the Treasury introduced the 'cash limits' system of financial allocation to the public sector. This meant that the NHS was given an annual budget rather than being demand led. It also coincided with a struggle between the then Labour government and the medical profession over private beds in NHS hospitals, which resulted in their reduction but not extinction. Otherwise, the position of the doctors was essentially unchanged.

The 1970s were a period of union growth in the NHS, partly fuelled by the introduction of bonus schemes for ancillary staff and by the requirements of the 1971 Industrial Relations Act, under which the professional associations, such as the British Medical Association (BMA), the Royal College of Nursing (RCN) and the Chartered Society of Physiotherapists (CSP), registered as trade unions and adopted some of the organisational features of unions, such as stewards (Mailly *et al.*, 1989). In addition, the 1970s were a period of union militancy throughout the public sector, including the NHS (Winchester and Bach, 1995), culminating in 1978-9 in the so-called winter of discontent, which played a large part in the election of the Conservatives in May 1979.

1979–1990

The Conservative government considered that the NHS, like other public services, could and should be made more efficient. This would enable it to satisfy the public's demand for healthcare while limiting public expenditure. Influenced by public choice theories which claim that public servants' prime concern is to run a service that meets their interests rather than those of the public, it also aimed to reduce the power of the professionals. Accordingly during the 1980s it sought to put managers in the driving seat and to place managerial priorities ahead of clinical priorities.

First, it reorganised the NHS in 1982, retaining the 14 regions in England but abolishing the area level and creating 190 district health authorities and eight special health authorities. Second, the government introduced performance indicators in 1983, allowing health authorities to be compared on the basis of value for money. Third, in an attempt to get more for less, in 1983 the Conservative government set manpower targets for all staff, a policy that it continued intermittently, for instance requiring RHAs in 1993 to limit their staff to 200. Fourth, Rayner scrutinies, involving intensive study of a particular area aimed at improving efficiency, pioneered in the civil service, were introduced into the NHS. Fifth, health authorities were instructed to engage in competitive tendering for laundry, domestic and catering services (Mailly *et al.*, 1989). In part this reflected the Conservative government's ideological belief in the superiority of the private sector over the public sector and in part it was a pragmatic attempt to curtail the power of public sector trade unions and to reduce NHS expenditure.

Most important of all, in the 1980s, was the implementation of the recommendations of the NHS Management Inquiry report (Griffiths, 1983). The report diagnosed a lack of management. It said: 'if Florence Nightingale were carrying her lamp through the corridors of the NHS today she would almost certainly be searching for the people in charge' (Griffiths, 1983: 12). Accordingly, it recommended the ending of consensus decision-making and the vesting of the general management function in one person at each level – hospital, district and region – with a chief executive at the centre. In addition, on the assumption that policy and management could be separated, a part-time supervisory board was established, chaired by the Health Secretary, to determine strategy, with a full-time, multi-professional management board to oversee the implementation of strategy. Roughly one-third of the members of the management board had a commercial background, with the remainder from the NHS and the civil service. The chief executive, the first two of whom came from outside the NHS, and the general managers were employed on fixed-term contracts with a performance-related pay element, then a novelty in the NHS (Harrison *et al.*, 1992). In short, the Griffiths and related reforms set out to challenge the professional domination of the NHS but they did not dent clinical freedom.

Moreover, the supervisory board rarely met and the management board did not manage. It advised ministers (Day and Klein, 1997).

During this time, the industrial relations arrangements partly changed. As before, there was a multiplicity of staff organisations and Whitley machinery at national level, that is, joint management/trade union committees to determine terms and conditions of employment. Industrial action, however, in 1982 resulted in the withdrawal of collective bargaining for nurses, midwives, health visitors and the professions allied to medicine, and the introduction of a pay review body, which makes recommendations to government, which is the ultimate decision-maker. Doctors and dentists had had a pay review body since 1962, but this second pay review body resulted in less than half of NHS staff having their pay determined by collective bargaining.

The Internal Market

In 1990 the government set in train more fundamental changes to the structure of the NHS, under the National Health Service and Community Care Act. As before, the rationale was both ideological and pragmatic: the government considered that markets and the private sector led to more efficiency and thus could provide more with less. Allied to this, in an attempt to control NHS costs, the government wanted to assert managerial priorities over clinical ones and make managers operators, rather than administrators.

Accordingly, the Act created a proxy market with quasi-contracts. It separated the purchasing of health care from its provision, with purchasing carried out by district health authorities (health boards in Scotland) and general practitioner fundholders. Purchasers make annual quasi-contracts (non-legally binding agreements) with providers: NHS trusts (that is, NHS hospitals) and private hospitals. There are three types of such contracts: block contracts, cost and volume contracts and cost per case contracts. The first type, which initially predominated largely because of a lack of information on costs, gives patients access to a range of facilities and services. The second type, defined in terms of a given number of treatments or cases, is more sophisticated. The third type is used where the purchaser does not already have a contract with the provider, so-called extra-contractual referrals (House of Commons, 1990).

The 1990 Act not only adopted market mechanisms, it also brought in people from the private sector. For instance, both health authorities and trusts had to have non-executive directors who were mainly drawn from the private sector. In addition, the 1990 Act decentralised the NHS, introducing a looser, multi-divisional (M-form) structure found in many large private sector companies in place of a unitary (U-form) one (Williamson 1975).

Before the Act hospitals were part of district health authorities (DHAs) (health boards in Scotland) which reported to regional health authorities (RHAs) (except in Scotland) and ultimately through the management board to the Secretary of State. The Act, however, gave considerable powers to DHAs as they could choose with whom and on what basis to contract, setting not only prices for treatments or services but also standards of quality. As to NHS trusts, they were given considerable freedom on financial matters (for example, they owned their estates) but they had three duties: to break even, to earn a 6 per cent return on capital and to live within the external financing limit set by the Secretary of State. They were given considerable freedom on employment matters too. For instance they became the employers, whereas before 1990 most hospital staff were employed by DHAs with consultants employed by RHAs. Also trusts were empowered to set their own terms and conditions of employment irrespective of the national arrangements (NHS Management Executive, 1990).

In carrying out this restructuring, the government considered that decentralised units would be able to respond more flexibly to local circumstances but such a structure is not unproblematic. First, it sits uneasily with the political realities of ministerial accountability to parliament and government funding of the NHS. Second, the decentralised structure sits uneasily with legislation, particularly the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 1981, which limits trusts' autonomy in setting terms and conditions of employment. Under its provisions staff previously working in a unit which became a trust can continue to receive nationally determined terms and conditions for as long as they choose to do so, provided they stay in the same job. Third, as Day and Klein (1997) point out, this decentralised structure sits uneasily with the strengthening of the centre. In 1995, the NHS Executive became responsible for both management and policy. Before then there was a separation, a policy board (formerly a supervisory board) and an NHS management executive (formerly a management board). Also eight regional offices replaced 14 RHAs. The offices are part of the centre, staffed by civil servants, instead of being at arms length as were the RHAs, which were staffed by NHS employees.

Finance

One of the tensions in the NHS, as mentioned above, is between managers and clinicians. The former essentially give primacy to financial imperatives and the latter essentially to medical imperatives. The internal market was opposed by the BMA on the grounds that it might constrain doctors' autonomy and undoubtedly the introduction of quasi-contracts negotiated by managers gave the latter an enhanced role and led to a growth in their numbers (Corby, 1996). Quasi-contracts made clinicians aware of the cost of their treatments and to tie clinicians further into the contracting process, many trusts devolved their activities into clinical directorates, headed by a

clinician aided by a business manager. Then trust managers centrally used the information provided by the clinical directorates in the contracting process.

The internal market also sought to assuage the tension between the need to constrain public expenditure and the need to provide universal, free healthcare. To this end, the Act introduced a new system of capital accounting, which included depreciation and interest charges. The government argued that this would encourage hospital managers to make the most efficient use of their physical resources as contracts were to be agreed on a full-cost basis (that is, including the cost of capital) and cross subsidisation of services would not be permitted. It would also enable purchasers to make comparisons of cost and performance between different parts of the NHS and the private sector. Managers in trusts with higher-than-average capital costs could avoid losing contracts by disposing of surplus assets to reduce their capital costs and/or increase throughput to reduce the average capital cost per unit (Shaoul, 1998).

Although managers have done this, the circle has not been squared for two main reasons. First, labour is the main cost, not capital. Over 70 per cent of a trust's costs are labour. Second, there is a political commitment, in principle at least, to a full service, so managers of NHS trusts, unlike private hospitals, cannot vary their activity mix and concentrate on high-flow, relatively uncomplicated treatments. In short, although the Conservative government's reforms resulted in putting managers in the driving seat, it did not obviate debate about the level of state funding of the NHS.

Employment

The NHS is labour intensive, so any restructuring is likely to affect employees. The reforms of 1990 affected employees in a number of ways. First, although numbers in employment: did not alter greatly – the total non-medical labour force declined by 6 per cent over the period September 1986–96 – the numbers in certain occupational groups changed dramatically (Department of Health, 1997c). The decline in the numbers of nursing and midwifery staff in England, by 13 per cent, was mainly the result of the fact that from 1990 the figures have not included student nurses. The numbers of general and senior managers in England rose dramatically until 1995 when the basis of the statistics changed. Accordingly comparisons can only be made in the number of administration staff which includes all grades from clerical staff to senior managers. The numbers rose by 44 per cent in the 10 years from 1986.

The numbers in the professions allied to medicine (PAMs) rose by 34 per cent in the period September 1986–96 but the numbers of whole-time equivalent ancillaries fell substantially, by 49 per cent over the same period, reflecting competitive tendering for laundry, cleaning and catering services. Although the majority of contracts remained in-house, competitive tender-

ing enabled managers to alter working practices, to cut jobs/hours and to change shift patterns, undermining the unions and at the same time constraining costs (Kelliher, 1996).

In a drive to substitute cheaper labour for more expensive labour, a new grade of health care assistant (HCA) was introduced in 1990. Official figures differentiate between those who support nurses and those who 'mainly' work in hotel services, but trusts often do not make this differentiation and adopt a host of titles for this grade. Nevertheless, even though the official figures may not accurately reflect the position, this is now clearly a major new employment category (Thornley, 1998).

Numbers apart, the volatility engendered by the annual contracting process between purchasers and providers has had a significant effect on the type of employment contract offered by trusts. Previously most staff were employed on indefinite contracts with job security being a feature of NHS employment. According to a survey by Seccombe and Smith (1996) the number of nurses on short-term contracts has risen. They found that 5 per cent (seven per cent in community trusts) of all nurses and a quarter of those nurses who joined or returned to the NHS in the year 1995–6 were employed on short-term contracts in 1996. They also found that short-term contracts were being renewed: almost half of those on short-term contracts had been employed in the same trust for more than a year, despite the fact that most contracts were for less than a year. A survey in 1996 by Incomes Data Services (1997) also found that the use of temporary and short-term contracts had risen and that the average proportion of temporary staff (that is, not just nurses) was 7 per cent of the NHS workforce. It said (Incomes Data Services, 1997: 164):

The main reason cited by organisations for a rise in the proportion of temporary workers was uncertainty in funding due to the short term nature of the contracting process.

The volatility of the annual contracting process and cost constraints have also led to an increase in the number of casual staff in the NHS. Casuals are used to cover for absent staff, to match peaks in workload and to reduce paybill costs, as they usually do not receive pension and leave entitlements and are placed on the lowest increment. Statistics are collected on the number of so-called bank nurses and midwives. 'Banks' are internal, that is, trust run, employment agencies and thus cheaper than employment agencies outside the NHS. 'Bank' staff signal to the trust their availability for work in principle and when the trust is short-staffed it contacts a person on the bank to see if that person can come into work. Looking at whole time equivalent (WTE) figures, in 1990 there were 6580 bank nurses and midwives in 1990 and 15,610 in 1996 (Department of Health, 1997c). During that period the number of agency staff was fairly stable: just over 6700 WTEs in both 1990 and 1996. According to Seccombe and Smith (1996) one in four NHS nurses

reported undertaking other paid work in addition to their main job. Half were doing bank work and a further fifth were doing agency nursing. Also some trusts have established 'banks' for professions allied to medicine and for junior doctors. For instance Salford Mental Health Services Trust had 10 doctors of various grades in its 'bank' in 1997. Paradoxically, at the same time as seeking to cut employment costs and treating at least some staff as easily disposable, many trusts are seeking the Investors in People (IiP) standard, which entails making a public commitment to develop all employees to achieve business objectives, principally through training. IiP, however, has barely affected doctors, who have remained a privileged occupational group: GPs remained self employed, while consultants retained the right to work both in the NHS and privately, to use private beds in NHS hospitals and to obtain distinction awards, albeit managers became involved in a minor way in their distribution (NHS Executive, 1994).

As to pay, traditionally those employed in the NHS had their terms and conditions determined nationally, either by collective bargaining or by pay review bodies (see above). The 1990 changes, however, gave trusts power not only to employ staff but to remunerate them on trust terms rather than on national terms, though because of TUPE existing staff could choose whether to opt for the former or the latter. The Conservative government promoted local pay, for instance giving some trusts, such as Derby City General Hospital, money to develop a new, job-evaluated structure. It considered that local pay arrangements would enable trusts to react to their local labour market and to reward such objectives as flexibility. Importantly also, local pay arrangements could reinforce loyalty to the trust and help in the development of a new organisational culture, whereas national arrangements, with pay determined according to functional group, served to reinforce inter-professional differences and loyalty to the profession.

By 1996 nearly a third (31 per cent) of staff were on trust contracts (Incomes Data Services, 1997), mainly those recruited since the hospital had become a trust and those who had changed jobs. The proportion, however, varied from trust to trust. Trust employment contracts are of two kinds: those which mirror the national arrangements in most respects and those which are radically different. The latter category were common in ambulance trusts, and for healthcare assistants, a category of staff for whom there have never been nationally determined terms and conditions. According to Thornley (1998) nearly a quarter of HCAs were worse off than nursing auxiliaries on the national arrangements.

Also, as part of its drive to encourage local pay determination, the NHS chief executive in 1994 asked trusts to establish machinery for determining local pay (Langlands, 1994). As a result trusts set up collective bargaining machinery, often on a 'prime union', single-table basis, whereby all the staff organisations are recognised but a smaller number have seats on the negotiating executive, that is, the main bargaining table (Corby, 1992; Corby and Higham, 1996). With government encouragement, the pay

review bodies for nurses and paramedicals in 1995 recommended a national pay rise to be supplemented locally by top up pay. However, this led to a major industrial dispute, with the moderate RCN and Royal College of Midwives (RCM) repealing their rules prohibiting industrial action. The dispute was resolved through a complex agreement for 'local pay in a national framework' applying to all those covered by national arrangements, except doctors. In brief, this provided for national pay rates to be maintained at the same time as allowing local bargaining over part of the annual pay rise, but with an uprating mechanism through which national pay rates would be adjusted annually to reflect the outcome of the previous years local negotiations. In fact, these complex provisions for local pay, having been used in 1995 and 1996, were abandoned in 1997, just before the general election (Incomes Data Services, 1998).

Quality

Performance indicators (PIs) were introduced into the NHS in 1983. The Conservative government, however, decided to develop performance measures, the so-called *Citizen's Charter* (Prime Minister's Office, 1991), across the public sector including the NHS, and this spawned patients' charters in England, Scotland and Wales. The government saw these charters as a means by which the needs of customers could be given priority over the interests of the professions and they included, for instance, specific times for out-patient appointments and to be seen within 30 minutes of that time; the use of day-case surgery; time spent on a waiting list; ambulance service emergency response times; and a named nurse or midwife to be responsible for each patient's care. In addition, to aid the contracting process, the government introduced a purchaser efficiency index, essentially centred around 'bottom line' measures. The NHS Executive has monitored performance against the objectives set by government, while trusts normally have denoted a board member to be ultimately responsible for quality, often the Director of Nursing, and have established quality units.

Labour's 'Third Way'

After the general election of 1997, the Labour government published White Papers on the NHS in England (Department of Health, 1997a), Scotland (Scottish Office, 1997) and Wales (Welsh Office, 1998). The changes are limited as Labour has retained the purchaser/provider split, which it considers is the best way to make health care providers responsive to patient needs (Department of Health, 1997a). Similarly, it has retained decentralised management in semi-autonomous NHS trusts. Nevertheless the language

has changed: the purchaser/provider split is no longer called an internal market and quasi-contracts are now called funding agreements, not contracts.

Also, Labour is adopting and adapting GP commissioning, a practice introduced by the Conservatives under the so-called fundholding scheme but which had problems. Because fundholding operated outside a strategic plan, it led to fragmentation and gave advantages to some patients (whose GPs were fundholders) at the expense of others. Accordingly the government is requiring health authorities to provide strategic leadership by developing local health improvement programmes and it is introducing what it calls primary care groups for *all* GPs. As well as commissioning health care, primary care groups will have to work closely with social services and contribute to the health authority's local health improvement programme. Each group, which typically will serve 100,000 patients, is to be accountable to the health authority and will have a governing body which includes representatives of other professions such as community nurses and social workers, as well as GPs, so limiting the power of doctors, and its meetings are to be open to the public, so empowering patients – in theory at least. Furthermore, groups can take one of four forms. They can:

- act in an advisory capacity to the health authority;
- take devolved responsibility for managing the budget for health care in their area, acting as part of the health authority;
- become established as a freestanding body accountable to the health authority for commissioning care;
- become established as a freestanding body accountable to the health authority for commissioning care (as above) but with added responsibility for the provision of community services for their population, excluding mental health or learning disability services.

Primary care groups could start at any one of the four options but the government would expect groups over time to move to the last two forms, to be termed Primary Care Trusts, which may include some or all of the services previously provided by NHS Community Trusts. The White Paper (Department of Health 1997a: 27–8) says:

Such an approach provides a 'third way' between stifling top-down command and control on the one hand, and a random and wasteful grass roots free-for-all on the other. . . . It harnesses the strategic abilities of health authorities and the innovative energies of primary care commissioners for the benefit of patients.

The changes to the NHS in Scotland mirror those in England with some exceptions (Scottish Office, 1997). Scotland has never had a regional and district health authority structure. Instead it has had health boards which combine the functions of the English regions and districts. Under Labour it

is to have primary care trusts, typically comprising community hospitals and mental health services as well as networks of general practices in local health care co-operatives, and acute hospital trusts, with health boards monitoring and drawing up local strategy. In Wales there will be health authorities, NHS trusts and local health groups. The latter will be groups of practitioners commissioning healthcare initially on an indicative basis (Welsh Office, 1998). Both in Scotland and Wales, the Scottish Parliament and the Welsh Assembly respectively are to assume responsibility for health functions exercised by the Secretary of State at the time of writing.

Finance

In many respects the financial regime instituted by the Conservatives has been untouched by Labour's reforms. Thus NHS trusts still have three financial duties: to break even, to make a 6 per cent return on capital and to stay within the external financing limit set by the Secretary of State. Moreover, the system of accrual accounting has been retained. Labour, however, aims further to contain NHS expenditure in a number of ways. First it is expanding the private finance initiative (PFI), started by the previous government, whereby private sector consortia (usually a construction company, a bank and a facilities management contractor) design, build, own and operate hospitals for the NHS. The NHS trust pays the consortium a regular fee for a given period (typically 20–30 years) to cover construction costs, the rent of the building, the costs of support services and the risks transferred to the private sector. PFI obviates the need for capital expenditure by the government and by mid-1998 the Labour government had approved PFI schemes for 15 acute hospitals in England and three in Scotland (Socialist Health Association, 1998).

Second, it aims to reduce NHS expenditure by cutting the number of contracts for the purchase of health care. Thus individual cost-per-case contracts are to be abolished and annual contracts are to be replaced by longer-term three-year, or in some cases five-year funding agreements. In addition, with the replacement of GP fundholding by primary care groups, the number of commissioning bodies will be reduced from around 3600 to 500. The government maintains that its 'changes will reduce costs by £1 billion over the lifetime of the current Parliament' (1997 to 2002) and the money saved can be invested in patient services (Department of Health, 1997a: 8). It admits that primary care groups will incur management costs but believes that essentially such costs can be met by a redeployment of the GP Fundholding Practice Fund Management Allowance. Third, the Government is seeking to contain costs by shifting the financial responsibility on to GPs and other primary care professionals. This is because primary care groups will have a single cash limited 'envelope'.

Employment

The pay of NHS employees remains a central problem, given that the NHS is labour intensive and employs over one million people. This problem has been exacerbated by a tighter labour market in a stronger economy: the general election of 1997 coincided with shortages of staff nurses, especially in certain specialities (Brindle, 1998a). This was fuelled by the extra cash given by the government in 1998 to the NHS to bring down waiting lists, which has increased trusts' staffing requirements, by the falling intakes to pre-registration nurse education in the first half of the 1990s, and by the fact that more than a fifth of those on the nursing register were 50 or over in 1996 and thus coming within the scope of early or normal retirement (Seccombe and Smith, 1996). According to the RCN, there were at least 8000 nursing vacancies nationwide in November 1998 (Peston, 1998).

Second, there are equal value problems. The government has settled out of court some of the speech therapists equal value claims, including *Enderby v Frenchay Health Authority* after a decision by the European Court of Justice in 1993, as it is now clear that comparisons can be drawn across different bargaining groups. They can also be drawn across a service, for example, nurses in different trusts, as a result of the decision by the Employment Appeal Tribunal in 1996 in the case of *Scullard v Knowles*. Equal value claims are unlikely to be obviated by the Health Secretary's proposal for 'a system which combines national pay determination with appropriate local flexibility' or by the review body proposal in 1998, accepted by the government, for some discretionary increments on top of some of the scales for senior nurses, midwives and professions allied to medicine or even a single pay spine, as Unison has suggested (Incomes Data Services, 1998).

As to job security, many continue to be employed on short-term contracts and on the 'bank'. The Health Minister asked the NHS Executive to produce plans by October 1998 to cut the routine use of short-term employment contracts for health workers (Brindle, 1998b) but at the time of writing it is not known what these will be. Moreover, under PFI a considerable number of staff – certainly domestic, catering, maintenance, security and portering staff and possibly receptionists, secretaries and laboratory technicians – will be employed by private companies rather than the NHS (Socialist Health Association, 1998).

Nevertheless, it would be inaccurate to conclude that the change of government in 1997 has as yet made no positive change to NHS employment. NHS trust boards are to be required to review regularly whether they are doing enough to involve staff and are enjoined to work imaginatively through staff consultative committees and other local arrangements to improve dialogue about decisions affecting local health services' and to make sure that staff can speak out when necessary, without victimisation (Department of Health, 1997a: 51).

Quality

PIs, as noted above, were extensively used by the Conservative government. The Labour government maintains that under the Conservatives performance was driven by what could be readily measured, which distorted priorities in the NHS and failed to reflect the needs of patients. It does not, however, plan to jettison performance measures in the NHS. On the contrary, it plans to build on them as, like its predecessor, it sees quality improvements as a way of delivering value for money both in terms of cost effectiveness and clinical effectiveness, and thus also a way of assuaging the tension between the need to constrain public expenditure and the needs of patients. It also sees quality measures as a way of shifting the balance both from the autonomy of the professional associations, particularly doctors, to the interests of patients, and from local discretion to central control, as the centre will monitor trusts' performance.

Accordingly, the government is establishing a number of measures to improve quality (Department of Health, 1997a). First, it is setting up a National Institute for Clinical Excellence, whose membership will be drawn not only from the health professions but also from health economists and patient representatives. Second, it is developing a programme of new evidence-based national service frameworks setting out patterns and levels of service which should be provided for patients with certain medical conditions. These frameworks will be drawn up by government after discussions not only with the professions but also with representatives of users of the NHS. Third, it is creating a Commission for Health Improvement. As a statutory body at arms length from government, the new Commission will spot-check local arrangements to monitor and assure clinical quality, will be able to intervene to investigate and identify problems, and will have powers to remove chairs of NHS trusts and/or non-executive directors where there is evidence of systematic failure. Like the Institute, the Commission's membership will not only be drawn from the professions but also from patient representatives. Fourth, the performance of health authorities and trusts will be monitored in England by the centre through its regional offices and, fifth, Labour is developing a new national performance framework to provide an improved basis for the benchmarking of performance.

Finally, the government is instituting 'clinical governance', an initiative 'to assure and improve clinical standards at local level' (Department of Health, 1997a: 82). As a result, chief executives of trusts will not only have financial duties, they will also have a duty for the quality of care, and NHS trust boards will have to publish an annual report on quality assurance and investigate adverse events. Allied to this will be so-called professional self-regulation but as the BMA has said (1998: 7) 'the requirements of professional self-regulation and outcomes, driven performance assessment required by NHS management can be mutually incompatible.'

Conclusion

When the NHS was founded in 1948, the distinction between public and private health care was blurred. Consultants could work in both sectors and there were private beds in NHS hospitals. Over 50 years on, the dividing line between the public and the private has become even more indistinct in order to limit the demands on the public purse and boost managerialism. In particular, since 1990 NHS purchasers have been able to buy healthcare for NHS patients from the private sector and PFI schemes are resulting in long-term and major NHS involvement in commercial operations. This insertion of the private sector, however, has not been problem free. NHS staff may lack judgement or expertise and/or take risks with public money. Several examples have been uncovered recently in the NHS in respect of computer projects, with one (the Read codes program) involving a potential conflict of interest according to the National Audit Office (Wighton, 1998). Similarly, the Royal National Orthopaedic Hospital lost £3.5 million in a venture with a private sector firm for an incinerator (Brindle, 1995).

As noted above, there is a tension between the centre and local management discretion. In the last decade the purchaser/provider structure introduced by the Conservatives and only marginally changed by Labour has been partly justified by government on the basis of the need to turn local managers from administrators into operators and there has been much rhetoric about the devolution of responsibility. Local management discretion, however, remains constrained and the centre has increased its powers both as a result of structural changes and its increased role in monitoring the burgeoning quality measures.

There is also a tension between the interests of professionals and the needs of patients, and clinical freedom is increasingly being limited by the expansion of quality measures. Furthermore, there is a tension between the Government's desire to control public expenditure and the public's health care needs. The Conservatives tried to assuage that tension by giving a key role to managers whom it expected to deliver efficiencies. Labour has sought to control public expenditure by reducing the number of managers and making GPs take on a managerial role and act as the gatekeepers for health services. It assumes, however, that GPs will be equal to their managerial tasks and that they will want to act as managers. It also assumes that GPs will be willing to ration health care. According to *GP* magazine, which carried out a survey of 300 GPs in the first half of 1998, the majority of GPs were opposed to Labour's proposals. For instance, it quoted one GP as saying that 'the whole point of the exercise [Labour's planned changes] is to shift the blame for the failings of the NHS on to GPs and mask the true cause – a lack of money', and another as saying 'they will not work . . . and are a complete waste of my time' (*GP*, 1998: 36). At this juncture, it is too early to assess whether these comments are accurate.

5 Industrial relations in the civil service

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Introduction

Industrial relations in the civil service is changing markedly in the 1990s with implications for the half a million people working in it, the taxpayer (as over 70 per cent of its costs are labour costs) and Parliamentary accountability. Essentially the thrust of the changes is to make industrial relations in the civil service more like industrial relations in the private sector. This is being brought about in three main ways: first the government is reducing civil servants' career opportunities both by bringing in people from the private sector and by eroding job security; second it is introducing pay systems similar to those found in the private sector; third it is eroding collectivism, which could result in the reduction of union organization to a level closer to that found in the private sector. Before looking at these developments in detail it will be useful briefly to describe the background.

Up to 1980, civil service industrial relations was characterized by strong control from the centre (the Treasury and then the Civil Service Department), centralized rule making, a high level of union membership and organization and joint agreement over a wide range of matters. Consultation often merged with negotiation, through the 'Whitley' system (formal committees of officials and union representatives). Another characteristic of the industrial relations scene in the civil service until 1980 was the government's view that it should seek to be a model employer, providing *de*

facto job security, relatively generous sick pay and pension arrangements, encouragement of union membership and effective grievance machinery. In addition, civil service pay was set by a complex procedure which entailed collective bargaining, constrained by and based primarily on the principle of 'fair comparison' with the remuneration of staff outside the civil service – the so called Priestley (1955) system – and with unilateral access to arbitration as the final guarantee of impartiality between government and unions. Although the government sometimes modified civil service pay settlements on grounds of public policy, this was regarded as a temporary aberration (Hepple 1982, p. 72).

From 1979, the Conservative government sought to improve the managerial efficiency of the civil service and to curb public expenditure. This had knock-on effects on its industrial relations. First, the Prime Minister, Mrs Thatcher, set across-the-board staff reduction targets. Second, cash limits replaced volume planning. The cash limit included a pay assumption which, if breached, required the additional costs to be funded by job losses, higher productivity or service reductions. Third, power was devolved from the centre to departments: both financial control (the Financial Management Initiative) and personnel management control (MPO 1983). The latter resulted in a change from the central prescription of civil service-wide management rules to framework guidance from the centre to departments. So, for instance, departments could devise their own staff appraisal systems but had to follow certain common denominators. Fourth, in 1981 the government ended the Priestley system for pay determination. This resulted in a dispute lasting over four months, ending with the establishment of a committee of inquiry. The committee's report recommended 'informed collective bargaining' with less weight than hitherto given to pay comparisons with those outside the civil service (Megaw, 1982, para 113). Finally, between 1987 and 1989, all the civil service unions concluded new pay agreements with the Treasury. These combined the tradition of comparability with greater flexibility. On the one hand, they were based on the need to recruit, retain and motivate staff and so there was provision for the compilation of data on annual pay movements in the private sector. On the other hand, they enabled departments to provide performance pay (within guidelines) and to make 'special pay additions' where there were particular recruitment and retention difficulties.

The most important development in civil service industrial relations in the 1980s was the report drawn up under Sir Robin Ibbs entitled *Improving Management in Government: the Next Steps* (Efficiency Unit 1988), the broader significance of which is discussed elsewhere (see Chapters 2, 3 and 9). Suffice it to say that the civil service was considered too diverse in its activities, too vast to be managed as a single entity with common rules for financial and personnel management. It also found that the civil service was

dominated by political and policy considerations at the expense of its service delivery functions and managerial efficiency. To rectify this, the report recommended that the executive functions of departments should be clearly designated and restructured to form executive agencies. Each agency would be headed by a chief executive, operating within a quasi-contractual framework document spelling out its objectives, set by the responsible minister in consultation with the Treasury and specifying the financial and personnel 'freedoms' judged necessary. But by the end of the decade, only nine agencies had been set up, compared to 102 by the end of 1994. Thus, the 1980s saw some changes in industrial relations: a lessening of civil service uniformity and some decentralization in the setting of terms and conditions. In the 1990s, however, we are witnessing more deep-rooted changes.

Before dealing with these, it is important to point out that the civil service is not unique. Throughout the public sector the Conservative government has sought to control public expenditure and to import private sector practices and market mechanisms. Since 1979, the government has privatized public corporations and utilities; deregulated bus transport; introduced compulsory competitive tendering and rate capping in local government; reorganized the NHS into purchasers and providers, establishing self-governing trusts; changed the arrangements for teachers' pay to bring them under closer government control, brought in the local management of schools and created grant-maintained schools. The driving force behind these changes has been the wish to improve managerial efficiency, to give greater priority to the needs of customers rather than producers, to bring in market disciplines or proxies for them and to exercise tight budgetary control. These changes, although not led by are nevertheless consistent with the government's overall industrial relations objectives throughout the public sector. These include the breaking up of large organizations with uniform pay structures and detailed conditions to form smaller units responsible for setting terms and conditions. As a result, pay determination is devolved to a multiplicity of localities where public sector unions, with their centralized structures, have tended to be weak. Other government industrial relations objectives include movement from the nationwide prescription of terms and conditions to locally determined arrangements, reflecting more closely local labour markets and the unit's financial position rather than the going rate; the empowerment of managers so that they can become operators rather than administrators; the forcing of local management and union negotiators to confront the trade-off between pay and employment; and the growth of individualism and the erosion of collectivism, for instance through individual performance-related pay. In short, the industrial relations developments in the civil service examined below are not exceptional when set in the context of the public sector. This will be seen by considering career patterns; decentralization; and the erosion of collectivism.

Career patterns

An important development in the 1990s has been the increase in the number of people brought into the civil service at senior levels from the private sector. In the 1980s such appointments (e.g. Peter Levene, Montague Alfred) were exceptional. In the 1990s, they are no longer exceptional. Thus up to 1990, agency chief executives were mainly drawn from the ranks of serving civil servants (five of the first seven) and without open competition. Now open competition is the norm (Goldsworthy 1991, p. 29). More than half the chief executives have come from outside the civil service, although this does not necessarily mean the private sector (Cabinet Office 1993a, p. 8). At levels below the top, people from the private sector have been brought in, for instance the head of training and the head of finance at the Benefits Agency (TCSC 1994, Vol II, p. 238) and the head of the Procurement Unit at the Treasury (Adonis 1995b). In 1995 the First Civil Service Commissioner was drawn from the private sector and there was an open competition for a mainstream permanent secretary (Adonis 1995c). The person appointed did not have a commercial background but neither was he a career civil servant. Moreover, this process looks set to continue. In its 1994 white paper, the government said that departments, before filling posts in the senior civil service, 'should consider systematically on each occasion whether to use competition as a means of filling vacancies, either by internal advertisement across the Civil Service or by full open competition' (Cabinet Office 1994a, para 4.24). Indeed the government, which formally had as one of its objectives maintaining a career civil service, has changed this to a *predominantly* career civil service (author's emphasis) (Cabinet Office 1995a, para 1.5, p. 2), believing that people from the private sector can improve civil service efficiency.

Admittedly, the numbers coming from the private sector into the civil service are minute. However, they are filling key posts, thus denting the concept of a civil service career for life and reducing the promotion chances of incumbents. Importantly, also, their presence has an impact on industrial relations, parliamentary accountability and values. As to industrial relations, it is probably no coincidence that the Royal Mint chief executive who sought to derecognize unions came from outside the civil service, as did the chief executive of the Recruitment and Assessment Services, who operates without a Whitley Council.

As to parliamentary accountability, the Trosa report (1994, para. 4.7.11) found that agency chief executives recruited from the private sector did not realize that, on occasion, they would have to make compromises between efficiency preoccupations and political requirements. The Home Secretary's dismissal of Derek Lewis as chief executive of the Prison Service in October 1995 underlines this point. It centred on issues of operational control, policy

formulation and the roles of the minister and agency chief executive (see below, Chapter 9). Similarly, Sir John Bourn, the Comptroller and Auditor General, said that private sector managers brought in to run public services often had an inadequate grasp of the importance of accountability to Parliament and were often surprised to learn that they were subject to scrutiny for their handling of public money (Willman 1994).

It is harder to gauge a change in values. Career civil servants normally subscribe to the public service ethos while those from the private sector adhere essentially to entrepreneurial values. Arguably, however, as those from the private sector come into key posts in the civil service, entrepreneurial values come to the fore. One example is the Meteorological Office's decision to keep its thirty day forecast secret so that it could be sold to corporate customers, rather than making it publicly and freely available (Cookson 1995). Looking at local offices of the Inland Revenue and the Benefits Agency and charting the intensification of work and increased managerial discretion, Fairbrother (1994, p. 6) argues that we are seeing in the civil service the 'beginnings of the creation of an enterprise or commercial culture'.

Civil servants' career patterns are changing, however, not only because outsiders are being brought into top jobs. Job security is being impaired by the growing use of casual and fixed-term appointees. According to a representative of the Civil and Public Services Association (CPSA), 43 per cent of administrative assistants in what is now the Benefits Agency are not permanent, whereas the equivalent figure ten years ago was 10 per cent. Job security is also being eroded by cuts in the number of civil servants. Between April 1992 and October 1995, 11 per cent of civil service jobs were cut – to 506,000, the lowest level since the Second World War. But staff reductions continue and the Chartered Institute of Public Finance and Accountancy forecasts a loss of 30,000 jobs in 1996/97 attributable to cuts in running costs (Parker and Kampfner 1995). These reductions are mainly occurring because of delayering, market testing and privatization. In its white paper (Cabinet Office 1995a, para 4.7, p. 17), the government said all departments with twelve or more senior staff were to carry out senior management reviews with the aim of moving to leaner, flatter management structures. It was estimated that over a quarter of senior jobs would go in 1995-96 (Adonis 1995c).

As to the market testing of civil service jobs, a process launched in 1991, David Hunt, when Chancellor of the Duchy of Lancaster, said that 26,900 civil service posts had gone between April 1992 and September 1994. Of these, 10,600 staff had transferred to external suppliers, 2,100 had gone through natural wastage and there were 3,300 redundancies, half of which were compulsory (Adonis 1995a). In a large minority of cases – over 40 per cent according to the Council of Civil Service Unions (TCSC 1994, Vol III, p. 133) – in-house bids were not allowed. The government argues that in these

cases there is strategic contracting out – i.e. for strategic reasons the government wants the activity undertaken outside the civil service. This seems to cover cleaning and office services in some, but not all, departments, as well as drafting the Finance Bill.

Perhaps the privatization of executive agencies poses the greatest threat to civil service job security. Initially, when the first agencies were formed it was generally accepted that 'further immediate change was unlikely' (Goldsworthy 1991, p. 19). Now, however, every five years (formerly every three years) the parent department undertakes a re-examination of the feasibility of abolishing the agency, contracting out the whole of the agency's functions or of privatization, after which there is a ministerial decision. At the time of writing, agencies which have been or are in the process of being privatized include: DVOIT (the information technology directorate of the Driver and Vehicle Licensing Agency), the Transport Research Laboratory, the National Engineering Laboratory, the Laboratory of the Government Chemist, and the Accounts Service Agency (Cabinet Office 1994b). Others include the Chessington Computer Centre, HMSO and the Civil Service College (Hencke 1995). Privatization is not confined to executive agencies: Forward, the civil service catering organization, the information technology part of Inland Revenue and the Accreditation Services have been transferred (Institution of Professionals, Managers and Specialists (IPMS) 1995a, p. 7; Cabinet Office 1995a, para 3.8, p. 11).

Privatization and market testing/contracting out have both industrial relations and constitutional implications. Currently the public has access to information about the costs of services provided by civil servants through departmental accounting officers. If the work is privatized or contracted out, there is generally less information available to the public because of the application of the commercial 'in confidence' restriction. At the same time, the reduction of job security and career opportunities affects civil servants' commitment to their work. Indeed, according to a MORI poll carried out for the Association of First Division Civil Servants (FDA) in 1995, only one in five would recommend a young person to join the civil service. Moreover, in a climate of uncertainty with the undermining of the concept of a career for life, civil servants may feel tempted to tell ministers what they believe they want to hear and be less willing to offer frank and fearless advice. This could insidiously erode the political impartiality of the civil service. In the MORI survey, three in five civil servants agreed with the statement: 'speaking up can damage career prospects' (MORI 1995).

Decentralization

The Ibbs Report heralded the introduction of structures similar to those

found in many private sector companies. Such companies have substituted a quasi-autonomous, multi-divisional organization (M-form) for a unitary organization (U-form) (Williamson 1975). The main impact of this restructuring on civil service industrial relations is the delegation of terms and conditions to departments and agencies, placed on a statutory basis by the Civil Service (Management Functions) Act 1992. This Act enables the Treasury and Office of Public Service to grant delegated authority, instead of 'discretions' as before.

Thus the early 1990s saw departments determining their travel and subsistence arrangements, in the light of Treasury guidance, with many agencies setting up bonus schemes. More radically, by the end of 1992 a few agencies – HMSO, the Agricultural Development Advisory Service (ADAS), the QEII Conference Centre and the Royal Mint – had developed their own pay and grading schemes. By April 1994, twenty-one agencies and two departments (Inland Revenue and Customs and Excise) had their own pay and grading regimes. In April 1996, all central civil service collective bargaining ended. The pay and grading of staff at senior levels (grade 5 and above) is now unilaterally determined, while the pay and grading of less senior staff is delegated to departments and agencies (Cabinet Office 1994b, p. iii), essentially for joint determination. This marks the end of a long tradition of central joint pay determination and nationally set grades according to Treasury grading guidance. It brings the civil service into line with practice in the private sector. According to the Workplace Industrial Relations Survey, carried out in 1990, national level bargaining was the most important level for pay determination for only 5 per cent of non-manuals in private sector services and 24 per cent in manufacturing (Millward *et al* 1992).

This delegation, however, is hardly cost effective. Some 150 bargaining units replace a handful and 3,000 managers are doing the work that was previously carried out by forty civil servants in the Treasury's Pay Division (IPMS 1995b, p. 1). Moreover, there are remarkable similarities between the pay awards of departments and agencies. For instance the independent pay research body Incomes Data Services (IDS 1995, p. 17) looked at the outcomes of delegated bargaining in 1994 and found 'little variation in the level of awards which ranged from 1.5 to 2.9 per cent with the majority between 2.2 to 2.5 per cent'. Similarly, another independent research body, Industrial Relations Services (IRS 1995, p. 5), found a number of common features in the 1994 pay round. These included paybill increases of around 2 per cent to 2.6 per cent, the replacement of salary scales by wider pay bands, a greater emphasis on merit pay and the adoption of unconsolidated but pensionable pay rises.

Yet it is not surprising that in practice departments' and agencies' pay and grading schemes show few significant differences. Until April 1996, the Treasury was directly responsible for authorizing each department's, or

agency's, detailed plans for the initial delegation before they were tabled for negotiations with the unions. Once a delegated pay system was up and running, plans had to be submitted to the Treasury before annual negotiations could take place. Thus, a union representative at HMSO said that he had been told by the human resources (HR) director that he could not yet begin to negotiate the annual pay review because the Treasury had not cleared the paperwork (Corby 1994, p. 61). (At that time the HMSO HR director was new and, perhaps, naïvely candid). According to a brief from a civil service union research department (CPSA 1995):

It has been obvious that, at least for this year [1995], the Treasury has remained *in control* of pay at the delegated level. As well as there being the public sector pay policy, it has been clear that the Treasury has been clearing the negotiating remits of management in delegated areas and/or the offers.

There will continue to be control from the centre, responsibility for industrial relations and terms and conditions passing from the Treasury to the Cabinet Office (Office of Public Service). Moreover, as the Treasury continues to retain control of public expenditure, including public sector pay, it will continue to have a finger in the pie.

There have been a number of studies of decentralized bargaining in the private sector, notably by Kinnie (1987) and Marginson (1988). They found tensions between the centre and the business unit – 'centripetal' and 'centrifugal' pressures, as Kinnie terms them. Kinnie also talks about the 'illusion' of autonomy and points out that the main advantage for management is the parochializing of industrial relations. The unions focus their attention on local issues, even though key decisions are taken at a higher level. Marginson shows that the centre can restrict the unit's autonomy on pay in a number of ways: by issuing broad guidelines, advising or by instructing. He found that, generally, companies tended towards the instruction of units. The Treasury's stance, therefore, is not unusual when viewed against private sector practice.

Even though variations in terms and conditions are not substantial, they may be hampering interdepartmental and agency/departmental transfers, thus undermining the unitary and collegiate ethos of the civil service. There is evidence that both management and union representatives share the view that it will become increasingly difficult for staff to transfer across the civil service as pay systems, grading arrangements and personnel practices diverge (Corby 1994, p. 59). Symbolically, the government also closed the Staff Transfers and Trawling Unit, which redeployed staff across the civil service (IPMS 1995c, p. 6).

A CPSA representative pointed out that previously each department had

a single management hierarchy. Now each agency has its own management structure, in addition to that of the department, and it is often not easy to get the appropriate managers from these different organizations together to arrange transfers. He also ventured the view that management was at times reluctant to take on long-standing civil servants from another agency or department because they would 'bring "baggage" with them in terms of the traditions of the civil service'. They preferred 'new, more malleable people'.

The Cabinet Office appears to be distinguishing the new senior civil service, for whom mobility is important, from other civil servants, for whom mobility is not important, seemingly departing from the concept of a unitary civil service. However, it admits that mobility may become more problematic even for the senior civil service. It says 'some have expressed concern that variations in levels of pay... will act as a barrier' (OPS 1995).

The erosion of collectivism

Until the 1980s, the government regarded being a good employer as acting jointly with the unions (Fredman and Morris 1989). It encouraged unionization in the civil service and expanded the scope of consultation and bargaining, with the former merging imperceptibly into the latter. This changed in 1984, when the government banned union membership at the intelligence gathering centre, GCHQ. Although this only affected a relatively small number of civil servants (some 7,000) and a small number of workplaces, it suggested that the traditionally strong endorsement of union membership for civil servants may not endure. In fact, according to the Workplace Industrial Relations Survey of 1990 (Millward *et al* 1992): 'the proportion of workplaces in central government where managers said that management strongly recommended trade union membership halved between 1984 and 1990'. Similarly, in its handbook for the new civil servant, the government used to encourage entrants to join the union appropriate to their grade and to play an active part in union affairs. When it revised the handbook in the late 1980s it said: 'If you decide to join a union, you are encouraged to play an active part'. Another important example of the government's antipathy towards the civil service unions is its removal, from April 1996, of some 2,000 civil servants in grades 4 and 5 (assistant secretaries) from joint pay determination.

Generally managers in departments and agencies have tightened up in the granting of facility time, i.e. time off for trade union duties, and are having less regard for union involvement. This approach, according to a union representative in the Benefits Agency, was encapsulated when a senior manager advised a newly promoted lay union representative to 'take the opportunity to turn his back on the unions'.

Against this background, it is not surprising that the government, while continuing to claim to be a good employer, sees this in terms of equal opportunities and staff training and development (Cabinet Office 1995a, para 1.5, pp. 1-2). It does not see it as encompassing the encouragement of union membership or joint decision making.

There are also examples of restrictions to the Whitley system – i.e. the system of joint committees of the official side and the trade union side. For instance, in the Employment Service, the agency Whitley Council and the regional Whitley Councils meet every six months, instead of every four months as before. They have a smaller membership than before and the number of sub-committees has been reduced. At the Benefits Agency, the district Whitley meets when necessary, instead of monthly as before. Recruitment and Assessment Services (RAS) has no Whitley Council at any level. When the agency was formed in 1991 under a chief executive from the private sector and with no experience of Whitley, the Whitley Council was moribund. There were no consultative arrangements in existence and the two main civil service unions there were inactive. When the union branches were reconstituted and union representatives elected, management would not reconstitute the Whitley Council. Instead there are informal meetings.

There is an interesting contrast. In 1991, RAS management used the opportunity of union inactivity to dispense with the Whitley structures, whereas six years before and in a similar situation senior officials in the Ministry of Defence had positively encouraged staff to participate in the FDA branch to prevent its demise through apathy (Corby 1994, p. 60). Moreover, there are numerous examples of consultation rights being eroded. For instance, HMSO union representatives were given a morning to submit comments on changes to travel and subsistence allowances. Union representatives at Employment Service were consulted on a new personnel handbook, but this consultation proved to be a sham. The management circular to staff had already been written and, by accident, distributed the day *before* the joint meeting (Corby 1994, p. 60). Similarly, according to a survey by Labour Research (1995), a union representative at the Planning Inspectorate Agency spoke of 'a clear trend by management to keep the union at arm's length' and a union representative at the Health and Safety Executive said 'management is prepared to discuss everyday matters but is secretive on major changes'.

More subtly, collectivism is being eroded by the growing use of individual performance-related pay (IPRP). The government sees IPRP as an important tool for improving efficiency. As it said:

By linking rewards more directly with quality of service we can bring about a more customer-focused culture and ensure that customer service is given priority. We need to be able to differ-

entiate between those who are making a contribution and those who are not. If we do not, success and failure would be equally rewarded (Cabinet Office 1992a, p. 3).

This is not the place to debate the effectiveness of IPRP. Suffice it to say that at national level, in 1992, all four bargaining groups of non-industrial civil servants agreed individual performance-related pay schemes, in addition to general pay increases. Under delegated arrangements, pay agreements in departments and agencies also include individual performance-related pay schemes. In some cases, these schemes are essentially the same as the national arrangements. In other cases, new merit schemes have been designed, for instance at Inland Revenue, HMSO, Customs and Excise, the Valuation Office and for senior staff in the Employment Service (IDS 1995). The CPSA (1995) says that there has been a growing use of what are called equity share schemes. Each box mark (i.e. performance mark) is allocated a number of shares whose monetary value is determined according to the size of the paybill, enabling management to control costs.

IPRP undermines the traditional union objective of a rate for the job, making it clear that an individual's pay is largely dependent on management discretion, not union action. The unions may agree the size of the performance budget and receive information on the performance assessment markings and performance awards, typically broken down at least into staff groups and gender. But it is management, not the unions, who assess the individual's performance and who decide on the amount of the individual's performance pay. Management is not directly encroaching on collective institutions, nor does it have as a key objective the reduction of the unions' role. Nevertheless, that is the by-product. As Kessler and Purcell (1992, p. 21) comment:

The very mechanics of these schemes involve a fundamental restructuring of the employment relationship which can result in greater managerial control over staff. It is a system which isolates the individual from the work group and forces the personalised design and evaluation of work.

Again, the civil service is following the trend. Comparing 1990 against 1984 Millward *et al* (1992, p. 261) found that it had become more usual for non-manual employees to have some portion of their earnings dependent on their individual performance.

The unions' role is also being reduced as a by-product of the growth of so-called employee involvement initiatives, under which management deals directly with staff. This partially replaces or supplements the management/union representative link. Thus to gauge staff opinions in the

Employment Service, the agency carries out annual attitude surveys, rather than leaving it to union representatives to relay staff views. Similarly, management communicates with staff directly through team briefings, rather than leaving it to union representatives to pass on management's message. Moreover, working parties may not provide for union seats. Examples include HMSO's quality improvement projects or RAS's personnel strategy working group (Corby 1994, p. 61). Once again, the civil service is not unique in adopting employee involvement techniques. The Workplace Industrial Relations Survey found a substantial growth in such techniques since the mid 1980s (Millward *et al* 1992, p. 180). Nor is the civil service unique in operating a dual approach, i.e. collective bargaining and employee involvement techniques (Storey 1992).

Union power is also being weakened by the proliferation of bargaining units. The number of full-time officers (FTOs) of the civil service unions is not increasing proportionately to the increasing number of bargaining units and indeed some unions, because of financial problems, are actually reducing the numbers of FTOs. This gives greater scope for lay union representatives but they may not be able to cope adequately with an enhanced role. The new pay bargaining arrangements also bear upon union power through the law, making civil service-wide industrial action virtually impossible. This is because industrial action is only lawful in respect of those directly affected. So if terms and conditions are set nationally, a civil service-wide strike is lawful. If they are not and a department or agency is the bargaining agent, then those civil servants directly affected can take industrial action, but civil servants in other departments or agencies cannot lawfully take sympathy action.

The reduction in the role of civil service unions should not be overstated. Unions are setting up regional offices to be better able to meet the challenges of decentralization, arranging membership swaps and agreeing on union mergers (IPMS Bulletin 1995d). The most recent is that between the National Union of Civil and Public Servants and the Inland Revenue Staff Federation to form the Public Services, Tax and Commerce Union with 160,000 members (Bolger 1995). Nevertheless, civil service union membership has declined. Union density is now estimated at 63 per cent (Corcoran 1995) as compared to 91 per cent in 1979 (Fryer 1989), though these estimates must be treated with caution as they are not based on comparable data.

Union strength and union role are not only matters of interest to industrial relations specialists. They also have constitutional implications. Without a union to mediate an individual's employment concerns, the individual is less powerful vis-à-vis management. Where the government is the employer and the employee is a politically neutral civil servant, it is important that the employee feels confident enough to speak up, even though this may cause a minister political difficulties, especially where accountability to Parliament

is at issue. The case in 1985 of Clive Ponting, who leaked information to Parliament about the sinking of the *General Belgrano* in the Falklands war, illustrates this. When Ponting was prosecuted under the Official Secrets Act, he was supported by his union, the FDA. But such a high profile case apart, the importance of an independent voice for civil servants is vital if they are to feel secure and confident and thus to offer impartial and objective advice to ministers. They inevitably feel less secure and confident in an environment where career opportunities are being restricted, where the collegiate and unitary concept of the civil service is being impaired by the decentralization of pay and grading and where civil service unionism is no longer encouraged.

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CHAPTER 4

The National Health Service

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The National Health Service (NHS) was established in 1948 to deliver health care according to clinical need and irrespective of an individual's ability to pay for it. Essentially, it is funded by central government out of general taxation and is free at the point of use, but government is not the employer. District health authorities (DHAs) and family health service authorities (FHSAs), which are merging, and health service trusts are the employers of over one million staff working in the NHS, although most general practitioners, dentists and opticians, are self-employed.

There were reorganizations of the structure of the NHS in 1974 and 1982 (Harrison *et al.*, 1992, p. 21). Then the Conservative government, as part of its drive to improve efficiency in the public services, broadly implemented the recommendations of the Griffiths report (1983). Following the Griffiths reforms, the NHS in England was headed by the Secretary of State for Health, who chaired a Supervisory Board whose members included the Minister for Health, permanent secretary, chief medical officer and a non-executive member. It had strategic responsibility for NHS resources and objectives. A full-time, multi-professional NHS Management Board was accountable to it and responsible for overseeing implementation of the strategy. This was chaired by the Minister for Health and

included the NHS chief executive. Although the composition of the Management Board varied, roughly one-third of its members had a commercial background, one quarter came from the NHS and the remainder from the Civil Service (Harrison *et al.*, 1992, p. 46). Fourteen regional health authorities (RHAs), in turn, controlled 190 DHAs and 90 FHSAs. In addition, there were eight special health authorities (SHAs), such as London postgraduate teaching hospitals, which reported directly to the NHS Management Executive (Seifert, 1992, p. 174). A general manager headed every RHA, DHA and SHA, taking overall responsibility and replacing what had previously amounted to consensus decision-making by a team, on which the clinical professions were represented.

There were similar arrangements for Scotland and Wales. The Secretary of State for Scotland and the Scottish Office and the Secretary of State for Wales and the Welsh Office performed essentially the same functions as the Health Secretary and the Department of Health in England. Scotland had 15 health boards which combined DHAs and FHSAs and Wales had nine DHAs and eight FHSAs. There were no RHAs in either Scotland or Wales (Welsh Office, 1994; Scottish Office, 1993).

Recent Reforms and Structural Change

In 1990, the government set in train more fundamental changes to the structure of the NHS, under the National Health Service and Community Care Act. The Act's key feature is the separation of the purchasing of health care from its provision. The DHA, or general practitioner (GP) fundholder, makes annual, non-legally enforceable contracts to buy services from providers, on a block basis, or a cost and volume or cost per case basis. On 1 April 1994, in addition to the 190 DHAs, there were nearly 9000 GP fundholders in England serving over one-third of the population (Department of Health, 1994a).

Purchasers buy most services from NHS trusts, although the private sector is increasingly an important provider. Trusts are formed from the units providing health care in the NHS. They vary in function and include: acute hospital, ambulance, community, mental health or combined trusts. They vary in size from under 500 to over 5000 employees. By 1 April 1994, there were 419 trusts in England, 96 per cent of all provider units (Department of Health (DoH), 1994b). In Scotland, there were 39 trusts, or 70 per cent of provider units, and in Wales, 24 trusts, or 75 per cent of provider units, on 1 April 1994, according to the Scottish Office and Welsh Office.

Trusts are directly accountable to the Secretary of State, unlike the few remaining units which are directly managed by DHAs. Moreover, they are governed by a board of normally 11 people, a chairman plus equal numbers of executive and non-executive directors appointed directly or indirectly by the Secretary of State. There are similar provisions in respect of DHAs (NHS Management Executive (NHSME), 1990).

The 1990 Act also changes power relationships in the NHS. Before the Act, there was a clear chain of command running from the Secretary of State to the Health Department, and then to RHAs and DHAs (health boards in Scotland), with the provider units as part of DHAs. The Act, however, devolves decision-making. Not only does it give purchasers more power, for instance DHAs can choose with whom to contract, but trusts also have a degree of autonomy on financial matters and considerable autonomy on personnel and employment matters. For instance, trusts are the employers, whereas before the 1990 changes most hospital staff were employed by DHAs, with consultants employed by RHAs. Also, as discussed below, trusts can set their own terms and conditions of employment, devise industrial relations procedures irrespective of national arrangements and apply these to new or promoted staff.

The centre, too, has been streamlined, as part of the new structure. The Supervisory Board and Management Board have been replaced by a Policy Board, chaired by

the Secretary of State for Health, and includes business people as well as the chief executive of the NHS. Under the Policy Board is the NHS Management Executive (NHSME), now called the NHS Executive. Comprising over 800 civil servants, it is both an integral part of the DoH and head office of the NHS. Also, as a result of the changes outlined above, further modifications to the NHS structure are being made. In 1993, the role of RHAs was reduced and their number fell from 14 to eight. Legislation is in hand to abolish RHAs and replace them with regional offices of the NHS Executive, with a monitoring function only. The legislation will also enable DHAs and FHSAs to merge and will facilitate mergers between DHAs, so putting developments in practice on a statutory basis. For Wales, too, legislation will provide for mergers between DHAs and FHSAs and reduce their number from 17 to five (Welsh Office, 1994).

By these changes, the government has made the NHS more like the private sector. First, it has introduced people from the private sector into the NHS at all levels, from the NHS Policy Board to trusts boards (Gilligan, 1994). Second, by inserting quasi-contracts into the NHS, government has introduced proxies for the market mechanism and processes akin to those found in the private sector. Third, it has introduced structures similar to those found in many large private-sector companies, thus substituting a quasi-autonomous multi-divisional structure (M-form organization) for a unitary one (U-form organization) (Williamson, 1975).

This decentralized structure is not unproblematic. There are countervailing pressures and the trusts' theoretical autonomy on personnel matters is constrained in practice in four main ways. First and foremost, it is constrained by political initiatives under which trusts are strongly encouraged to achieve ministerial ends and directed on how to do so. The government essentially funds the NHS and, although the Secretary of State can no longer command units, government is the paymaster. Moreover, the NHS Executive faces in two directions. On the one hand, it has a political role, supporting the Secretary of

State, and is part of the DoH. But, on the other hand, it also has a managerial role, ensuring the implementation, for instance, of health targets, financial parameters and personnel objectives. Thus, for example, it monitors compliance on equal opportunities; gives leadership by holding workshops on performance pay; and provides guidance on local pay bargaining. In short, the NHS Executive, with its chief executive, may be modelled on the private sector but it has both government policy responsibilities and is accountable for operating a public health service.

Second, the trusts' new-found autonomy on personnel matters is limited in practice by the collectivist and pluralist traditions dating back to the NHS's inception. Allied to this is the NHS's well-embedded pay determination arrangements under which national terms and conditions for each functional group are set in one of two ways. Over half of NHS staff, namely doctors and dentists, nurses, midwives, health visitors and the professions allied to medicine (PAMs), have their pay determined by government on recommendations of pay review bodies. Their other terms and conditions are essentially determined by collective bargaining in the Whitley machinery. Nearly all the remaining NHS staff, such as administrative and clerical workers, ancillaries, ambulance staff and scientists, have all their terms and conditions agreed in the Whitley system. This consists of one general and 10 functional councils. The main exceptions are general and senior managers and healthcare assistants, who are not covered by national arrangements, and maintenance staff, whose unions negotiate directly with the Health Departments.

Compared with private-sector collective agreements, those in the NHS have been far more detailed. This remains the case, even though over the last decade NHS agreements have become looser by incorporating, for instance, flexible pay points to allow managerial discretion, or taking the form of so-called enabling agreements setting broad parameters for local negotiations. Whatever form they take, however, these national arrangements at best sit uneasily with trust autonomy on personnel matters.

Third, the autonomy of trusts is constrained by TUPE Regulations 1981. Under its provisions, staff previously working in a unit which has become a trust, or part of one, can continue to receive nationally negotiated terms and conditions, and/or pay rates arising from pay review body awards, for as long as they choose to do so. This is provided they stay in the same job and are not promoted. Furthermore, all collective agreements with the old employer, generally a DHA, including those covering union recognition, transfer to the new employer, the trust, in respect of existing staff.

Fourth, trust autonomy is constrained because the employer is not the only focus for staff loyalty or the sole source of role definition. The majority of staff in the NHS are professional workers. Professional training, standards of entry, the nature and remit of their work are laid down by professional bodies, not the employer. These include the General Medical Council for doctors, the UK Central Council for nurses and the Council for Professions Supplementary to Medicine for physiotherapists, radiographers and other professions allied to medicine. It is no coincidence that so far trusts have removed job barriers only in non-professional areas (Corby, 1992). This dual focus of loyalty for the majority of NHS staff is a dimension in people management that marks the NHS from some other public services, such as the Civil Service and local government.

The Personnel Function: Some Emerging Issues

The NHS is a labour intensive organization. Its total labour force has not changed significantly over the period 1981 to 1993, as shown in Table 4.1. In England, Wales and Scotland, total numbers employed in the NHS were 1.2 million in 1981 and 1.1 million in 1993. The numbers of doctors and dentists and PAMs have risen, although nursing and midwifery staff numbers fell in England and Scotland between 1989 and 1993. But this may be partly

explained by the removal of students from the figures. The numbers in some non-professional groups, however, have altered greatly. In particular, the number of ancillaries has more than halved since 1983, reflecting competitive tendering for laundry, cleaning and catering services. Some contracts went outside the NHS but, even where in-house tenders were successful, this was often because hours and jobs were cut (Mailly *et al.*, 1989). Seifert (1992) estimates that 82 per cent of tenders were won in-house.

More recently, as a result of decisions by the European Court of Justice (*Dr Sophie Redmond Stichting v. Bartol and others* [1992] IRLR 366) and the Court of Appeal (*Dines and others v. (1) Initial Health Care Services and (2) Pall Mall Services Group Ltd* [1994] IRLR 336), the number of successful external bids looks set to dwindle, with knock-on effects for the terms and conditions of in-house staff. This is because outside contracts have been won essentially since contractors have taken on NHS workers, but with wage rates lower than those in the NHS. Court decisions, however, have held that this is unlawful under TUPE Regulations.

The number of general and senior managers in England and Wales has risen dramatically in the last few years, from less than 5000 in 1989 to over 21 000 in 1993. The numbers for Scotland have only recently been kept. Some commentators argue that this partly is a result of a reclassification of those who previously had managerial roles, such as chief laboratory technicians or directors of midwifery services. Others argue that the rise in the number of managers is an inevitable result of the internal market (Brindle, 1994a).

The structure of the personnel function

Until the establishment of trusts, the main locus of the personnel function was at the centre, in the Health Departments, where standardized rules and procedures were determined. Personnel managers at local level largely

TABLE 4.1 NHS workforce, 1981-93

	1981	1983	1986	1989	1993
NHS: England					
General and senior managers					
Nos	—	—	510	4 630	20 320
Wte	—	—	510	4 610	20 010
Doctors and dentists					
Nos	51 520	52 970	53 970	56 730	59 720
Wte	39 420	40 690	41 880	44 090	48 740
Nursing and midwifery					
Nos	445 890	452 380	459 080	466 740	445 160
Wte	388 010	394 680	397 240	398 050	361 460
PAMs					
Nos	—	—	41 580	45 160	48 950
Wte	—	—	33 590	36 710	39 770
Admin. and clerical					
Nos	128 180	129 620	131 390	141 570	162 840
Wte	108 800	109 960	110 840	116 840	132 650
Ancillary					
Nos	221 450	215 330	167 580	141 540	108 440
Wte	172 180	166 180	124 270	102 360	77 770
Total – all staff groups					
Nos	970 190	979 050	946 820	927 990	941 030
Wte	819 070	825 420	794 730	787 200	766 710
NHS: Wales					
General and senior managers					
Nos	—	—	—	190	1 190
Wte	—	—	—	190	1 160
Doctors and dentists					
Nos	2 590	2 670	2 790	2 870	3 260
Wte	2 310	2 400	2 470	2 600	2 950
Nursing and midwifery					
Nos	29 730	30 330	31 680	33 240	34 440
Wte	25 360	25 980	27 190	28 040	26 455
PAMs					
Nos	2 070	2 270	2 550	2 870	3 330
Wte	1 700	1 890	2 090	2 410	2 810
Admin. and clerical					
Nos	7 320	7 500	7 860	8 630	10 510
Wte	6 400	6 530	6 970	7 480	8 920

TABLE 4.1 *Cont.*

Ancillary					
Nos	15 110	14 940	13 690	11 900	10 000
Wte	11 840	11 560	10 210	8 650	7 060
Total – all staff groups					
Nos	62 830	63 840	64 590	66 500	69 850
Wte	53 270	54 170	55 370	55 830	55 940
NHS: Scotland					
Doctors and dentists					
Nos	6 820	7 960	7 850	8 160	8 460
Wte	6 410	6 660	6 550	6 870	7 310
Nursing and midwifery					
Nos	70 940	72 230	72 990	74 950	64 520
Wte	61 130	62 400	62 870	64 450	53 390
PAMs					
Nos	—	—	4 970	6 500	6 477
Wte	—	—	4 160	4 680	5 370
Admin. and clerical					
Nos	15 190	15 820	16 360	17 420	20 070
Wte	13 630	14 090	14 450	15 220	17 390
Ancillary					
Nos	34 790	34 740	32 680	25 960	20 580
Wte	27 350	26 970	24 570	18 660	13 290
Total – all staff groups					
Nos	142 810	146 440	146 570	143 720	133 210
Wte	122 640	124 800	124 040	121 060	109 200

Notes

1. Abbreviations – Wte = whole time equivalents, nos = numbers, PAMs = professions allied to medicine.
2. All figures rounded to the nearest 10.
3. Figures as at 30 September each year.
4. The figures for nursing and midwifery in 1993 no longer include student nurses.
5. The figures are collated by three separate statistical units and therefore may not be strictly comparable. Nevertheless, the author has tried to provide a common basis for the three countries' figures, e.g. by excluding general medical practitioners and general dental practitioners, as they are self-employed.
6. Scotland does not have figures for general and senior managers for the years between 1981–1989 inclusive.
7. Figures for PAMs for 1983 and 1986 are not available for England and Scotland as they were included in 'professional and technical' and cannot be broken down.

interpreted and implemented these rules and procedures. Pay rates, for example, were determined nationally and the roles of DHA and unit personnel managers' were essentially administrative ones. In addition, RHAs had a personnel function and, for instance, developed region-wide computerized personnel systems, as well as organizing training.

There is now no personnel function at regional level and, in line with trust autonomy on personnel matters, the personnel function at unit level has changed from an administrative to a strategic and operational one. There is now only a very limited personnel function in DHAs, that is at purchaser level, since they employ very few staff. Some DHAs have actually contracted out their personnel function, although this is rare even among the smallest trusts.

There is still a continuing personnel function at the centre. Thus the NHS Executive, and the NHS Management Executive in Scotland, which is staffed by civil servants, mediates between trusts and ministers and deals with other parts of the Department and other government departments. The NHS Executive deals with the Treasury on pay, represents the NHS on employment issues and manages industrial relations at national level. At the same time, it supports and encourages trusts to adopt government initiatives. At the time of writing, these include the move to local pay flexibility, performance pay and the achievement of goals on equal opportunities.

There is no common model for organizing the personnel function in trusts. Some trusts have personnel specialists attached to clinical directorates, but with a personnel or 'human resources' director taking an overall view. Some trusts centralize the personnel function and others operate a half-way house. Bach (1995) points out that devolution, i.e. the first model, has benefits. There is a clear separation between the operational personnel role and the strategic one. Also, with proximity to divisional managers, personnel specialists can make a greater contribution to the divisions. Yet devolution of the personnel func-

tion creates new conflicts amongst divisions and between divisions and the centre. At one trust, there were differences in the manner in which divisions handled discipline and these differences were exploited by the unions.

There is no requirement for the head of the personnel function to be one of the five executive directors with an automatic seat on the trust board, though, symbolically, there is such a requirement for the chief executive and directors of nursing and finance and the medical director. In fact, a survey by the NHSME (1993a) found that in 60 per cent of respondent trusts, the senior personnel manager was an executive member of the board and this compares well with the private sector and trading parts of the public sector, where the equivalent figure is 40 per cent (Millward *et al.*, 1992).

Guest and Peccei (1992), studying personnel management in the NHS, found that the effectiveness of the personnel function, for which they apply a number of tests, tends to be highest where personnel has a significant influence over major organizational decisions. This, in turn, was found to be related to the representation of personnel on trust boards. Where the personnel director does not have a seat on the board, some trust personnel directors have told the author that they are much closer to the business planning process than in pre-trust days. Bach (1995, p. 112), however, doubts this, saying: 'the personnel function has a peripheral position within trusts and limited credibility.' He argues that this, in part, is because the NHS Executive imposes external constraints for instance on local pay bargaining.

There is no systematic analysis of the employment background of personnel directors. Nevertheless, evidence suggests that most have been appointed from personnel departments inside the NHS. Significantly, though, neither the NHS Executive's current Human Resources Director nor the previous one had a background in personnel. It is becoming more common, however, to appoint personnel staff below director level from among those with personnel experience outside the NHS.

As to the relationship between the personnel department and the line, Guest and Peccei (1994) found personnel managers clearly dominated in the areas of equal opportunities, industrial relations and manpower planning information. The areas where non-personnel managers dominated most clearly were productivity, quality and flexibility. Using the same data, Guest and Peccei (1994) also found that 38 per cent of NHS personnel staff possessed or were studying to obtain a professional qualification, but the number of personnel staff with professional qualifications or degrees of any kind did not make any difference to personnel effectiveness.

There is evidence that there are some serious tensions between personnel specialists and doctors. Personnel officers are often intimidated by consultants whom they see as a law unto themselves, or the 'Eiger mountain we have to conquer' according to Maddock and Parkin (1994, p. 56). Undoubtedly doctors have been successful in safeguarding their autonomy. It is the doctor, for instance, who diagnoses, prescribes treatment and discharges. This has implications for staff numbers and workforce composition of not only doctors but also nurses and the professions allied to medicine. Thus managerial plans, including human resources plans, are subverted (Harrison *et al.*, 1992). In an attempt to alleviate such tensions, doctors have been made clinical directors, bringing them into the managerial process. Nevertheless, tensions continue to surface and doctors often dominate, as for instance at Brighton Healthcare and Burnley Healthcare. In both these trusts, there were votes of no confidence by the consultants in a trust board member, with the result that at the former, in September 1994, the chairman was ousted and at the latter, in November 1994, the chief executive and medical director were forced to depart (Brindle, 1994a; Bunyan, 1994).

Personnel policies and employment strategies

Over 70 per cent of trusts' costs are attributable to labour costs, so *prima facie* one would expect the development

of long term employment strategies by employers. Yet as we have seen, the structural changes under the 1990 Act have led to a quasi-market system with trusts receiving annual contracts from purchasers. This leads to an uncertainty that units did not have in the last decade and militates against planning for longer than 12 months ahead, putting a premium on *ad hoc* decision-taking and opportunism. Thus one trust in Manchester had to deal suddenly with redundancies in autumn 1994 as a result of the loss of a contract, whilst another in Mersey, which won a contract formerly held by a neighbouring trust, had to deal with the integration of transferred staff.

Nevertheless, as well as the new structure leading to short termism, decentralization of the new structure also leads to diversity. So, whereas most trusts are adopting an opportunistic and *ad hoc* approach, a few have deliberately tried to adopt a steady-state employment strategy and a few have seen it as an opportunity for the adoption of a raft of new employment strategies, underpinned by a philosophy of individualism, in contrast to the NHS's traditional pluralism (Corby and Higham, unpublished). Thus a chief executive of a mental health trust pointed out to the researchers that inevitably the adoption of trust status involved restructuring the unit's relationship with the DHA but, where possible, he wanted to limit the turbulence. Accordingly, the trust's employment strategies and personnel policies are centred on maintaining stability. This entails, at least initially, preserving the Whitley arrangements for new employees, as staff associate security and continuity with Whitley. It also entails making changes gradually. This approach, he thinks, is most likely to win staff co-operation.

In contrast, a number of ambulance trusts (Corby, 1992) and a few community trusts, notably Homewood (Lilley and Wilson, 1994), are already making maximum use of their autonomy to break with employee relations traditions. They have established new systems of pay determination, made changes to workforce composition and introduced individual performance pay.

A key consideration is whether the trust has a personnel strategy and, more importantly, whether it is published and approved by the trust board. According to the NHSME survey (1993a), 79 per cent of trusts had a personnel strategy, 53 per cent had a published strategy, whilst 65 per cent had a strategy approved by the trust board. Guest and Peccei (1992, p. 9), taking a different approach, looked at 17 areas of personnel work and asked whether there was 'a written policy, agreed by the executive management team'. Whilst 96 per cent of respondents had a written policy agreed by the management team on equal opportunities, only four per cent had one on productivity of staff, with the average per unit being just over seven of the 17 policy areas. They found that the effectiveness of personnel management was associated with the extent to which personnel policies were written down and agreed by members of the management team.

It is difficult to assess trends or forecast developments in respect of employment strategies at this juncture. The key environmental pressure on trusts is governmental policy but many trusts take the view that a number of employment strategies will take a few years to develop. By that time, there will have been a general election and perhaps a change of political priorities and yet another reorganization of the NHS.

Staffing and Employment Resourcing in Trusts

In the trusts, staffing and employment resourcing issues continue to be of central importance in people management. Three key ones considered here are: contracts of employment; local pay; and equality issues.

Contracts of employment

The volatility engendered by annual contracts between purchasers and providers has had a significant effect on

the type of employment contract offered by trusts. Previously most staff were employed on indefinite contracts, with job security being a feature of NHS employment. This was first undermined by the terms and conditions of general managers who, since 1985, have been employed on fixed-term contracts. More recently, there is some evidence that increasingly a range of staff, including nurses and PAMs, are being employed on fixed-term contracts. Staff employed on fixed-term contracts of one year or more can lawfully be required to sign away their unfair dismissal rights on the expiry of the contract or, where such contracts are for two years or more, their rights to redundancy pay. Thus if a purchaser does not renew a contract with a provider, the trust may avoid redundancy costs and the inevitable deterioration of staff morale which would have occurred if redundancies had been declared. Nevertheless, staff on indefinite contracts are sometimes made redundant. Examples include redundancies at Guy's and Lewisham Trust and at Bradford Hospitals Trust (House of Commons, 1992) and at Wellhouse Trust (Brindle, 1993).

Another way that trusts are trying to protect themselves against uncertainties in the reformed NHS is by using temporary staff. Some trusts, for example, employ temporary administrative and clerical staff at the end of the financial year, when there is an expansion of work, as financial accounts have to be prepared and business plans drawn up. Trusts are also using nurse 'banks'. Under a bank system nurses, having proclaimed a willingness in principle to work at the trust, then agree with the employer to work particular shifts. This is what the hotel industry terms 'regular casuals'. A bank allows the employer to vary staff to accommodate demand and/or non-availability of core staff, through sickness or holidays. Although nurse banks have operated in the NHS for decades, they are now being expanded and a few trusts are setting up PAM banks. Furthermore, managers have changed terms and conditions to increase the temporal flexibility of staff. At one trust, for instance, instead of nurse contracts sometimes specifying particular nights or days

for working, nurses are now contracted to work any shift, subject to a maximum number per week (*PM Plus*, 1994).

In addition, there are initiatives in multi-skilling in non-professional areas and increases in the proportion of support staff to professionals. Dyson (1991), in a paper which was widely circulated amongst NHS managers, argues that such strategies enable the staff concerned to achieve improved remuneration and trusts to achieve substantial reductions in labour costs. In other words, they enable the circle to be squared. This is an important consideration at the time of writing, when government is freezing public-sector pay budgets. There is evidence that such labour-use strategies are being pursued. For example, ancillary workers are combining the traditional duties of porters, catering and cleaning staff, whilst health care assistants, in nursing areas, perform some of the tasks traditionally carried out by nurses, such as making beds, feeding and escorting patients. A recent NHS Management Executive survey (NHSME, 1993a) points out that ambulance trusts have been particularly proactive in changing skill mixes, with the introduction of a health transport/attendant grade and changes to shift systems.

Local pay

There is strong government encouragement for trusts to adopt local pay regimes. For instance, the NHS Chief Executive, Alan Langlands (1994), wrote to trust chief executives in England, asking them to have local pay machinery in place by February 1995. The NHS Executive followed this up by visits to trusts, mounting workshops and subsidizing them. In the Welsh NHS, there have been similar developments, though, at the time of writing, not Scotland. Where trusts have employees on trust contracts, they mostly mirror national arrangements on pay and conditions and make only minor changes. For instance, they have departed from Whitley terms on

removal expenses to give managers more discretion or they have incorporated the two NHS statutory days of holiday into annual leave entitlement. Because of TUPE Regulations, major changes to terms and conditions of employment are expensive, an important consideration in the context of the internal market and the government's freeze on public-sector pay budgets. Also most trusts are not experiencing labour market pressures and thus do not have business reasons for improving pay beyond the levels determined nationally.

Only a small minority of trusts, 11 out of 419, had introduced comprehensive local pay deals by October 1994 (Wood, 1994). Research (Corby and Higham, unpublished) suggests that those trusts which have introduced comprehensive pay regimes have been in a financially robust position. Nevertheless, even where trusts have a comprehensive pay regime, employees may choose to remain with national arrangements. In 1994, for instance, 15 per cent of employees at St Helens and Knowsley Community Trust were on that trust's pay spine; 60 per cent at Homewood; but 98 per cent at Northumbria Ambulance Trust, according to figures provided by these trusts.

Where there are local pay arrangements, they normally involve a single pay spine, determined on the basis of job evaluation, ranging from cleaners to consultants. There are no 'off the shelf' job evaluation schemes which command general support, however, and attempts to develop a dedicated job evaluation scheme at Central Manchester Trust have already taken over three years and were not completed at the time of writing. Arguably, a single pay spine reinforces loyalty to the trust and helps in the development of a new organizational culture, whereas the national arrangements, with pay determined according to functional groups, serves to reinforce professional differences. Moreover, single pay spines are also consistent with other personnel objectives, such as breaking down job demarcations and introducing single table bargaining. However, the power of the doctors *vis à vis* senior

managers has already been mentioned. Significantly, the majority of trusts with such pay spines are either ambulance trusts, with no doctors, or mental health or community trusts, where the proportion of doctors in the workforce is significantly lower than in general acute trusts. In addition, a minority of trusts, about five per cent of them, have made significant changes to the reward system of a single occupational group, such as ancillary staff.

The position on local pay, however, is extremely fluid. The government exhorts trusts to adopt local pay regimes. Although the Human Resources Director of the NHS in England, Ken Jarrold, says he does not expect every trust 'to be all singing all dancing on pay' by 1995 (Huddart, 1994a), the number with local pay schemes looks set to increase.

Alternatively, trusts may adopt top-up arrangements. Government and the unions, albeit reluctantly, concluded enabling agreements, as part of the 1994 pay deals, for NHS employees whose pay is determined by Whitley. The agreements allow trusts to make local payments 'based on the performance of the organization' to those who have their pay determined by Whitley. But there is a proviso: 'agreement with staff and their trade unions and extensive communication with those affected are essential'. Similarly, the pay review body reports of 1995 for nurses, midwives and health visitors and the professions allied to medicine provided for local top-up payments. They awarded one per cent nationally, with a further 0.5 to two per cent to be awarded locally sparking off a union campaign to defend national pay determination. Doctors and dentists, however, were treated differently by their pay review body, whose 1995 award was 2.5 per cent nationally (Bolger, 1995), underlining their special position in the NHS. At the time of writing, it is not clear to what extent top-up payments will provide an impetus to the reality of local bargaining as opposed to local bargaining in name only. There is evidence that most trusts applied local payments uniformly, in full and without changes to conditions or allowances. Furthermore, the Government has agreed to constrain severely local

bargaining for staff covered by pay review bodies until 1998. Trusts are not permitted to change allowances or conditions and there is a safety net for pay rates. Under a complex procedure, any locally agreed rates which fall below the going rate are nationally uprated annually.

The NHS Executive, meanwhile, is also strongly encouraging trusts to adopt performance management, giving some trusts money for pilot projects. It claims that performance systems can change the organization's culture to make it more customer aware and improve line management style (NHSME, 1992a). In response, trusts are in the process of extending performance appraisal to all staff and linking appraisal with the standards set in the purchasers' contracts. A variety of systems of performance appraisal is being used, so it is impossible to generalize. A further complication is that there is sometimes a tension between standards based on total quality management and those based on resource management. Professionals tend to prioritize quality, whilst business managers tend to prioritize cost and activity (Koch, 1992). Whatever system is adopted, performance appraisal is covering increasing numbers of employees in the NHS, with some trusts inevitably further along the road than others.

So far, there have been few moves to link performance appraisal with performance pay. Indeed, a survey in 1994 found that the extent of PRP in the NHS was 'very limited' (Incomes Data Services, 1994a, p. 27) and mainly covered senior managers, whose pay has incorporated an element of performance pay under national arrangements since 1989. Where trusts have local pay spines, some make progress dependent on individual performance, not length of service as under the national arrangements. Others, such as South Tees, make progress dependent on the performance of the trust as a whole (p. 8). A few trusts, which do not have comprehensive pay regimes, have established individual performance pay for discrete groups of staff on trust terms, particularly ancillaries, whose traditional bonus schemes based on output have been replaced by more qualitative measures (Health Service

Report, 1994). In contrast, a Mersey trust has scrapped bonuses and PRP completely, and the directors of personnel at Dorset Community Trust (Merrick, 1995) and at Guy's and St Thomas's Trust (*People Management*, 1995), have publicly expressed doubts about individual PRP. Interestingly, the Human Resources Director of the NHS in England, Ken Jarrold, said to trust personnel directors: 'We don't insist on individual performance related pay for everyone . . . You decide on the system appropriate to your organisations' (Huddart, 1994b).

Although local pay and performance pay are analytically different concepts, they are intertwined in practice at trust level and in government and union statements. For instance, the Whitley agreement pay deals in 1994, which allow for local payments, talk about 'schemes based on the performance of the organisation'. The staff organizations, in turn, likewise equate local pay with performance pay in their publicity (British Medical Association, 1994). In 1994, for instance, the BMA called on junior doctors to lobby MPs, claiming that local pay bargaining and PRP are undesirable for doctors and patients.

Irrespective of any local pay arrangements, there are more opportunities for promotion than in pre-trust days. For instance, nurse managers or PAM managers are becoming generalist managers, while managers who have not come from a profession are taking on responsibilities for areas including professionals, despite tensions with and resentment especially from doctors. The position on recruitment, however, has not changed since pre-trust days. For the majority of potential NHS employees, the numbers of job seekers and their qualifications are largely set by the professional bodies, not by employers.

Equality issues

A recurring theme throughout this chapter has been the impact of the new NHS structure on employment practices and, in particular, the tension between central control and trust autonomy on people management matters.

Perhaps this tension is nowhere more sharply reflected than in the NHS's programme on equality for women. Women comprise 79 per cent of those working in the NHS but are concentrated in lower-paid occupations, nurses not doctors, ancillaries not managers. Many work part-time, especially in predominantly female occupations such as nursing. Women are also disproportionately concentrated in the lower grades of the occupational hierarchy. For instance, Hutt (1985) found that whereas only 10 per cent of nurses were male, they filled 40 per cent of senior nurse posts.

In 1991, two reports were issued, identifying a number of barriers to women's progress in the NHS. The first report, by Goss and Brown (1991), highlighted the limited availability of part-time and flexible working arrangements at senior levels, the limited availability of appropriate child care provision, the convention in many jobs that long hours are required and the widespread use of patronage and head hunting for senior posts. The second report, by the Equal Opportunities Commission (1991), pointed out that most health authorities did not implement their equal opportunity policies effectively or plan or evaluate progress. It recommended a national corporate plan with equality targets and the establishment of an NHS equality unit.

Against this background, in October 1991, the Secretary of State for Health signed up to Opportunity 2000 on behalf of the NHS in England. Opportunity 2000 is a business and government supported, voluntary campaign to increase the quality and quantity of women's participation in the workforce by the year 2000. In the NHS, where the problem was the quality, not the quantity of women's jobs, a women's unit was established which initially set eight Opportunity 2000 goals, of which four are numerical, to be achieved by the end of 1994 as a milestone towards 2000 (NHSME, 1992b). Examples of numerical targets are goals of women comprising 30 per cent of general managers and 20 per cent of consultants by 1994. Examples of non-numerical goals centre on initiatives for recruiting or retaining nurses or the provision

of development centres for women aspiring to management positions. After progress on those goals has been assessed, further goals will be set.

Research suggests that the overall position is patchy and some goals are not being achieved (Corby, 1994b; 1995). This failure stems partly from the NHS structure. Trust autonomy on personnel matters does not sit easily with a comprehensive NHS-wide equality programme, strategically directed from the centre. Thus the NHS women's unit can only cajole, support and provide funding for innovative projects. It cannot order and control, although it asks each trust to produce annual statistics and a local action plan. Significantly, the only goal that has been surpassed is that women should comprise 35 per cent of members of health authorities and trusts, as here alone there is central control. The Health Secretary appoints the chairman and up to three out of five non-executive directors of each trust (NHSME, 1990).

Moreover, the need for cost effectiveness in the quasi-market provides infertile ground for an equality programme which inevitably carries costs. There are resource implications in starting a creche, producing and publicizing an action plan and administering a career break scheme. Yet there is little financial reason for trusts to embrace measures to aid staff retention when labour turnover is low. This is not to say that reasons for lack of progress only relate to NHS structure. In some trusts, there have been failures in implementation. For instance, some managers fail to publicize the programme, whilst others discourage staff from making use of flexible work provisions, such as career breaks or job sharing, which would help them combine work and parenthood, because of staffing repercussions. Despite weaknesses, however, the Opportunity 2000 campaign has given a high profile to women's equality in the NHS in England. An Opportunity 2000 campaign in the NHS in Wales was launched in mid-1994 (*Personnel Management*, 1994) but there is not one in Scotland at the time of writing.

Turning to equality of opportunities for ethnic minorities, in 1986, the DoH and the King's Fund jointly estab-

lished a task force. Its final report (King's Fund Task Force, 1991) found that only limited progress had been made in tackling equal opportunities for ethnic minority staff. Consequently, in 1993, the Secretary of State launched a programme of action for the NHS in England, with the aim of achieving an equitable representation of ethnic minority groups at all levels. Eight goals were set and every trust was asked to draw up a local action plan to be incorporated into the business plan (NHSME, 1993b). Meanwhile the DoH is carrying out ethnic monitoring of the entire NHS workforce in England, as part of its annual census. Nevertheless, as with gender equality, the extent to which the centre can direct trusts, given their autonomy, is limited. Moreover, the ethnic minority equality programme has received far less publicity than the programme for women. Indeed, according to a staff representative, at one large general acute trust in Manchester, an area with a sizeable ethnic community, neither the chief executive, nor the human resources director, professed knowledge of the programme one year after its launch.

In terms of equality of opportunities for disabled staff in the NHS, the NHS Executive had not developed a strategy by 1994. Perhaps unsurprisingly, an Equal Opportunities Review survey (1994, p. 29) found: 'trusts are giving considerably higher priority . . . to the under-representation of women than that of ethnic minorities or disabled people'.

The New Industrial Relations

As noted above, under TUPE Regulations, collective agreements with the former employer, normally DHAs, transfer to the new employer, the trust. However, DHAs did not set the main terms and conditions which are set at national level, so trusts have a clean slate in respect of any arrangements for determining trust pay. Research (Corby, 1992) suggests that many trusts have established

arrangements for determining pay and benefits, although the majority have rarely made use of them to produce substantive outcomes. In fact, most of the new arrangements embody the NHS's pluralist traditions. Only four trusts are known to have decided not to recognize unions for collective bargaining purposes. These four have been able to adopt this approach essentially because the staff organizations, on account of factors at the workplace, have been unable to mount any effective opposition to management. Allied to this, existing staff in these trusts have chosen to go on to trust terms, because a significant pay rise has been offered, with unilateral regulation of pay by management as part of the package.

The unions and staff organizations

A significant feature of the NHS is the plethora of occupational groups management has to deal with and the even greater multiplicity of staff organizations, of which over 20 have certificates of independence. Essentially, staff organizations can be divided into two categories: trade unions and professional associations. Trade unions recruit from both inside and outside health care and are all affiliated to the TUC. The professional associations, in contrast, are specific to the health sector and are rarely TUC affiliates. The largest TUC affiliate is UNISON and the largest non-TUC affiliate is the Royal College of Nursing (Farnham and Giles, 1995b).

Although there tend to be a large number of recognized unions and staff associations in public services, compared with the private sector, the multiplicity of bodies representing NHS staff, with their overlapping jurisdictions, is unique. For instance, general acute hospital trusts normally have in the order of 16 active unions within them and mental health hospitals have eight, whilst midwives can be represented by four independent staff organizations. Inevitably this leads to fragmentation and is a factor that managers and personnel managers have to take into account in dealing with staff collectively.

TABLE 4.2 Membership of key unions in the NHS, 1988 and 1992

<i>Membership numbers</i>	<i>1988</i>	<i>1992</i>
UNISON*	1 608 022	1 486 984
MSF	653 000	552 000
Royal College of Nursing	281 918	299 157
British Medical Association	82 359	88 107
Chartered Society of Physiotherapists	34 376	37 558
Royal College of Midwives	33 487	36 327
Society of Radiographers	12 047	12 931
Total union membership	10 387 238	8 928 902

* UNISON, was formed in 1993 as a result of a merger between three unions: National and Local Government Officers' Association, the National Union of Public Employees, Confederation of Health Service Employees. Accordingly its figures are based on the membership figures of its constituent unions.

Source: derived from Certification Office, 1989 and 1993

Managers also need to take into account the fact that union density in the NHS is high. Although in recent years union membership has been falling in the UK as a whole, and labour force figures show a decline in union density in hospitals from 67 per cent in 1989 to 61 per cent in 1993, density in the NHS remains relatively high (Bird and Corcoran, 1994). Also the professional associations in the NHS have been bucking the trend and increasing their membership, as shown in Table 4.2.

Local bargaining machinery

In a small number of trusts, management, conscious of the weight of tradition in industrial and employee relations, has recognized all the unions active in the unit and negotiates with them all. The pattern in these trusts is that if they are large organizations there is bargaining by functional group, as in the Whitley system, whereas in

smaller trusts there is one body – a single-table bargaining unit.

In the overwhelming majority of trusts, however, there is what is called a 'prime union' system. All the staff organizations are recognized for collective bargaining, which is consonant with the NHS's employee relations traditions, but a smaller number have seats on a single-table negotiating executive, though the name of the body varies with the trust. So not all staff organizations are at the main bargaining table. In the main, the staff side determines amongst itself who should fill the seats and thus have the key negotiating roles, along with any mandating and reporting back arrangements. This saves managers from the approbrium of decisions which are unlikely to please all (Corby, 1992).

A prime union system, which is not normally found elsewhere in the public or private sectors, has a number of advantages for NHS management. First, key negotiations are carried out by a streamlined body, an important consideration in view of the multiplicity of unions. Second, as all the staff organizations are recognized for bargaining purposes, managers can negotiate with organizations which are not on the main body about minor matters affecting a discrete group of staff. Third, as all the unions are recognized, none can complain. Fourth, the main negotiating body provides for single-table bargaining and this fits management's longer term objectives for a single pay spine, the breaking down of job demarcations and harmonization of conditions of employment. Currently, conditions amongst and within functional groups vary considerably under the national arrangements.

Research by Corby and Higham suggests that the unions affiliated to the TUC and the non-affiliated staff organizations are uniting together in dealings with management. This contrasts with a decade ago, when there were examples of TUC-affiliated unions refusing to sit down with non-affiliates (Seifert, 1992). Arguably, inter-union cooperation is opportunistic and the British Medical Association (BMA) and UNISON, for instance, or the Royal College of Midwives and MSF, do not have shared vi-

sions but they do face common problems.

The negotiating roles of full-time officials in trusts vary considerably and, unlike many private-sector agreements, trust agreements often specify the nature of the involvement of the full-time officer in negotiations. Some trusts allot them seats on the main negotiating body. Others say they can attend and speak but not vote, whilst others limit the numbers of full-time officials. Whatever the *de jure* position, evidence (Corby and Higham, unpublished) shows that full-time officials are playing a key part in supporting their local lay representatives who, in the past, did not have to deal with terms and conditions of employment.

Only a very few trusts mention arbitration as a method of dispute resolution, whether of a conventional or pendulum kind, and in all cases it is dependent on a joint reference. This may be because managers do not want pay determination decisions going outside the confines of their unit. After all, many managers have long criticized Whitley, because it is outside unit control (Warlow, 1989).

Other procedures

Before the 1990 changes, there were formal joint committees at DHA level and sometimes at unit level. Such committees, although termed JCCs, were in practice forums for both consultation and negotiation on a limited range of matters, such as shift patterns and ancillary bonus schemes. With trusts becoming the employers, formal consultative bodies have been established at this level. In most, but not all cases, management, to prevent blurring the distinction, have set up separate consultative and negotiating bodies. This, of course, ties in with the prime union model, as all the recognized unions have a seat on the consultative committee, though not on the key negotiating body.

Just as negotiating procedures have been redrawn because of the formation of trusts, so too have procedures

that can be exercised individually, such as grievance and disciplinary procedures. By the end of the 1980s, the vast majority of employing authorities had negotiated their own local procedures with their JCCs. When those procedures were exhausted, it was open to all NHS employees, through their recognized staff organizations, to take their case beyond the local boundaries to regional level and, in the case of individual grievances, to national level.

These procedures have been recast for a number of reasons. First, for most staff, the employing authority is no longer the DHA but the trust. Second, the Whitley provision relating to individual grievances (s. 32) was abolished from the end of March 1992. Accordingly, no NHS employee can now take a grievance beyond the employer. As to discipline, the RHA always had discretion whether or not to entertain an appeal from beyond employer level. Anyway, RHAs are abolished so the new procedures end at trust level. Instead of a hearing by a sub-committee of the DHA, a matter is now determined by a sub-committee of the trust board. This mirrors the fragmentation of the NHS, as there is no longer a chain running from local to national level on matters connected with employment. Exceptionally, hospital doctors and dentists can still appeal directly to the Health Secretary on grounds of redundancy, professional – not personal – misconduct and professional incompetence (Ward, 1995).

What essentially amounts to the bypassing of Whitley can also be seen in trust initiatives to foster employee involvement in ways not covered by Whitley. These include team briefing, which according to the NHSME survey (1993a, p. 11) is 'the preferred method of intra-unit communication', followed by in-house newsletters. According to Storey (1992, p. 271), unit general managers are also experimenting with team building and quality circles and embracing the concepts and language of culture change. Yet he says the 'weight of the extant systems were such that the new initiatives were pushed to the fringes'.

Training and Staff Development

The current pattern of training and staff development mirrors organizational changes in the NHS. Until the early 1980s, training and staff development grew in an uncoordinated way. For example, the DoH's estates division carried out training for managers as did other departmental divisions. As part of its drive to improve efficiency, government formed the NHS Training Authority (NHSTA) in 1984 to coordinate training in England and Wales (NHSTA, 1985). Interestingly, it was formed as a special health authority, responsible directly to the Secretary of State and with a governing body drawn from the NHS nationally, regionally and locally, the professions and staff side.

The NHSTA played a key role in certain areas, such as management education and development, ambulance training, training for professionals in their non-professional duties such as finance. It also developed individual performance review systems to assess training needs. It carried out training, owning training centres and improved training technology, such as computer assisted learning. At the same time, it also conducted projects for the Secretary of State on NHS audits including analysing training needs, developing standards and establishing a training programme to be delivered by training centres, validated by such bodies as the Chartered Institute of Public Finance and Accountancy.

The NHSTA, with some 200 staff, was at the pinnacle of a hierarchical structure. It worked with and through the RHAs which, in turn, had their coordinators and training departments. Linked to them were the DHAs, which also had their own training staff who liaised with trainers in hospitals. With the establishment of the first trusts, the structure of the NHSTA changed. Instead of a special health authority, it became a directorate reporting to the human resources director of the NHS. However, to draw it more tightly into the NHS Executive, it underwent a further change in 1994. It became the NHS Training

Division (NHSTD) with some 100 staff.

These structural changes were accompanied by changes in its function. The NHSTD hived off its training centres and so no longer provides training. Instead, it is concerned with standard setting. For example, it has developed National Vocational Qualifications (NVQs) for support workers, operating department assistants and physiological measurement technicians, setting standards for workplace assessors and accrediting training centres. It encourages trusts to go for the Investors In People award. It also acts as a resource, such as producing open learning packages and, as before, carries out commissions and oversees the national management training scheme and the financial management training scheme, appointing the awarding bodies. At the same time, it plays a leading role in organizing training for NHS Executive initiatives, such as local pay.

Whereas the NHSTD has already lost a significant part of its role, RHAs are set to lose their training function completely. At the time of writing, however, they commission others, such as colleges of nursing, to provide professional education and training for all staff groups except doctors and dentists, on the basis of figures provided by trusts, though this too is likely to be devolved to trusts soon. As to DHAs, they are not large employers now and have lost most of their training function.

Indeed the focus of training and staff development, which formerly flowed from the centre, now flows from trusts, and Guest and Peccei (1992) found that the top priority for trust personnel staff was training and development. A typical trust spends about two per cent of its budget on training, not counting the professional education and training currently arranged through RHAs. In some trusts, the training budget is held centrally, whilst in others part of the budget is held centrally and part is devolved. Within these budgetary limits, trusts analyse their training needs. For professional staff, they place contracts with training providers, generally local colleges, for statutory professional update training. For ancillaries and health care assistants, trusts decide what competences

are needed on the basis of their skill mix plans and then determine who should undergo training. In fact, most trusts have staff who have completed, or are undertaking, NVQs. The majority are health care assistants at level two (NHSME, 1993a).

There is much discussion in the NHS currently about the need for management development but, according to some trust personnel directors, there is more talk than action. Whether or not that view is representative, there is considerable variation. The NHS Executive found that only 41 per cent of trusts use assessment or development centres (NHSME, 1993a). It also found that some trusts have in-house accredited management certificates, some send staff on university courses, such as Diplomas in Management Studies or Masters in Business Administration (MBAs), and some use the NHS management scheme. Some trusts concentrate on management skills for managers, whilst others are concentrating on management skills for clinical directors and other professionals. Nevertheless, whilst the mode and extent of management development vary, there is growing importance attached to financial management. Marketing is also a new feature of NHS management education. There is evidence too that there is more in-house training than before. Trust human resources directors see it as less costly and more relevant and it provides a management development opportunity for trust staff, although outsiders are used as well as insiders to provide the training.

It is likely that trusts will do more training and development themselves and the NHSTD will reduce to around 30 staff, with a strategic function enmeshed in the NHS Executive. Other current NHSTD initiatives may continue, provided they can be financed by income generation. It is too early to say whether training provision will become more effective under these arrangements, though the measurement of training effectiveness is bedevilled with problems. Some trust personnel directors argue that training of the workforce must be embedded in workforce planning and analysis of needs, which only trusts can do effectively. Anyway, the centre will continue to oversee

management training, whilst the strong professions will also set standards. Some in the NHS Executive fear that training may no longer be seen as crucial, or that training may be duplicated, as it was before the NHSTA provided coordination. Whatever the validity of these views, the devolution of training to trusts is consonant with their new personnel responsibilities relating to the management of people.

Conclusion and Evaluation

Many NHS personnel people now have a job title which incorporates the term 'human resources' or HR in it. But one has to go behind the HR label. There is evidence that people management in the NHS still corresponds more with TPM than human resources management (HRM). This, of course, begs the question of the nature of the differences between the two and there has been much debate about this (Guest, 1987; 1990). One distinction that has been made between HRM and personnel management is that the former is more strategic and integrated with business policy than is the latter. There is some evidence that trust personnel managers are now much more involved in business plans than formerly and over half sit on trust boards. Yet because of the annual purchasing process, there is a premium on short termism. As one HR director of a community trust said: 'we are trying to be strategic, but in practice we find ourselves reacting to the purchaser'. She instanced the loss of a family planning contract which meant that she suddenly had to decide which three family planning sessions had to end.

Sometimes HRM is measured by the extent to which the content of its policy and practice is different from personnel management. There are examples of new communications strategies associated with HRM, such as team briefing, but this does not necessarily signal a change of approach. Indeed, Guest and Peccei (1992, p. 13) in their study of NHS personnel managers found that 'policy goals

associated with traditional personnel management are still accorded slightly higher priority than those linked to the more contemporary human resource management.' This may be because HRM is linked with individualism and personnel management is linked with collectivism, which is still important in the NHS since union density remains high. The unions themselves, particularly the BMA, are powerful not least because many of them, through their professional role, work with the professional bodies to limit entry and maintain training standards and successfully intertwine their professional and industrial relations roles. The BMA's campaign against performance pay is an example of this (BMA, 1994).

Furthermore, collectivism in the NHS has not been seriously undermined by the government. For instance, Whitley and the pay review bodies remain, though the messages about their continuation emanating from the centre are mixed (Bach and Winchester, 1994). At local level too, collectivism prevails on the whole. Only a handful of trusts have decided not to recognize unions for collective bargaining purposes and the letter from the chief executive of the NHS to trust chief executives (Langlands, 1994) talks about stimulating local pay *bargaining* (author's emphasis). Moreover, recent research (Corby, 1992; Corby and Higham, unpublished) finds that trust managers are proceeding cautiously and that unions have succeeded in deflecting management from a unilateral to a collectivist approach. At one trust, for instance, the staff side were able to secure negotiations about a local pay deal, although originally management had only wanted to consult the unions. At another, the staff side were able to secure negotiations over trust contracts, although management had originally said that these would be determined unilaterally.

The larger staff organizations, though not necessarily the smaller ones, also seem to be surmounting the problems caused by the trend of moving key industrial relations decisions away from the centre to the locality, where traditionally public-sector unions have been weak. They are providing training, information and full-time officer

support to lay representatives to build up their confidence and capabilities. So lay representatives are well placed to negotiate either local pay deals or local top-up arrangements.

Nevertheless, the collectivist approach is not going unchallenged by management. There is evidence that local pay determination tends in practice to be linked with individual or group performance pay, which, in turn, depends on managerial assessments. Thus it is counter to the notion of joint agreement over a rate for the job. If performance pay becomes the norm rather than the exception, as at present, collectivism may be seriously threatened.

Collectivism is not the only feature of the NHS which is being challenged by the new developments in people management. The whole nature of employment is too. First, employment in the NHS is becoming less secure. In particular, the system of annual purchasing of healthcare has introduced volatility into NHS employment which, in turn, has led to redundancies, fixed-term contracts of employment, temporary work and the use of nurses' banks. Second, there is evidence of deterioration in the quality of working life and increased workload. For instance, a nurse looked after 19.3 patients in 1989-90 but this had risen to 21.4 patients in 1992-93 (Brindle, 1994b). The aim of the NHS and Community Care Act 1990 is, of course, to improve quality of service, not the quality of life of those working in the NHS. However, the jury is still out on quality of service (Robinson and LeGrand, 1994).

In recent years, the NHS has become more like the private sector in a number of respects: trust and health authority boards modelled on company boards; quasi-contracts similar to the market process; and decentralized structures akin to those found in many large companies. At the same time, terms and conditions for employees in the NHS and the private sector are converging, such as the erosion of job security and the growing emphasis on performance management and performance pay. In addition, whereas conditions for NHS staff were once at the leading edge, this does not always apply now. For

instance, annual leave in the private sector has increased, particularly in engineering, and career-break schemes were developed in the clearing banks, not the NHS. Moreover, like large parts of the private sector, the NHS is active in the area of equal opportunities for women and has embraced the Opportunity 2000 campaign but is doing little to advance equal opportunities for disabled staff.

Nevertheless, these similarities between the NHS and the private sector do not outweigh the differences and the NHS exhibits many features found only in the public services. These include: pay determination by pay review bodies; a relatively high level of unionization, over 60 per cent compared with 23 per cent in the private sector (Bird and Corcoran, 1994); a multiplicity of unions in the NHS, with from eight to 16 per establishment, compared with a mean of 1.7 recognized unions in the private sector (Millward *et al.*, 1992); and a tradition of detailed joint regulation of employment issues.

Moreover, for the vast majority of NHS staff, the national level is the most important one for pay determination. This contrasts starkly with the private sector. The Workplace Industrial Relations Survey 1990 shows that national level bargaining was the most important level of pay determination for only a small minority in the private sector: five per cent and 24 per cent for non-manual employees in private services and private manufacturing respectively (Millward *et al.*, 1992).

The key distinction between the NHS and the private sector is the political context. but, up to 1990, party political controversy revolved around aspects of the NHS, such as levels of funding, 'paybeds' and the pay of employees. With the 1990 Act, the NHS moved to the forefront of the party political agenda and controversy has centred on the ethos, nature and fundamental structure of the NHS.

If the Conservative party wins the next general election, we shall probably see the developments set in train by the 1990 Act carried further. For instance, national arrangements for determining terms and conditions are likely either to be scrapped or wither away and, at the

same time, local pay determination could become the norm. We are also likely to see more skill mix changes and more temporal flexibility as the internal market becomes more deeply rooted.

In contrast, if the Labour party wins the next general election, there could be changes to the NHS, as evidenced in its documents, *Health 2000 and Renewing the NHS* (Labour Party, 1994; 1995). Instead and of annual purchasing contracts, the Labour party proposes service agreements on a three-year rolling basis with GP fundholding being phased out in place of new commissioning agencies. This would reduce volatility and provide more fertile ground for longer term employment planning, with knock-on effects for employment patterns. The Labour party also favours the expansion of the regional tier which would limit local autonomy, as would its plans to retain the pay review bodies and a national framework for collective bargaining. Moreover, its plans for a national minimum wage, and its commitment to end CCT, would have implications for the terms and conditions of NHS staff, as would its collectivist ethos and its commitment to equal opportunities, including its proposal for targets for employing people with disabilities. It also proposes to make changes in the criteria for the appointment of non-executive directors of the trusts to increase accountability to local communities. The thinking of NHS managers may continue to be informed by their experiences in the first half of the 1990s. But the outcome of the next general election could shape the future direction of the NHS, and its approaches to people management, for the rest of the decade and beyond.

Commissioned research reports

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INNOVATIONS IN PAY AND GRADING IN NHS TRUSTS

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Executive Summary

A. The scope and objectives of the research

This report examines innovations in pay and grading in 10 NHS trusts in England using data collected from March 2000 to January 2001, ie prior to the implementation of *Agenda for Change*. These 10 trusts, which varied in size, function, and location, were selected primarily to illustrate a variety of different approaches to pay and grading. The research utilised a qualitative methodology, with interviews of managers on a one to one basis, group interviews with lay union representatives, focus groups with staff and the inspection of documents. This study focused on four questions:

- Did local pay resolve the problems associated with Whitley?
- What were the consequences of local pay?
- Were the trusts' pay systems introduced in line with 'new pay' ideas and current trends in reward management?
- What factors were critical to the success of developing and implementing local pay systems in NHS trusts?

B. Background

The data on pay and grading in NHS trusts was placed in context by reviewing pay arrangements in the public services. In the civil service decentralised collective bargaining is well established with pay progression essentially based on performance; but the amount and form of performance rewards were being re-examined, with team bonuses being considered. In the universities an independent review (Bett, 1999) proposed wide ranging reforms to both bargaining structures and pay systems to address long- standing gender inequality issues but at the time of writing there had been little progress on the review's recommendations. In local government a new national level 'single status' agreement was concluded in 1997. The agreement gives local authorities considerable discretion. For instance they can choose a job evaluation system and determine a range of premium payments, but there has been slow progress on implementation.

To inform further our answers to the research questions, the report also reviewed the criticisms of Whitley and the debates and issues surrounding the choice and application of pay systems, in particular the 'new pay' and reward management literature.

C. Findings

Aims and objectives

Management aims could be categorised as value driven or issue driven. The former included such objectives as fairness, simplicity, equity and enhanced patient care. The latter included recruitment and retention issues. Trusts adopted a values based, strategic approach where they were proposing to introduce pay changes for a

significant proportion of their workforce throughout the organisation. Conversely, where trusts were proposing to introduce pay changes for a discrete area only, issues driven approaches were adopted. The need to manage performance was often not an espoused aim, but interviewees suggested that it formed at least part of the rationale for pay changes.

Pay systems

The extent to which trust employees were eligible for local pay systems varied. At one trust none were eligible as the trust adhered to the national arrangements. On the other hand in three trusts all non-medical staff were eligible and in the remaining trusts discrete occupational groups only were eligible for the new arrangements. Take-up rates among eligible staff also varied, from 25% to virtually 100%.

Four out of our 10 trusts used Medequate job evaluation, one trust used Hay and another introduced 'recruitment clusters' based on a competency grading system. The remaining trusts based their new grading systems on the national grading system with changes to suit their circumstances. Three of the trusts using job evaluation adopted single pay spines, which managers saw as enhancing teamwork and providing a defence against equal value claims. Only one trust introduced a very broad banded structure with no pay maxima to grades, only pay minima. Most trusts which introduced their own pay systems ended up with grading structures which were little different from the national grading structures either in theory or in practice.

Basic pay apart, four of our trusts did not move away from the national terms and conditions. Turning to those that did, significant features were the incorporation of unsocial hours premia into basic pay and harmonisation of unsocial hours premia, overtime, working hours (37.5 per week) and on call payments. Of all the major conditions annual leave was the least likely to be harmonised, essentially for pragmatic reasons, ie the costs involved in harmonisation.

Pay progression

Performance related payments were made for at least some staff in nine of our 10 case study trusts but only in one was performance related to the organisation as a whole. In all the other trusts, performance related to the individual but there was variation as to whether the individual's performance was measured by behavioural and/or clinical attributes, with some trusts developing competencies. As to how the payments were made, the majority of trusts made payments on an incremental, consolidated basis. Two trusts employed a mixture of consolidated and non-consolidated increases and one trust gave non-consolidated bonuses only to staff at the top of their grade, with service related increments within grade.

There was a wide variation in the extent to which trusts' performance pay systems discriminated between employees' performance. For example, at one end of the spectrum nurses and midwives at one trust could receive 10 possible levels of award ranging from 0 to 6%. Within the spectrum, in three trusts a performance award was withheld from around 10% of employees. At the other end of the spectrum, in three trusts the performance award, equating to a service related increment under Whitley, was not normally withheld.

Process

The unions did not favour any departure from national pay arrangements. Given that general stance they adopted three main approaches: in five trusts there were management/union agreements on the new pay system and negotiations and agreement each year on the annual review; at three trusts there were management/union discussions prior to the introduction of a new pay system, but not agreement, though subsequently there were negotiations and agreement on the annual increase; at two trusts there was no discussion before the introduction of a new pay system, but subsequently there were negotiations and agreement on the annual increase. As to staffs' views, five trusts held focus groups of staff to elicit views about the future shape of a pay system or to help to compile competencies.

Costs

Management time in developing a pay system was hard to quantify, especially where managers incorporated pay development and implementation into their other duties. Three trusts, however, introduced a new full-time post. Assimilation costs ranged from nil to 3.5% of the paybill and depended on a number of factors, including the extent to which the new pay system differed from national arrangements and whether the trust, wishing for a high take-up rate initially, offered generous incentives to transferring staff.

Outcomes

Our data revealed that eight of the 10 case study trusts took the opportunity of changes to pay systems to introduce rotating shifts, new on-call arrangements or annual hours. Managers were of the view that such new working patterns, underpinned by revised payment systems, enabled them to meet service needs more effectively. The main area where the pay system was used to support multi-skilling was in theatres. ODPs/ODAs and theatre nurses were placed on a new and common pay system (instead of two separate sets of national arrangements) and at the same time were trained to provide functional flexibility.

There was a paucity of evaluation conducted by trusts. Where evaluation took place it was often small in scale, eg evaluation of a pilot. Moreover, although trusts collect data on labour turnover and sickness absence and now carry out an annual staff attitude survey, none compared those on the national arrangements with those on the trust's pay system. This limited the usefulness of such data for the purposes of this study.

With this important caveat, we examined labour turnover data. It did not indicate that new pay systems had had any noticeable positive or negative long-term effects. The sickness data examined, however, indicated that the introduction of a new pay system had, in a few trusts, gone hand in hand with a reduction in sickness absence, though this did not necessarily equate to a causal link.

As to patient outcomes, the link between pay systems and three NHS performance indicators (emergency re-admissions, deaths within 30 days of surgery after emergency and non-emergency admissions) were explored but no clear relationship

was found. Many management interviewees, however, and some staff, were strongly of the view that their new pay systems had led to an improvement in patient care.

D. Conclusions

Our literature review indicated that managers identified three problematic areas in Whitley: the Whitley Council structure, the complexity of the numerous collective agreements and the high degree of centralisation. Another problem, equal value, was revealed in the litigation stemming from Enderby v Frenchay Health Authority (1993).

Our data showed that where the case study trusts made innovations in pay and grading the bargaining structure was greatly simplified both on the management side and the union side. Also, in a number of trusts collective agreements were simplified. Other trusts, however, introduced a number of pay systems for different occupational categories and/or departments in the trust and this resulted in considerable complexity, compounded in one case by a merger. Another source of complexity was the pay progression arrangements. Eight out of the 10 trusts studied had replaced service related increments with performance based pay progression arrangements. As to centralisation, interestingly only in three trusts were the majority of employees covered by pay arrangements which materially differed from the national arrangements. This suggested that managers on the whole did not necessarily make use of the pay flexibility provided to them. Moreover, only three trusts introduced job evaluated single pay spines which could obviate equal value problems for employees in the same employment.

We also examined the consequences of local pay. On the one hand, interviewees highlighted benefits for the service, especially where new pay arrangements supported changes in working hours and/or multi-skilling. On the other hand, local pay arrangements were not unproblematic. Where the new pay system included an opaque system of performance related pay which made fine distinctions between staff there was both union hostility and staff dissatisfaction.

The 'new pay' and reward management writers recommend a strategic approach to pay, ie that there should be a link between pay and business strategy. Our data, however, indicated that only four of our 10 trusts adopted a strategic approach, while a further three trusts planned to take an organisation-wide approach but in the event did not do so. The 'new pay' writers also recommend that pay be based on the individual (for example, by performance pay), rather than a rate for the job. Nine out of our 10 case study trusts introduced at least an element of performance related pay, though the rhetoric of performance pay was not always translated into reality and only in one trust was the annual increase entirely based on performance.

As to grading structures, our data contrasted with the views of American 'new pay' writers that job evaluation is in decline and that broad banding is on the increase. Five trusts used job evaluation and there was only limited evidence of broad banding. An area where our data accorded with current trends in reward management, however, was harmonisation, with single pay spines in three trusts and harmonisation in respect of terms and conditions, apart from pay, in six out of the 10 case study trusts. We also found examples of trusts introducing variability in the weekly amount or timing of employees' hours, while keeping constant employees' pay.

Finally, factors critical to the success of developing and implementing new pay systems were considered and the following conclusions were drawn from our data:

- A close working relationship between management and the staff side at trust level eased the development and introduction of local pay regimes.
- Trust managers said that the process of introducing a new pay system was more time consuming than they had anticipated and three trusts created new full-time posts to develop and implement local pay regimes.
- Liaison with employees, for instance on assimilation arrangements and the drawing up of competencies, engendered the confidence of staff and unions who mistrusted complex and opaque performance pay systems.
- Harmonisation of terms and conditions, as well as being perceived by management, unions and staff as equitable, also contributed to improvements in functional flexibility and teamworking.
- Management considered that the subsuming of certain premium payments into basic pay served to underpin temporal flexibility and staff welcomed the ensuing stability in earnings.
- Our focus groups of staff were of the view that pay systems must be considered alongside a number of other factors, particularly career development arrangements and pay levels.

OVERVIEW

This report focuses on innovations in pay and grading in 10 NHS trusts in England prior to the implementation of *Agenda for Change*. Our approach utilised a case study methodology. The research questions (stemming from our original proposal, see Appendix A) were:

- Did local pay resolve the problems associated with Whitley?
- What were the consequences of local pay?
- Were the trusts' pay systems introduced in line with 'new pay' ideas and current trends in reward management?
- What factors were critical to the success of developing and implementing local pay systems in NHS trusts?

This report is organised in two parts. Part one reports the background literature, placing our data in context by reviewing the state of play in the public services and specifically local government and the NHS. The literature review also addresses the debates and issues surrounding the choice and application of pay structures. These served to prompt our research questions. Part two provides an account of our empirical work. Analyses are organised around several key issues, including trust aims and objectives, pay systems, pay progression arrangements, the process of developing and implementing trust pay and outcomes. We end by drawing together our findings and the current literature, presenting key conclusions and pointing to critical success factors.

PART ONE: THE LITERATURE

1.1 Introduction

Over the last two decades there have been major changes in the way in which employees' pay and grading is determined in the UK. These developments have been driven by both economic and political changes and have affected the private and public sectors. In this literature review we provide a context for our research on innovations in pay and grading in the NHS. The review is organised into sections. In section 1.2 we examine changes in public sector pay generally. In sections 1.3 and 1.4 we take a detailed look at local government and the NHS respectively. In section 1.5 we consider the theoretical debates and issues in what has become increasingly known as reward management.

1.2 Pay in the public services: the context

1.2.1 The Conservative years 1979-1997

The Conservative government elected in 1979 was in power for a substantial enough period to have had a significant effect upon employment policies in a way that few post-war governments have had. Essentially in 1979 it abandoned the use of incomes policies to control wage and price inflation in favour of a market approach. For instance, Mr Kenneth Clarke, when Minister of State for Employment, said in 1987:

We must move towards a system more clearly based on market forces, on demand and supply, on competition and on ability to pay... If we can move to a system where pay increases are primarily based on performance, merit, company profitability and demand and supply in the local labour market, we will dethrone once and for all the annual pay round and the belief that pay increases do not have to be earned (cited in Kessler and Bayliss, 1998:223).

The Conservative government, as the direct or indirect employer, was able to influence the pay arrangements for public sector workers in line with this approach. For instance, it gradually introduced performance related pay into the civil service and for senior managers in the NHS in the 1980s. Then in the 1990s performance related pay became a feature in the bespoke pay systems developed by some NHS trusts and in a significant number of local authorities, at least for senior managers. It also replaced collective bargaining for certain public sector workers with determination by pay review bodies: nurses and professions allied to medicine in the NHS and school teachers in England and Wales (White, 2000). The coverage of the Senior Salaries Review Body was also extended to cover grade 5 civil servants (Cabinet Office, 1994).

Furthermore, from 1996 the Conservative government replaced national pay determination for all civil servants (except the most senior) with department/agency pay determination in an attempt to ensure that pay rates more accurately reflected specific labour market needs rather than the many and often conflicting needs of the civil service as a whole (Cabinet Office, 1994; Corby, 1998). Similarly it encouraged local bargaining in the NHS in 1995-96 in an attempt to ensure that pay reflected local labour market conditions (Corby, 1996). In addition, especially in the tight labour market generated by the economic boom of the late 1980s, it reacted to labour market

pressures by awarding special pay additions to public sector workers in short supply, rather than increasing pay more generally (White, 1996).

The economic downturn of the early 1990s led the then Chancellor of the Exchequer, Kenneth Clarke, to impose a pay limit of 1.5 % in the public sector, followed by a freeze on pay budgets for the subsequent three years. Under this pay policy any increases for public sector workers had to be funded through efficiency or other savings (IDS, 1993).

1.2.2 New Labour 1997-2001

Initially New Labour continued with its predecessor's public sector pay policy. It sought to ensure that all pay increases in the public services were self-financing. In 1998, the first year in which the new government considered the recommendations of the pay review bodies, the awards were accepted but staged, reducing the overall cost. In the subsequent three years, however, it implemented in full the pay review body recommendations.

Over the period from January 1998 to September 2000 public sector earnings, as measured by the monthly Average Earnings Index, continued to run below the level in the private sector. A more reliable measure, the annual New Earnings Survey, indicates that average weekly earnings in the public sector stood at £394.40, compared to £412.30 in the private sector in April 2000 (ONS, 2000). Pay dispersion is much narrower in the public sector than in the private with lowest decile workers having higher pay in the public than the private sector. In contrast, highest decile workers have higher pay in the private sector than in the public sector.

The government, in its white paper *Modernising Government* (Cabinet Office, 1999a), laid down its main political objectives for the public services. In respect of public sector employees, it undertook to revise performance management arrangements and tackle the under-representation of women, ethnic minorities and people with disabilities. Also, the government, in contrast to its predecessor, said that 'we will continue to work closely with the public sector trade unions to achieve our shared goals of committed, fair, efficient and effective public services' (Cabinet Office, 1999a: 62). In addition it said: 'Public servants must be rewarded fairly for the contribution they make. We must make sure that our approach to pay encourages more of the best people to join and stay' (Cabinet Office 1999a:58). The government then listed four ways in which this objective could be achieved:

- the reform of 'outdated' systems, including challenging the 'idea that "fair pay" means that everybody should get the same increase, or that pay and conditions should all be set nationally';
- revising pay scales and grading systems to deal with recruitment and retention problems for certain key groups of staff such as teachers and nurses so that 'more skilled people can stay in the front line';
- making best use of non-pay incentives, for example better training and development opportunities, good career prospects, family friendly policies and employee recognition schemes;

- rewarding results and performance. 'A person's pay should reflect their output, results and performance... We should challenge systems which give automatic pay increases to poor or inefficient performers';

(Cabinet Office 1999a: 59).

1.2.3 School teachers

This overarching policy was translated somewhat differently in each public service, in part according to its history and political salience. An example of New Labour's objective of rewarding results and performance and its objective of revising pay scales to deal with recruitment and retention problems of key staff can be found in the proposals for individual performance-related pay for school teachers. The government proposed a new nine point scale for classroom teachers based on annual increments with a performance threshold which would trigger an immediate £2,000 increase with a further five performance-related pay points on top of the nine point scale. Teachers with management or other additional responsibilities would receive special allowances (Department for Education and Employment, 1998).

The additional increments were to be paid from September 2000 but the government's plans were temporarily thrown into disarray in July 2000, when the National Union of Teachers successfully challenged the performance scheme in the courts. This is because, unlike other UK public servants, any changes to the pay of school teachers in England and Wales must be approved by Parliament but this had not been done. Subsequently the Secretary of State asked the pay review body to consider the performance pay scheme, which then went ahead with additional government funding (Department for Education and Employment, 2000).

1.2.4 Civil Service

The Conservative government, as noted above (see sub-section 1.2.1), had made significant changes to civil service pay, introducing individual performance related pay and replacing national level bargaining with bargaining by department/executive agency. Thus Labour's espoused policies of rewarding performance, reforming 'outdated' systems and revising pay scales to deal with recruitment and retention problems would seem already to have been realised. Problems, however, remained, mainly centred on pay progression arrangements. The Cabinet Office has recognised the fact that in many departments and agencies the size of the performance-related pay increase is insufficient to motivate staff (IDS, 2000:35). It said:

Performance related pay needs to take its place in a culture of proactive management. We need to be clearer about what we actually want from performance related pay and how that can be achieved within the financial constraints which will continue to exist' (Cabinet Office 1999b:13).

As a result, departments and agencies are reviewing their performance management structures, with a view to introducing new pay and appraisal systems from April 2001.

A parallel review of civil service performance pay was undertaken by the Public Services Productivity Panel in the Treasury, led by John Makinson, Group Finance

Director of Pearson plc. It looked at four major civil service departments and proposed that:

- unconsolidated merit bonuses should replace the current consolidated performance increases,
- performance should be measured against operational targets, rather than against individual appraisal results, and
- team based bonuses, based on efficiency savings, should be used instead of individual performance pay for most civil servants,

(Makinson, 2000).

At the time of writing these proposals had yet to be accepted though one department (Customs & Excise) was conducting some pilots of team bonuses.

1.2.5 Universities

In the universities (which strictly are not part of the public sector) there are a number of pay related problems. First, since the transformation of the previously local government controlled polytechnics into 'new' universities in 1992, there has been a single system of higher education with one employers' organisation but two sets of negotiations for 'old' and 'new' universities, each with their own settlement dates. Amalgamation of the two separate negotiating machineries has been long overdue. Second, there are continuing equal value problems (Bett, 1999).

An independent review, chaired by Sir Michael Bett, recommended that higher education should retain a broad national framework for the determination of pay and conditions of service, but with freedom within the framework for individual institutions to adapt the detail (Bett, 1999). It also recommended that:

- The present 10 separate negotiating groups (six bargaining groups in 'old' universities in England and Wales, three groups in 'new' universities in England and Wales and one group in Scottish universities) should be replaced by a single National Council with an independent chairperson and secretariat.
- There should be two closely related pay spines: one for academics (teachers, research and academic related staff) and one for non-academic staff (ancillaries, administrative and technical staff), with a common settlement date for all groups.
- Pay progression for academic staff should be based on length of service (up to four years), relevant qualifications, additional responsibilities, and merit and achievement.
- Pay progression for non-academic staff should be based on merit and achievement, responsibilities and acquired competencies, as well as experience gained in the first few years of service in a grade.

- A new job evaluation scheme should be introduced to remedy gender inequalities for which funding by central government would be necessary. The committee estimated that the paybill increases necessary would be about 9% for academic staff and around 8% for non-academic staff.

In February 2000, it was agreed in principle that three joint working parties should be established to deal with new national bargaining machinery, equal opportunities and casualisation (NATFHE, 2000:1). Following the ending of a dispute over the 2000 pay awards in universities and as part of those settlements, it was agreed at the beginning of 2001 that the joint working party on equal opportunities should go ahead forthwith.

The so-called Russell Group of elite universities, however, that hope to create a British 'Ivy League', have made it clear that they wish to make pay and conditions much more dependent on market principles. They want lecturers' salaries and conditions to be priced according to scarcity, performance and demand. The government, as part of an injection of money into higher education, has asked all universities to devise pay schemes, essentially in accordance with the Russell Group approach, for consideration by the Higher Education Funding Council (Kelly, 2000). Whether national level bargaining can withstand these pressures is an open question.

1.3 Local government

1.3.1 Background

While the NHS has not yet agreed a new pay structure, local government did so with effect from 1997. Local government in England and Wales employs 1.2 million people (excluding teachers) and has a paybill of £13 billion¹. There are 410 local authorities each employing from a few hundred staff to tens of thousands (White and Hutchinson, 1996). These differences in size reflect geographical size to some extent, but also the range of services provided. The largest employers are the large metropolitan city authorities and the London boroughs, followed by the county councils and unitary councils. The district councils, while most numerous, are the smallest, as they employ relatively few occupational groups.

Local government is funded both by central government grants (which provide around 80% of the total) and by its own revenue, raised through the council tax. It, therefore, has a degree of financial independence and a wide scope in employment matters compared to central government. Most local authorities, however, since the Second World War, have followed the various national agreements on pay and conditions. In the 1980s a small number of local authorities, largely small district councils, opted out of the national agreements to establish their own terms and conditions (Griffiths, 1990; Bryson et al, 1993) at least for some of their staff. In many cases these opted out councils used the opportunity to introduce performance related pay schemes and new job evaluation systems (IDS/KPMG Peat Marwick McLintock, 1988; IDS/Coopers and Lybrand, 1989).

¹ Information provided by a press officer in the Employers' Organisation, January 2001.

The 1997 agreement was not the first major new deal in local government in recent years. In 1987 the local government employers and the unions representing manual workers concluded an agreement. The job evaluation (JE) exercise, conducted by a joint management/union team, led to the creation of a new six grade structure for manual workers (IDS, 1987). Certain 'plus rates' paid for particular duties were also consolidated. The national job evaluation scheme adopted was points-based, with eight weighted factors, which allowed each job to be evaluated at local council level. A key concern was equal value and the JE scheme's factors covered all aspects of manual workers' tasks, not just the traditional factors of educational/training attainments and strength (IDS, 1987; IRS, 1987; Hastings, 2000). Accordingly, it resulted in the moving of some female jobs to higher grades.

The agreement, however, whilst it dealt with basic pay rates, did not tackle the fact that male manual workers typically receive bonuses and female manual workers, eg cooks, do not. According to a survey of manual workers' pay by the local government employers in 1996, 57% of men received bonus payments compared to only 7% of women (cited in IDS, 1999:91). The 1987 agreement also included a commitment in the longer term to harmonisation with white collar staff. The creation of the trade union, Unison, in 1993 (Certification Officer, 1994), which brought together both manual and non-manual local government employees, gave added impetus to this commitment.

1.3.2 The 1997 agreement

The 1987 agreement was superseded by the 1997 so-called single status agreement, which brought together the two largest bargaining groups, the manual workers' national joint council (NJC) and the administrative professional, technical and clerical (APT & C) NJC, establishing a single pay spine and harmonising working hours. The culmination of several years of negotiations, the agreement maintains a national framework for pay determination but in response to employer demands, allows more local flexibility than hitherto at individual council level. The agreement, however, does not cover a number of small bargaining groups such as chief executives, chief officers and various specialist education groups and maintenance crafts, who retain their own agreements.

The major objectives of the new pay system are threefold: to address a longstanding issue of fairness or 'equity' between the terms and conditions of manual and non-manual workers; to address problems of equal value, especially in bonus schemes; and to allow employers more local flexibility in grading, pay progression systems and terms and conditions (IDS, 1998). The agreement provides for:

- the creation of a single integrated 49 point pay spine for both manual and non-manual employees,
- a standard 37 hour week for all employees from 1 April 1999,
- a new national job evaluation scheme with the encouragement of local grading reviews,

- the ability to modify certain conditions of service by local negotiation, (particularly unsocial hours premia),
 - the ability to grade staff on a single point or a scale,
 - the ending of subsistence allowances,
 - the ability to average hours over a longer period than a week,
 - the handling of grading appeals locally rather than at provincial level as before, and
 - clearer provisions on the suspension of sick pay,
- (National Joint Council, 1997).

1.3.3 Reasons for slow progress

Progress with implementation of the local authority agreement has been slow for four main reasons: structure, local flexibility, cost and management/union relations. Dealing first with structure, local authorities have a degree of independence, as noted in sub-section 1.3.1. They come together voluntarily and do not have to follow the national agreements, though most do so, and were able to use the national pay spine flexibly before the 1997 agreement (IDS/KPMG Peat Marwick McLintock, 1988). There is a national employers' organisation and provincial councils but, unlike the NHS, there is no direct involvement in national negotiations by central government (White and Hutchinson, 1996). As a result, there is no hierarchical structure to ensure implementation locally.

As to local flexibility, councils have considerable choice within the national agreement. For example they are free to choose either the bespoke National Joint Council (NJC) JE scheme or some other scheme. The unions favour the use of the NJC scheme but some councils have chosen to use Hay, the Greater London Employers' scheme or some other patented scheme. In some cases councils, which had opted out of the national agreement prior to 1997, had already adopted new JE schemes. Councils are also free to design their own grading systems, although they 'must be fair and non-discriminatory, complying with equal pay legislation and associated Codes of Practice' (National Joint Council, 1997: 2.3). This allows the number of grades to differ from council to council, unlike the previous recommended national grades (IRS, 1998b).

Although by 1999 more than 110 councils had agreed to use the new NJC scheme, (out of 191 that had decided on a JE scheme), only a handful had actually begun the process of evaluation and even fewer had completed it (Employers' Organisation, 1999). A year later, progress continued to be slow. An IRS survey of 98 councils, employing 58% of the 1.2 million employees covered by the agreement, found that by July 2000 only seven respondents (six district councils and one county council) had carried out job evaluation and put a new harmonised pay structure in place. The survey also found, however, that 71% said that they had decided on which job evaluation scheme to use (IRS, 2000). At the time of writing not a single large

metropolitan authority had completed the exercise. Small district councils have made most progress, essentially because they employ few manual workers and relatively few occupational categories, so harmonisation is simpler. One large council which has completed the introduction of the NJC job evaluation scheme is West Sussex County Council, which implemented a 12-grade structure. A major impetus in that local authority was the outcome of an equal value case.

Another key area where there is flexibility relates to terms and conditions outwith pay. The national agreement provides for local negotiation over the unresolved issues of shift payments, unsocial hours payments, most standby allowances and the bonus scheme for manual workers (IDS, 1998:83). The only national conditions remaining are sick pay and car allowances, although the NJC continues to set working time premia (eg overtime and shift allowances for those who have not adopted local conditions). Local authorities, charged with resolving such important issues locally, have not been able to implement the new pay system easily or quickly.

The third reason for slow progress relates to cost. As discussed in sub-section 1.3.1 local government finance comes from both central government grants and the local authority's council tax. There is no specific allocation of central government funds for pay costs and councils set their own staffing levels and pay budgets. This means that councils have to meet any costs of the new agreement from their own budgets. The agreement provided for the harmonisation of working hours at 37 hours per week and this has involved a two hour reduction for manual workers. The IRS survey found that 85% of respondents had introduced a 37 hour week for manual workers, although this does not necessarily imply parity with non-manual workers in all cases (IRS 2000). (In some London authorities white-collar staff are already on 36 or 35 hours per week.) There are also costs connected with the consolidation of pay additions into basic salaries because employees normally expect some financial gain for accepting this change.

The IRS survey found that a number of allowances had been changed by respondents, including subsistence allowances (57%); weekend rates (47%); mileage allowances (43%); overtime rates (42%); and evening rates (40%). Annualised hours systems had been introduced by 26% of respondents. Consolidation or the reduction/abolition of allowances is one way in which employers can make savings, but there are on-going costs of protection for staff who are downgraded. There are also significant transaction costs. Some councils have established dedicated 'single status' teams employing specialist temporary contract staff (such as Birmingham and Newcastle City Councils), but elsewhere councils are trying to cope with existing HR staff. One way of containing costs might be the piecemeal approach taken by Newcastle City Council. It plans to have the NJC job evaluation scheme in place for the six existing manual grades and the three lowest APT&C grades by the end of 2001, with the higher grades joining later. The single status agreement was to be cost neutral, but at West Sussex County Council, for example, the changes totalled £5 million spread over a six year period (IRS, 2000:11). The unions are lobbying the government to provide councils with extra funding to help implement the agreement.

The fourth reason for the slow progress relates to management/union relations. Although the agreement was the result of close working and partnership between employers and unions nationally, according to anecdotal reports the same partnership

has not been in evidence in some local authorities and this has slowed negotiations down. The national agreement exacerbates this because it provides for much of the detail of the new terms and conditions (and often the most contentious items) to be determined locally and this appears to be a major stumbling block. IRS reported a number of industrial disputes in local councils resulting from the agreement (IRS, 2000:6).

Lack of progress in implementation apart, the objective of addressing equal value problems and giving local authorities greater control over pay may conflict. There has been reluctance at a local level to tackle the issue of gender discrimination in bonus schemes. Furthermore, variation in the job evaluation systems selected by local authorities may give rise to equal value problems. Under the Equal Pay Act employees can only make comparisons with others in the same employment (or in associated companies in the private sector). The Employment Appeal Tribunal (EAT), however, scrutinising the European Directive from which the national provisions stem, held in the case of *Scullard v Knowles* (1996) that in the public sector such comparisons may go wider. Scullard, employed by a government funded regional education advisory council, successfully compared herself to male managers employed by other regional advisory councils. It was held that she could make such a comparison. The units were supported and funded by the Training and Education Directorate of what is now the Department for Education and Employment and thus were in the 'same service'.

Similarly in *South Ayrshire Council v Morton* (2001) the EAT ruled that EU equal pay law allowed a teacher employed by one Scottish local authority to nominate as a comparator a teacher employed by a different authority. Even though each local authority decided how salary scales agreed by the Scottish Joint Negotiating Council were to be implemented, there was 'sufficient connection in a loose and non-technical sense'. Accordingly the applicant and the nominated comparator could be said to be in the same service even though the applicant's employer had no control over the terms and conditions of employment of the comparator employed by another local authority. Although it has not yet been tested whether or not local government is a service under the equal pay provisions in respect of employees other than teachers, the cases cited above suggest that an employee of one local authority could compare herself with employees in another local authority

1.3.4 Implications for the NHS

The 1997 single status agreement was a major achievement in terms of meeting the requirements of the employers and trade unions. By combining the twin aims of a fairer pay system and local flexibility in pay, grading and allowances, the agreement provides a useful model of pay modernisation in the public services. Its implementation, however, has been much slower than anticipated, largely because of the costs of introduction and, in some cases, the inability to reach agreement locally on matters left to local negotiation.

The 1997 agreement is primarily about the harmonisation of just two (albeit major) bargaining groups for manual and non-manual workers. It does not cover all the groups of local government staff, nor does it require the harmonisation of terms and conditions for differing professional and technical groups. The major remaining group

of local government employees, school teachers, continues to be covered separately by a pay review body and there is no pay linkage with NJC staff. Thus the local government agreement differs from the proposals in *Agenda for Change* (Department of Health, 1999), which envisage the harmonisation of the many professional and technical NHS occupations. Another difference is that local government employers come together voluntarily but in the NHS, there is a hierarchical system with a chain of command running from the Department of Health and the NHS Executive at the apex, through regional directors to NHS trusts.

1.4 The National Health Service

1.4.1 Background

The National Health Service (NHS), essentially funded by central government out of general taxation, currently receives some £54.2 billion². Of this 70% is spent on the costs of employing its nearly one million staff in England (782,000 whole time equivalents) of whom in 1999 68% were direct care staff and 32% were management and support staff.

Table 1.1: NHS Hospital and Community Services: directly employed staff³

30 September, 1999; England: Whole-time equivalent (thousands)

Staff group	1989	1994	1995	1996	1997	1998	1999
All directly employed staff	797.3	758.5	755.6	761.3	758.1	765.9	782.1
All direct care staff	-----	-----	497.3	507.9	508.3	517.3	529.3
Nursing, midwifery, health visiting staff	-----	-----	330.4	332.7	330.6	332.2	338.6
of which qualified staff	-----	-----	246.8	248.1	246.0	247.2	250.7
Medical & dental staff	44.1	49.4	52.6	54.2	57.1	58.7	60.3
Other direct care staff	-----	-----	111.6	118.5	120.6	126.4	130.4
All management & support staff	-----	-----	260.9	255.9	249.7	248.6	252.8
Admin. & estates staff	-----	-----	168.7	167.4	167.0	167.7	172.8
Other management & support staff	-----	-----	92.2	88.4	82.8	80.9	80.0

The directly employed NHS workforce is predominantly female (76%), although the proportion is smaller for some staff groups, eg 34% for medical and dental staff, according to Department of Health Statistics. The numbers of non-professional groups have varied over the last two decades. In particular, the number of ancillaries has more than halved since 1983, reflecting the then government's requirement for competitive tendering for laundry, cleaning and catering services. Some contracts

² UK net NHS Expenditure Plan 2000/2001.

³ www.doh.gov.uk/HPSSS/TBL-D1.HTM accessed 5/3/01

went outside the NHS but, even where in-house tenders were successful, this was often because hours and jobs were cut (Mailly et al, 1989). Seifert (1992) estimates that 82% of tenders were won in-house.

A distinction can be made between those staff in a labour market which is external, eg building and maintenance craftsmen, secretaries and those whose labour market is internal eg doctors and qualified nurses. Even where the labour market is largely internal, however, health care staff can work in private healthcare, as well as for the NHS and/or for an agency. Hendry (1995) distinguishes further with a four-part typology: internal labour market, occupational labour market, technical and industrial labour market and external labour market. An internal labour market is where ports of entry are restricted, eg the civil service, so the majority of NHS staff according to Hendry's typology would fall within the category of an occupational labour market. This, he says, is where the 'benefits of training accrue to the individual, and their first loyalty is often said to be to the craft, occupation or profession, rather than to the organisation' (1995:232). Irrespective of the typology used, however, the different labour market contexts for the various NHS job 'families' create tensions at trust level.

1.4.2 The Whitley system

When the NHS was established in 1948 it adopted the so-called Whitley industrial relations system, which was in use in the civil service and local government (Winchester and Bach, 1995). The system stemmed from a report of a committee chaired by J. S. Whitley in 1916 which recommended the establishment of joint industrial councils with formal written constitutions and joint determination over a wide range of matters or, to use today's terminology, a partnership approach (Clegg, 1985:204-207). The NHS Whitley system was designed to:

secure the greatest possible measure of co-operation between the authorities responsible for the nation's health and the general body of persons engaged in the health services, with a view to increased efficiency in the public service, and the well-being of those engaged in the services... [and] to provide machinery for the consideration of remuneration and conditions of service (Main Constitution of the Whitley Councils for the Health Service (Great Britain) cited in Loveridge 1971: 147).

At present there is a general Whitley Council for matters affecting all NHS staff and numerous functional councils and several committees⁴ as follows:

- Administrative and clerical staffs (including ambulance officers, control assistants),
- Ambulance staffs,
- Ancillary staffs,
- Professional & Technical A (including radiographers, physiotherapists and occupational therapists),
- Scientific and Professional Staffs who have committees for:
 - speech therapists,
 - clinical psychologists,
 - clinical scientists,

⁴ Verbal communication from Department of Health, 31.1.01.

- hospital pharmacists,
 - chaplains,
- Professional and Technical 'B' (medical laboratory scientific officers, medical technical officers, estates officers, operating department practitioners/assistants, dental staff),
 Doctors and dentists,
 Nurses, midwives and health visitors.

For building trades and maintenance staff there is a management advisory panel (MAP). Although not legally constituted as a Whitley Council, it operates in the same way as the functional councils cited above.

This NHS Whitley system has essentially been unaltered since its inception, although there have been some changes (Seifert, 1992) as follows:

- in 1962, when a pay review body was set up to recommend the fees, allowances and pay of doctors and dentists;
- in 1974, when a new Whitley Council was created for ambulance staff (previously employed by local authorities);
- in 1983 when a pay review body for nurses, midwives, health visitors and the professions allied to medicine was established to recommend pay and certain allowances but not other terms and conditions which remained to be determined under the Whitley system;
- from 1990 when NHS trusts set up under the NHS and Community Care Act could determine the terms and conditions of their staff, subject to certain legal restrictions.

Although the NHS Whitley system has not changed in any material respect since it was established, it has been heavily criticised for many decades. These criticisms centre on structure; complexity; over centralisation/ lack of local flexibility and equal value. They are now addressed in turn.

1.4.3 Critiques: structure

Dealing first with the Whitley council structure, Lord McCarthy described the system famously as 'employers who do not pay and paymasters who do not employ' (McCarthy, 1976: para 2.3) and highlighted the disproportionate influence of departmental civil servants upon negotiations. McCarthy's suggestion was that the civil servants should have control over the overall cost of pay offers but that the detail of the pay structures should be left to the NHS managers.

Other recommendations for the reform of the Whitley Council structure were made by the TUC (1981), the National Association of Health Authorities (1983) and the King's Fund (McCarthy, 1983). The last wanted the regional chairmen to appoint the chairs of the Whitley Councils to ensure accountability to the service and to be given the responsibility for formulating a strategy on NHS pay.

What resulted was the formation of a pay strategy sub-group by the RHA chairmen. The aim of the sub-group was to

.... develop objectives for pay policies which reflect the manpower requirements of the NHS; future pay policy options and their consequences in anticipation of public expenditure sub-committee discussions; [and] advise on strategy within which management sides have to operate (Leopold and Beaumont, 1986:39).

In addition, the total number of Whitley Council management side members was cut from over 200 to less than 40 and management side members were henceforward appointed by the Health Secretary on the basis of their personal qualities, rather than as representatives. Leopold and Beaumont (1986) argued that these changes were designed to reduce the impact of intra-organisational bargaining, specifically between the department and NHS representatives and to increase the influence of NHS management over pay decisions and pay strategy. Maily et al (1989) argued that the overwhelming preponderance of NHS managers on the Whitley Councils appointed by the Health Secretary may have reduced intra-organisational bargaining between government and the NHS, but at the expense of an independent, truly representative management side.

McCarthy also called for the rationalisation of representation on the staff side and for proportional representation for the unions, but this proved unpopular with the TUC unions, which could have lost seats to the professional bodies. The number of unions represented on Whitley fell, however, from 48 in 1950 to 39 by 1989 (Maily et al, 1989:127). In the 1990s this process continued, notably with the amalgamation of the National Union of Public Employees, the Confederation of Health Service Employees and the National and Local Government Officers' Association to form Unison in 1993 (Certification Officer, 1994) and the transfers of engagements of the Health Visitors' Association to MSF in 1990 (Certification Officer, 1991). Nevertheless, there are still over 20 unions represented on Whitley, over a dozen Whitley Councils/Committees and a very large management side.

The intricate Whitley machinery is compounded by the fact that the two pay review bodies (for doctors/dentists and nurses and professions allied to medicine) set the pay of over half the staff working in the NHS, though their other terms and conditions are set by Whitley. As Seifert (1992:277) says:

'If Whitley was criticised for being remote and incomprehensible to ordinary health workers, so pay review is worse. If Whitley was criticised for the muddled role of government, so pay review is worse.'

It is noteworthy that those occupations covered by pay review bodies have received larger increases than groups not covered by pay review bodies, according to Elliott and Duffus (1996) who looked at pay levels over the period 1970-1992. Although this report centres on pay structures, not pay levels, the former impacts on the latter.

1.4.4 Critiques: complexity

Some 15 years ago the King's Fund/National Association of Health Authorities (1985) criticised the complexity of Whitley. It proposed that the Whitley Councils

should be wound up and three new bodies should be created: a pay policy committee to determine policy and negotiating strategy; a pay negotiation unit to brief the policy committee; and an NHS negotiation council to negotiate new pay bands. There would be a 'spinal column' to which all NHS salaries would be attached, thus producing broad pay bands to enable the reward of merit and performance. This suggested single spine, however, was rejected by almost all the NHS staff organisations.

The Warlow report (1989:v), 'the only comprehensive review [of NHS conditions of employment] to have taken place since the inception of the NHS', also criticised the complexity of Whitley. Based on interviews with over 600 NHS managers either individually or in small groups, it said:

Other than the specialist (personnel officers), few managers are familiar with all of the provisions applying to their occupation and none appear conversant with many of the provisions applying to other occupations... They believe that most staff (again with the exception of the specialists and representatives) fare no better and often have a lesser understanding... The existence of 12 sets of agreements governing the employment conditions of NHS staff is complex – but 12 sets following no common structure, having different styles of authorship and sometimes using different terminology, compounds the managers' problems of understanding (Warlow, 1989:36).

The report called for the use of simpler wording, more uniform principles and a reduction in the scope of national regulation.

1.4.5 Critiques: centralisation

The reduction of the complexity of Whitley agreements thus interacts with another focus of criticism: the need for decentralisation. The tension between national and local pay determination has been a theme in the NHS for many a decade. On the one hand, the Department of Health and/or HM Treasury want to control public expenditure, and thus the pay of NHS employees, and to provide effective accountability through the Secretary of State to Parliament. On the other hand, local managers want flexibility to enable pay to be contingent on their service needs and to reflect local labour market conditions. Furthermore, 'many doubt whether highly detailed, prescriptive, functionally based national agreements can cater for the degree of variety of local operational requirements' (Warlow, 1989:3).

The McCarthy report (1976) proposed that the Whitley Councils should negotiate more flexible agreements, allowing for wider interpretation and adaptation at regional level and below (Cuming 1978:193). Flexible elements in pay agreements could include starting salaries and allowances for differences in job content and performance elements. Regional councils would be given the job of developing bargaining on all aspects of work arrangements and the distribution of work tasks, especially those having an impact upon pay such as overtime, shifts and leave rotas.

Warlow (1989) considered that terms and conditions could be fashioned to local circumstances in one of three ways: by national agreements which allow wide local discretion in their application; by placing the onus for determining conditions on the district health authority; or by discriminating between these approaches according to the issue.

1.4.6 Equal value

A criticism which came to the fore from the mid-1980s arises from the fact that, under the Whitley Council structure, terms and conditions are set for the different occupational groups separately. Some occupational groups are mainly female, eg speech and language therapists, and some are mainly male, eg clinical psychologists. An employer may satisfy the provisions of the Equal Pay (Amendment) Regulations 1983, by claiming that there is a material factor which gives rise to differences in pay between mainly male and mainly female groups. The European Court of Justice, however, in the leading case of *Enderby v Frenchay Health Authority* (1993) held that it would not be sufficient for an employer to rely on the absence of discrimination within each of the collective bargaining processes taken separately; nor to show that statistically significant pay differences between female dominated and male dominated jobs arose for non-discriminatory reasons. Where there is job segregation and a statistically significant difference in pay it is up to the employer to provide objective justification. A factor-based job evaluation scheme may provide such a justification, but there is none to date for the NHS as a whole, though there are in some trusts. Under the Equal Pay Act an employee can only make comparisons with others in the same employment (or with employees in associated companies in the private sector). The rulings in *Scullard* (1996) and *South Ayrshire Council* (2001), however, which are based on EU law, suggest that an employee in one trust might be able to nominate as a comparator an employee in another trust (see sub-section 1.3.3). In other words, it is strongly arguable that comparisons could be made across the service; but this point has not yet been tested in respect of the NHS.

1.4.7 The internal market and devolved bargaining

The National Health Service and Community Care Act 1990, which created self governing NHS trusts from hospitals run by the district health authorities, provided the opportunity to resolve some of the problems which had been identified with Whitley (Department of Health, 1990). Empowered to set the terms and conditions of employees, trust management would no longer be bound by the Whitley Council structure, could simplify agreements and mould their arrangements to suit their situation. To foster devolved pay determination, the NHS Executive 'pump-primed' certain trust pay initiatives.

The development of trust pay, though, was slow and in 1994 the government, losing patience with the slow pace of change, sought to impose local bargaining on trusts by requiring them to negotiate top-ups to the basic national awards. Thus there were national level enabling agreements concluded in 1994 for non-pay review body staff which allowed trusts to make local payments 'based on the performance of the organisation', although 'agreement with staff and their trade unions and extensive communication with those affected are essential' (Corby, 1996). Similarly the pay review body reports of 1995 for nurses, midwives and health visitors and the professions allied to medicine awarded 1% nationally with a further 0.5% to 2% to be awarded locally. This, however, sparked off an industrial dispute only resolved through a complex agreement. The agreement provided for local bargaining to top up the national pay awards but with an uprating mechanism through which the national pay rates would be adjusted annually to reflect the outcome of the previous year's

local negotiations. In fact these complex provisions for local pay were only used in 1995 and 1996.

Moreover, a survey of 137 trusts in 1997 found that although more than three-quarters of the sample had developed local terms and conditions for trust staff, only 35 trusts had made extensive use of their freedom to set terms and conditions which differed in a majority of respects from Whitley (IRS, 1997). The reward components most likely to vary from national terms and conditions were annual leave; premium payments and enhancements; pay progression methods and sick pay. Bryson et al (1995:130) point out that, 'in the long term the removal of complex premia and conditions diminishes the union role of joint regulation of the system as there is less opportunity for the unions to get involved'.

In short, the government's push to make trusts determine their own terms and conditions, thus breaking away from Whitley and reflecting their own needs and circumstances, including the local labour market, was only partially successful. A number of reasons have been suggested for this. First the law: a contract can only be varied by agreement, so under common law NHS employees can remain on the national arrangements provided they stay in the same job. Furthermore, there is statutory protection of an employee's contractual rights under the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) where an employee, who was employed by a health authority, has a new employer, the trust, provided the employee stays in the same job. Second, the continuance of the national pay arrangements (the Whitley system and the pay review bodies) had a countervailing effect to government policy (Carter and Fairbrother, 1999). Third, pragmatic HR directors had more immediate priorities than introducing local pay (Corby and Higham, 1996). Fourth, HR directors who sought to reduce the cost of the paybill could more easily obtain such reductions by changes in working practices and skill mix changes rather than by devolved collective bargaining (Bach and Winchester, 1994; Lloyd and Seifert, 1995; Bach, 1998). Fifth, there were institutional obstacles arising from the tension between the centre and the field (Locock and Dopson, 1999) and union opposition (Lloyd, 1997; Thornley, 1998; Thornley et al, 2000), which restricted the development of local pay.

1.4.8 Agenda for Change

When there was a change of government in 1997, a full-blown local pay system had been developed in only a minority of NHS trusts and/or for small groups of staff. In February 1999 the Health Secretary announced new proposals in *Agenda for Change* (Department of Health, 1999). To provide a defence against equal value claims a new job evaluation scheme was proposed. To provide simplicity, there would be just three NHS bargaining groups with a national pay spine for each, with a considerable degree of harmonisation. To provide flexibility there would be some delegation to trusts on some matters. At the time of writing, the relevant parties are in the throes of negotiating a new pay system for the NHS.

1.5 Debates and issues

1.5.1 Reward management and 'new pay'

The changes outlined above were accompanied by the development of a new paradigm in the UK, 'reward management'. The term 'reward management' was first used by Armstrong and Murlis who define it as 'the development, implementation, maintenance, communication and evaluation of reward processes' (Armstrong and Murlis 1998:1), although Child had talked of 'reward policies' four years earlier (Child, 1984). While subtly different, there are close similarities between the British 'reward management' paradigm and the American 'new pay' paradigm. For instance, both adopt a holistic approach to reward.

1.5.2 Best fit or best practice?

A major strand in both US 'new pay' and British reward management literature is the emphasis upon reward systems being contingent upon business strategy and explicitly linked to business performance, (Lawler, 1990, 1995; Mahoney, 1989; Schuster and Zingheim 1992). For example, Lawler said:

The new pay argues in favour of a pay-design process that starts with business strategy and organisational design. It argues against an assumption that certain best practices must be incorporated into a company's approach to pay (Lawler, 1995:14).

Similarly, Gomez-Mejia and Balkin state:

The emerging paradigm of the field is based on a strategic orientation where issues of internal equity and external equity are viewed as secondary to the firm's need to use pay as an essential integrating and signalling mechanism to achieve overarching business objectives (Gomez-Mejia and Balkin, 1992:4).

This contingency approach can be contrasted with those who advocate a 'best practice' approach (Taylor, 2000). A number of writers argue that certain reward practices and 'high commitment management' can lead to improved performance, irrespective of business circumstances (Huselid, 1995; Fernie and Metcalf, 1996; Wood, 1996; Pfeffer, 1994 and 1998). Also, there is considerable scepticism as to whether reward systems have become more linked to business strategy in practice (Smith, 1993; Poole and Jenkins, 1998). A recent survey of senior managers' views on new approaches to pay and reward found considerable support for the ideas expressed in the 'new pay' paradigm. There was considerably less evidence, however, of changes in practice (Poole and Jenkins, 1998), although there was a marked difference between the larger private sector companies and the rest. Whatever the practice, however, a contingency approach is scarcely new, as Kessler (2000:272) points out. It echoes the earlier, contingency based approach to pay design advocated by Lupton and Gowler (1969) or White (1981).

1.5.3 Fixed or variable pay?

Schuster and Zingheim (1992) argue that the traditional pay concepts of job evaluated grading structures, payment by time, seniority based pay progression and service-related benefits are the product of Taylorist, manufacturing industries operating in

stable and predictable product market conditions. In the more volatile business environment of today, however, pay levels and composition need to fluctuate according to business circumstances; hence the emphasis upon variable pay as opposed to fixed pay and the individualisation of reward systems. In the words of a CBI report, the great attraction of variable pay is that pay 'can go up and, crucially, down in line with individual, group and company performance' (CBI/Wyatt 1994:5).

According to the 'new pay' writers, employers must abandon concepts of 'rate for the job' in favour of those based on an individual employee's value as measured in the external market. Lawler (1990:153) argues: 'Paying people according to their value in the market pays. After all, it is people who move from job to job and from company to company'. The use of internal comparisons for setting wages should be avoided, as it runs 'the great risk of producing pay rates that are not competitive' (Lawler 1990:192).

Also the proportion of fixed to variable pay should be increased to allow for more incentive pay based upon individual, group and/or organisational performance. As Heery (1996) indicates, this pay philosophy suggests a transfer of the organisation's business risks from the employer to the employee.

1.5.4 New forms of pay progression

An important corollary of moves towards more person and incentive based remuneration systems has been the development of new criteria by which employees progress up a pay structure. While payment by output, performance or productivity was common among manual workers in the past, there has been a substantial decline in payment by results (PBR) among this group in recent years (Druker, 2000). In contrast, there has been a sharp increase in the numbers of non-manual workers who have all or part of their annual pay increase related to their performance. The third Workplace Industrial Relations Survey (WIRS) (Millward et al, 1992) found that between 30% and 40% of workplaces had merit pay for white-collar staff at various levels, compared to under 20% of workplaces with schemes for manual workers. A survey for the Chartered Institute of Personnel and Development (Cannell and Wood, 1992) of 360 organisations found that a quarter of employers had introduced performance-related pay for non-manual workers over the previous five years, but only 6% had introduced such schemes for manual workers.

There has been a substantial academic debate about the value of performance related or merit pay systems. This debate has largely been ignored by HR practitioners, who have continued to extol the benefits of such systems in the face of widespread evidence to the contrary (see for example Brown and Armstrong, 1999). The underpinning theory for all performance related pay systems is expectancy theory (Vroom, 1964; Porter and Lawler, 1968), the belief that employees will adjust their behaviour in line with the expected reward. Critics of individual performance related pay have focused on several aspects, not least the concept that pay is a motivator. The American critique of performance related pay goes back to the 1950s (Sayles, 1952; Whyte, 1955) but more recent critics have included Pearce (1985; 1987) and Kohn (1993). The latter lists a number of problems with performance related pay systems: pay is not a motivator; rewards punish non-recipients; differential rewards rupture teamwork; rewards ignore reasons; rewards discourage risk-taking; and rewards

undermine interest. Kohn quotes Deci's and Ryan's research in the early 1970s which showed that 'any contingent payment system tends to undermine intrinsic motivation' (Kohn, 1993:512).

UK critiques of performance related pay can be found in various studies including those by Bowey, Thorpe and Hellier (1986); Kinnie and Lowe (1990); Marsden and Richardson (1991); Cannell and Wood (1992); Kessler and Purcell (1992); Thompson (1993); Marsden and Richardson (1994); and Marsden and French (1998). Without exception, all these studies found major problems in operationalising merit pay and considerable evidence of negative effects upon employee motivation. The studies based upon surveys of employees' views were particularly critical but the Chartered Institute of Personnel and Development (IPD, 1999) found that managers, especially those in the public sector, were also critical. Public sector managers were 'much less likely [than their private sector counterparts] to feel that their schemes are generating beneficial outcomes for their organisation on every indicator' (IPD, 1998:6). Nevertheless, the same survey found little evidence of a lack of interest: 40% of organisations had individual performance related pay (IPRP) for managers and 25% for non-management grades, although the incidence was higher in the private sector than in the public sector.

There are a number of ways in which pay can be related to performance. In the simplest form, employees receive a merit bonus, usually unconsolidated into basic pay, on top of their normal pay. In some schemes, pay progression is consolidated and linked to an incremental scale. In other schemes, progression is a percentage increase applied within a broad pay band. In many so called 'all merit' schemes, there is no annual cost of living underpinning increase (although, in reality, the average increase is usually close to the cost of living increase).

Alternatives to linking pay to individual performance include both skills and competence based pay, whereby progression is linked to the acquisition of new skills or qualifications or the demonstration of key behavioural characteristics or competencies. Pritchard and Murlis (1992) distinguish between skills, which are concerned with practical abilities and expertise and may also include mastery of a certain body of knowledge, and competencies, which are related to underlying behavioural and attitudinal characteristics or traits needed to carry out the job effectively. Competencies can be used for a range of HR purposes, including recruitment, career development and reward systems both for grading jobs and as criteria for pay progression.

The attraction of skills or competency based progression over traditional output or target related performance pay is that it provides a longer term approach. As Kessler (2000:274) suggests: 'One of the many concerns raised with such (output related) schemes is that, by focusing upon output achievements, they encourage a narrow and blinkered concentration on specific tasks to the neglect of daily, behavioural requirements needed to perform the job in an all-round sense'. In contrast, competency based systems reward employees for development within the job and link to the organisation's core competencies. Kessler (2000) points to a number of different circumstances and rationales for introducing competency based pay; in some cases it has been used to create a new organisational culture or to introduce new quality and customer service objectives.

Research evidence, however, indicates that there is limited use of both skills based and competency based schemes (Industrial Society, 1998). In a critique by Sparrow (1996), a number of deficiencies and problems with competence based systems were identified. First, he argued that the identification of the key competencies may rely on existing appraisal techniques which are not sufficient or robust enough for the purpose. Second, he argued that separating out in-built behaviour from that which can be developed is a complex and uncertain business. Third, he argued that managers have to make accurate judgements about revealed competency, a task to which most will not be equal.

Empirical evidence suggests that competency based schemes may be problematic in certain areas. A small scale survey of competency based approaches to human resource management in the British civil service indicated widespread support among HR managers, who nevertheless identified problems, including the difficulty in applying competency criteria and the complexity of competency frameworks (Farnham and Horton, 2000).

A further problem with competency based systems, as with performance related pay, is the potential for gender or racial bias in the decisions of managers. There is evidence that women and ethnic minorities are likely to be under-rated as performance or competence is equated with white, male behavioural characteristics (Bevan and Thompson, 1992; Civil Service College, 1995). Of course, traditional seniority based pay progression systems are not free of bias, particularly for women who take career breaks.

Another alternative to performance related pay is the use of team based pay. (See, for instance, sub-section 1.2.4 on the use of team based pay instead of individual performance related pay (IPRP) for certain civil servants.) There are a number of ways in which the behaviour associated with teamworking can be rewarded. Teamwork can be assessed as part of an employee's performance appraisal and thus feed into IPRP. Teamwork can be included as a criterion in a competency based grading scheme and thus feed into basic pay. Finally teamwork can be rewarded by a team bonus (Harrington, 2000). It is largely this last aspect that interests reward management writers. Again, however, team bonuses are fairly limited in practice (Thompson, 1995) and most common among manual workers, as surveys by the Industrial Society (1996) and the IPD (1994) have confirmed. Problems identified with team bonuses include the selection of viable criteria to judge team performance, especially if there is no tangible output; the transient nature of many teams; and the problem of equity in paying a collective bonus when levels of input to the team may be uneven (Armstrong, 2000).

Organisation-wide reward systems are more common than team bonuses (IPD, 1994), largely because they have been encouraged by government. These include periodic bonuses based upon some measure of organisational performance (eg profits, turnover, share performance); profit-sharing schemes, profit related pay (PRP) and share ownership schemes.

According to Hyman (2000) the link between financial participation and organisational performance is by no means well established and it is difficult to

separate out the effects of employee financial participation from wider forms of participation. In contrast, the Brookings Institution (Blinder, 1990) in the USA found that profit sharing raised productivity but employee share ownership plans (ESOPs) did not. Blinder (1990), however, concluded that changing the way workers were treated may boost productivity more than changing the way they were paid.

In conclusion, there have been various attempts to link pay progression to some measure of individual worth, be it performance, skills or competence. Brown and Armstrong (1999) have brought all of these various methods together under the rubric of 'pay for contribution'.

1.5.5 Equity and equality

Another major debate over recent years has been the increasing divide over whether pay policies should be based on the concept of equity/equality. According to equity theory, largely associated with Adams (1963), the major determinant of employee satisfaction at work is the extent to which the employee feels that he/she is fairly rewarded in comparison to colleagues. Employees are less interested in actual levels of pay than in the fair distribution of rewards within the workforce. Research projects established to test Adams's equity theory have produced positive findings (Mowday, 1996).

There are, however, two schools of thought as to how equity is defined (Runciman, 1995). On the one hand, there is a basic egalitarian approach. On the other hand, there is a libertarian view that the market should determine the distribution of rewards. The 'rate for the job' relates to the egalitarian approach, while external pay referencing systems relate to the market approach.

The introduction of sex discrimination and equal pay legislation, including the 'equal value' provisions which stem from the European Union's Council Directive 75/117/EEC, have resulted in increased attention being paid to concepts of equality between men and women and the creation of gender neutral grading systems based on job evaluation. In contrast to the views expressed by the American 'new pay' writers that job evaluation is old fashioned and in decline, there is considerable evidence in the UK that the reverse is the case. Kessler reports that the use of job evaluation is found in around a half to three-quarters of organisations and a survey in the mid-1990s found that a significant number of organisations were introducing job evaluation for the first time (Industrial Society, 1996). This is mainly because organisations are seeking to create grading structures which are resistant to equal value claims by employees (Hastings, 2000). Also, job evaluation remains popular because 'job size remains a key support to grading structures and crucial to more general notions of career development within the organisation' (Kessler, 2000:278).

Nevertheless, while job evaluation remains important, there have been attempts to create less rigid and bureaucratic systems (IRS, 1996; Industrial Society, 1996). In particular there have been moves towards simplified structures, including integrated systems for all staff and the use of competencies as the basis for grade classification, rather than the traditional job description. This has allowed organisations to create a more 'person' centred form of grade classification, rather than the traditional

concentration on the content of the job. (See Armstrong and Baron, 1995; Pritchard and Murlis, 1992).

Another development has been the use of so-called 'broad banding' structures to grade employees. These structures have been devised to strike some sort of balance between the need for task flexibility on the one hand and role demarcation on the other. They involve the replacement of numerous grades, each with its own salary scale, with a smaller number of wider pay bands, often based on just a simple minimum and maximum with no intermediate incremental points. This allows a larger number of jobs to be subsumed into the wide band and is seen as particularly useful where organisational structures have become flatter and thus where the opportunities for career progression are limited. Employers have much more discretion with such broad band systems, than with narrower grades, to place and progress individual employees. The evidence again, however, suggests that there has been limited take-up of broad banding among organisations (Industrial Society, 1997).

1.5.6 Harmonisation

Other current trends in reward systems, apart from those proposed by 'new pay' writers, include harmonisation and variable hours. According to the latest 1998 Workplace Employee Relations Survey (WERS, formerly WIRS), there has been a shift towards 'single table' arrangements whereby all the unions in a workplace negotiate together as a single unit. This development has been most common in the public sector: 23% of public sector workplaces in 1990 had single table bargaining rising to 70% of such workplaces in 1998 (Millward et al, 2000). Moreover, single table bargaining has led to increasing harmonisation of terms and conditions. The trend towards single table bargaining is driven by the effects of decentralisation, deregulation and privatisation; the changing structure of employment; the blurring of job boundaries through technological change; and in the private sector only the increased presence of both US and Japanese owned firms, both of which tend to favour single status (and single union) arrangements within the UK (Price and Price, 1994; Russell, 1998; Druker, 2000)

The impetus for harmonisation of manual and non-manual workers' terms and conditions often comes from union demands for equity, but its introduction usually stems from a management initiative (Farnham and Pimlott, 1995:326; Russell, 1998:14). The gains identified for management include improved efficiency and productivity, such as improved time keeping, lower labour turnover and reduced absence rates, but less tangible benefits include improvements in worker morale, attitude to work, loyalty and commitment (Russell, 1998:15). The ending of restrictive work practices, rigid job and skill demarcation, job rights and trade boundaries are also identified by Russell as key objectives for employers in negotiating harmonised terms. These changes allow for the development of multi-skilling and team working and a more flexible approach to job design. In some cases, the shift to salaried status for manual workers has entailed agreements to consolidate allowances and premium payments into basic pay, thereby additionally cutting labour costs.

For manual employees harmonisation often provides benefits in improved pay levels; greater stability in weekly earnings; and enhanced career potential. Non-manual

workers, however, may resent their loss of status and seek to defend their privileges. Farnham and Pimlott (1995:326) argue: 'Effective harmonisation ultimately requires fundamental changes in employee attitudes and in managerial attitudes to the two groups, with sometimes radical changes in working methods'.

There are a number of different approaches to harmonisation. The pay of different groups of employees may be brought together on to a single integrated pay system, but a divide may still exist in respect of other terms and conditions (eg lower paid staff may receive fewer or lower levels of benefits than higher paid staff).

Alternatively, staff may move on to a single pay spine with common terms and conditions, including working hours (often called single status), usually with harmonisation upwards, not downwards. Of course, in reality no organisation has completely single status conditions as managers will usually have access to 'perks' (eg company cars) which are not available to other workers.

1.5.7 Variable hours

Variability does not only relate to pay. It also relates to hours. Traditionally, employees work a set number of hours per week and meet any further fluctuations in the demand for the provision of goods and services by working overtime and/or working weekends/nights when premia are paid. Under such arrangements the employee's pay may vary from pay period to pay period according to the overtime/unsocial hours worked.

An alternative is to allow for variation in hours while keeping constant employees' pay. This can take the form of what is commonly called flexitime where employees work certain core hours, but outside the core can vary the hours within a defined range and carry over credit or debit hours from one period, for instance a month, to another. Such a system gives a significant amount of discretion to the employee over the hours worked, though not varying the pay the employee receives and is useful to the employer who wishes to attract workers.

Another form of hours variability is flexible rostering, where the employee does not work a set shift, eg permanent nights, and the employer decides the pattern of shift working which varies from period to period, for instance a week or a month. In return for this flexibility the employee is rewarded by a percentage addition to the annual salary. A variation is self-rostering, where again the pattern of shift working varies, but pay is constant and the employee has choice of shift, within certain parameters.

Annual hours, whose basic principle is that working time is defined in terms of the year rather than the week, also provides for variability in hours, but constancy in pay. There are two main types: in one type the emphasis is on the variability of weekly hours with work periods longer in busy times and shorter during slack times. In the second type rostered hours are less than the agreed annual hours: workers are effectively on-call for the non-rostered time and can be required to come into work to cover unforeseen circumstances (Arrowsmith and Sisson, 2000). According to IDS (1991) employers have introduced annual hours or flexible rostering not only to match hours to business needs but also to eliminate the costs of overtime. Connected with this is the employer's enhanced ability to predict labour costs more accurately. The main benefit to the employee is the predictability of earnings over the year, but the

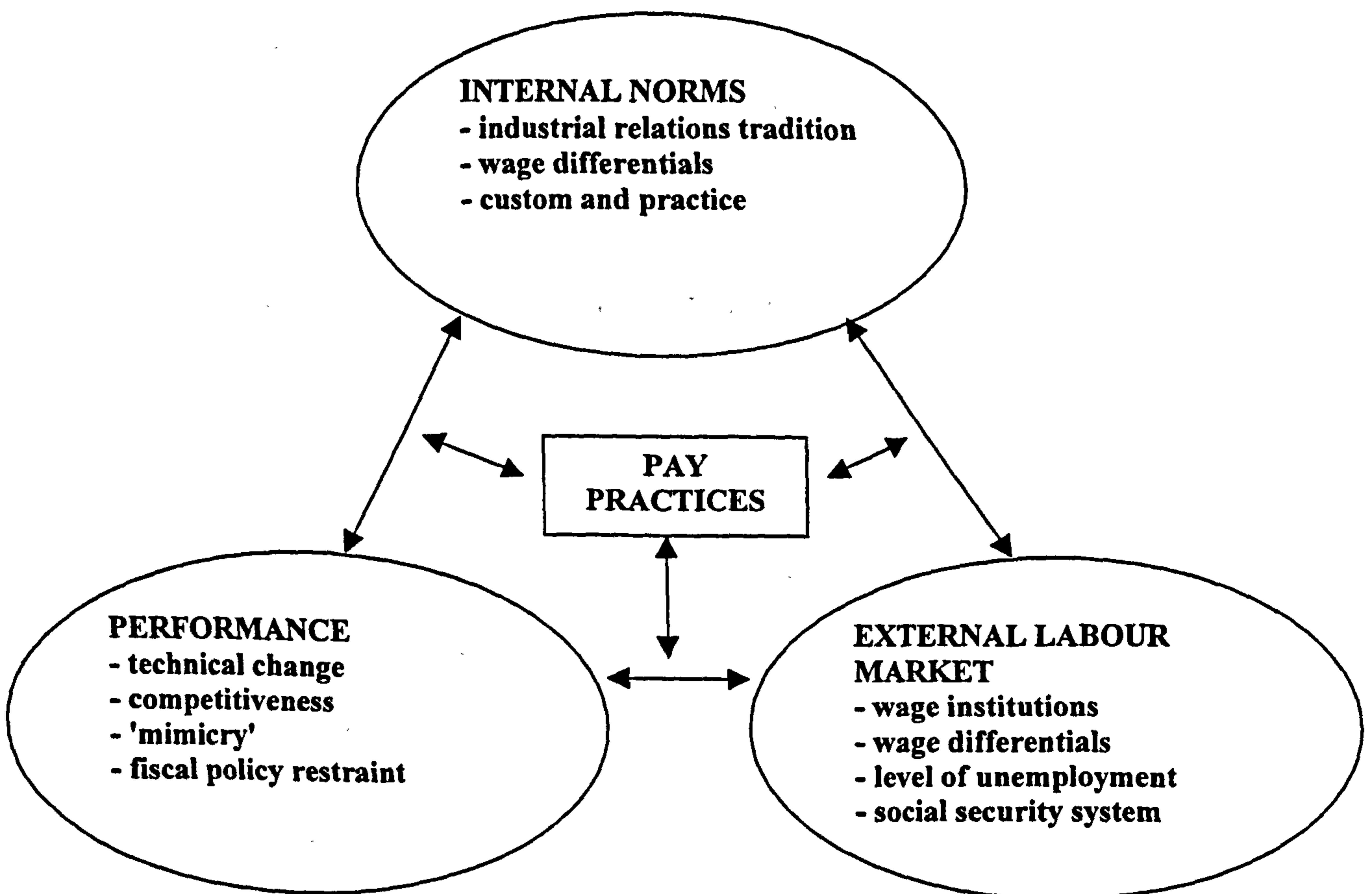
main disadvantage stems from the employee's inability to plan personal commitments such as child-care arrangements.

According to IRS (1998a) annual hours were more common among manual than non-manual employees, while Arrowsmith and Sisson (2000) said that 'annual hours remain very much a minority practice' but its incidence is increasing. This is reflected in the findings of Arrowsmith and Mossé, (2000) in respect of NHS trusts. In 1996 and 1997 one in 10 trusts reported the adoption of annual hours for some employees. This increased to one in five in 1998.

1.5.8 Determining pay: a wider picture

The preceding sections have discussed a number of discrete areas that affect pay determination. Grimshaw (2000), taking a wider stance, argues that various factors interrelate to determine pay and often conflict with each other. For instance, internal norms, such as custom and practice, may conflict with wage differentials in the external labour market and the importation of a performance related pay system may conflict with the industrial relations traditions of the organisation. Grimshaw (2000) provides a model of the interrelationship between these factors and pay practices; see figure 1.1 below.

Figure 1.1: The three 'rings' of pressures shaping change in pay practices (Grimshaw, 2000)



Returning specifically to the public services, while the impact of current trends in reward management and 'new pay' ideas can be detected, this has happened in a refracted manner (see White, 1999). According to Kessler and Purcell (1996), there has been some imbibing of the contingency view, ie that pay systems should be contingent on business strategy, and the concept that pay should become more individualised. These ideas, however, have been moderated by the traditions of British public sector industrial relations. In the public services, there remains a concern to incorporate certain aspects of 'best practice', including transparency and equity. Furthermore, the continuing presence of strong trade unions, not least among powerful groups of professional staff, mediates the more radical ideas of the 'new pay' literature.

1.6 Summary

Part one of this report places in context our research on innovations in NHS pay and grading. It first reviewed both the changes and continuity in policy between the Conservative governments 1979-1997 and the Labour administration 1997-2001. Second, it looked at pay for school teachers and the civil service, where there is a continuing concern with performance related pay, and at the universities. The last have been examining issues related to the simplification of pay determination systems and the equality proofing of the grading structure. Third, the report examined local government, particularly the 1997 single status agreement, where implementation has been slow, largely for cost reasons and the need for agreement locally on a wide range of matters. Fourth, the report looked at the NHS. The Whitley system has been criticised on four main grounds connected with its structure, complexity, lack of flexibility and equal value problems. These criticisms could be addressed at least in part when NHS trusts were established from 1991, as they had the freedom to introduce their own pay systems. In fact, however, trusts' use of this freedom has been limited: few have introduced new systems for most of their staff. There are a number of reasons for this including the legal position, the continuance of national pay arrangements and institutional obstacles.

Finally, part one of this report turns to the 'new pay' ideas and current trends in reward management. The 'new pay' literature stresses the need for a strategic approach to pay to be adopted, for pay to be related to the individual's contribution, (despite much evidence from surveys of the disbenefits of such an approach) and broad banded grading structures. Other current trends in reward management include harmonisation and a number of approaches whereby employees' pay is kept constant, despite variations in the amount and timing of the weekly hours worked. These ideas and trends, however, have been moderated by the traditions of British industrial relations.

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PART TWO: ANALYSIS

2.1 Introduction

Part two of this volume is divided into three sections. The first section outlines our research questions and describes our research methodology. The second section reports our research findings. These are presented under the following thematic headings:

- Trust aims and objectives
- Pay systems
- Pay progression
- Process
- Costs
- Evaluation
- Outcomes

These thematic headings are not exclusive categories, rather they are used to organise the data. In our final section, discussion and conclusions, we revisit our research questions, pulling together the literature and our findings.

Our report intentionally draws selectively from our data to illustrate points being discussed. Tables and figures summarise the position in each trust. We emphasise that all figures in this report are designed to provide an immediate graphical impression and are not intended as statistical representations.

2.2 The research

2.2.1 The research questions

This part of our report addresses the research questions and outlines our methodology. Our original research questions as outlined in our proposal (December 1999) (see Appendix A) were reformulated to take account of our literature review, absorbing our earlier questions. Our revised research questions were as follows:

- Did local pay resolve the problems associated with Whitley?
- What were the consequences of local pay?
- Were the trusts' pay systems introduced in line with 'new pay' ideas and current trends in reward management?
- What factors were critical to the success of developing and implementing new pay systems in NHS trusts?

2.2.2 Methods and sample

We discuss here both the 10 case study trusts selected and the methods of data collection.

2.2.2.1. The case study trusts

Our work focused on the experience of 10 NHS trusts in England (see table 2.1). These 10 trusts were selected after discussion with the Department of Health as case studies to illustrate a variety of different approaches to pay and grading and highlight the themes and issues that arose in making innovations. This sample provided relatively fine grained data and captured the rationales, possibilities and constraints in some detail. The sample was not, however, statistically representative of all trusts in England, nor was it statistically representative of all trusts which introduced changes in pay and grading. So it was not possible to gross up the findings to the country as a whole.

Table 2.1: Trusts by NHS region, type and size

Trust	NHS region	No. non-medical employees* (at Sep. 1999)	
		Headcount	WTE
Acute Teaching 1 <i>LRI</i>	Trent	4,286	3,447
Acute Teaching 2 <i>Nottingham City</i>	Trent	4,534	3,667
Acute Teaching 3 <i>St George's</i>	London	3,744	3,423
Community <i>Aylesbury</i>	South East	1,805	1,040
Large Acute <i>B & T</i>	Eastern	2,151	1,799
Multiservice 1 <i>North Thurwood</i>	South East	2,687	2,287
Multiservice 2 <i>K's Lynn</i>	Eastern	2,361	1,809
Multiservice 3: <i>Wigan & Leigh</i>	North West	4,557	3,618
Very Large Acute 1 <i>St James</i>	Trent	4,409	3,605
Very Large Acute 2 <i>St Leeds</i>	Northern & Yorkshire	4,419	3,513

Source: * NHS Executive, 1999b.

Very Large Acute 1 was the result of a merger in 1998 between two hospitals (Urban 1 and Urban 2) which had, and still had at the time of writing, different pay systems. Therefore, we refer to Urban 1, Urban 2 or Very Large Acute 1 as appropriate. Acute Teaching 1 merged with two other trusts in April 2000. As this post-dated the commencement of this research, our report deals only with the pre-merged trust.

The 10 trusts in this study, which were geographically located across England, were situated in seven out of the eight NHS regions (table 2.1). (South West region was the

only region without a trust in our sample.) Three of the case study trusts were in the Trent region, two in Eastern region, two in the South-East, with other trusts from the London, Northern and Yorkshire and North West regions. Three of the trusts have paid cost of living supplements under a national scheme for qualified nurses and professions allied to medicine (PAMs) as from 1 April 2001, which attests to their labour market problems. We sought to include another London NHS trust in our sample, but unfortunately though initially we were promised co-operation, we were then not given access.

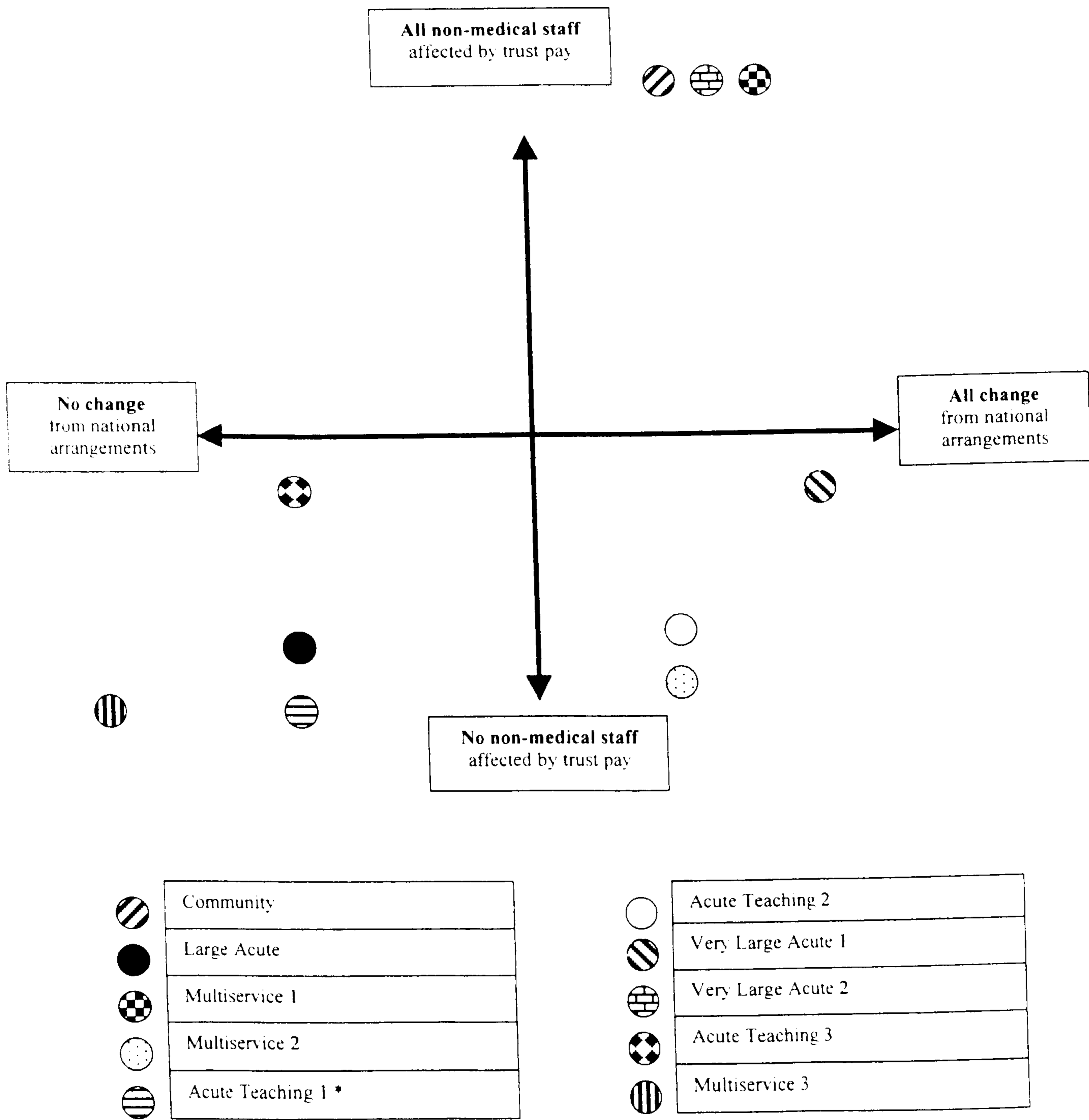
Our 10 trusts provided a range of differing services, reflecting the diverse nature of NHS trusts in England. Three were acute teaching trusts, three were acute trusts, three were multiservice trusts and one was a specialised community trust (table 2.1). We intentionally did not include any ambulance NHS trusts as the type of service provided, and the main occupational groups employed, are not found elsewhere in the NHS. Moreover, ambulance trusts unlike other NHS trusts, only employ a few occupational groups. Therefore, their industrial relations structures are less complex.

The 10 trusts varied in size both in income and in number of employees. Department of Health figures on trust income for 1999/00 were still provisional and subject to continuing audit at the time of writing (at January 2001). Accordingly, 1998/99 figures were used (NHS Executive, 1999a). Annual income for the year 1998/99 ranged from £32,529 million to £185,927 million (median £127,770 million) in our case study trusts. Income of the 402 NHS trusts in England for this period spanned £2,592 to £432,071 million, the average being £68,276 million (mean figure; median £59,169 million). These figures suggest that, as a group, the 10 trusts in this study received larger incomes than the national average. Since becoming trusts, all study sites have met their three financial duties: to balance income against expenditure (taking one year with another), to operate within externally set financing limits and to achieve a capital cost absorption rate of 6%.

As to employees, at September 1999 the total number of non-medical employees, based on headcount, in our 10 trusts ranged from 1,805 to 4,557 (median 4,015) (table 2.2). Comparative figures for all NHS trusts in England, using September 1999 data (NHS Executive, 1999b), spanned from 202 to 10,800 employees (median 2,060). These figures suggest that, as a group, the 10 trusts in this study had a greater number of non-medical employees than the national average.

As mentioned above (this sub-section) the trusts were selected because they had made some pay innovations. Some trusts had introduced changes to pay systems as early as 1994 (Urban 1), with others introducing changes up to the time of our fieldwork (eg Acute Teaching 2, and Acute Teaching 3). Thus we were able to examine both the immediate and longer term effects of changes in payment systems.

Figure 2.1: Trusts' changes to pay by staff coverage: a comparison



- Nearly all non-medical staff eligible, but only a minority transferred.

The trusts studied adopted a range of different approaches to terms and conditions. Some made radical changes to the national arrangements whereas others made minimal changes. Some introduced changes for most non-medical staff whereas others introduced changes for only a few non-medical staff. Figure 2.1 depicts the extent to which the trust's pay system departed from Whitley and the proportion of the trust's non-medical staff affected by revised pay arrangements.

2.2.2.2 Documents

Having selected the case study trusts, we then began to collect relevant documents. We perused secondary sources, such as reports from Incomes Data Services and Industrial Relations Services. We also asked for a range of trust documents as set out in table 2.2. Unfortunately we were not always able to obtain these documents because they had been mislaid eg because of office moves. Accordingly, the table notes whether the documents were provided.

In some instances although documents were provided, they were inadequate for our purposes. For instance one trust only supplied labour turnover data for one year. For a fuller discussion see sub section 2.3.7.4. Also the monitoring and evaluation varied greatly in its depth and nature. In some trusts the HR director reported to the board only the numbers of employees on trust pay. In other trusts, evaluation encompassed a survey of employee attitudes to a new performance system. See section 2.6.

In many trusts, however, we were provided with documents which are not listed in the table. For instance one trust provided us with the management consultant's report drawn up before any pay changes were made. In two trusts the staff side secretaries lent us their entire files. These documents provided us with important background, although we were not always at liberty to quote from them.

2.2.2.3 Interviews

The research was carried out between March 2000 and January 2001. As well as being based on an inspection of documents, 73 tape-recorded interview sessions were conducted incorporating management, union and staff perspectives (table 2.3). Managerial staff were interviewed on a one to one basis and interviews typically lasted forty five minutes to one and a half hours. The director of human resources/head of personnel (or equivalent title), or in one case the deputy HR director, was interviewed in all 10 trusts. In addition, other personnel managers were seen in four trusts. The director of finance was interviewed in eight of the 10 trusts. Additional management interviewees typically included the director of nursing and managers of clinical directorates. We were able to interview two 'line managers', ie heads of clinical directorates, in eight trusts. Where trusts applied new pay systems to some occupational groups only, we interviewed one manager whose staff were eligible for a new pay system and another line manager whose staff were not. The questions varied according to the pay system in place and the HR manager interviewed was asked about the features of the pay innovations that had been introduced, how the changes had been put in place, the nature of the unions' role and the costs incurred.

Table 2.2: Documents

Trust	Annual report 98-99	Occupational breakdown	Staff attitude survey 1999-2000	Sickness data	Labour turnover data	Exit interview data	Paper(s) on aims of any pay systems	Monitoring or evaluation reports	Information on the performance pay system
Acute Teaching 1	✓	✓	✓	✓	✓	x	✓	✓	✓
Acute Teaching 2	✓	✓	x	✓	✓	x	✓	✓	✓
Acute Teaching 3	✓	✓	✓	x	✓	✓	✓	✓	x
Community	✓	✓	x	✓	✓	✓	✓	x	✓
Large Acute	✓	✓	x	x	x	✓	x	✓	✓
Multiservice 1	✓	✓	x	✓	✓	✓	x	✓	x
Multiservice 2	✓	✓	✓	✓	✓	✓	x	x	N/A
Multiservice 3	✓	✓	✓	✓	✓	x	✓	✓	✓
Very Large Acute 1 (Urban 1)	✓	✓	x	✓	✓	x	✓	✓	✓
Very Large Acute 2	✓	✓	✓	✓	✓	x	✓	✓	✓

Other questions to the HR managers, the nursing director and the line managers covered:

- the original aims and objectives of pay innovations and whether they varied over time,
- the impact of the pay system on recruitment, retention, workloads, career progression, working practices, teamworking, morale,
- the resources in management time needed to introduce new pay systems,
- the evaluation undertaken.

The questions to the finance director centred on the pay bill costs.

Union representatives, who were seen in all 10 trusts, were mostly interviewed using group techniques with sessions lasting approximately one and a half to two hours. Our primary aim was that these group sessions would include either the chair and/or the secretary of the staff side. On occasion, however, largely due to work commitments, a substitution was necessary. We also aimed to ensure that the major unions in the trust, generally Unison and the RCN, were represented in our fieldwork. The union representatives were asked about what they thought were management's aims in introducing new pay arrangements, the nature of the staff side involvement and the impact of pay innovations on recruitment, retention, workloads, career progression, working practices, teamworking and morale.

Table 2.3: Fieldwork

Trust: NHS region	No. interviews conducted			
	Management One to one interviews	Union Group interviews	Staff Focus groups	Total
Acute Teaching 1	3	1	0	4
Acute Teaching 2	5	1†	3	9
Acute Teaching 3	5*	1	2	8
Community	5	2‡	2	9
Large Acute	5	1	1	7
Multiservice 1	6	1	3	10
Multiservice 2	5*	1**	3	9
Multiservice 3:	4	1†	2	7
Very Large Acute 1	3**	1	0	4
Very Large Acute 2	5*	1	0	6
Totals	46	11	16	73

- * In one of these interviews two respondents were present.
- ** In addition, a sole union representative was separately interviewed.
- † Interview with single staff side representative only.
- ‡ Interviews were held with two staff side representatives individually.

Employee interviews utilised focus group techniques. In contrast to group interviews, focus groups were characterised by an emphasis on staff interaction to investigate and explore common and/or different perceptions relating to pay arrangements and each focus group typically comprised eight employees. Employee focus groups typically lasted one to one and a half hours and included employees from a range of divisions, including theatres and oncology. Where pay systems affected some occupational groups only, one focus group was selected from staff eligible for the trust's pay system and who came from a clinical directorate where we had interviewed the line manager and one focus group was selected from staff who were only eligible for the national arrangements and who came from a clinical directorate where we had interviewed the line manager. Focus groups discussed the impact of the pay system upon recruitment, retention, workloads, morale, career progression, teamworking and working practices.

2.2.3 Summary

This section describes the data on which this report is based. In summary, we conducted case studies of 10 trusts which were primarily selected to show a range of approaches to pay and which varied in function, size and geographical location. Our data were based on documents and 73 interview sessions comprising either one-to-one interviews, group interviews or staff focus groups. Our data addressed four research questions: whether trust pay systems resolved the problems associated with Whitley, the consequences of trust pay, the extent to which trust pay systems incorporated 'new pay' ideas and current trends in reward management and the factors critical to success in developing and implementing new pay systems.

2.3 The findings

2.3.1 Trust aims and objectives

This part of our report presents our findings under the following headings: trust aims and objectives, pay systems, pay progression, process, costs, evaluation and outcomes. These headings do not represent exclusive categories, rather they are used to organise our data. We begin by looking at trust aims and objectives.

Our data revealed that the aims and objectives of introducing new pay arrangements varied according to several factors, particularly the aims and objectives of stakeholders, eg management and/or unions. Focusing on management aims and objectives, our data was largely based on management interviewees' recollections, as we were often not provided with the original documentation proposing pay changes. Broadly, management aims could be categorised as value driven or issue driven. Whilst we emphasise that these approaches do not necessarily represent discrete categories, the former espoused concerns such as fairness, simplicity, equity, performance management and enhanced patient care. The latter related to more practical concerns such as recruitment and retention and temporal and functional flexibility. For instance, Very Large Acute 2 described its aims and objectives in an annual report in values terms: 'a flexible, equitable and simple approach to pay and conditions of service'. In contrast, interviewees at Multiservice 2 informed us that the main objective of their new pay system in theatres was the removal of 'artificial

barriers between surgical skills and anaesthetic skills of the theatre practitioners'. Interestingly, our data revealed that theatres were regarded as a priority area. In all but two of our trusts which had theatre changes were made to the pay and conditions of theatre staff. (The exceptions were Large Acute and Multiservice 3) In particular management wanted to align the work of ODAs/ODPs and theatre nurses.

Notably, scrutiny of our data revealed that trusts adopted a values based approach where they were proposing to introduce pay changes for a significant proportion of their workforce throughout their organisation. Conversely, where trusts were proposing to introduce pay changes for a discrete area only, eg a department or occupational category, issues driven approaches were adopted.

Costs were also an influential factor. On the one hand some trusts were of the view that pay changes would not lead to an increase in the paybill. Higher basic pay would be offset by the consolidation of unsocial hours payments into basic pay, as occurred at Community. On the other hand, an expectation that a new pay system might be costly deterred some trusts from developing and/or introducing more extensive changes to pay arrangements, for instance at Acute Teaching 3 and Large Acute.

Managerial perspectives were not necessarily static over time. In some trusts, whilst initial concerns centred on value driven aspects, issues related concerns came to the fore in later years. Our data revealed two examples of this situation and in both cases there was a considerable delay between development and implementation of the new pay arrangements. At Acute Teaching 3, whilst initial aims related essentially to flexibility and performance management, by the time the scheme had got underway recruitment and retention were becoming issues. At Acute Teaching 2, where initial concerns were value driven, a 1998 report to the board stated: 'The pressure to develop harmonised terms and conditions, although commencing at a corporate level are now primarily bottom up'. Interestingly however, there was no evidence of issue related concerns evolving into value related concerns.

In many trusts, the need to manage performance was not stated overtly as an aim. Nevertheless, some interviewees suggested that this was an implicit consideration which could fall under the rubric of enhanced patient care or flexibility. For instance at Urban 1 a management interviewee suggested that at least part of the rationale for changes in pay regimes for nurses and midwives and other occupational groups was the link of pay determination to performance management. Realisation of the aims and objectives was contingent upon the party/parties who championed the new arrangements. In addition to the human resources director, in some trusts influential roles were played by others, eg the trust board members at Multiservice 1, the director of nursing services at Acute Teaching 3.

The unions did not favour any departure from national pay arrangements. Given that principled stance, they adopted pragmatic approaches. Some became involved to seek to influence the direction of changes. For example, at Community the aims and objectives of unions were to limit any potential adverse impact. At other trusts, the unions considered local pay arrangements as a means of increasing salaries for some staff (Acute Teaching 2) or enhancing staff development (Large Acute). At Acute Teaching 1 the unions refused to enter into discussions as they did not want to be seen to endorse, in any respect, the introduction of local pay. Unions, on the whole, were

particularly opposed to performance pay and the abolition of service based increments. Nevertheless, at Large Acute the introduction of new competency based pay progression criteria for clinical support workers were developed from a union proposal and the full time union official was an important champion (see sub-section 2.3.4.1).

2.3.2 Pay systems

We deal here with the proportion of employees covered by trust pay systems, grading structures, the incorporation of premia and allowances into basic pay, the harmonisation of terms and conditions, annual settlements and market supplements.

2.3.2.1 Coverage: eligibility and take-up

The extent to which trust employees were eligible for local pay systems varied considerably. On the one hand, at Multiservice 3 none were eligible: the trust used the flexibility provided under Whitley to introduce new on-call arrangements for certain staff. On the other hand, in three trusts, there were local arrangements for which all non-medical staff were eligible, while in the remaining trusts only discrete occupational groups were eligible for the new arrangements. This ranged from less than 100 to some 4,000. Details of eligibility appear in table 2.4.

Eligibility and take-up, although related, are not the same and a number of factors appear to have influenced take-up rates: first, the length of time since the trust pay system was introduced allied to labour turnover rates. Under the common law a contract can only be varied by agreement and under statute the Transfer of Undertaking (Protection of Employment) Regulations provide that existing employees who stay in the same job can opt to remain to be covered by the national arrangements, even though their employer is the trust, not the health authority as before. Thus, whereas Multiservice 1 and Very Large Acute 2 introduced new pay systems for all non-medical staff except directors in 1994, actual take-up was some 10 percentage points higher in the latter than the former trust at the time of our fieldwork (summer 2000). This may be partly because Multiservice 1, which was near London, had higher labour turnover rates than Very Large Acute 2, which was in the north east. Details of take-up appear in table 2.4.

A second factor influencing take-up was whether the new pay system radically departed from the national arrangements. Employees may feel that the closer the trust pay system is to the national arrangements, the less they are at risk. For instance at Acute Teaching 3 in respect of nurses, midwives and support workers and at Large Acute in respect of clinical support workers and midwives, the trust arrangements complied with the national pay points (though the pay progression system differed) and in both these trusts the overwhelming majority of eligible staff had accepted the new system. Indeed, at Acute Teaching 3, two of the new D grade nurses in one of our focus groups were unaware that they were on a trust pay system. Perhaps, however, this was not surprising given that a recent advertisement in the *Nursing Times* (2000) for nurses in the cardiothoracic unit did not refer to the trust's competency based pay system.

Table 2.4: Trust pay arrangements by coverage

Trust	Staff groups eligible	Take-up ^a (%)
Acute Teaching 1	All non-medical staff except scientists, pharmacists, estates officers.	25
Acute Teaching 2	All theatre staff	90
Acute Teaching 3	Nurses, midwives, health visitors, support workers	90
Community	All non-medical staff except grade B clinical psychologists	65
Large Acute	Maintenance craftsmen	100
	Clinical sterile support department	100
	Nearly all CSWs	90
	Midwives	>65
Multiservice 1	All non-medical staff	75-80
Multiservice 2	Qualified theatre staff only	92
Multiservice 3	Some pathology laboratory staff	N/A ^c
Very Large Acute 1: Urban 1 Urban 2	Nurses, midwives ^b	95
	A & E, Trauma & Orthopaedics	>90
Very Large Acute 2	All non-medical staff	67

^a Take-up at time of fieldwork: April to September 2000.

^b Urban 1 also developed pay systems for admin. & clerical, hotel services, 'professional' staff, ODPs/ODAs.

^c Not applicable as changes centred on variation to Whitley terms.

A third factor influencing take-up rates was the immediate financial incentive provided. For instance when the new pay arrangements for nurses, midwives and support workers were introduced at Urban 1 in 1994, staff moving on to the new structure were assimilated on to the next highest point *plus* an additional increment *plus* a further increment if the transfer took place in the first month, ie three increments worth 2% each. In fact the take-up rate amongst this occupational group was 95% by the time of the fieldwork. At Community, where a new pay system was also introduced in 1996, the take-up rate was 65% at the time of our fieldwork: staff transferring moved on to the next highest point, worth up to 4%. Interestingly at Multiservice 1 the financial incentive was not immediate. Staff transferring moved across without any change to their pay, but all 'excellent' staff could continue to receive increases, whatever their position in the pay band, without hitting a ceiling and the take-up rate at the time of our fieldwork was 75%-80%.

2.3.2.2 Grading structure

Four of our nine trusts which introduced local pay arrangements, used the Medequate job evaluation system, while Multiservice 1 introduced 'recruitment clusters' based on a competency grading system. At Urban 1 the Hay job evaluation system was used for so called professional staff, ie staff whose role was substantially managerial or

where an individual was a professional head of a service or department. The Hay job evaluation system was also used at Urban 2 in Accident & Emergency and Trauma & Orthopaedics to support a new patient focused care system.

Large Acute and Acute Teaching 3 both eschewed job evaluation and closely based their grading structures on the Whitley grading structures. Acute Teaching 2 apart, the unions in the trusts which used Medequate had profound reservations. A comment by a staff representative at Community was not untypical:

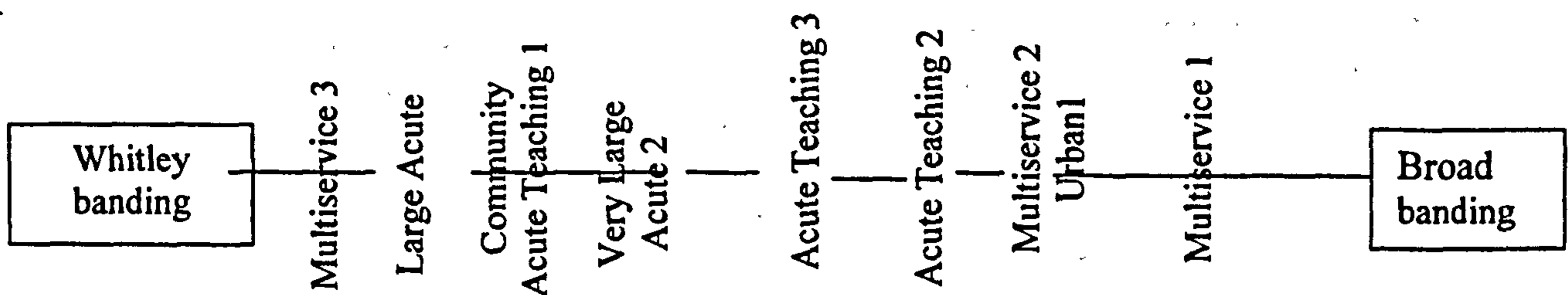
[Medequate] wasn't initially designed for the health service...It was very obviously biased in certain areas... budget holders and people who controlled a lot of staff... against therefore clinical staff who maybe don't have a lot of budgetary control or don't control a lot of staff, but actually... do a very complex and difficult job.

Three of the 10 trusts which we studied created single pay spines, (Acute Teaching 1, Community and Very Large Acute 2). Interestingly, although the unions rejected the concept of a single spine when it was proposed by the King's Fund/National Association of Health Authorities (1985) (see sub-section 1.4.4), some 10 years later this was not a stumbling block. Indeed, managers at Community cited the single pay spine as a major strength and expressed concern about the proposal under *Agenda for Change* to introduce three pay spines. The unions, too, approved of the single pay spine which covered all employees whether they were 'a nurse or a painter'. At Very Large Acute 2 the single spine was seen by management as a means of deterring equal value claims and was acceptable, in principle, to the unions. The unions' main concern related to the performance element of the pay system. At Acute Teaching 1 (where the unions were not involved in the development of the pay system) the HR director saw the single pay spine as an enabler for teamworking.

Three trusts (Acute Teaching 2, Acute Teaching 3, Multiservice 2,) had originally intended to cover all the non-medical staff in the trust but for a number of pragmatic reasons, including cost pressures, had not done so. Indeed, Acute Teaching 2 had 'Medequated' jobs throughout the trust.

Another significant feature of the grading structure was whether the trusts essentially continued to follow the spans determined nationally or introduced broader bands. Multiservice 1, which had no pay ceilings on its bands, just minima, was at one end of the spectrum having broad bands. Multiservice 2 introduced a three grade structure covering four nurse clinical grades and three medical technical officer grades, while Acute Teaching 2's 10 grades were mostly broader than the Whitley grades. Others (Acute Teaching 1, Community and Very Large Acute 2), while introducing their own grading structures, in fact ended up with structures which were little different from the Whitley grading systems, while Large Acute only tinkered with the national grading systems and Multiservice 3 observed them completely. Figure 2.2 illustrates the position.

Figure 2.2: Departure from Whitley banding by trust



The pay structure at Acute Teaching 3 at first sight seemed to be a broad banded one. The trust replaced the nine nursing and midwifery grades A to I with four bands:

- Band 1: Support worker (corresponds to grades A and B),
- Band 2: Qualified nurse/midwife (corresponds to grades D and E),
- Band 3: Senior qualified nurse/midwife (corresponds to grades F and G),
- Band 4: Manager/specialist (corresponds to grades H and I).

These broad bands, however, were subdivided to correspond with the clinical grades and staff could only move between the sub-bands if they had the competencies, the finance was available and the service required those competencies. Moreover, even if those conditions were satisfied, a formal interview was required if there was more than one suitable person in the area. As a union representative commented:

The philosophy was to open up the barriers basically... but if you were working as a D grade and you'd met all the competencies and perhaps could go to an E grade, you'd still have to wait for a job to apply.

This comment was consonant with that of a personnel director at another trust, who eschewed broad banding. He commented:

It's very difficult to control costs on a broad banding system... unless you build in lots of quotas and performance bars and artificial constraints which then defeat the whole object of the exercise.

2.3.2.3 Terms and conditions: incorporation

Leaving basic pay aside, we found that four out of our 10 trusts (Acute Teaching 3, Large Acute, Multiservice 1⁵, Multiservice 3) did not move away from the national terms and conditions, which vary by occupational group, even though in one case, Multiservice 1, the trust made extensive changes to basic pay.

Turning to the other trusts, we found that a key management aim in changing terms and conditions was to incorporate premia and allowances into basic pay to ensure simplicity. As the HR director of Community said:

⁵ Multiservice 1 incorporated on-call payments into annual salaries for pathology staff

We rationalised the allowances... we wanted to get rid of allowances because there were a whole range that were meaningless and small amounts and when you advertise a post, why take it into account. You give the basic pay and don't say plus laundry, plus psychiatric lead, plus this, plus all the rest.

Connected with this was the aim of ensuring that although the timing at which work took place could vary, eg from week to week, the salary received would remain constant from one pay period to another. This has advantages for management in that it can predict the paybill and, perhaps reduce the costs of overtime/unsocial hours work. The advantage for staff is that earnings can be predicted and do not vary, for instance on account of annual leave or sickness. Thus, three trusts developed inclusive rates for the job based on the extent of the unsocial hours in the work pattern as follows:

- Acute Teaching 2 (theatres): basic; basic + 3%; basic + 5%; basic + 8%.
- Community: basic; basic + 8%; basic + 15%.
- Very Large Acute 2: basic; basic + 2%; basic + 5%; basic + 12½%.

Acute Teaching 2 introduced the basic + 3% rate in 2000. Hitherto it had only two plus rates in addition to the basic rate. Very Large Acute 2 introduced a basic + 2% rate (for weekend working, but not shifts) in 1999. Before then it only had two plus rates in addition to the basic rate. Also in 1999/2000 it raised the highest rate in stages from 10% to 12½%. An interviewee commented that before the third lower rate was introduced, some staff who were doing quite a lot of unsocial hours were receiving the 5% enhancement, even though strictly speaking they did not meet the criteria for 5%, but it was not equitable that they should only receive the basic salary.

Very Large Acute 2 claimed that inclusive rates served to obviate the perverse incentives that operate under the Whitley system of premia. The acting personnel director commented that the ward sister, who draws up the off duties, would be tempted under Whitley 'to put herself on duty at times when she was paid most, when it was least useful to the organisation in terms of her doing her management role'.

Another example of an inclusive rate of pay despite variations in hours worked was the annual hours scheme for maintenance craftsmen at Large Acute. The agreement, effective from 1.9.97, was based on an annual hours agreement of 2,300 hours per year with provision of a full 24 hours service with overtime and call-out payments absorbed and new shift patterns designed to meet the needs of the service.

At Multiservice 3, where external auditors found that the budget was uncontrollable as on-call payments were based on the timing of tests, not the workload, a continuous process pattern (CPP) agreement in respect of the haematology and clinical biochemistry departments was introduced from September 1998. The agreement provided for a 24-hour rota system with an agreed sum divided equally between rota members. At Multiservice 2 unsocial hours payments for work during the week were incorporated into basic pay, but not for weekend work.

As the NHS operates throughout the year on a seven-day a week, 24 hour basis, the relationship between pay and hours is a singular feature of this organisation. This relationship was addressed in varying ways as our data revealed and any configuration gave rise to both problems and solutions. See sub-section 2.3.7.2.

2.3.2.4 Terms and conditions: harmonisation

Details of harmonisation are set out in table 2.6. Working hours and on-call were harmonised in five trusts. The standard 37.5 hours per week was adopted in place of the national arrangements under which working hours vary by occupational group. Nurses, midwives and health visitors have a working week of 37.5 hours and are the largest occupational group; thus the weighted average is 37.5 hours.

At Acute Teaching 2, Community, Multiservice 2, and Very Large Acute 2 unsocial hours payments were not only incorporated into basic pay, they were also harmonised in respect of the different occupational groups. In contrast, Acute Teaching 1 and Urban 1 harmonised but did not incorporate. Also, whereas the former applied the rates payable to nurses and midwives to other occupational groups, the latter introduced a new, lower rate for most occupational groups (nurses, midwives, administrative and clerical staff, hotel services staff and ODAs/ODPs).

Table 2.5: Harmonisation by trust

Trust	Working hours	Unsocial hours	Overtime	On-call	Annual leave
Acute Teaching 1	x	√	√	√	(√)
Acute Teaching 2*	√	√	√	√	x
Acute Teaching 3	x	x	x	x	x
Community	√	√	√	√	x
Large Acute	x	x	x	x	x
Multiservice 1	x	x	x	x	x
Multiservice 2 **	√	√	√	√	√
Multiservice 3	x	x	x	x	x
Very Large Acute 1***	√	√	√	x	x
Very Large Acute 2	√	√	√	√	x
Multiservice 3	x	x	x	x	x

* Local pay applicable to theatre staff only and based on three separate rates/work patterns

** Local pay applicable to theatre staff only

*** Relates to Urban 1: nurses, midwives, admin. & clerical, hotel services, ODAs/ODPs.

In six trusts overtime was also harmonised, but there was variation as to whether or not there was a reduction compared to the national arrangements (time + a half Monday to Saturday for nurses and double time on Sunday). Two trusts: Community and Very Large Acute 2 extended the nurses and midwives overtime rates to other occupational groups. Four trusts paid lower rates. Thus Multiservice 2 did not make any overtime payments to its theatre staff Monday to Friday and provided time plus one third on Saturday and time plus two thirds on Sunday and bank holiday. Urban 1 paid time and a third Monday to Saturday and time and a half on Sunday. Acute

Teaching 2 paid overtime at time and a third for its theatre staff and Acute Teaching 1 only paid overtime premia after 42 hours had been worked, ie the first 4 ½ hours above the contracted hours were only paid at the basic rate, with time off in lieu.

Four trusts did not carry out any harmonisation. The finance director at Multiservice 1 said that they wanted the new pay system, introduced in 1994, 'to bed in properly'. Then the trust started to look at harmonising terms and conditions, but a change of government took place.

Of all the major conditions annual leave was the least likely to be harmonised and continued to be related to grade and length of service, except for qualified theatre staff in Multiservice 2 and for all above level 1 at Acute Teaching 1. This was a pragmatic assessment of the costs entailed, not a principled stance. Nevertheless, even where harmonisation was not achieved, there was some standardisation. Data relating to the impact of harmonisation on teamworking are discussed in sub-section 2.3.7.5 below.

2.3.2.5 Settlements

As noted before, three trusts did not depart from the national pay points (Acute Teaching 3, Large Acute, Multiservice 3) and thus automatically applied the annual national settlements. The other seven trusts, whatever their freedom in theory, tailored their settlement to the national ones. At Acute Teaching 1, Community and Very Large Acute 2, where there were single spines, there were special considerations. First, the differential increases to the tops of certain grades by the nurses' and PAMs' pay review body in 1999 and 2000 necessitated some tinkering with trust scales to maintain equity between those on Whitley and those on trust contracts. Second, the pay review body award for nurses and PAMs was the benchmark, not the lower settlements applying to the non-pay review body groups and essentially all employees received the same percentage increase.

2.3.2.6 Market supplements

We were told that market supplements for certain groups of staff were applied at Community, (information technology (IT) staff, finance staff and clinical psychologists); Very Large Acute 1 (administrative and clerical staff and hotel services staff where necessary); and at Very Large Acute 2 (medical electronics staff, pharmacists and radiographers). Only at Community were we aware that this caused tensions with those staff who did not receive such supplements and this tension arose only in respect of clinical psychologists and not in respect of IT and finance staff.

2.3.3 Pay progression

We focus first on the basis of pay progression, particularly progression based on performance and whether or not performance payments were consolidated. We then consider how performance pay was awarded and distributed.

2.3.3.1 Basis

In eight of our case study trusts the link between pay progression and service was replaced with a link between pay progression and performance. The main exception was Multiservice 3. At Acute Teaching 1, however, there were service-related

increments until employees reached the top of their grade, where they were eligible for a non-consolidated performance bonus.

Only in Very Large Acute 2 was the performance related pay contingent upon the performance of the trust, not the individual. The non-executive directors decided the amount based on the trust's achievement of:

- quality targets, as for example set out in the *Patient's Charter*,
- number of patients dealt with, as stipulated in the trust's contracts with purchasers,
- financial targets,
- service developments, as set out in the trust's business plan.

To date (2000) the trust never achieved 100% of its targets and the actual performance award paid varied between 4.8% in 1994 to 7.2% in 1999. The researchers were informed that comprehensive information from each directorate was sent to the non-executive directors prior to their decision on the annual performance award, but how they decided the extent to which targets were achieved and thus the performance award was not at all clear.

Team bonuses were very rarely used in our case study trusts, only for some 10 pharmacists at Acute Teaching 1 and for theatre staff at Acute Teaching 3 (where the pay arrangements were under review at the time of writing). Individual performance related or competency based pay was much more common than team or organisation based pay and was found in eight of our trusts. Competencies were either based on skills, or behaviours, or clinical care, or a combination. Moreover, the competencies often varied significantly by occupational group. At Large Acute, for instance, the competencies of clinical support workers were equated to the achievement and demonstration of skills, but the competencies for midwives were behavioural and professional/clinical. The mix of the behavioural and professional/clinical was also to be found for nurses, midwives and their support workers at Acute Teaching 2, Acute Teaching 3 and Multiservice. For instance at Multiservice 1 assessment was based on:

- occupational skills,
- client care,
- decision making and problem solving,
- interpersonal skills,
- leadership skills,
- planning and administration.

At Urban 1 the criteria used to assess the performance of nurses and midwives under their performance pay scheme covered a range of behavioural attributes as clinical competence was assumed. The criteria used were weighted and there were eight headings:

- *process*: assessment, planning implementation and evaluation of care needs,
- *professional responsibility*: staff and ward/department development,
- *research*,
- *human relations*: communications, relationship building, interpersonal understanding, personal awareness,

- *teamwork,*
- *adaptability,*
- *attendance,*
- *commitment to patient care.*

At Urban 2 performance assessment was based on a mixture of behavioural attributes and skills, using the English National Board's 10 key characteristics and three additional characteristics as follows:

- accountability,
- clinical skills,
- research,
- teamwork,
- innovation,
- health promotion,
- staff development,
- resource management,
- quality of care,
- change,
- care planning,
- communication,
- teaching skills.

In fact a new performance assessment scheme was being developed to merge the two different systems of staff appraisal at Urban 1 and Urban 2 in the wake of the merger of those two hospitals. The main aim was to introduce an assessment procedure which was more transparent, had a stronger evidence base and was less subjective.

Our data suggested that trusts found it more straight forward to develop competencies based on skills than on more abstract clinical and behavioural attributes. The latter were often evaluated by means of employee portfolios or profiles which staff may not have found easy to compile. Acute Teaching 2 theatres' pay progression competency scheme, grade 6 said: '...profile construction is organised in your own time and there is no definitive method of producing one', according to an internal document.

At Acute Teaching 1 and Multiservice 2 the researchers did not obtain any criteria for performance assessment, whilst at Community the researchers were told that the trust's competency profiles were primarily designed for recruitment purposes and, according to a management interviewee they were:

... an additional tool at the performance development review to help the manager to decide whether to award the progression point. They are not used on their own to make that decision.

2.3.3.2 Consolidation?

Having considered the basis on which performance was assessed, we now consider how performance pay was applied in the nine trusts where there was performance/competency pay. In six of our trusts performance pay was consolidated and by incremental step. At Acute Teaching 1 a non-consolidated performance bonus was paid only to those at the top of their grade.

Multiservice 1 and Very Large Acute 2 employed a mixture of both consolidated and non-consolidated payments. At the latter, half of the performance element (which as noted above was based on trust, not individual performance) was awarded as a consolidated increase and half as a non-consolidated lump sum, though those at the

top of the grade received only the unconsolidated half. At Multiservice 1, where there were no grade maxima, only minima,

- staff rated 'poor' did not receive an increase,
- staff rated 'satisfactory' received a consolidated percentage increase which in practice was in line with the national award,
- staff rated 'good' received a consolidated percentage increase which in practice was some two percentage points above their colleagues rated satisfactory (ie broadly equivalent to half an increment under Whitley),
- staff rated superior received the same consolidated percentage increase as those rated good, plus a non-consolidated bonus of 2%,
- staff rated 'excellent' received the same consolidated percentage increase as those rated good, plus a non-consolidated bonus of 4%.

2.3.3.3 Procedures

Multiservice 3 had service related, not performance related, pay progression, as did Acute Teaching 1 which, however, provided a non-consolidated bonus for those at the top of the grade as noted above. The remaining eight trusts had performance related pay progression but only at Multiservice 1 was there a single annual performance award and no separate annual settlement based, for instance, on the cost of living and/or the national pay awards. All the other trusts distinguished between the annual settlement and the performance award. Of these trusts, three (Acute Teaching 2, Community and Very Large Acute 2) applied their annual performance award on a single date, while Urban 1 applied its annual performance award either on 1 April or 1 October. The remainders applied a performance award according to the employee's anniversary.

It is debatable from the management viewpoint whether one approach is preferable to another but from the employee's viewpoint there is a disadvantage in a once a year date as some time may elapse between appointment and pay progression. For instance at Acute Teaching 2, where there was pay progression for theatre staff on 1 April, only staff who had completed six months' service in post, irrespective of whether this had been achieved by appointment, promotion or regrading could progress. Thus staff who joined after 1 October had to wait up to almost 18 months before they were eligible for a performance related increment.

2.3.3.4 Distribution of awards

Only at Urban 1 was there a forced distribution (where management prescribe the allocation of awards in advance) and a complex system to ensure paybill control. The appraisal resulted in the top 10% receiving a rating of 3; the next 20% receiving a rating of 2, the remainder receiving a rating of 1 unless they had a score of below 100, when they received a nil rating. The ratings determined the *potential maximum* salary increase, as each pay band had performance bars as follows:

- Staff below bar 3 could receive a potential maximum salary increase of 6% if rated 3 and a potential maximum salary of 4% and 2% if rated 2 or 1 respectively.

- Staff between bars 3 and 2 could receive a potential maximum salary increase of 4% if rated 3 and 2% if rated 2. Those rated 1 did not get a performance increase.
- Staff above bar 2 who were rated 3 could receive a potential maximum salary increase of 2%. Those rated 2 and 1 did not get a performance increase.

The bars limited the rate of progression and only high performers could progress to the maximum of the band. The next stage was for salary increases to be awarded. These were awarded in 0.5% bandings according to the number of points scored by the individual. Staff whose scores were in the bottom 45% of staff scores in each sub-occupational group received a 2% salary increase (except that staff scoring below 100 received no percentage increase). Staff scoring above the 45% trigger received a salary increase of between 2.5% and 6% split into eight bandings in 0.5% steps. Thus there was a forced distribution. The last stage was for the salary increase indicated by the score to be mediated by the employee's position on the pay spine relative to the performance bars and the employee's rating.

At Multiservice 1 performance awards followed a bell curve: 20% of employees were expected to be assessed as poor or satisfactory; 60% of employees were expected to be assessed as good; 20% as superior or excellent. Departmental managers were able to deviate from this distribution but were required to meet additional costs from their budget.

2.3.3.5 Discrimination in performance

We now consider to what extent the performance related pay system discriminated between employees. At Multiservice 1 there was a five point rating scale and Urban 1's professional contribution rating system for nurses and midwives provided for 10 possible levels of award: 0 and then nine bandings between 2% and 6%. In other words, the performance awards at these trusts were based on fine distinctions.

At Community, 80% of staff received one performance based increment, while 10% received two increments and 10% received nothing. At Acute Teaching 2 theatre staff could only receive one competency based increment a year and different figures were mentioned in interviews as to the number of eligible staff who had not been given a competency increment in 1999, ranging from 10% to 25%.

At Very Large Acute 2, all employees on trust terms received the same percentage performance increase (unless they were at the top of the grade when they received half the increase), but those who had a disciplinary warning extant or had been absent from work, whether or not on account of sickness, did not receive the award. Individuals absent for more than fifteen days, or on four separate occasions in a year lost 50% of their performance award. If this level of absence occurred in the following year then the individual lost 100%, ie all the performance award. Different figures were mentioned in interviews as to the number of eligible staff who had not been given a performance award ranging from 3% to 10%. The unions were critical of the use of the absence based criterion, pointing to inequities between different parts of the trust. One interviewee remarked:

Yes in the early days I am led to believe that some divisions, some divisional leaders didn't believe in stopping the bonus for any reason, so there were certain divisions that never lost their bonus. There were other divisions where, particularly facilities and staff within the facilities division, lost their bonus at the drop of a spoon.

Accordingly changes were introduced in 2000. Absence for reasons of pregnancy and bereavement and occupationally induced sickness were no longer counted and, in the interests of consistency across the trust, a panel was set up to make a final decision on whether the award should be withheld.

Whereas in most trusts the performance award discriminated between poor and better performers at least to some extent, in three trusts (Acute Teaching 3, Large Acute, Multiservice 2) the performance award was not normally withheld and a performance based increment was awarded. Accordingly, the pay progression system in practice was only a little different from the Whitley system of so-called automatic increments, where in theory an increment can be withheld from a poor performer. Management interviewees at Acute Teaching 3, however, maintained that the competency based pay progression system ensured that managers focused on performance in the job. As a result, the *process* of awarding increments differed and managers made a positive decision in respect of each job-holder.

At Multiservice 2, according to an internal document in 1998, 'the general approach is that staff are deemed entitled to their routine annual increment unless a major negative issue had been highlighted but not yet resolved following appropriate counselling'. A theatre practitioner II, however, who left on 15 April 1998, was recorded in her exit interview as never having had a management staff review in her six years of employment in the trust, including over one year on the new theatre pay system.

Interestingly, our data revealed that trusts' performance pay systems made fine distinctions where they had been introduced in the first half of the 1990s. The two trusts which introduced performance pay systems earliest, ie in 1994, (Multiservice 1 and Urban 1 in respect of nurses) introduced fine distinctions in their performance pay systems. In contrast, we found no examples of trusts which introduced their performance pay systems after 1996 making fine distinctions.

2.3.4 Process

In reporting on innovations in pay and grading we refer to 'process' as incorporating two aspects; development and implementation. Essentially three parties have the potential to influence the development and implementation of trust pay and conditions: management, unions and employees. The complex ways in which these parties interrelate were important variables in pay modernisation programmes, whether or not trusts departed from national arrangements, minimally or radically. Our data revealed a number of managerial approaches which could be adopted. These approaches highlighted how unions may or may not have been involved and where they were involved, such involvement varied. Management may:

- adopt a unilateral approach whereby there is no union involvement,
- liaise with employees directly both as individuals and through the use of focus groups,

- liaise with employees indirectly through the use of external consultancy firms,
- hold discussions with the unions,
- negotiate with the unions, and/or
- adopt one, some, or all of these approaches.

The complexity of the situation was further confounded as management could adopt one, some, or all of these approaches in both the development and/or the implementation of trust pay systems. Moreover, our data suggested that an array of associated aspects, for example the use of management consultants, the degree of staff involvement and/or duration of time between initiation and implementation of trust pay, also had the potential to influence process. Although this sub-section predominantly focuses on management approaches, it is important to remember that unions may decline to liaise with management. Each case study differed. We now use a selection of these case studies to illustrate pertinent points.

2.3.4.1 Union involvement

Figure 2.3 illustrates the degree of union involvement in each trust. Essentially, there were three categories:

- i) where there was negotiation and agreement on the new pay system and also on subsequent pay increases;
- ii) where the unions were involved in discussions on the development of the pay scheme, but there was no agreement. Once the scheme was introduced, however, there was joint negotiation and agreement on subsequent pay increases;
- iii) where the unions were not involved in developing the scheme but negotiated and agreed pay increases once the scheme was introduced.

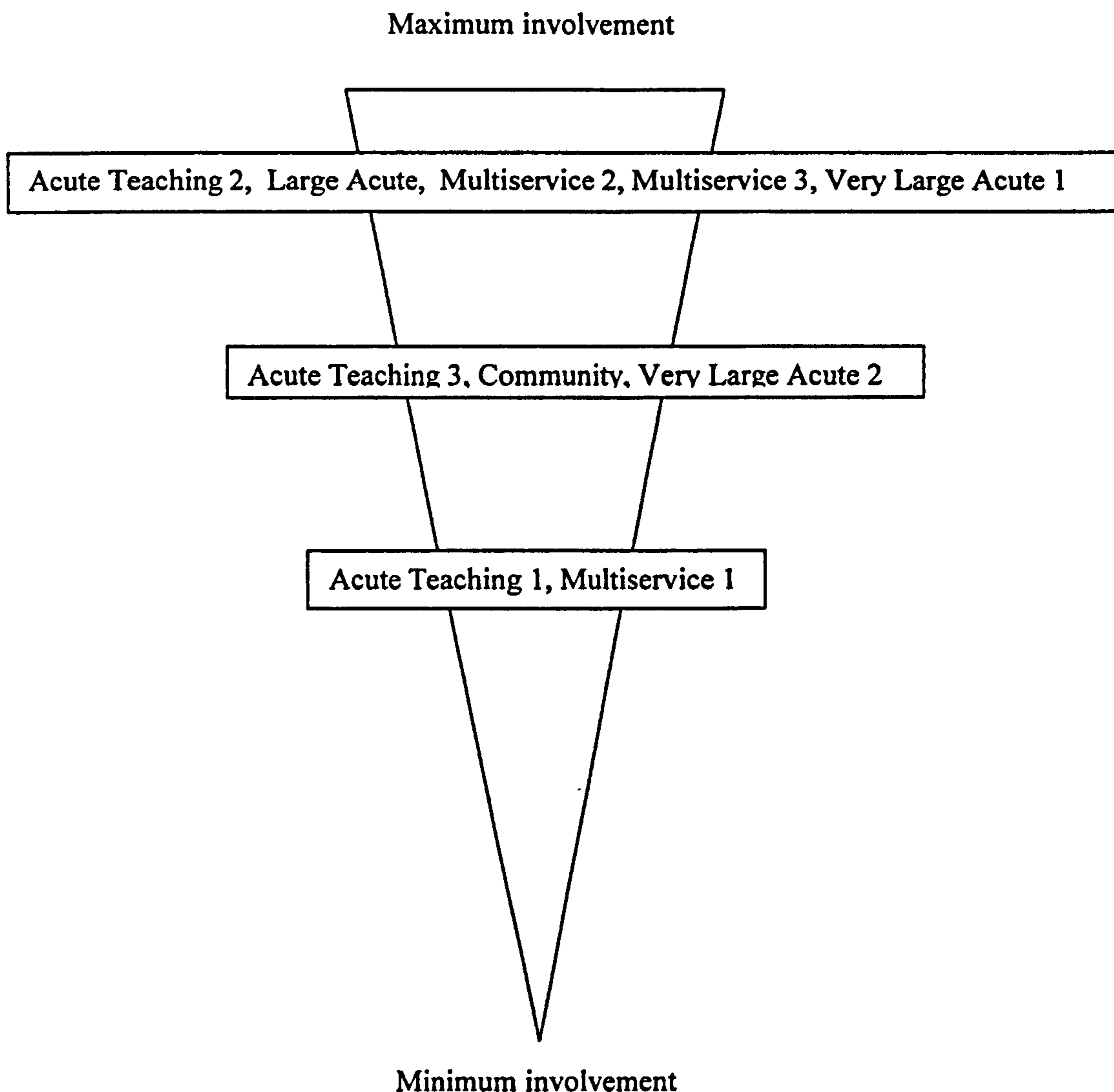
It is notable that the degree of union involvement had no apparent influence on whether radical or minimal changes were introduced. For example, at both Multiservice 1 and Urban 1 radical changes were introduced but at the former there was little union involvement and at the latter there was union agreement, (see figure 2.3).

Focusing on the range of managerial approaches that could be adopted, table 2.6 reveals that in all but two trusts (Acute Teaching 1 and Multiservice 1), there was at least discussion between management and unions prior to a new pay system being introduced. At Acute Teaching 1, according to management, the unions declined to take part in discussions, even on a 'need to know' basis so that they could advise their members.

At Multiservice 1, which had a competency based grading system, the unions were not invited to take part in the development of the system. This was undertaken by a consultancy firm (Lloyd Masters). The unions, however, signed a recognition agreement and subsequently negotiated the pay increase for staff on trust terms. At Very Large Acute 2, the unions' rationale for engaging in discussion was to influence the final model. At Community an interesting situation occurred. The unions did not support the development of the new pay arrangements mainly because they were of the view that the job evaluation system used, Medequate, did not adequately value the

role of clinicians. Nevertheless, they later reached a compromise with management whereby employees on trust contracts prior to the new pay system being launched, could opt to remain on Whitley terms, rather than automatically receiving the new trust terms.

Figure 2.3: Degree of union involvement by trust



In contrast to the approaches of the trusts mentioned above, at four trusts the unions were fully involved from initiation. Thus at Multiservice 3 a new agreement on a continuous process pattern (CPP) was negotiated between management and the relevant union, MSF, with the full involvement of both the full-time official and the staff representative.

Table 2.6: Process by trust

Trust	Focus groups	Management consultants	Discussion with unions	Agreement with unions
Acute Teaching 1	x	x	x	x
Acute Teaching 2	√	x	√	√
Acute Teaching 3	√	√	√	x
Community	√	√	√	x
Large Acute	x	√	√	√
Multiservice 1	x	√	x	x
Multiservice 2	√	x	√	√
Multiservice 3	x	x	√	√
Very Large Acute 1	√ ^a	√ ^a	√	√
Very Large Acute 2	x	x	√	x

^a With nurses, midwives and HCAs (Urban 1)

At Acute Teaching 2, in respect of the theatres agreement, the trade unions were involved at two main levels. First, discussions took place within the forum of the general bargaining group and through the staff side chair. Second, at departmental level, the Unison representative liaised closely with both the staff and the staff side chair. Indeed, both union representatives and management considered trade union involvement at Acute Teaching 2 critical to success. One management interviewee, commenting on the union representative in theatres, remarked:

He went to every meeting there was about pay. He was taken seriously. His concerns were taken seriously. I think that is reflected in the amount of people who actually came over on to the pay scale.

Notably, implementation at Acute Teaching 2 also included a one-year pilot project in theatres.

Interestingly, at Large Acute a union representative was instrumental in developing the pay scheme for clinical support workers (CSWs). Against a backdrop of recruitment and retention difficulties in nursing, CSWs (previously called auxiliaries) were undertaking a range of additional duties. This led to Unison supporting an appeal for a number of staff to be regraded from grade A to grade B. Immediately prior to the hearing, the union official suggested that a working party be set up to obviate the need for appeals and properly reward CSWs for additional duties undertaken. The then assistant director of nursing, who accepted that CSWs were taking on new responsibilities, subsequently accepted this suggestion. Thus, the move to new arrangements stemmed directly from a union proposal.

2.3.4.2 Management consultants

Turning to the use of management consultants, these were commissioned in five of our ten case study trusts (see 2.6). Our data revealed that the role of the management consultants differed from trust to trust. It could range from investigating staff views about pay and their jobs and making recommendations, as KPMG did at Acute Teaching 3, Hay did at Urban 1 and Towers Perrin did at Community, to developing a competency system, as Lloyd Masters did at Large Acute and Multiservice 1.

2.3.4.3 Staff involvement

Staff involvement primarily occurred through the use of focus groups, which may or may not have been facilitated by management consultants. Focus groups were held with or without management consultants in five trusts (see 2.6). Staff involvement took a number of forms:

- suggestions about the future shape of the pay agreement,
- helping to formulate and compile competencies,
- communications with management individually about their pay if they were to move over to a new system.

For example, at Acute Teaching 3 staff, through focus groups, suggested changes to the pay system. At Acute Teaching 2, groups of theatre staff met with management to draw up competencies. At Urban 1, a manager and a union representative conducted interviews jointly with each member of staff individually to explain how their position would change under a new pay system.

2.3.4.4 Time

Our data revealed that the duration of time between initiation to implementation of trust pay varied between our case studies, as mentioned in sub-section 2.2.2. At Acute Teaching 3 the trust wanted to proceed slowly. As one interviewee remarked:

You know if it's limited to one or two service centres and it all goes pear shaped, it's much easier to control the damage; but if it's rolled out and if it affects every nurse, midwife and health visitor employed by the trust then it's quite difficult to control that damage and actually to bring that back in and it would have a negative effect on confidence in the employer.

Roll-out, however, took much longer than anticipated due to a protracted period of staff training in competency based appraisal and the initial project leader leaving. At Acute Teaching 2 too, there was some time between initiation and implementation. In 1995 there was a trust wide job evaluation exercise. For a number of reasons, including cost and change of government, it was decided to roll out gradually and the first staffing department to receive trust terms was theatres, in January 1998. In other trusts, implementation occurred much more rapidly. For example Multiservice 1 gained trust status in 1993 and launched a new pay system in 1994.

2.3.5 Costs

This sub-section initially focuses on stakeholder perceptions and then goes on to discuss developmental costs, assimilation costs and on-going costs. It must be noted, however, that costs were affected by the extent of the changes made to the national arrangements, for example whether the development of the trust system involved radical or minimal changes. Costs were also affected by the extent of staff covered by the new system, for example whether applicable to one, some or all non-medical occupational groups. In addition, our data revealed that other factors had a bearing on costs, such as whether additional funds were available to support the development and implementation of trust pay arrangements, the extent of the incentive payments offered to induce staff to transfer to trust terms and whether trusts obtained offsetting cost savings.

It is important to bear in mind that fear of incurring costs could be an impediment to change. Two trusts eschewed major changes to pay (Large Acute and Multiservice 3) because of an unwillingness to risk an increase in costs. Also three trusts which originally intended to apply a new pay system to all non-medical staff decided to restrict it to discrete groups only, largely because of cost pressures.

2.3.5.1 Stakeholder perceptions

In many trusts, the unions were of the view that a new pay system had been introduced to obtain paybill savings. For instance at Urban 1 a union representative interviewed suggested that pay reform was 'very much linked to money... a long term objective to save money'. Similarly at Multiservice 1 the unions were firmly of the view that the new pay system saved the trust money. (Management in neither trust, however, stated that as one of their aims; see sub-section 2.2.2). Reduced costs may have flowed from reductions in overtime pay or unsocial hours payments but these reductions were offset by higher basic pay. Indeed a management interviewee's comments at Acute Teaching 2 were not untypical. He said: 'It's been generally accepted... that it wasn't about saving money. It was about bringing more modern practices into the pay system.'

2.3.5.2 Development costs

It was difficult to establish exact resource and/or financial costs in respect of the management time involved in development of new pay systems as none of the trusts we studied quantified this information precisely, but all relevant interviewees made general remarks. For example, one commented:

Over the time, we have had two or three people working on the project at different times and each of them at different levels and working different hours.

Another interviewee remarked:

You need the time of trade union reps. You need the expertise of union reps, you need motivated knowledgeable trade union reps and they need to put a hell of a lot of time in and that can have quite an impact. You can virtually lose a whole time equivalent for a protracted period in the trade union role and if they are not knowledgeable and motivated, you have a real problem. In management time again what you need is somebody who has the understanding

and motivation to do this and also has the capacity in their working day to commit to this because of course they still have their day job.

What was revealed by our data was that the management time incurred in developing a bespoke trust pay system could be extensive. The pay system for nurses and midwives at Urban 1 entailed 'an investment of more than 500 person hours', according to a report by the then HR director. At Acute Teaching 2 a report to the trust board remarked that resources for the development and introduction of the theatres pay scheme included '... project meetings lasting 32 hours in total, plus management, personnel and management accountant's time outside of these meetings'. This same report also suggested that whilst no extra staff were taken on, the project manager's time equated to, on average, one day a week over a year. In contrast, other organisations employed additional staff to assist with the development and implementation of the trust pay system: three trusts introduced a full-time post.

In respect of sums dispersed in development, again our data was incomplete, perhaps because of commercial confidentiality. Where trusts employed management consultants, they did not reveal the payments involved. 'Pump priming' money was given by the NHS Executive to Acute Teaching 3 and Urban 1 who received around £70,000 and £80,000 respectively, according to interviewees. At Acute Teaching 2 the trust centrally provided £30,000 to 'pump prime' the theatre pilot project; equating to 1.1% of the theatres' paybill.

Development costs were broken down into four areas: the development of the pay system, the briefing of staff, the development of the competencies or attributes determining pay progression and the training of managers in competency/performance appraisal. Trusts, when providing some albeit limited information about development costs, were normally unable to provide further breakdowns. Where trusts introduced pay systems, however, HR and/or line managers saw each member of staff individually to explain their personal pay position both under Whitley and the trust pay system. Such an interview lasted generally half an hour. Unusually in respect of nurses and midwives at Urban 1 a HR manager and a union representative jointly carried out the interview with the member of staff. Such interview costs were absorbed by management. Also management absorbed training costs in the general training budget. As to the development of competencies, sometimes a consultant was used, as at Multiservice 1 and Large Acute and sometimes the cost of development was absorbed by the line manager as for theatres at Acute Teaching 2.

2.3.5.3 Assimilation costs

Assimilation costs varied. There were no assimilation costs at Acute Teaching 3, where national pay points were followed and at Multiservice 1, where the new pay system did not have pay points. An interviewee told us that assimilation costs for Acute Teaching 1 were calculated at £540,000 in 1994/95 in respect of all eligible staff. At Urban 1, nursing and midwifery staff received two increments, (worth 2% each) on transfer, with a further increment if the transfer took place in the first month of the new pay system. It was suggested that the new arrangements resulted in a very slight increase in the nursing paybill, in part due to the costs of assimilation. At Multiservice 2, where the assimilation costs equated to 3.5% of the paybill, some theatre staff received increases of around £1,000 per year. An interviewee who

remarked, 'My memory is that people were pretty happy as their wages went up' corroborated this.

Very Large Acute 2 informed the researchers that overall there were no assimilation costs because starters who commenced at lower salaries were balanced by staff transferring to the new system. Two trusts (Acute Teaching 1, Large Acute) said that assimilation costs had to be absorbed into the departmental budget, through efficiency savings which could involve changes in skill mix and reductions in premium payments. For instance, at Large Acute the cost of introducing the CSW pay deal was equivalent to the loss of 15 whole time equivalent D grades. Because D grade vacancies exceeded that number, this was notional. Indeed, a management interviewee remarked:

I couldn't recruit Ds [qualified nurses] because the students just weren't coming through... So when we actually changed, I had quite a lot of vacancies and could move the money quite easily. What we said is we've got 10 As who need to go up to B. Finance looked at the money and agreed that we had got D grade money in there and changed that down. It means you recruit less Ds, but I couldn't recruit in the first place.

2.3.5.4 On-going paybill costs

On-going paybill costs were difficult to quantify as trusts conducted little or no evaluation (see sub-section 2.3.6). Scrutiny of the limited data available to us revealed that on-going paybill costs ranged widely. Savings of £60,000 were reported at Multiservice 3, where the introduction of a 'continuous process pattern' (CPP) agreement changed working patterns for laboratory staff. Minimal savings were reported at Very Large Acute 2 and no savings were made at Acute Teaching 3, where changes to the pay structure were minimal.

At Multiservice 1, where there were no grade maxima only grade minima, an interviewee was of the view that the pay bill was 'probably slightly higher' under the trust's pay system: an estimated 20% of the workforce had gone 'off scale' ie were receiving higher pay than the equivalent Whitley maximum. There was a 'healthy turnover' of staff, however, and part of the performance pay award was in the form of a non-consolidated bonus and thus recyclable money. A further interviewee, however, remarked that if it had not been for the *Agenda for Change* proposals, the trust might have considered renegotiating its pay system because 'I don't think very long term it would be viable'.

Managers at Acute Teaching 1 and Acute Teaching 2 said that increases in basic salaries for staff were offset by savings from overtime and unsocial hours payments. Also three trusts specifically reported savings from management/payroll administration. For instance the finance director at Very Large Acute 2, said that since the introduction of their single pay spine in 1994, the number of staff employed by the trust had increased by 30-40% but the number of payroll staff had remained constant. The finance director at Multiservice 1 said that the new pay system had resulted in 'far less' payroll costs, though she was not sure how much was attributable to the new pay system and how much to new working practices in payroll. At Large Acute the new pay arrangements for maintenance craftsmen and staff in Central Sterile Services Department resulted not only in savings on overtime and unsocial hours payments,

but also in the saving of management time through the removal of clocking on and the transfer of staff from weekly pay to monthly pay. At Community, where overall the paybill increased by 1%, the new, simpler pay system had led to administrative savings. The finance director said:

Rather than having this complex system of people claiming different premium rates whether they are working Saturday or Sunday or late during the week they are assimilated to just one scale which compensates them for that regardless... So it's much simpler for managers. It's much easier to administer.

On the other hand, the new pay systems all of which included an element of performance pay led to an increase in management time in appraising staff, at least one hour per employee. A manager at Multiservice 1 commented that appraisal 'would slip in a busy environment, but because it's related to pay you're all very careful to get them done for everybody'. No trust, however, had either calculated on a financial basis the costs in management time or the savings in management time mentioned above.

Table 2.7 pulls together our data but it should be noted that the data provided to us were neither comprehensive, nor in the same format from trust to trust.

2.3.6 Evaluation

It is not our intention here to provide comprehensive results of every evaluation to which we refer. This is dealt with in sub-section 2.3.7 on outcomes. Rather, this sub-section outlines the different ways in which evaluation was conducted, reports on the different parties, internal and external, that took part in evaluation and outlines the diverse foci of trusts' evaluation.

We were surprised at the paucity of evaluation. For example, at Acute Teaching 1 in the original briefing to the board the HR director said:

It is essential that the introduction of new pay and conditions be closely monitored to ensure they are operationally appropriate and viable. Applying them in a piece-meal fashion to coincide with the re-engineering "roll out" provides the opportunity to closely monitor small and manageable segments of the organisation enabling swift corrective action to be taken when seen to be necessary (HR director, 1994).

Nevertheless, in the event Acute Teaching 1 did not undertake any formal evaluation, apart from monitoring the numbers who were on the trust pay system. Furthermore, trust figures on sickness absence and labour turnover were sometimes inadequate; see sub-section 2.3.7.4. This was somewhat surprising given that in some trusts, the resources necessary to develop and implement trust pay systems were extensive; (see sub-sections 2.3.5.2 and 2.3.5.4). Also, whilst the NHS Executive now requires trusts to conduct annual staff attitude surveys, the detail is determined at trust level. Our data revealed that these surveys tended to focus on a variety of issues, including pay levels but did not examine employee attitudes to pay systems and, as with other trust statistics, did not distinguish between those on trust terms and those on Whitley.

Table 2.7: Costs of introducing new pay system by trust

Trust	Staff group	Development costs	Assimilation costs	On-going payroll costs ie after offsetting savings
Community				
Acute Teaching 1	Non-medical staff except scientists, estates officers pharmacists	Absorbed by existing HR staff and line managers	£540,000	Costs absorbed by departments
Acute Teaching 2	All theatre staff	Absorbed by existing HR staff and line managers	1.1% of payroll	Not known but savings on overtime pay & sickness absence
Acute Teaching 3	Nurses	Consultants + full time post and other costs absorbed by HR staff and line managers	National pay points observed	Less than 2%
Community	All non-medical staff except certain clinical psychologists	Consultants + full-time post	One increment (4% basic pay)	1% costs
Large Acute	CSWs	Absorbed by existing HR staff and by line managers.	National pay points observed	Costs absorbed by departments with loss of posts.
	Maintenance craftsmen		Not known	Costs offset by savings from abolishing clocking, overtime, call-out payments & weekly pay.
Multiservice 1	All non-medical staff	Consultant + full-time post with other costs absorbed by HR and line managers	None	'Probably slightly higher': an estimated 20% of population above equivalent Whitley scale maximum.
Multiservice 2	Qualified theatre staff	Absorbed by existing HR staff and line manager	Up to 3.5% of payroll	Not known but some offsetting savings
Multiservice 3	Certain laboratory staff	N/A	N/A	N/A
Urban 1	Nurses	Consultant + 500 person hours absorbed by existing HR staff and line managers	4% of basic pay + 2% incentive to change immediately	A very slight increase
Very Large Acute 2	All non-medical staff	Absorbed by existing HR staff and line managers.	None: those moving across balanced by starters recruited on less attractive packages.	Minimal savings

Only one of our case study trusts, Multiservice 3, went beyond an in-house survey. It was part of a consortium of 38 trusts in the north of England that commissioned Electoral Reform Ballot Services to carry out a staff opinion survey. Thus it was able to benchmark its findings against those of other trusts in the area (Electoral Reform Ballot Services, 2000). In short then, evaluation was limited. Where evaluation took place, however, it could be divided into internal and external evaluation. Dealing first with internal evaluation, ie evaluation conducted by the trust, at Community there was an audit of the performance development review system among community nurses in 1999. At Acute Teaching 3 a formal review of the pilot of the competency based pay system was undertaken (Stern, 1997) but it focused mainly on the effects of the pay system on recruitment. According to the HR director 'we were not evaluating in the sense of setting it against costed alternatives'. At Multiservice 2, where an interim audit of the theatres' pay system was conducted, the primary focus was the changes which had occurred in working practices.

In contrast to these relatively limited evaluations, Urban 1 carried out an extensive evaluation of its performance pay system two years after its introduction. The data were obtained from a range of sources including a questionnaire survey, individual interviews and focus groups. In addition there was an analysis of the performance payments made to ascertain if there was any bias on grounds of gender and ethnicity. As a result Urban 1 made some changes.

Other trusts combined internal and external evaluation. This was exemplified at Acute Teaching 2 where an MBA student examined staff attitudes towards the theatres' pay system and the HR director examined the managerial benefits of the system. The latter included the effects of the trust system on recruitment and retention of staff, rostering and expenditure. Similarly, evaluation at Very Large Acute 2 also incorporated internal and external reviews, the former consisting of an in-house evaluation of the impact of its pay system 18 months after it had been introduced. The external evaluation consisted of an examination of the effects of performance pay on employee motivation, conducted by a university. Another trust to combine internal and external evaluation was Multiservice 1. In 1995 the trust conducted an evaluation of their performance pay system based on responses from 42 employees which indicated a number of concerns (see section 3.4.7) and in 1996 a university investigated the effects of performance pay on employee motivation.

2.3.7 Outcomes

We now turn to the outcomes of trust pay systems. We first discuss the parties who have a stake in the outcomes. Then we look at working practices, employment data and the outcomes for patients. Finally we consider the views of staff and unions.

2.3.7.1 The stakeholders

There are four main stakeholders in the outcomes of changes to NHS pay and grading systems: management, unions, employees and patients. The different stakeholders have different priorities. For instance a management priority is likely to be the extent to which a pay system is cost effective and supports functional or temporal flexibility, whereas a union priority is likely to centre on the level of pay and the transparency and equity of a pay system. This is a priority shared by employees, who may also

favour stability in earnings. The link between pay systems and patients is the most problematic. Whilst patient care is influenced by the dynamics between management, unions and employees, there is no obvious and direct causal relationship between these variables. As one HR director said, patient care is probably 'one step removed' and another HR director said that changes to pay systems 'facilitate, but do not deliver' changes to the provision of health services. Given the differing approaches of stakeholders, we look in turn at working practices, patient outcomes and then staff and union attitudes on the fairness of the system. We deal first with working practices.

2.3.7.2 Working practices: temporal flexibility

Trusts have been concerned to reduce the number of staff on permanent nights and introduce rotating shifts for a number of reasons. First permanent nights attract expensive unsocial hours premia under the national arrangements but many interviewees expressed a view that those on day shifts work harder and had more complex jobs than those on permanent nights but were paid less. (Trusts only deal with emergency procedures at night and in the main night staff 'baby-sit', an interviewee claimed.) Second, those on permanent nights miss out on developmental and training opportunities and third they are often divorced from the main management chain.

Reductions in permanent night work can be secured under Whitley, for instance putting new staff on rotating shift contracts or obtaining agreement to variation in contract. As detailed in sub-section 2.3.2.3, however, a number of trusts took the opportunity of changes to pay to introduce rotating shifts. For instance, our research showed that three of our 10 trusts (Acute Teaching 2 in respect of staff in theatres only, Community and Very Large Acute 2) paid inclusive rates dependant on the flexibility provided, with the highest inclusive rate for those on rotating shifts.

We were informed that the new roster system at Acute Teaching 2, underpinned by an inclusive rate payment system, provided a better match than hitherto with service needs. It led to fewer operations being cancelled, a significant reduction in the waiting list and emergency work after midnight limited to critical operations only. Nevertheless, there were disadvantages with an inclusive rate system. For instance, a focus group of nurses at Community suggested that a degree of inflexibility had been introduced into staff deployment. As a ward manager said:

If you have someone on flexi 1 [basic + 8%] ... if you want them to do say a week on nights, it's impossible really to get any night money because they're on a flexi 1 contract.

Another disadvantage of inclusive rates was identified by a management interviewee at Community who was of the view that they tempted some individuals to take longer off sick. She said:

Before if you were off for a month you missed out all your allowances, whereas now you get the same amounts, so instead of taking one week and thinking well I'm losing money, people maybe take two or three.

Her view, however, was not borne out by an analysis of sickness statistics; (see sub-section 2.3.7.4).

We noted above (this sub-section) that changes to shift systems can be made irrespective of changes to pay and we came across experiments in self-rostering where pay changes had not been made, eg oncology at Acute Teaching 2. Brooks (2000:26) argues that self-rostering lessens the detrimental effects of shiftwork for employees, while service needs can be met provided that 'there are sufficient checks in place'. Also we found that changes to hours of work for PAMs had been made with and without changes to pay systems. For instance at Community the new inclusive rates supported evening working by occupational therapists (though a focus group of PAMs were not aware of that provision). At Acute Teaching 3, the opening hours of certain physiotherapy out-patient clinics had been extended and physiotherapists, who remained on Whitley, worked longer hours on some days and in return had a half day off a week.

A second important way that trusts can obtain temporal flexibility and at the same time control paybill costs is by rationalising the on-call arrangements. For instance Multiservice 3 changed the on-call system for certain pathology departments through a continuous process pattern (CPP) agreement (see 2.3.2.3), albeit within the flexibility provided under Whitley. The departmental manager was of the view that CPP worked well, while employees said that although 'CPP is not perfect, it's the best we've got'.

In theatres at Multiservice 2, a new shift system was introduced during the day, with unsocial hours premia for weekday work incorporated into basic pay and on-call was substituted for night duty. According to the theatre manager:

The absence of the 'convenience factor' of having night duty staff has reduced the incidence of inappropriate surgery during the night. The downside of the on-call service is that occasionally an elective list has to be cancelled because the emergency team has worked through the previous night, thereby reducing staffing levels on the following day (Shannon, 1999:571).

In short, eight of our 10 trusts introduced rotating shifts and/or new on-call arrangements or annual hours underpinned by new pay systems and managers were of the view that this enabled them to meet service needs more efficiently and effectively.

2.3.7.3 Working practices: functional flexibility

The main area where the pay system was used to support functional flexibility was in theatres, whether or not as part of trust wide pay changes. Leaving aside Community which did not have theatres, six out of the remaining nine trusts specifically changed terms and conditions in theatres. The main aim was to support the multi-skilling of ODAs/ODPs and theatre nurses against a background of a national shortage of the latter and to reward the skills of the former so that their pay would equate with that of theatre nurses with whom, with training, they were to a large extent interchangeable. (Under Whitley ODAs/ODPs fall within the Professional and Technical B Council, not the Nursing and Midwifery Staff Council.) Pay apart, management interviewees regarded the harmonisation of working hours and overtime/unsocial hours premia as particularly important in underpinning functional flexibility.

The changes in terms and conditions so that ODAs/ODPs and theatre nurses were placed on a common footing, however, could only support functional flexibility, not

deliver it. Delivery can only be secured by the necessary training: eg nurse training in anaesthetics and ODAs/ODPs in scrubbing up and recovery. Training is dependent on staff release, which had led to problems at Multiservice 2, hampering the achievement of multi-skilling. Nevertheless there and at Acute Teaching 2, the changes to the pay system were considered by management to have been essential catalysts. For instance a management interviewee at Acute Teaching 2 said:

I don't think we could have taken it quite as far as we did without equal reward for equal contribution.... Before the change basically ODAs had one coffee room and nurses had another. That's going. It's not completely gone.

A union interviewee also thought that the new pay system had led to the breaking down of demarcations. After the pay changes, she said:

One wasn't getting more pay for being on-call. One wasn't getting more overtime payment. They were all getting annual leave at the same rate and basically it meant that they could work alongside not looking to say, you have got more than I have got.

Theatres apart, another area of multi-skilling in our case studies was in respect of support workers at Large Acute where clinical support workers (CSWs) who acquired and demonstrated certain skills moved from grade A to grade B automatically.

A number of trusts had created new posts, eg 'ward hostesses' at Very Large Acute 2 (whose responsibilities include making beds, serving meals, basic patient administration and simple maintenance work such as changing light bulbs) and 'discharge co-ordinators' at Large Acute. At Very Large Acute 2, the new post was 'Medequated' and slotted into the pay spine relatively easily and quickly, whereas under Whitley personnel 'would have scratched [their] heads' as to whether it was an administrative or ancillary post. At Large Acute, however, where there was no trust-wide job evaluation system, the grading of the post was more problematic. At the time of the fieldwork, a post-holder complained that she had already been waiting many months for her grade to be allocated.

2.3.7.4 Employment data

This sub-section is based on data collected from the trusts in this study. We endeavoured to see how and, if so, in what way changes in pay systems had affected certain employment data. We found that exit interview data were not always kept centrally for the whole organisation. In some trusts it was collected and held by department/directorate heads, while in other trusts it was only collected for those departments/directorates where a problem had been identified.

In short, there were only a few trusts where we were able to locate useful exit interview data. At Community, the percentage of staff citing pay as a major factor in their decision to leave the trust almost halved in 1998/99 compared to 1996/97 (from approximately 25% to 12%). According to a report to the board in 1999, that 'could be a reflection of the satisfaction with trust pay'. At Multiservice 1, where a new pay structure was launched in 1994, exit interview data were examined for three periods (April-September 1996; October-March 1996/97; April-September 1999). There appeared to have been a slight increase in respondents claiming that trust pay was poor between 1996 and 1999. No data prior to 1996 was available and no distinction

was made between staff on Whitley and staff on trust pay, so it was difficult to establish the effect of the introduction of the new pay system.

Bearing in mind that there are many factors, apart from pay, which contribute to recruitment and retention and bearing in mind that labour turnover data reflects pay levels, rather than pay systems, we then looked at the effect of new pay systems on labour turnover. We could not draw any conclusions on a cross case basis. This was because data was not comparable between trusts due to the varying range of local initiatives that had been introduced by trusts; the different staff groups focused upon by trusts and the different methods of data collection adopted by trusts.

We then sought to see if we could draw conclusions from the labour turnover data in respect of a trust individually. We found that we were unable to do so. In none of the trusts studied did labour turnover data distinguish between those on Whitley and those on the trust pay system. Moreover, the data were often deficient in at least one other respect:

- Data did not longitudinally examine labour-force aspects by staff group before and after the introduction of trust pay systems.
- Data did not distinguish by staff group, even where pay changes had been introduced for selective groups of employees only, eg theatre staff.
- Data was incomplete/sporadic, covering intermittent time periods that were not comparable with each other.
- Data related to very short time periods post the introduction of a new pay system, because a trust had only recently introduced new pay arrangements.

For instance, at Large Acute new pay arrangements for clinical support workers and midwives were only introduced in 1999, so a clear pattern had not yet emerged. At Acute Teaching 3 too, because of the slow roll-out which had only just been completed for qualified nursing and midwifery staff by the time of the fieldwork (June/July 2000), labour turnover data were of limited use. At Very Large Acute 1 it was not possible to separate out labour turnover and sickness absence figures for its two components (Urban 1 and Urban 2) post merger, ie 1998, though terms and conditions at the two hospitals remained distinct.

Given these important caveats, particularly the lack of distinction between Whitley staff and trust paid staff, we looked at labour turnover data where trusts provided fairly comprehensive statistics. We found that the new pay systems did not seem to have had any noticeable positive or negative long-term effects on turnover rates. At Community the new pay system was introduced from 1 July 1996 and had no apparent effect on labour turnover: from 1997-99 the average rate was 14 % compared to an average of 15% between 1993-95. At Very Large Acute 2 labour turnover also remained fairly static and varied by under four percentage points from 1993 to 2000. At March 1993, ie a year before the trust pay system was introduced, labour turnover stood at 10.9%. By March 2000 it was 13.3%. Between those dates there were fluctuations with the highest point being reached in March 1995 (14.5%).

Labour turnover data for nurses and midwives at Urban 1 was examined from 1993/4, ie the year before the new pay system was introduced, until 1996/97, ie just before the merger with Urban 2. The data show that labour turnover for Urban 1 nurses and midwives in 1993/94 was 12.3%, rising to 16.7% in 1995/96 and then falling back to 12.8% in 1996/97. In short, labour turnover data showed fluctuations and thus no evidence of positive or negative changes being associated with the introduction of the new pay system in 1994.

As to theatres at Multiservice 2, two years before the new pay system was introduced for clinically qualified staff, labour turnover was 13.2% (1995/96) and 6.1% (1996/97). In the year immediately following the introduction of the new pay regime (1997/98) labour turnover reduced to nil. The following year it rose to 6.1% and the year after to 13.6%. In Acute Teaching 2, where a new pay system was implemented in January 1998, we were told that labour turnover in theatres in 1998/99 was about 5% but had increased to 9.9% in 1999/2000. A management interviewee, however, was of the view that this was 'not because of pay. I think that it is connected to the way we have reorganised theatres'. At Multiservice 1 some data relating to the period from April 1996 (ie two years after the introduction of the pay system) was available. This showed a span of just over three percentage points between 1996/97 and 1999/2000 (22.4% to 19.1%).

Although Acute Teaching 3 labour turnover data were not useful for our purposes, we obtained some information on the results of a pilot of the pay system. A review found that three out of 13 respondents in the Children and Women's Services and five out of 27 respondents in Cardiothoracic Services said that the trust's competency based nurses' pay system would positively influence their decision to apply for a post (Stern, 1997).

We were not provided with sickness absence data for all our 10 trusts. Moreover, the extent to which and how pay and grading and sickness absence are related is debatable. For instance sickness absence varies seasonally, although the pay system does not, and is influenced by the policies and procedures for handling sickness absence. Leaving that debate aside, where the necessary data were provided, we found that in some trusts the introduction of the new pay system had gone hand in hand with a reduction in sickness absence. For instance at Acute Teaching 2 sickness absence was 5.3% in theatres in 1999-2000, compared with 7% before the new agreement was introduced in January 1998. At Community sickness absence was 3.1% in 1998/99 compared to 3.5% in 1992/93. (Community's new pay system was introduced in 1996.) At Multiservice 2 sickness absence in theatres was 7.3% (1995/96) and 6.0% (1996/97). The year after the new theatres' pay system was introduced (1997/98) it fell to 3.7%. At Urban 2 we were given sickness absence data for Accident & Emergency and Trauma & Orthopaedics, where new pay systems were introduced in 1996. In the year before the new pay arrangements were introduced sickness absence was 2.6% and 3.6% respectively. The comparable figures for 1997/1998 were 2.6% and 2.4% respectively, ie a downward trend in Trauma & Orthopaedics but not Accident & Emergency. These reductions, however, may be attributed to new approaches to sickness management as noted above (this sub-section), rather than new pay systems and, in any event, do not equate to a causal link between these two variables.

2.3.7.5 Patient outcomes

Patient outcomes are affected indirectly by pay systems, for instance where they underpin temporal and functional flexibility (see sub-sections 2.3.7.2 and 2.3.7.3) and lead to improved service delivery and/or where they lead to improved staff performance. Accordingly, we first examined NHS performance indicator data (1998/99) in respect of our case study trusts. We then examined interview data from our management respondents.

In short, the quantitative data did not allow us to find any positive or negative causal relationship between NHS performance indicators and innovations in pay and grading, because the performance indicators themselves were deficient for the purposes of this study. Although the indicators compared like with like, eg multiservice trusts with multiservice trusts and acute teaching trusts with acute teaching trusts, their development is only in its infancy. Also, 'differences may occur between hospitals due to the differing mix of specialities' and 'death rates may vary between trusts due to the variation in the complexity of procedures carried out. For example, the major cardiac centres may have high death rates due to the complexity of the operations carried out' (NHS Executive, 2000: 65-67). Furthermore, none of the trusts in this study made changes to the pay of medical staff, yet their work was a major influence on these indicators. With these important caveats in mind, we looked at the league tables of both emergency re-admissions and deaths following surgery. These indicators applied to all our case study trusts, except Community where there were no theatres and, unsurprisingly, we were unable to establish any relationship between the performance indicators and pay systems.

Next we turned to our qualitative data and asked management interviewees about the inter-relationship between pay systems and patient care. In some trusts, interviewees were of the view that the inter-relationship was both tenuous and hard to identify. In other trusts, however, management was of the view that new pay systems had led to an improvement in patient care. For instance at Acute Teaching 1, the business process re-engineering (BPR) exercise, which in turn had led to the development of Acute Teaching 1's pay system, had resulted in improved patient experiences, eg 'one-stop shops' for a range of diagnostic tests.

Moreover, managers in the trusts which had carried out some harmonisation were strongly of the view that harmonised pay systems supported teamwork across occupational boundaries. For instance, an interviewee at Acute Teaching 1 said that the change in pay and grading had been an aid to changing the culture of the hospital by stressing teamwork and breaking down professional boundaries. She contrasted Acute Teaching 1's pay system with the Whitley grading systems, which reinforced professional boundaries between the many occupational groups in the NHS. Such a comment was not untypical. At Large Acute an interviewee said:

It's the old chestnut about having everyone in boxes... If we're talking about teamworking, about being all in this together, it's got to be more harmony for conditions of service.

As table 2.5 above indicates, however, trusts either did not harmonise any terms or conditions or harmonised more than one. Accordingly managers were unable to link the harmonisation of a particular term with teamworking. Their comments were made

in respect of a package. Moreover, managers in four out of our 10 trusts which did not carry out harmonisation did not consider that the pay system effected teamworking either positively or negatively.

Most managers were also of the view that a pay progression system based on performance/competence had beneficial outcomes for patient care. Thus, at Acute Teaching 2 the theatre manager considered that the competency based pay progression system had led to improvements in standards of dress and behaviour to patients, 'just little things that are probably quite unquantifiable really'. At Large Acute a manager was of the view that the competency based pay scheme for clinical support workers (CSWs) had contributed to an improvement in standards of health care. Nevertheless, she added a rider, remarking that the competency based pay system 'will only be as good as the kind of appraisal that sits within it... You'll find a lot of managers not wanting to rock the boat unless they've got a particularly poor performer'. This interviewee was not the only manager who harboured doubts about the operation of performance pay. A manager at Multiservice 1 said that although she thought that 'the ethos behind performance related pay is good... how people are judged on their performance and then money is attached to it, there are issues there'.

At Acute Teaching 3, a manager felt that the new pay progression system had resulted in staff becoming more focused on their roles and his conversations with patients and students indicated that this was positive. On the other hand a PAMs manager at Acute Teaching 3, whose staff did not have a competency based system, was more sceptical. She said: 'if there'd been a lot of positive vibes [from the nursing competency system] then I'm sure we'd have looked more strongly to see whether we could do it... We'd need to see very clear benefits from it to spend time away from doing the clinical work.'

2.3.7.6 Staff views

Our data on staff views is drawn from focus groups which were not conducted in every trust (see table 2.3) and, where relevant, staff surveys. Staff experiences varied depending on their occupational group and the trust's pay system. Accordingly, it was not possible to provide a blanket assessment of their views.

Staff views fell into two main categories: their views about the relationship between the pay system and patient care and their views about the fairness of the pay system *per se*. These two areas, although analytically distinct, in practice are not divorced from each other. For instance, morale and motivation relate, whether directly or indirectly, both to patient care and to views about the fairness of the system.

We deal first with staffs' views about patient care. On the positive side, at Large Acute qualified nurses said that the new competency based pay system for CSWs helped to ensure that they had trained support and enabled them to get teams together 'because we each know what we can do'. Another nurse said:

A competency based pay system is a good thing. It should replace annual increments. You shouldn't just sit back on your heels and just expect to get more pay for not performing or achieving.

At Acute Teaching 3 a nursing staff focus group was also generally positive. Comments included 'brilliant, a framework to work towards', 'better than a job description... it tells you the qualities you need'. One thought it had motivated D grade nurses in her area; 'people were a bit lazy before'.

On the negative side competencies may impact negatively on mobility within the internal labour market. As a management interviewee at Acute Teaching 2 pointed out, an E grade nurse who wanted to transfer from a ward into theatres might not have the competencies required for theatres and, if so, could not immediately be offered pay at the level previously enjoyed.

Urban 1's survey of its nurses, midwives and support staff in 1997 found that 44% were of the view that the new pay system had had a positive impact on patient care as opposed to 30% who disagreed and 26% who were either unsure or did not respond to that question. Moreover 45% were of the view that the new pay system had had a positive impact on staff motivation compared to 40% who did not. On the other hand, only 29% of respondents were of the view that it encouraged more flexible working. The survey, which presented rather contradictory findings, only had a 20% response rate, so the results should be treated with caution.

A staff survey conducted by a university in 1996 at Multiservice 1 also had contradictory findings. For instance a bare majority (52%) thought that the individual performance and development review (IPDR) system had undermined staff morale but a similar majority (55%) thought that their performance rating was a fair reflection of their work. In the three focus groups at Multiservice 1 which we carried out in June 2000 we found that staff were virtually unanimously of the view that the IPDR system did not enhance employee morale. Focus group respondents wanted a guaranteed rise, not a performance related one. A typical comment was:

If the nurse's performance is poor, then it is up to the superior to pick it up and address that long before any performance appraisal at the end of the year or something.

The difference between the university's findings and our findings may reflect the difference in time or may be a product of methodological design. The university's findings were based on 693 responses to structured questionnaires, whereas our findings were based on responses derived from focus groups comprising some 20 people in all, where participants were able to talk openly at some length.

A study of staff views on the theatres' pay system by an MBA student at Acute Teaching 2 also revealed some contradictory findings. For instance the study found that staff thought that working relationships were improving but morale remained variable. Our focus groups corroborated these findings.

Turning to staff views about the fairness of their pay, in every trust where we conducted focus groups, staff voiced dissatisfaction with their pay levels (rather than the pay system *per se*) and compared their position with professions inside and outside the NHS. For instance at Acute Teaching 3 nursing staff compared their pay unfavourably with teachers and the police as well as those in private sector industries. Theatre staff at Multiservice 3 made comments such as 'You shouldn't have to be a manager to earn a reasonable salary' whilst laboratory staff, in particular were of the view that they were inequitably rewarded both absolutely and compared to colleagues

in nursing, radiography and physiotherapy. Indeed one MLSO said that although she had worked for many years in the NHS, her daughter, a nurse, was earning more than her.

Staff, however, did not suggest that differences in terms and conditions between occupational groups affected their commitment. Moreover, a union representative in another trust which had not harmonised commented that she did not believe that her members were aware of the terms and conditions of colleagues in other occupational groups and that such differences did not hinder staff from working together. As a nurse at Multiservice 1 said:

Every day you get on with your multi-disciplinary team. You have to get on with them and communicate with them, regardless of whether you're getting paid a penny or a pound because you are all there because of the patient and you are there to work together at the end of the day. That's why I think most nurses are in the nursing profession. The money's not great but it's the profession you choose that you love and enjoy.

As mentioned, trusts have been required to conduct annual staff attitude surveys from 1999 (see sub-section 2.3.6). We were provided with such surveys for five out of our 10 trusts. They all indicated that pay and benefits attracted adverse ratings. It is important to bear in mind, however, that dissatisfaction with pay may reflect more general concerns about pay levels rather than pay systems as such and the latter, not the former, is the focus of this study. Furthermore, the results were from all staff, not solely from those on trust pay.

Finally, our focus groups at Acute Teaching 2 and Community, where the pay rates were inclusive of unsocial hours premia, revealed that staff valued the stability in earnings. Moreover, we were told by a manager at Very Large Acute 2, where there were inclusive rates also, that staff there welcomed the stability in earnings which the system provided. They also liked the lump sum bonus.

2.3.7.7 Union views

We now concentrate on outcome from the unions' point of view. The unions had a strong belief in the principle of equity. In all our case study trusts, the unions considered that their members were inequitably rewarded compared to their responsibilities and the pay enjoyed by those not in the NHS. This view was held regardless of whether their members were on a trust pay system or on the national arrangements.

2.3.7.7.1 General

Turning to pay systems, rather than pay levels, however, where a trust had its own pay regime, unions favoured systems based on the national pay points, albeit with pay progression arrangements altered, rather than pay rates based on new grading structures. They also favoured pay arrangements which resulted in greater equity between different occupational groups, as they did in respect of theatre staff at Acute Teaching 2 and Multiservice 2, or where staff were on a single pay spine as at Community and Very Large Acute 2.

2.3.7.7.2 Performance pay

The unions' main concern on the grounds of equity and their bone of contention with management was performance related pay, especially where fine distinctions between employees were made and/or a significant proportion of employees did not get a performance related increase. For instance a union representative at Very Large Acute 2 said categorically some six years after the introduction of a new pay system: 'we don't agree with the performance pay bonus'. A union representative at Urban 1 said: that the original performance related pay scheme 'was very much behavioural...very subjective' and was working with management to replace it with a new, less subjective, rating system. A union representative at Multiservice 1 said: 'the way I see it, the pay system is that it's human nature. If your face fits you do well.' Indeed, the unions were pleased where they had managed to 'water down' performance related pay. A union representative at Community said:

It's a performance review in a way but we've taken the sting out of that... We've turned it round and said you know, it's only in exceptional circumstances, if somebody's really so awful that they're not going to get it, so we've actually sort of changed the focus.

The unions were also more inclined to favour a system where only one performance increment a year could be awarded, as at Acute Teaching 2, or as in practice occurred at Acute Teaching 3 and Multiservice 2. In addition, the unions preferred the term 'competency based pay system' rather than 'performance based pay system'. A union representative remarked, 'performance related pay has got connotations ...the bells start to ring'.

Whether or not a competency or performance based pay system was used, however, the unions voiced concern over managers' assessment capabilities. The comment by a union representative at Acute Teaching 3 was not untypical:

Competencies, when they work, work well, having a set of standards for all grades irrespective if they're in a clinical area... the equity of the measure, the opportunity to measure candidates against what is fundamental, that is good but the negative aspect of that is that if the appraisal system isn't working effectively, then those competencies aren't benchmarked effectively and they can be used in a negative manner.

2.3.7.7.3 Remuneration

The unions were more likely to favour a new pay system where it led to increased remuneration for their members without distinctions made between them by management. More money had resulted from new pay arrangements for theatre staff at Multiservice 2. At Urban 1 the unions pointed out that although members obtained more money initially when they transferred to the new pay system for nurses and midwives, the bars and forced distribution of the performance pay system meant that in later years only a few reaped significant monetary rewards. Similarly at Acute Teaching 3 a union representative commented that the bars in the pay bands limited members' monetary reward.

2.3.7.7.4 Partnership

In no trust did we receive the impression that management/union relationships were deteriorating. On the contrary a new partnership forum had been set up at Multiservice 3 and was in the throes of being set up at Acute Teaching 3. At Very Large Acute 1 management and unions were working closely together to revise the performance pay system. At Large Acute closer management/union relationships had emerged when, according to the unions, a manager left. At Very Large Acute 2 the unions suggested that they now had more of a partnership with management. These developments boded well for the future.

2.3.8 Summary

This section has reported our findings. Management aims could be categorised as value driven or issues driven. A values based approach was found where trusts were proposing to introduce pay changes for a significant proportion of the workforce throughout the organisation, while an issues based approach was found where trusts were proposing to introduce pay changes for a discrete area only.

The extent to which employees were eligible for trust pay systems varied considerably as did take-up rates. As to new grading systems, half of our trusts used some form of job evaluation, with Medequate being the most common and three trusts adopted single pay spines. Only one trust introduced a very broad banded structure, with no pay maxima to grades and most trusts which introduced their own pay systems ended up with grading structures very little different from the national grading structures. Basic pay apart, there was harmonisation of conditions, particularly working hours at 37.5 hours a week, unsocial hours, overtime premia and on-call payments. Annual leave was the least likely of all the major terms and conditions to be harmonised.

Where trusts introduced new pay systems they all introduced some form of performance/competency payment and, in all except one trust, this was based on the individual, not the organisation. There was, however, a wide variation in the extent that trusts made distinctions between employees' performance. In one trust there were 10 levels of performance payment, while in contrast in two others, where employees received an annual increment if performance was satisfactory, we found no evidence that such an increment had ever been withheld.

The unions did not favour any departure from the national pay arrangements. Given that principled stance there were essentially three pragmatic approaches: management/union agreement; discussions between management and unions prior to the introduction of a new pay system, but not agreement and then subsequently negotiations and agreement on the annual increase; no discussions prior to the implementation of the pay system but subsequently negotiations and agreement on the annual increase.

Management time in developing a pay system was hard to quantify, especially where staff incorporated pay development and implementation into their other duties. Assimilation costs varied between nil and 3.5% of the paybill and in some trusts were absorbed by departments. Evaluation was limited and where it took place it was often small in scale, eg a pilot, and the data collected by trusts, for instance on labour

turnover, sickness, exit interviews, did not distinguish between those on Whitley contracts and those on trust contracts and was often insufficiently comprehensive longitudinally.

As to outcomes, these are summarised in respect of our second research question on the consequences of local pay; (see sub-section 2.4.2 below).

2.4 Discussion and conclusions

We now return to our four research questions which we address in turn.

2.4.1 Research question one

Did local pay resolve the problems associated with Whitley?

Our literature review indicated that the Whitley system was criticised on four main grounds connected with its structure, complexity, lack of local flexibility and equal value problems (see section 1.4).

2.4.1.1 Structure

The current (January 2001) Whitley Council structure is set out in sub-section 1.4.2. In summary there is a General Whitley Council with numerous functional councils and committees. There are over 20 recognised unions, many employer representatives, plus civil servants. Our data based on 10 case study trusts showed that where there were innovations in pay and grading, the structure was greatly simplified. On the management side, there was only one employer, ie the trust. On the union side the number of unions active in the trust varied, but was considerably less than the number recognised nationally. For instance, Very Large Acute 2 recognised nine unions, ie all unions with more than 30 members in the trust and Large Acute recognised seven unions. Acute Teaching 3 recognised 13 unions but had a smaller negotiating group with only six staff side representatives.

Over 25 years ago, McCarthy (1976) recommended that civil servants should have control over the overall cost of pay offers but that the detail of NHS pay structures should be left to NHS managers (see sub-section 1.4.3). From 1991, some trusts introduced their own pay systems, with managers designing their pay structures but civil servants continued to control the overall cost of the paybill in two ways. First, virtually all the income obtained by trusts comes from the Department of Health, albeit often indirectly. Second, because the law provides that some NHS staff can choose to remain under Whitley, settlements were in practice in line with the settlements agreed nationally and, in particular, the awards stemming from the pay review body for nurses and PAMs which are dependant on acceptance by the Secretary of State. In short, some trusts achieved simplification, whilst remaining under a national umbrella of cost control.

2.4.1.2 Complexity

Another problem identified by managers (Warlow, 1989) was the complexity of the numerous, diverse agreements under Whitley (see sub-section 1.4.4). In fact collective agreements were made simpler in a number of trusts. Community and Very Large Acute 2 introduced single pay spines for all except those at board level and non-medical staff and terms and conditions, except for annual leave, were harmonised. Acute Teaching 1 also introduced a single pay spine though the number of occupational categories excluded (eg pharmacists, estates offices and scientists) was greater than in the other two trusts. At Acute Teaching 2, Acute Teaching 3, Multiservice 2, Very Large Acute 1, there was simplification in theatres where ODAs/ODPs and theatre nurses were put on common terms and conditions, instead of being governed by two different Whitley Councils.

In contrast to the move by some trusts towards simplicity, there was greater complexity in other trusts. The prime example was Very Large Acute 1 where there were a variety of trust terms and conditions for many different groups of staff: at Urban 1 for nurses, midwives, nursery nurses and support workers; administrative and clerical staff; hotel services staff; professional staff and theatre staff and at Urban 2 for medical secretaries and staff in Trauma & Orthopaedics and Accident & Emergency. The merger between Urban 1 and Urban 2 in April 1998 further complicated this with new staff being put on the merged trust's contract which essentially mirrored Whitley. At the time of our research, work was being undertaken to reduce the complexities of different pay systems within the trust.

Another example of an increase in complexity was Large Acute. That trust, eschewing an organisation-wide strategic approach, introduced new terms and conditions for maintenance craftsmen, ancillary staff in the central sterile services department, clinical support workers and midwives, each group having different arrangements aimed at resolving particular problems. Even where the trust adopted an organisation-wide approach, however, the resulting pay system did not always lead to simplification. For instance, at Multiservice 1 the new pay system, which introduced eight separate recruitment clusters, abolished increments and had no set pay points above the minima, was not simple.

Pay structures apart, another source of complexity was the pay progression arrangements. Under Whitley pay progression is based on increments dependant on length of service. Such arrangements are simple and easy for staff to understand (and for finance directors to predict paybill costs). All the trusts which had replaced national pay structures, however, had introduced at least an element of performance based pay. Probably the most complex performance based pay progression system was in Urban 1 in respect of nurses and midwives, see sub-section 2.3.3.4, but in every trust union representatives found the performance/competency based arrangements opaque, even though some in theory favoured competency based pay.

2.4.1.3 Centralisation

The third critique by managers centred round what they saw as too much centralisation (Warlow, 1989). This militated against the flexibility which managers said they wanted. From 1991 trusts, by introducing their own pay systems, could

obviate this; but we have seen that one of our case study trusts did not depart from Whitley at all and in only three trusts were the majority of employees covered by pay arrangements which materially differed from the national arrangements; see figure 2.1. A number of reasons why so few trusts seized the opportunity to decentralise have been identified in the literature, including the continuance of national pay arrangements (Carter and Fairbrother, 1999), institutional obstacles (Locock and Dopson, 1999) and the more immediate priorities of pragmatic HR directors (Corby and Higham, 1996); see sub-section 1.4.8 for details.

2.4.1.4 Equal value

Problems relating to equal pay for work of equal value have come to the fore as a result of the Enderby v Frenchay Health Authority (1993) litigation. The European Court of Justice held that NHS employers are required by law objectively to justify differences in pay between male dominated occupational groups and female dominated occupational groups (see sub-section 1.4.6). A factor based job evaluation scheme can provide objective justification and our data show that four of our 10 trusts used a factor based job evaluation scheme (Medequate) for most non-medical occupational groups and one trust used a competency based factor scheme. It has not yet been tested, however, whether or not the ruling in Scullard v Knowles (1996) and South Ayrshire Council v Morton (2001) apply to employees in the NHS, ie whether an employee can compare herself for the purposes of an equal value claim with a colleague employed in another NHS trust.

2.4.2 Research question two

What were the consequences of local pay?

Sub-section 2.3.7 on outcomes gives full details of our findings which were subsumed in this research question. In summary, we found no positive or negative relationship between new pay systems and labour turnover, though given the deficiencies in the data for the purposes of this study, such findings were not surprising. Similarly, we did not find any positive or negative relationship between pay systems and NHS performance indicators. Our qualitative data, however, revealed that many management interviewees and some staff, were of the view that their new pay systems, all of which emphasised performance/competency, had led to an improvement in patient care, though it was generally admitted that this was hard to quantify. Also, our case study data revealed many examples of new pay systems indirectly affecting patient care where they underpinned temporal flexibility: new on-call arrangements, rotating shifts and annual hours (see sub-section 2.3.7). Interestingly, however, while most managers were strongly of the view that harmonisation supported teamworking across occupational boundaries, a minority of managers and most staff were of the view that teamworking took place irrespective of whether terms and conditions were harmonised.

We also found that new pay systems indirectly affected patient care where they underpinned functional flexibility. The most common example of multi-skilling was in theatres between ODAs/ODPs and theatre nurses. Of the nine trusts which had theatres, six were carrying out such multi-skilling and, in managers' views, the consequence was that they were better able to tailor their work to service needs.

There were also some negative consequences. Foremost among these was union hostility. As discussed in sub-section 2.3.7.7, the unions were opposed in principle to local pay and, for instance, at one trust the unions refused to enter into discussions with management even on a 'need to know' basis. Second, the proliferation of diverse pay systems reinforced labour market competition at a time of growing scarcity in many NHS occupations. Third, our focus group data indicated that at least some staff were dissatisfied with the trust's new pay arrangements, particularly where a comprehensive but opaque system of performance related pay had been introduced. Fourth, the development of a trust pay system was less resource efficient than national pay determination as there was a need to 'reinvent the wheel'. To take an example: in five of our case study trusts there was harmonisation of working hours at 37.5 per week, at least among some occupational groups, but in each of these trusts there were discussions with the unions. Harmonisation at national level would perhaps have been more time efficient.

2.4.3 Research question three

Our third research question was as follows:

Were the trusts' pay systems introduced in line with 'new pay' ideas and current trends in reward management?

We address this question using the areas outlined in section 1.5 of our literature review: pay strategies, variable pay, grading structures, harmonisation and variable hours.

2.4.3.1 Pay strategies

We begin by considering whether trusts adopted a strategic approach, as recommended by Lawler (1990; 1995), Mahoney (1989) and Schuster and Zingheim (1992). Our data revealed that only in four trusts was a strategic, organisation-wide approach taken. Three trusts initially planned to take an organisation-wide approach but in the event did not do so. We also considered whether those trusts which adopted a strategic approach, formulated their strategy on a contingency or best practice basis. Given that there was a coincidence in the aims espoused, eg simplicity, flexibility and performance management, our data suggested that a best practice approach was taken. Accordingly, our findings contrast with those of Kessler and Purcell (1996). As all the trusts were in the same 'business', healthcare in England, however, there was perhaps little scope for contingent differentiation.

2.4.3.2 Variable pay

The 'new pay' and reward management writers recommend the individualisation of pay, for instance by performance related pay in place of the rate for the job, and we found that our case study trusts were no exception to the finding of a growth in the use of performance related pay by British employers (Cannell and Wood, 1992): nine out of our 10 trusts introduced at least an element of performance pay. Notably, the rhetoric of performance pay was not always translated into reality. In two trusts, where performance pay was based on annual increments, there was no evidence of

such an increment ever being withheld from an employee. Only in one trust was the entire annual pay award determined by performance and there were no incremental points. In all the other trusts, there was a separate annual review and no indication that trusts had adopted the views of the Conservative government that the annual pay round be 'dethroned'; see sub-section 1.2.1.

Interestingly, our data revealed that trusts' performance pay systems made fine distinctions between employees where they had been introduced in the first half of the 1990s. (For instance one trust distinguished the performance of employees in 10 bandings.) In contrast, we found no examples of trusts which introduced their performance pay systems after 1996 making such fine distinctions.

Our literature review indicated that studies in the UK and USA, in both the public and private sectors, without exception revealed major problems in operationalising merit pay and considerable evidence of negative effects upon employee motivation, see sub-section 1.5.4. Our data from the focus groups, which we held with staff, essentially supported these findings, especially where there was a performance pay system which made fine distinctions between staff. (For further details see sub-section 2.3.7.6).

Only in one trust in respect of nurses and midwives was a specific analysis undertaken in respect of the effect of performance pay on equal opportunities. This analysis revealed no bias in respect of gender or ethnicity. This contrasted with the study of Bevan and Thompson (1992) who looked at four organisations in the public and private sectors and found gender bias. It also contrasted with a study of performance pay in the civil service (Civil Service College, 1995), which found bias on grounds of ethnicity.

Although Kessler (2000) outlines the perceived advantages of skills or competency based progression over traditional output or target related performance pay, the Industrial Society (1998) found little evidence of its use. In contrast, we found what was termed competency based pay in four trusts. Staff in our focus groups were generally positive about the principle of competency based pay, but some of their comments echoed the critiques identified by Sparrow (1996), ie developing competencies is complex and uncertain and existing appraisal techniques may not be sufficiently robust. Also, our data suggested that trusts found it more straightforward to develop competencies based on skills, than on more abstract behavioural attributes. The latter were often evaluated by means of employee portfolios or profiles which could be problematic. We also found, as did Thompson (1995), virtually no evidence of team based performance pay.

2.4.3.3 Grading structures

Our data relating to the use of job evaluation to underpin grading structures contrasted with the views of American 'new pay' writers that job evaluation is in decline. Rather our data accorded with considerable evidence in the UK that the reverse was the case; (see sub-section 1.5.5). Five of out of our nine trusts which introduced their own pay systems used job evaluation for some or all of their staff. This potentially provides an equal value defence and it can, if the job evaluation system is perceived as fair, (which it was not by a number of staff sides in our case studies), help to ensure that

employees perceive that they are rewarded fairly in comparison with others. In respect of banding within grading structures, we found only limited evidence of broad banding, see figure 2.2. Again this was consonant with a British study (Industrial Society, 1997).

An area where our data accorded with current trends in reward management was the use of harmonisation. The latest WERS survey (Millward et al, 2000) indicated that there has been a shift to single table arrangements and a reduction in bargaining units; (see sub-section 1.5.6). Our data revealed single spines in three trusts. We also found harmonisation of terms and conditions apart from pay; (see table 2.5).

2.4.3.4 Variable hours

Another area where our findings accorded with current trends in reward management was in respect of pay which was kept constant for the employee, although there was variability in the timing, or amount of, the weekly hours worked. The relationship between pay and hours is particularly salient in NHS trusts as they are open seven days a week, 24 hours a day. There were essentially three new main ways in which trusts related pay to hours: first, three trusts had introduced an annual salary calculated inclusive of unsocial hours premia, with three or four rates depending on the unsocial hours worked; second, in one trust on-call payments were consolidated and an annual sum divided equally among rota members; and third, in another trust an annual hours system was introduced for maintenance staff. We found that employers introduced such schemes to control costs and to match hours to service needs, ie akin to the reasons found by Russell (1998), who looked at a range of industries and services.

2.4.4 Research question four

Our fourth research question is:

What factors were critical to the success of developing and implementing 'new pay' systems in NHS trusts?

Essentially, as outlined by Grimshaw (2000), pay and grading systems are the product of a complex interplay of tensions. These include notions of equity, custom and practice, industrial relations traditions, the external labour market, the technology involved and perceived performance management needs. Bearing in mind these complexities, our data revealed a number of critical success factors. First, a close working relationship between management and the staff side was identified by both management and union interviewees to be important in ensuring that arrangements were introduced relatively smoothly. Allied to this, the unions were of the view that union confidence in the trust's project manager was essential if there was to be a smooth introduction of new pay arrangements. One of the union representatives whom we interviewed suggested that a trust-level project manager post should be job shared by a manager and a staff representative. As noted in sub-section 1.3.3, one of the reasons for the slow progress in implementing the 1997 local government agreement was the number of industrial disputes in local councils (IRS, 2000:6).

Second, communication with staff and staff involvement were seen by interviewees to be critical to success. This took a number of forms: for instance at one trust a manager and a union representative jointly saw each member of staff individually to explain how the new pay system would affect the individual and at another trust staff were involved, through focus groups, in determining the competencies required.

Third, we became aware that the introduction of new pay arrangements were exceedingly time consuming and more time consuming than managers in many trusts had anticipated, especially if the introduction of the new pay system went hand in hand with the development of competencies. Indeed, in one trust the development and roll-out of a pay system took six years. It almost goes without saying that HR managers and line managers have other demands on their time. As noted above in sub-section 1.3.3, two city councils had established units dedicated to the implementation of the 1997 local government agreement and our data revealed that three trusts created new project manager posts. Interestingly, in trusts where new pay arrangements were introduced relatively speedily, there was strong board level commitment.

Fourth, staff and union representatives were more likely to have confidence in pay systems if they were transparent. The way decisions on the performance award at some trusts were reached was not clear to staff (or to the researchers) and was criticised by staff representatives.

Fifth, we became aware that harmonisation between occupational groups could provide a catalyst for teamwork. The prime example were theatres where the different Whitley terms and conditions for ODAs/ODPs and nurses were seen as counter-productive to efficient working, with the result that theatres became a priority for new pay arrangements. Moreover, three trusts took harmonisation much further with the establishment of single pay spines. Such single status was largely welcomed by management, unions and staff on grounds of equity. Indeed, the HR director at a trust which had a single spine, expressed concern about the proposal under *Agenda for Change* to introduce three pay spines. We would add, however, that in areas where terms and conditions were not harmonised managers and staff were nevertheless of the view that various occupational groups worked together and we concluded that there were differences of degree in the level of teamwork, rather than of kind.

Sixth, we found that trusts had often subsumed unsocial hours premia into basic pay in exchange for flexible rostering. We found that employees liked the stability of earnings which this produced and there were advantages for management, for instance in being able to predict paybill costs, though it could lead to inflexibilities (see sub-section 2.3.7.2).

Perhaps the most important message of all, however, was that pay systems could not be seen in isolation and were only a part of the HR agenda. Other factors were important, particularly career progression arrangements and pay levels. Virtually all the staff in the focus groups which we held in seven trusts (see table 2.3) voiced their appreciation of any training and development opportunities open to them and voiced dissatisfaction with their pay, comparing their position with professions inside and/or outside the NHS.

2.4.5 Final comment

This report covers the pay and grading innovations introduced by trusts from the early 1990s to 2000. It has shed light on the development and implementation of trust pay structures, looking in particular at approaches to grading and pay progression, and also examining process, costs and outcomes. At the time of writing management and unions are negotiating a new pay and grading system, stemming from the proposals outlined in *Agenda for Change* (Department of Health, 1999), which will result in an agreement to apply to NHS employees nationally. The next phase of our research, which again will result in a report, will evaluate the implementation of this agreement.

GLOSSARY

A & C	Administrative and clerical staff
A & E	Accident and Emergency
APT&C	Administrative, professional, technical and clerical staff
ATO	Assistant technical officer
BPR	Business process re-engineering
CPP	Continuous process pattern
CSSD	Central Sterile Services Department
CSW	Clinical support worker
DfEE	Department for Education and Employment
DOH	Department of Health
EAT	Employment Appeal Tribunal
ENB	English National Board for Nursing, Midwifery and Health Visiting
ESOP	Employee share ownership plan
GNVQ	General National Vocational Qualification
HCA	Health care assistant
HR	Human resources
IDS	Incomes Data Services
IiP	Investors in People
IPD	Institute for Personnel Development; now Chartered Institute for Personnel and Development
IPDR	Individual performance and development review
IPR	Individual performance review
IPRP	Individual performance related pay
IRS	Industrial Relations Services
JE	Job evaluation
LSE	London School of Economics
MBA	Master of Business Administration
MLSA	Medical laboratory scientific assistant
MLSO	Medical laboratory scientific officer
MSF	Manufacturing, Science and Finance Union
MSR	Management staff review
MTO	Medical technical officer
N/A	Not applicable
NATFHE	National Association of Teachers in Further and Higher Education
NHS	National Health Service
NJC	National Joint Council
NVQ	National Vocational Qualification
ODA	Operating department assistant
ODP	Operating department practitioner
ONS	Office for National Statistics
PAM	Professions allied to medicine
PDR	Performance development review
PFC	Patient focused care
PRB	Pay review body
PRP	Performance related pay
PTA	Professional and technical A (Whitley Council)
PTB	Professional and technical B (Whitley Council)
RCM	Royal College of Midwives
RCN	Royal College of Nursing
SALT	Speech and language therapist
SoR	Society of Radiographers
T & O	Trauma and Orthopaedics
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 1981

UK	United Kingdom
USA	United States of America
WERS	Workplace employee relations survey
WIRS	Workplace industrial relations survey

APPENDIX A

Our original research questions, as outlined in our proposal (December 1999) were reformulated to take account of our literature review and absorb our earlier questions. Our revised research questions were as follows:

- Did local pay resolve the problems associated with Whitley?
- What were the consequences of local pay?
- Were the trusts' pay systems introduced in line with 'new pay' ideas and current trends in reward management?
- What factors were critical to the success of developing and implementing new pay systems in NHS trusts?

Our original proposal listed the following research questions:

1. What, if any, changes in working practices have taken place since the trust was established, in particular in respect of task flexibility and temporal flexibility?
2. Are these changes in working practices related to changes in pay and, if so, how?
3. When harmonising conditions of service what are the optimum arrangements?
4. Where changes in pay and grading have taken place, what management and union resources were needed?
5. How have trusts evaluated the costs/benefits of their pay and grading arrangements?
6. Is the pay regime felt to be fair by staff?
7. Has a partnership approach by management/unions been adopted in decisions on pay, grading and working practices?

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H M PRISON SERVICE

**The Industrial Relations
Procedural Agreement**

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1. Summary

- 1.1 This study evaluates the strengths and weaknesses of the Industrial Relations Procedural Agreement (IRPA) between Prison Service management and the Prison Officers Association (POA) and makes recommendations for improvement. Its findings are based on interviews with key participants to ascertain their views.
- 1.2 The study found that the majority of disputes are settled locally without the registration of a failure to agree (FTA). FTAs are mainly registered by the POA, despite the agreement providing that it is for the person proposing the change to register the FTA. Managers argued that it was often against their interests to register an FTA as it triggered the status quo and thus stopped them going ahead with the changes they wished to make. The POA argued that this was a misapplication of the agreement.
- 1.3 The IRPA deals with negotiable and consultative issues without distinction.
- 1.4 The time limits of 21 days for each of the three stages are widely disregarded. However, no interviewees favoured the abolition of time limits. On the contrary, some argued that there should be penalties for non-adherence.
- 1.5 Most managers and all in the POA said that the status quo clause was useful. The practice of the operational director deciding whether to override the status quo clause in an operational emergency was generally seen to be an improvement on the old practice of allowing the decision to be made lower down the management hierarchy.
- 1.6 Interviewees had a difference of view in respect of the purpose of the first 21 days of the procedure, ie whether it was a notice period or a time for discussion. Moreover, there were mixed views about whether the area stage was necessary. There was almost unanimous agreement that the operational director stage was necessary.
- 1.7 Virtually all POA local and national officials, and some governors, favoured arbitration as a fair way of resolving disputes.
- 1.8 There was much complaint from the POA about the movement of governors. It was felt that this was not conducive to good industrial relations. There was widespread agreement that the IRPA would only work well if there was a spirit of trust and co-operation between the parties.

- 1.9 Recommendations include:
 1. a distinction between negotiable and consultative issues;
 2. clarification that the first 21 days stage locally is for further discussions and not to provide notice or a cooling off period;

3. a unilateral reference as a trigger for arbitration where an issue is negotiable;
4. arbitration to be binding, unless the Home Secretary, after consulting the Minister for the Civil Service, provides a contemporaneous reasoned explanation as to why the arbitrator's award cannot be implemented;
5. registration of an FTA by the party wishing to trigger the status quo clause;
6. penalties if the time limit is not met because of prevarication by one of the parties;
7. consideration by headquarters of ways in which the movement of governors between/from prisons may be reduced.

1.10 Last but not least, for any procedure to work effectively both sides need to act constructively. Accordingly, this will require managers and the POA to adopt fully a partnership approach.

2. Terms of reference

- 2.1 The terms of reference of this study are to assess the strengths and weakness of the Industrial Relations Procedural Agreement (IRPA) between Prison Service management and the Prison Officers Association and to make recommendations for improvements. In particular, the study:
- (i) ascertains the views of key participants;
 - (ii) examines procedures in other relevant areas.
- 2.2 Within the framework of the IRPA the study considers *inter alia*:
- a) the causes of collective grievances;
 - b) the operation of the time limits;
 - c) the status quo provisions;
 - d) whether the stages should be expanded or contracted.
- 2.3 More generally, the study looks at third party intervention: conciliation and arbitration, both pendulum and conventional arbitration.

3. Background

- 3.1 Formal procedures for resolving disputes in HM Prison Service do not have a long history. Essentially they date back to the Cubbon formula of 1987, named after the then permanent secretary at the Home Office. The Cubbon formula was a response to industrial action in the Prison Service. Such action was virtually unknown until the early 1970s when the Prison Officers Association, like other public service unions, banished its traditionally moderate image, primarily in response to public expenditure reductions. The Cubbon formula was replaced in 1989 by a new disputes procedure agreed between the Prison Service and the Prison Officers Association (POA). It provided a framework for the discussion of local disputes, with provision for referral upwards if a local resolution was not reached. There was a status quo clause and either side had to give 21 days notice of its intention to invoke the procedure. Lord Woolf, however, found that the disputes procedure had not achieved any substantial reduction in industrial action¹. He found that industrial relations within the Prison Service were “*in a sorry state*” and recommended a new disputes procedure.
- 3.2 The Industrial Relations Procedural Agreement (IRPA) was concluded in 1993. (The text is appended.) It is a three stage procedure: local, area and national (operational director) level. It has a status quo clause and time limits of 21 days per stage. Although similar to the old procedure, the IRPA
- moved away from the emotive term of “dispute” and uses “failure to agree”(FTA);
 - provides for regular “business meetings” between the headquarters staff and POA national representatives to review “*the detailed operation of the industrial relations procedure in relation to each case outstanding and its handling and relative priority for both sides in terms of scheduling meetings*”;
 - provides that the person proposing to make the change registers the FTA.
- 3.3 The IRPA was expanded to include an addendum on detached duty in 1995 and a jointly agreed note (Instruction to Governors) aimed at securing the more effective operation of the IRPA to take effect in January 1996. Essentially the note centred on provisions to meet the time limits eg the governor must inform the area manager (the next level in the procedure) immediately an FTA is registered. Other relatively minor changes were subsequently made. It was agreed that a decision as to whether the status quo should be lifted because of “*a clear operational emergency*” should be made by the operational director, rather than at a lower level in the managerial chain, and that a checklist should be introduced. The checklist, to be completed when an FTA is registered, focuses the minds of the parties on whether certain measures have been taken (sharing of information, local discussion, risk assessment), whether certain issues are relevant (local agreements, profiling) and whether the status quo is in dispute. It was also agreed that the third and final procedural stage should be chaired by the operational director, the budget holder, rather than someone from the industrial relations section of Prison Service headquarters.
- 3.4 In September 1996, a number of staff from the Prison Service (headquarters) and the POA National Executive Committee held a workshop under the auspices of ACAS. The workshop identified three areas for further work: IR training, communications and a review of the IRPA. It is from the latter that this report stems.

- 3.5 The focus of this study is narrow - the IRPA. Yet it cannot be divorced from a wider context, the locality where each prison is situated and its history. Old prisons have long histories and sometimes a building which requires high staffing levels. Also, the IRPA cannot be divorced from the events which have taken place since the agreement was concluded in 1993. These include the marked rise in the prisoner population (64,999 inmates on 6 March 1998 compared with 48,794 four years agoⁱⁱ) which has put an enormous strain on staff and resources. Another significant development is not only the re-organisation of the Prison Service as an executive agency but, more importantly for this research, the devolution of responsibility to governors. This has led to financial and personnel matters previously determined at region/area level or higher being determined at the level of the prison, such as grade mix and staffing levels, recruitment and promotion of prison officers. In other words, there are potentially more contentious issues locally.
- 3.6 In addition, in May 1997 there was a change in the political complexion of the government, although at this juncture the practical effects on industrial relations in the Prison Service are unclear. Last but not least, the prison officers' legal position has changed fundamentally as a result of the Criminal Justice and Public Order Act 1994. On the one hand, prison officers have been accorded the same statutory employment rights as civil servants generally, including the right to go to an industrial tribunal. On the other hand, they have been treated as police constables in that any freedom to take industrial action has been statutorily removed though, unlike the police, they have as yet no reciprocal guarantees.

4. Methodology

- 4.1** The main aim of this study was to gain an insight into the views of stakeholders about the procedure. As this entailed exploring understandings, a qualitative approach was adopted. Semi-structured interviews were held with the following:
- (i)** governors (or in one instance the deputy governor) in six prisons;
 - (ii)** POA branch chairmen assisted by at least one other POA branch official in six prisons;
 - (iii)** one operational director;
 - (iv)** one area manager;
 - (v)** two POA vice-chairmen;
 - (vi)** one ex POA executive committee member who is now in a governor grade;
 - (vii)** the general secretary of the Prison Governors Association;
 - (viii)** the assistant general secretary of the POA;
 - (ix)** three headquarters staff from industrial relations/personnel including the personnel director.
- 4.2** These interviews typically lasted an hour, were taped and then transcribed. Some interview schedules are attached. The six prisons chosen were two remand/closed young offenders institutions: Feltham and Glen Parva; a dispersal prison: Whitemoor; a remand centre for young males: Hindley; and two local prisons for males: Liverpool and Manchester. The latter has a service level agreement. The average number of prisoners per establishment varied from 1,238 at Liverpool to 501 at Hindley in 1996-1997. The prisons chosen were as a result of discussion between the Prison Service industrial relations section and POA national officers to provide a mix of prisons where there were harmonious industrial relations and where there were not.
- 4.3** In addition, a national failure to agree meeting was observed.
- 4.4** To place the IRPA in context, disputes procedures were examined in other relevant areas. Accordingly, there was desk research of procedural agreements in the private sector in both green-field and brown-field sites; and in the public sector - several NHS trusts, the arrangements for the police and the new procedure agreement at Government Communications Headquarters (GCHQ).

5. The views of stakeholders

- 5.1 The views of stakeholders are recounted on a topic basis, starting with the registration of an FTA to the final procedural stage.

The emergence of FTAs

- 5.2 Some prisons have not had failures to agree for many years and all the POA branch chairmen interviewed prided themselves on their ability to settle matters locally. One said: *"Once it goes out of the prison, it's usually one where the governor has received instructions from above and we feel we can't give, so it's got to go further."* Many governors echoed the importance of local resolution. As one said: *"Anything that goes out of my local control is a mark of failure as far as I am concerned."*
- 5.3 A POA national official thought that it was important that local agreements, eg on staffing levels, were written down. One governor, however, considered that they were invariably inadequate to address the specific question under review, whilst another governor thought they were a sign of distrust.
- 5.4 A number of interviewees considered that poor communications often led to FTAs and, once industrial relations had deteriorated, sometimes issues were exacerbated because of personality clashes and/or clumsy handling by governors. In addition, others commented that sometimes local disputes were a symptom of wider strains eg on resources. One governor, highlighted both these points. He said: *"It depends on the issue actually, whether or not it is settled locally. Like anything with IR, what can drive things up is that the issue is far bigger than the establishment can deal with itself. In other words the governor has no authority or discretion or there has been a deterioration in relationships locally where personalities are clouding the issues."*
- 5.5 A union official guessed that the Prison Service had *"no more than 12 jails, may be a bit more, which cause persistent industrial relations headaches"*. In the same vein a different national official pointed out that some of the 137 establishments did not register any FTAs, while some registered a lot. As he said: *"There are common problems within the service which manifest themselves as disputes in one establishment and which are obviously resolved in others... In most establishments there are compromises reached."*
- 5.6 A number also held the view that FTAs emerged because of the inadequacy of the training of governor grades. One said: *"I was a rare animal in that I joined the Prison Service from university as an officer. I spent 4 1/2 years as an officer and then I became a trainee assistant governor and it took two years to qualify: 18 weeks at college plus two six-week secondments to the probation service and the police, as well as management of a series of incidents. At the end there was accreditation... It takes three weeks* now to translate somebody from a principal officer into a governor"*.

* In fact, it takes two weeks.

Registration of FTA

5.7 Paragraph 7 of the IRPA says: "...it is for a party proposing the withdrawal from, or change to, a local agreement to notify the other side in writing of a 'failure to agree' using the proforma." Apparently this provision had been introduced as a result of some Members of Parliament (MPs) criticising the POA and blaming it for a negative and dispute ridden approach.

5.8 On 31 December 1997, 5 per cent of FTAs had been registered by management. So, in that the vast majority of FTAs continue to be registered by the union, this provision has not been effective. A number of POA officials argued that managers were not trained properly in the IRPA and did not understand that the onus was on them to register an FTA if they wanted to change a written agreement or an unwritten one, ie custom and practice. Managers maintained that they did not need to register an FTA where a local agreement was unwritten. Moreover, they argued that paragraph 7 of the IRPA was unrealistic. It triggered the status quo clause (see below) and thus put a stop to managers going ahead with changes. As a governor said: "*The position at the moment is that if I want to alter the status quo, I am the one who is supposed to put a failure to agree in, but it is not in my interest to do so.*"

Number of FTAs

5.9 At 31 December 1997, 171 FTAs were registered. As one headquarters manager said: "*Its [the IRPA's] strength is its simplicity. Its current weakness is its congestion. There's an awful lot of disputes in there which you would think with a dispassionate eye appear to be fairly trivial...The procedure is over-burdened...It is not being properly used for the big disputes.*"

5.10 A prison governor said: "*I can recall one incident where we displeased the local branch and in one day they served about ten failures to agree.*" A POA branch chairman essentially agreed that there were too many FTAs and that they became "*meaningless*".

Time limits

5.11 The IRPA sets out time limits of 21 days per stage and there are three stages: local, area and national. But these time limits are not met. For instance at Ford prison two disputes were registered in 1994 but were awaiting national meetings in December 1997 and two registered in 1996 were ongoing. All the managers complained about the fact that the time limits were not met. "*They're a joke*" was a typical managerial response. It was their main criticism of the way that the IRPA operated. Often the failure to meet the time limits, however genuine the reasons, caused real problems for governors. As one said:

"If the failure to agree is about staffing levels, which it normally is, three-quarters of the year has passed before the FTA has gone through procedure and meanwhile I am still paying people with a budget I haven't got...Everybody moans about why most governors have cut probation and education staff. Well it's quite simple. It's the easy

option... They're contracted so you just turn round and say thank you and goodbye but it is not necessarily the best way of organising the prison."

- 5.12 The POA officials interviewed were less concerned about the time limits. One POA national official pointed out:
"The difficulty with any operational service is that no matter what time parameters are set, there will be reasons for not meeting them...I don't think the time parameters are crucial in any event. The critical thing is whether you resolve the problem..."
- 5.13 He also cited the fact that sometimes management was responsible for the delay. At one branch, months had elapsed without any progress and staff had to take industrial action (leave the wings and sit in at visits) to get an area meeting arranged quickly. Another POA branch chairman likewise said that when prison officers were able to take industrial action, that tended to speed up management's action under the IRPA. He argued that the disregarding of time limits was bad for the morale of staff: *"the longer it goes on, the more disaffected they become"*. Another was of the view that prison officers preferred *"clarity to this muddled situation where things just drift on"*. He considered that the people who had no incentive in sticking to time limits were in Prison Service headquarters and Cronin House (the POA HQ).
- 5.14 Nevertheless, although there are examples of management being primarily responsible for the time limits not being met, or both sides being equally responsible, more often currently it is the union. Delay, with the status quo operating, (see below) can put off the introduction of a change. Thus one manager cited the removal of the dog section from Birmingham prison pursuant to the removal of category A prisoners. The branch registered an FTA and, he said, *"because they want to keep the dogs in Birmingham for as long as possible... we are having the greatest difficulty in finding dates for meetings"*.
- 5.15 Another admitted:
"[The time limits] are abused time and again by both sides and it's struck me that the only time that management have been vociferous in keeping to time limits is when it's really suited them to do so. You can see that coming a mile away. It's never in the trade union's interests to keep to the time limits... If Virgin Airlines did not keep to time we wouldn't fly with them any more and we ought to be no different."
- 5.16 No interviewee argued for an extension of the time limits, but many managers and one POA chairman argued for some form of penalty if the time limits were not met.

The status quo

- ~~5.17~~ A minority on the management side wanted to abolish the status quo clause but most did not. The POA saw the status quo clause as their *"only protection"* or *"only weapon"*, with the ending of the right to take industrial action in 1994. They could no longer stop a matter but they could delay it. As long as a matter is going through procedure, the status quo operates. So the time limits and the status quo clause are inter-related. As a governor remarked: *"close one door [making industrial action unlawful] they'll [the POA] find something else"*.

- 5.18 Paragraph 13 of the IRPA provides that the status quo clause can be lifted *“only in a clear operational emergency when events make such action necessary”*. One governor pointed out that if the operational emergency over-ride was used by management inappropriately, *“there’s usually a kickback... There is another issue raised later, perhaps with more impact”*.
- 5.19 The POA generally welcomed the relatively new practice that the operational director is responsible for lifting the status quo, rather than the area manager or governor as before, particularly as the operational director normally first contacts the POA executive committee member and/or vice chairman concerned. As one said: *“it’s an improvement, though it [the override] is still exploited a bit”*. One governor said that he had recommended to the operational director that the status quo be lifted, but the latter had not gone along with the recommendation.
- 5.20 Also sometimes there is a difference of interpretation as to what the status quo is. One branch chairman argued that the status quo clause was often abused to mean not the status quo before the change but the status quo after the change had been implemented unilaterallyⁱⁱⁱ. Another branch chairman said: *“You’ve got to be clever and put it in just before it happens and then it can’t happen.”* But a POA national official thought that the status quo clause had not been the subject of *“quite so many discussions and disagreements lately”*.

The stages

- 5.21 As noted previously, there are three stages in the IRPA: local, area (area manager) and national (operational director). Exceptionally, however, the six dispersal prisons, which do not have an area manager, have a two tier system for the IRPA: local and national (operational director). The logic of the IRPA structure is that it follows the Prison Service management structure. Moreover, the recently introduced provision that operational directors chair national meetings (rather than someone from the headquarters industrial relations section) was welcomed by all those interviewed. They pointed out that the vast majority of FTAs were about resources, over which the operational director has control.
- 5.22 There seemed to be some confusion about the purpose of the first 21 days at local level. Some saw it as a time for further discussions. Some saw it as akin to a notice period and some saw it as a cooling off period. Moreover, there were mixed views about whether the area stage was necessary. In sum, most though not all managers interviewed considered that the area manager stage should be omitted. On the POA side most thought that the area manager stage should be retained.
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- 5.23 Thus the following managers’ views were typical. *“The area stage does not add value.”* *“The area manager has always backed my [the governor’s] decision”*. *“The only value of the area stage is where people haven’t done the work at local level that they should have done”*. One governor recalled that he had been told from someone at HQ that very little was resolved at area level. Another interviewee from HQ reported that in a few instances, because the matter was urgent, the area level had been skipped.

Only two governors interviewed thought that the area level was necessary. Another, while arguing for one stage above the establishment, ie either area manager or operational director, was inclined to the former and one said that it did not matter how many levels you had in a disputes procedure, it was the time scale that mattered.

- 5.24 As to the POA, most branch chairmen and national officers interviewed argued strongly for the area manager stage. It helped to clarify issues and evaluate whether locally all the avenues of discussion had been followed. One said: *"I don't think by removing one stage you would encourage matters to be resolved locally, quite the opposite."*
- 5.25 On the other hand, one national official thought that the area manager stage could be cut out and as did two POA branch chairmen. One said: *"It seems to me it's a waste of space because basically the area manager is in cahoots with the governor."* The other said: *"Once it gets to the area manager you feel you're being heard but he's already made his decision before you walk into the room."*
- 5.26 There was almost unanimous agreement that the national/operational director stage was necessary. Exceptionally, one POA branch chairman wanted to go straight from the local level to an independent arbitrator (see below). He argued that once it went outside the prison, it was *"just a waste of time"*. The POA formally takes the view that where a local dispute is not resolved at operational director level, the matter should go up to the director-general. However, neither the branch chairmen nor governors interviewed favoured that.

Fairness

- 5.27 A universal and deeply felt complaint by the POA was that the procedure was not fair. If it went to national level the operational director chaired the meeting, but he was part of management. He was not independent. If the branch did not like his decision they had to lump it, because they could no longer take industrial action. POA comments about national level meetings such as *"you don't get a fair crack of the whip"*; *"there isn't a level playing field"*; *"it doesn't matter how good our case is"*; *"it's a paper exercise"* were typical. One POA branch chairman instanced an FTA about detached duty which went to the operational director. Not surprisingly he decided that the detached duty should go ahead as he had given the order in the first place.
- 5.28 Essentially, POA officials wanted arbitration. They did not want conciliation or mediation, instead of arbitration, as it was not binding. As one said: *"Whatever this arbitration body is, it has to be independent and I'm quite happy to live by what they come up with. I think at the end of the day [its decisions] should be binding. Otherwise we're going to go down the line of never addressing any problem."*
-
- 5.29 Stakeholders by and large had no view as to whether, if there was arbitration, it should be of the conventional or pendulum variety. However one POA national official said that he thought that pendulum arbitration was not necessarily suitable for local disputes which were mainly about resourcing issues, a grey area.

5.30 Unusually one POA national official was against arbitration because it would hinder free collective bargaining and the regaining of the right to take industrial action. Also he argued that there was *"no such thing really"* as independent arbitration because there would be a government override. This fear was voiced by several others from the POA who wanted arbitration.

5.31 Management, like the POA, evinced virtually no support for conciliation or mediation. Some governors, also, were not prepared to countenance arbitration, insisting on the right to manage without interference from outsiders and maintaining that arbitrators would have power, but not responsibility. A typical comment was: *"arbitration in a highly operational service like ours would be quite problematic"*. Some, however, thought that arbitration should be provided and that the present system was indefensible. As one said:

"I have always seen the IRPA as being a bit fraudulent because at the end of the day the chairperson... works for the department and therefore he could never come to the proceedings with clean hands and even if he did, no-one would believe he or she did... [With arbitration] you are less likely to see disputes because people will feel they have had their day in court, as it were."

Movement

5.32 There was much complaint on the POA side about the movement of governors. Prison officers stay many years at a prison. Governors frequently move around to gain experience and promotion. Indeed, one branch chairman and secretary, with whom there was a meeting in the board room, pointed to the board showing the list of governors. They said that even though in their prison the number one governor was a grade 1 governor, it was unusual for their governor to stay over three years. Normally the governor stayed less than that. A POA national official cited a prison where there had been three governors in six years. Another said:

"They talk to us about loyalty to the prison, ownership of the prison and all the rest of those lovely words and yet they come in, they do enough to get their bonus payments and then go... You spend 18 months trying to sort out the new arrangements and when you start to get things running smoothly, someone else comes in."

5.33 A few governors also argued that there was too much movement. Indeed, one governor reported that he had been offered an area manager position on temporary promotion, after arriving at a prison notorious for industrial relations difficulties. He had turned this opportunity down, even though it might have meant a higher salary, because he thought it was not in the Prison Service's best interests. Such situations are likely to be repeated as promotion opportunities are set to increase. New prisons are coming on stream in the private sector and those from the public sector are targets for poaching.

5.34 HM Chief Inspector of Prisons has voiced the opinion that this movement of governors is not helpful to industrial relations. Reporting on Erlestoke in 1997 he said: *"Over the last seven years there had been six Governors of Erlestoke. This high turnover had seriously undermined staff confidence in looking to their future^{iv}"*.

- 5.35 The pay system, and in particular whether or not there is broad banding and/or a system of personal promotions is outside the scope of this project. (One interviewee said that at present personal promotions were allowed in theory, but were rarely used in practice). It should be realised, however, that pay arrangements can have an effect on industrial relations and, arguably, one of the criteria in their design should be to aid stability.

Co-operation?

- 5.36 Certainly in some prisons, the spirit of the IRPA was disregarded. One governor said: *"Not doing a proper consultation early enough means that you're giving people surprises and you can't be surprised if they react badly to it. But equally there are people on the other side who are deliberately engineering failures to agree because that ties everybody up in knots, absolute knots."*
- 5.37 An operational director remarked that *"sometimes governors hadn't done sufficient homework"*. In particular, some governors did not carry out risk assessments or, if they did, did not show them to the POA. Understandably, the POA wanted risk assessments carried out and to see them, before considering staffing levels.
- 5.38 Some governors seemed to confuse consultation with information giving. As one governor said: *"there has to be a working group culture"*. Another governor argued that it was the commitment to resolve matters locally that counted. He said that *"we discuss potential issues so that we don't have disputes"* and he instanced a revised attendance system and working patterns, which were *"quite a major culture shift"*, accomplished without an FTA being lodged. Yet another governor cited a reprofiling exercise which was being done jointly, as opposed to being done by management and then afterwards shown to the union for comments, while another said: *"Unless I can converse with the other person in the dispute in a way which brings us closer together with a more common understanding, whether I go to arbitration on this issue or not, something else will bubble up somewhere."*
A POA branch chairman said: *"When you've got good industrial relations you overcome problems. When you've got bad industrial relations you escalate problems."*
- 5.39 Both governors and the POA were of the view that regular consultative meetings, at least on a monthly basis, were good practice. In addition some governors mentioned that information sharing was a two way process and that the POA branch chairman should give the governor in writing the resolutions carried by the branch and the minutes of branch meetings. Those who had experience of the business meetings, held at national level every two months, where FTAs were reviewed, reported that they were helpful. Similarly, most of the interviewees who had had experience of ACAS workshops had found them helpful.

Miscellaneous

- 5.40 One manager thought that sometimes managerial proposals for change were poorly articulated and should always be put in writing. It was unanimously agreed that the checklist, to be completed on registering a failure to agree was useful. Some

stakeholders on the management side thought that there was room for improvement in that only a couple of lines were provided for describing the FTA registered and that it essentially was a tick list. More space and another sub-heading "grounds", they suggested, could be added. A POA national official, however, argued against the checklist being expanded, as there was a danger in being too prescriptive.

- 5.41 At national FTA meetings, minutes are taken. However, the participants on both sides did not seem to find that helpful. "*Reams and reams of paper: a complete waste of time*", said one. Two governors felt that headquarters should disseminate industrial relations news regularly eg through Prison Service News. Currently often the main source for management of industrial relations news is Gatelodge (the POA journal). A POA national official argued that there should be joint management/union industrial relations training. (At present a POA national official has an input into management's courses and vice versa but there is not joint training.) Two interviewees were of the view that one of the problems was the lack of preparedness on both sides. Those involved in FTAs, both governors and POA branches, were sometimes unsure about the issues and/or unsure about what they wanted out of it.

6. The way ahead

- 6.1 The proposals below are based on the assumption that instead of refining and improving the IRPA, the Prison Service should start with a clean sheet. One interviewee likened the IRPA to an old car: as the years go by you stick on different parts, but there comes a time when you have to have a new model. A new model could be the opportunity for engendering a new culture in which there is a partnership approach to industrial relations. It could also reflect the changed environment since 1993, see above.
- 6.2 Like any procedural agreement, the IRPA serves a number of functions: a process for handling issues, an instrument for making deals, a forum in which both sides may argue their case and seek to persuade the other, a judicial system and a face saving device. The extent of its acceptance and use depends not only on the fact that it has been agreed, but also on the degree of the parties' satisfaction with its operation and the solutions reached within it.
- 6.3 Proposals for the way ahead are made on the basis of the criteria against which the IRPA, like other disputes procedures, must be measured. These criteria are first whether the dispute is resolved as near to the point it arises as possible; secondly whether the dispute is resolved speedily; and thirdly whether it is resolved fairly. The weight given to each criterion may vary both according to the dispute and the stakeholder concerned. For instance, speed may be the main concern in some disputes but not others and union officials are likely to place more weight on fairness than managers.

A twin track procedure

- 6.4 The IRPA is designed to deal with local matters, not national matters, a point that could be emphasised. If a matter is local then under the IRPA all disputes are handled the same way and traditionally the Civil Service has not distinguished between negotiable and consultative issues. This distinction, however, has long been made throughout the private sector and it is a distinction that is now made both in domestic law and European Union law, as well as in some Civil Service agencies, eg Employment Service. Negotiation is a bipartisan process which almost invariably results in joint agreement. Consultation is defined as discussions "undertaken by the employer with a view to reaching agreement with the appropriate representatives" (TULR(C)A s.188(2)). The author gained the impression that some governors confused negotiations with consultation and the giving of information with consultation. In deciding to differentiate between negotiable and consultative issues, the Employment Service (ES) said^v:

"Lack of clarity has enabled the unions to argue that any change in the way the ES carries out its functions affects the way in which their members do their job and hence to attempt to bring every issue into the negotiating arena...Whilst ACAS acknowledge that a unified structure can be used, they counsel against it and add the rider that, in order to be successful, both sides must be clear whether they are negotiating or consulting on any given issue. Otherwise they warn there will be pressure for all management plans and decisions to become negotiable. The adversarial climate this

creates results in the loss of opportunities to exchange ideas and opinions which are not negotiable."

- 6.5 Accordingly it is proposed that a new Prison Service procedure should differentiate between negotiable and consultative issues. Negotiable issues are those which affect the terms and conditions of prison officers. Consultative issues bear on the work of prison officers but exclude any matter concerning an individual grievance or problem or a disciplinary case.
- 6.6 Looking at the list of outstanding FTAs as on 31/12/97, certain issues would seem, on their face, to be negotiable eg regrading of healthcare officers (Bedford), new shift systems (Highpoint). Some matters would seem to be consultative, eg wearing of name badges (Gartree), changes to the sale of alcohol (Haslar), closure of staff social club without consultation (Lindholme), issue of security keys to non-unified grades (Onley), the site of the health-care centre (Feltham). Inevitably, there may be some dispute about whether an issue is negotiable or consultative. This is covered below.
- 6.7 Nevertheless, although a twin track procedure is envisaged, FTAs would start the same way. Once registered, there would be 21 days to resolve the dispute locally. However, the purpose of this stage should be spelt out: ie that it is for further discussion and not a cooling off period or a notice period. Then the matter would be referred to the next level. The parties should consider whether the area stage should be omitted as nearly all management and some POA officials were of the view that it did not add value.
- 6.8 While either party should be able to register an FTA, the onus should rest on the party who wishes to trigger the status quo clause rather than, as now, the party who wishes to make a change. This proposal reflects reality.

Arbitration

- 6.9 There are a number of arguments for arbitration as a final procedural stage. First the context: the uniformed grades in the Prison Service are highly unionised, highly organised and traditionally involved in service delivery, so there is little or no tradition of management acting unilaterally. Secondly, a measure determined by an independent third party has more legitimacy among staff, as it is seen as fairer than one which is unilaterally imposed by management. (This view came over loudly and clearly in the interviews). Thirdly, arbitration can be a face saving device: management and/or the union are let off the hook because the decision is taken out of their hands. Fourthly, it acts as a safety valve to prevent industrial action. Where arbitration has been introduced there is virtually no industrial action and, where it has been removed eg in the Civil Service since 1981, there has been a rise in industrial action. Finally, a system of arbitration, including an exchange of case before an arbitration hearing, helps focus the minds of the parties and clarifies the issues.
- 6.10 Some argued that an independent person would not be able to understand the Prison Service. This assertion appears somewhat arrogant. After all, the previous director-general had no knowledge of the Prison Service before his appointment. However, this point could be addressed if an independent arbitrator sat with wing members, one

nominated by the POA and one nominated by management. (The independent arbitrator would be appointed only with joint management/POA agreement). Some also argued that an independent arbitrator would have power without responsibility. He/she would not be accountable and responsible, unlike management. This ignores the fact that Labour's Home Secretary, Mr Straw, has gone on record as saying that Ministers will "*be responsible as well as accountable for the Service*" and that there may be "*scope for developing ... proposals for an independent arbitration mechanism...*"^{vi}. Furthermore, arbitration may weaken the parties' resolve to settle the matter themselves but this disadvantage must be set against the advantages.

- 6.11 However, should the arbitrator decide every FTA which is not resolved at operational director level? Here the twin track procedure would come into play. Where an issue is negotiable, the parties try to reach agreement. If they are unable to do so, the matter would proceed to arbitration, ie decision by a person independent of the Prison Service and the POA. Such arbitration could be triggered by a unilateral reference.
- 6.12 If a matter is consultative it also needs to go through procedure but after the operational director stage, where agreement is not reached, the operational director could impose. This is because management has the last word, where the issue is consultative. Where there was a dispute about whether an issue was negotiable or consultative, the decision of the arbitrator would be final. Especially in the early days, before precedent was established, the arbitrator might be called upon to make many decisions on this.
- 6.13 Normally the arbitrator's decision on an FTA would be final. However, all the parties to any new procedural agreement must understand that the Crown cannot absolutely bind itself against any future circumstances. In particular, any agreement cannot override the Secretary of State's duty to take such action as he deems necessary for overwhelming reasons of public safety and security. Accordingly, he must continue to have the power to over-rule the award of the arbitrator. But that power must not be used lightly. If it is exercised, the Home Secretary should only act with the concurrence of the Minister for the Civil Service and provide a contemporaneous reasoned explanation as to why the arbitrator's award cannot be implemented.
- 6.14 It is for the parties to decide the precise form of arbitration, ie whether pendulum or conventional. Pendulum arbitration, which requires the arbitrator to choose between management's position and the union's position, is said to encourage closer and more reasonable stances if arbitration proves necessary. Under conventional arbitration, it is said, both parties hold back from revealing their final stances as the arbitrator often chooses a compromise position between the final position of the parties. Pendulum arbitration may also signal a culture change as it has been used in the private sector as part of new management/union deals aimed at securing co-operation. However it is said to be inflexible and unsuitable for complex disputes and is rarely found in the public sector in the UK^{vii}.

Time limits

- 6.15 The time limits of 21 days per stage are patently not observed and both sides bear some responsibility for this. There would need to be a time limit (say 7 days) within which a reference to arbitration must be made. Then the hearing date could be fixed to take place no later than, for example, 8 weeks from the date when the reference was submitted, with the arbitrator providing a reasoned written award within 21 days of the conclusion of the hearing: in all, 21 weeks. If the matter was consultative, it would go through the procedure in 63 days (If the area stage was omitted, then both tracks of the procedure would be shortened by 21 days).
- 6.16 Often delay is incurred because there is no "tie-breaker" or "sudden death". If arbitration was to be used in many cases, then there would be a "tie-breaker" and so there might be less incentive for delay. Nevertheless, as "belt and braces", it is proposed that there should be penalties where the time limits are exceeded, unless they are extended by joint agreement. If the delay is attributable to the POA, then the status quo could be lifted after the time limit had expired, whether or not the matter has gone through procedure. Where the delay is attributable to management, then the matter could unilaterally and straightaway be referred to arbitration by the POA, whether or not the matter is negotiable or consultative and whether or not there has already been a meeting at operational director level. If there is a dispute about to whom the delay is attributable, then the arbitrator's decision would be final.

A new climate

- 6.17 The overall intention is to create a climate of relations between management and prison officers which is not confrontational nor adversarial but instead is based on partnership. A new procedure, in which arbitration has a place, will contribute. It has been argued that the arbitrator will have a full-time job. Not only will he/she have to arbitrate but also to decide other matters, such as whether an issue is consultative or negotiable and, where time limits have not been complied with, which party is responsible. The arbitrator's role may be time consuming, especially initially, but this must be set against the time now spent by managers and union officials in FTAs.
- 6.18 For any procedure to work effectively, both sides will need to act constructively. A procedure agreement is a process and, like any process, depends on the way that the parties use it. Accordingly, management should initiate the earliest possible discussions on proposals for change. Such proposals should be clearly spelt out and all relevant information provided to enable a real dialogue to take place. Also management should realise that consultation is more than the provision of information. For its part, the POA needs to demonstrate an equally constructive approach. The ACAS workshops held in some localities have been useful in building up relationships and could be extended. Joint training could also serve to enhance co-operation. Headquarters should also actively consider measures to reduce the movement of governors between/from prisons to help foster more stability in industrial relations.
- 6.19 The disputes procedure, which is the focus of this study, has to be seen in the wider context of the industrial relations arrangements between management and all the

unions in HM Prison Service. It has also to be seen in the context of government penal policy and of the resources allocated to prisons. Furthermore, industrial relations in the Prison Service must be set against the wider context of industrial relations in the country as a whole, where increasingly there is a partnership approach.

Endnotes

ⁱ Lord Woolf and Judge Tummim (1991) *Prison disturbance April 1990* Cm 1456 London: HMSO.

ⁱⁱ Campbell, D "Drug barons 'control jails'" *Guardian*, 11 March 1998.

ⁱⁱⁱ The author worked for a union in the NHS where there were also disagreements about what the status quo was.

^{iv} HM Chief Inspector of Prisons *HM Prison Erlestoke, report of a full inspection 6-11 July 1997, part A: Executive Summary* p.13 para 24.

^v ESMG 89/42 *Consultation under agency status*, unpublished.

^{vi} Letter from the Home Secretary, Mr Jack Straw, to the National Chairman of the POA, Mr Mark Healy on 28 January 1998. The previous Home Secretary, Mr Michael Howard, maintained that the Ministers were accountable, but not responsible for the Prison Service.

^{vii} Lewis, R. (1990) "Strike free deals and pendulum arbitration", *British Journal of Industrial Relations*, 28, 1, 32-56. At least one NHS trust has pendulum arbitration.

Appendix 1 Interview schedules

Governor

1. How long have you been in your present job?
2. Under the IRPA, you chair local meetings? How many have you chaired in say the last 12 months?
3. Can you tell me in detail about the TWO most recent local meetings which you chaired? Prompt - reason for meeting, what happened, your role.
4. Have you ever registered a failure to agree. If not, why not?
5. In your experience are matters mostly resolved at local level?
6. In your time as governor has the area manager ever not backed your decision?
7. What do you think is the main cause of collective grievances?
8. Do you think the checklist is helpful in identifying the issue in dispute?
9. Do you have a problem with local agreements not being in writing?
10. Are the time limits of 21 days per stage as set out in IRPA appropriate?
11. If not, what should they be?
12. There is a status quo clause and an "exceptional circumstances" over-ride (para13) but the two seem mutually incompatible. How does it work in practice? Eg can you give me examples of the use of the exceptional circumstances over-ride.
13. There are three stages of the IRPA, local, area and national. Do you think those three stages are appropriate? Are they all necessary?
14. Has the operational director always backed you under the IRPA. (If not, give example).
15. Do you think conciliation eg by ACAS would be helpful?
16. Do you think arbitration would be a way of deciding failure to agree?
17. If so, should it be instead of or in addition to a national level meeting?
18. Should it be binding or not?
19. Do you think there should be pendulum or conventional arbitration?
20. What do you think are the strengths of the IRPA? Prompt identifies resource shortages, prevents precipitate management action.
21. Often after national level meeting there is referral back to local level. The matter is not generally resolved in one fell swoop. Do you think this is a good idea?
22. What are weaknesses of IRPA? Prompt lengthy and costly process.
23. Do you have any views about IR in the Prison Service?

POA Branch

1. Under the IRPA, you are involved in local meetings? How many have you been involved in say the last 12 months?
2. In your experience are matters mostly resolved at local level?
3. Can you tell me in detail about the TWO most recent local meetings in which you were involved? Prompt - reason for meeting, what happened, your role.
4. What do you think is the main cause of collective grievances?
5. Do you think the checklist is helpful in identifying issues in dispute?
6. Who registers FTAs?
7. Do you have problems with agreements not being in writing?
8. Do you think your governor should stay longer in his job?
9. Are the time limits of 21 days per stage as set out in IRPA realistic? If not, what should they be?
10. There is a status quo clause and an “exceptional circumstances” over-ride (para 13) but the two seem mutually incompatible. How does it work in practice? Eg can you give me examples of the use of the exceptional circumstances over-ride?
11. There are three stages of the IRPA, local, area and national. Do you think those three stages are appropriate/necessary?
12. Have you noticed an increase in branch work given that governors now have more personnel powers (decentralisation etc.)
13. If you do ‘win’ at what stage is that generally?
14. Do you think conciliation eg by ACAS would be helpful?
15. Do you think arbitration would be a way of deciding a failure to agree?
16. If so, do you think it should be instead of or in addition to a national level meeting?
17. Should it be binding or not?
18. Should there be pendulum or conventional arbitration?
19. What do you think are the strengths of the IRPA? Prompt identifies resource shortages, prevents precipitate management action.
20. Do you think the checklist is a useful innovation?
21. Often after national level meeting there is referral back to local level. Do you think this is a good idea?
22. What are the strengths of the IRPA?
23. What are the weaknesses of IRPA?
24. Do you have any views about IR in the Prison Service ?

HM PRISON
SERVICE**Notice to Staff**

FOR ACTION	FOR INFORMATION	ISSUE NUMBER
The Governor Area Managers	All staff	NTS 78/1993
		DATE OF ISSUE
		1 July 1993
		EXPIRY DATE
		30 June 1994 . .
CONTACT POINT		SUBJECT
Terry Ward, DPF3, Room 701, Abell House, 071 217 5065		INDUSTRIAL RELATIONS

INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT WITH THE PRISON OFFICERS' ASSOCIATION

A new Industrial Relations Procedural Agreement between the Prison Service Management and the Prison Officers' Association was signed on 2 June and comes into immediate effect. This replaces the current disputes procedure (Notice to Staff 66/1989).

A copy of the new procedural agreement is attached.

The agreement was the subject of consultation with area managers and operational directors in the Spring of last year and has now been signed by the Director General and by the POA. It is essentially an update of the former disputes procedure but it:

- re-emphasises the importance of resolution of issues at local level;
- moves away from the emotive term 'dispute' and speaks of a 'failure to agree';
- clarifies the position of 'status quo' to refer only to the specific matter about which there is disagreement;
- provides for discretion about whether a matter should be referred beyond the area manager and, if so, whether such meetings should be chaired by the Head of DPF3 or other headquarters personnel.

It is intended to review the agreement in 12 months time.

INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT**AN AGREEMENT BETWEEN THE PRISON SERVICE MANAGEMENT
AND THE PRISON OFFICERS' ASSOCIATION**

This national agreement between Prison Service Management and the Prison Officers' Association replaces the national Disputes Procedure, which was introduced in 1989.

**INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT BETWEEN HM PRISON SERVICE
AND THE PRISON OFFICERS' ASSOCIATION****General Principles**

1. Prison Service Management and the Prison Officers' Association reaffirm their commitment to Whitley principles, which in practice are reflected in relation to the Association's members in the constitution of the Prison Department Whitley Council, the establishment of Local Whitley Committees (NTS 51/1975) and the Facilities Agreement (NTS 3/1984). Every member of staff in the eligible grades is free to decide whether or not to join the Association.
2. Prison Service Management recognises the position of duly elected officers of the Prison Officers' Association in representing the interests of the Association's members. Prison Service Management accordingly makes available, for example, in accordance with the Facilities Agreement, time to enable the election of officers of the Association to be conducted and for joint or certain branch meetings to be held.
3. Both Prison Service Management and the Prison Officers' Association are committed to good industrial relations. They recognise the importance of enabling the work to be done in Prison Service establishments and, so far as possible, to resolve disagreements at that level. In recognition of that the National Executive Committee of the Prison Officers' Association, Area Managers and Industrial Relations Section of DPF3 stand ready to offer help and assistance to governors and local branches.

National Agreements

4. In respect of working practices and agreements associated with them, the general principle is that the agreements at national level bind those of a local level. It follows for example, that where an agreement reached locally on a matter is in conflict, in fact or principle, with one reached nationally, the latter normally prevails.

5. Local variation from national agreements will be allowed only where both sides locally agree and that discretion forms part of a particular national agreement.

6. Where an agreement is reached locally, it is essential that in the interests of both sides the agreement is put in writing giving details of any special arrangements that may be applicable. Agreements not recorded in writing will not be recognised. Agreements will be honoured by both sides.

Withdrawal from or change to Local Agreements

7. If either party wishes to withdraw from or revise a local agreement every attempt should be made through the normal processes of local discussion to reach an agreement. But if no agreement can be reached in this way, it is for the party proposing the withdrawal from, or change to, a local agreement to notify the other side in writing of a 'failure to agree' using the proforma at Annex A. The 'failure to agree' notice will identify fully in writing the area(s) of disagreement.

Collective Grievances

8. When a collective grievance arises for reasons other than those covered by paragraph 7 above every attempt should be made through the normal processes of local discussion to resolve the matter. If this is not possible then the local branch committee will notify the Governor in writing of a 'failure to agree' again using the proforma at Annex A. The 'failure to agree' notice will identify fully in writing the area(s) of grievance.

Procedure to be followed

9. In the case of the issue of a 'failure to agree' notice either because of an intention to withdraw from or change an agreement or because of a collective grievance the aim will be to seek a settlement at the lowest level. The following procedure will apply:

- a. A 21 day period from the date of receipt of the notice will be allowed for local discussions. This will allow the normal process of consultation between management and the Trade Union Side to continue. During this period no industrial action will be initiated by the trade union nor will management impose changes. The 'status quo' in relation to the area(s) specified in the 'failure to agree' notice will be maintained by both sides. Every effort will be made through the normal processes of local discussion to agree a suitable resolution.

- b. If the matter is not resolved at local level the Governor will refer the matter to the Area Manager, informing DPF3 (Industrial Relations Section) that this has been done. The local branch committee will similarly refer the matter to the appropriate NEC member informing the General Secretary of the Association that it has done so.
- c. The Area Manager will then convene a meeting, or meetings, to seek a resolution of the matter attended by local management, the local branch committee and the appropriate NEC member. They will meet within 21 days of notification to the Area Manager and the status quo will continue to prevail during this second period with no industrial action being taken and no imposition by management.
- d. If the matter is not resolved at Area level the Area Manager will refer the matter to DPF3 (Industrial Relations Section) so that, if appropriate, a further meeting with similar membership may be arranged with the addition of other Headquarters personnel. The Head of DPF3 will normally chair this meeting. In exceptional circumstances the meeting may be chaired by a Director or other senior member of HQ staff, at the discretion of management. This meeting will take place within 21 days of the Area meeting or where there is more than one, the final Area meeting and the status quo will continue to prevail during this third period with no industrial action being taken by the local branch and no imposition by management.

10. The aim is for all discussions at each stage to be completed within each of the 21 day 'status quo' periods. However both sides recognise, that because of other commitments and priorities, this may not always be possible. In such cases the status quo should prevail until discussions at all levels have been concluded. At any stage either side may seek the assistance of DPF3 (Industrial Relations Section) and/or the POA NEC in assessing priorities and arranging meetings. Management undertake not to impose and the Trade Union not to take industrial action until the procedure has been exhausted. If that point is reached without agreement then it will be for each side to decide what action to take.

11. Discussion at each stage of the procedure set out above - including any agreement reached or any identification of the details of a "failure to agree" - will be carefully documented. A record of all meetings will be kept and signed by a representative of each side.

Status quo

12. 'Status quo' at all stages of the procedure relates to the

area(s) specified in the 'failure to agree' notice completed at the first stage of the procedure.

Exceptional circumstances

13. Staff will be required to act contrary to the terms of an agreement (national or local) only in a clear operational emergency when events make such action necessary. Management will always aim to give as much notice as is possible. The National Executive Committee of the Prison Officers' Association may wish to discuss such exceptional circumstances with the Area Manager and/or DPF3 (Industrial Relations Section).

Business meeting

14. The Head of DPF3 will convene a business meeting every two months with representatives from both sides to review the detailed operation of the industrial relations procedure in relation to each case outstanding and its handling and relative priority for both sides in terms of scheduling meetings. The meeting will also consider any other issues in relation to the operation of the procedure.

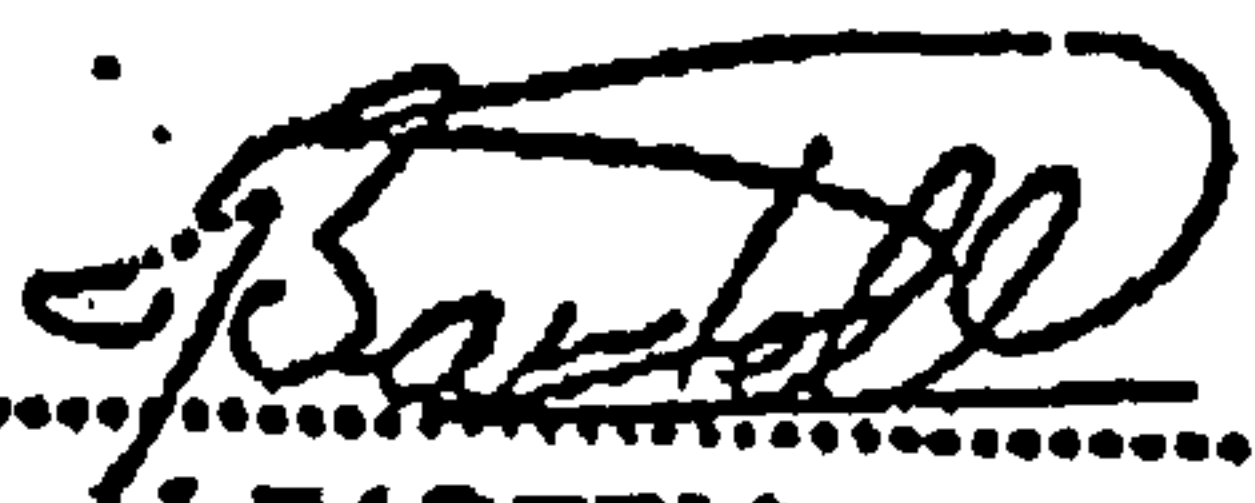
Individual Grievances

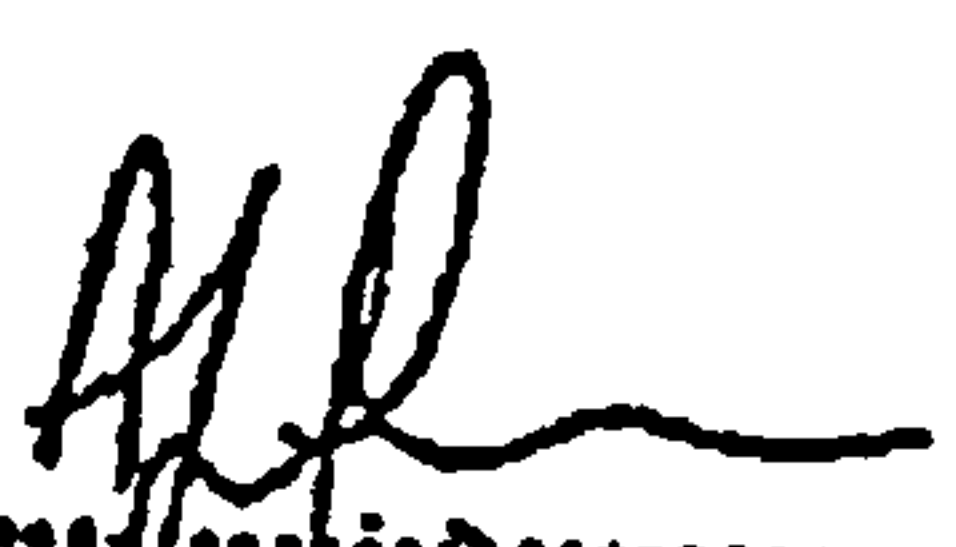
15. The procedure to be followed, when an individual wishes to complain about personal employment related matters, is currently outlined in paragraph 344 of the Staff Handbook for non-industrial civil servants.


Review of Agreement

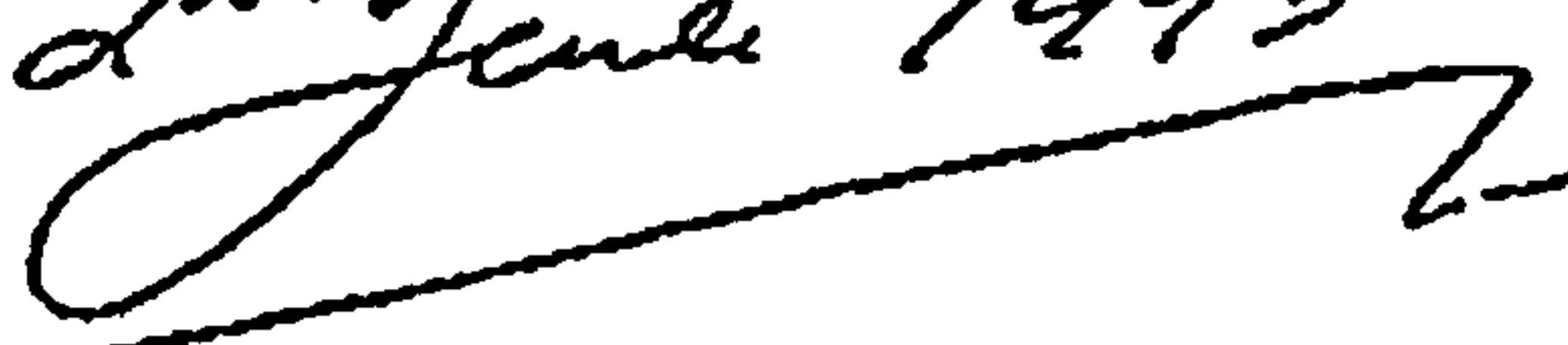
16. This agreement will be reviewed by both parties at the end of 12 months. It shall be open to either party to withdraw from the agreement by giving not less than 3 months notice to the other.


.....
D C LEWIS
Director General


.....
J BARTELL
National Chairman
Prison Officers' Association


.....
A J BUTLER
Director of Personnel
& Finance


.....
D EVANS
General Secretary
Prison Officers' Association

2nd June 1993



 HM PRISON
SERVICE

Instruction to Governors

FOR ACTION	FOR INFORMATION	ISSUE NUMBER
Governing governors, area managers, directors	Executive committee, heads of groups & services, all prison service staff	IG88/1995
		DATE OF ISSUE
		17 AUGUST 1995
		EXPIRY DATE
		31 July 1996
IMPLEMENTATION DATE	Immediate	SUBJECT
	CONTACT POINT	INDUSTRIAL RELATIONS
	Ron Curtis, PIRG, Room 814, Cleland House, Tel: 0171 217 6371	

INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT WITH THE PRISON OFFICERS' ASSOCIATION

ADDENDUM

DETACHED DUTY/FAILURES TO AGREE

Recent discussions with the POA NEC have led to a better understanding of the handling of requests for detached duty and dealing with disagreement within the Industrial Relations Procedural Agreement should that be necessary.

The attached addendum to the Industrial Relations Procedural Agreement has been signed by the Director General and by the POA and forms part of that agreement. It will be reviewed as part of the intended review of the agreement.

The POA NEC has sent similar advice to branches, but governors should draw this instruction to the attention of their local branch officials.


Derek Lewis

Index under: Industrial Relations

INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT**AN AGREEMENT BETWEEN THE PRISON SERVICE MANAGEMENT
AND THE PRISON OFFICERS' ASSOCIATION****ADDENDUM - DETACHED DUTY/FAILURES TO AGREE**

This addendum forms part of the national agreement between the Prison Service and the Prison Officers' Association, issued under NTS 78/1993.

2. It is accepted that as mobile grades prison officers can be required to do detached duty. It is the impact of detached duty on the sending establishment which can occasionally give rise to "failures to agree". These must be handled within the procedure, but the POA NEC and Prison Service management are committed to trying to resolve difficulties so that detached duty can take place without hindrance.

3. Prison Service management and the POA NEC expect managers and trade union officials, locally and nationally, to work in such a way as recourse to "failures to agree" and the Industrial Relations Procedural Agreement are rare.

4. To that end,

- i. managers will give as much notice as possible to the trade union of the need for detached duty;
- ii. both sides will work towards resolving any difficulties in good time for the detached duty to take place without hindrance;
- iii. if that fails, and a "failure to agree" is registered, both sides are committed to taking the issue through the procedure. Where the call for detached duty is urgent the failure to agree will be handled as quickly as possible with the objective of a resolution by the date when the detached duty is due;
- iv. in the event of having exhausted the procedure without agreement it will be for both sides to decide what action to take (Procedural Agreement, paragraph 10);

?

v. in circumstances of "a clear operational emergency", the Operational Director may decide that staff should be asked to work contrary to the terms of the Procedural Agreement, ie the detached duty will proceed whilst the procedure is being completed. (Procedural Agreement, paragraph 13).

Derek Lewis
D C LEWIS
Director General

10 August 1995

J. Boddington

J BODDINGTON
Acting National Chairman
Prison Officers' Association

10th August 1995



Instruction to Governors

FOR ACTION	FOR INFORMATION	ISSUE NUMBER
Directors, area managers, governing governors	Executive Committee, heads of groups & services, all prison service staff	IG116/1995
		DATE OF ISSUE
		21 December 1995
		EXPIRY DATE
		31 December 1997
		SUBJECT
		INDUSTRIAL RELATIONS
TARGET	8 January 1996	
CONTACT POINT	Ron Curtis, PIRG, Room 814, Cleland House, Tel: 0171 217 6371	

Approved by the Executive Committee for issue

INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT WITH THE POA

This IG, which has been agreed with the POA, describes how it is intended that the Industrial Relations Procedural Agreement (NTS 78/1993, IG 88/1995) should be made to work more effectively to resolve failures to agree registered from 8 January 1996. It responds to concerns expressed by line managers, the POA, and to recommendation 55 of the Learmont Report. The annex summarises the main elements of the agreement.

Action required for the effective working of the Industrial Relations Procedural Agreement (IRPA)

2. The following action will be taken to ensure resolution of a failure to agree within 63 days (references are to paragraphs in NTS 78/1993):

- every attempt should be made to resolve the issue locally before a failure to agree is registered and these efforts should continue throughout the procedure.

The first 21 days - local level (para 9a, b)

- The governor will inform the area manager and PIRG (Industrial Relations Section) immediately a failure to agree is registered, giving details of the area(s) of disagreement, of what attempts have been made to resolve it at local level, and the date when the 21 day period will expire. The local POA branch committee will similarly refer the matter to the appropriate NEC member, informing the General Secretary.

- IR Section must be informed of resolution or referral to area level.

The second 21 days - area level (para 9c)

- If not resolved at local level within the first 21 days, the failure to agree will be automatically referred to the area manager who will arrange a meeting within 21 days of the expiry of the first period (ie maximum 42 days from the date of first registering the failure to agree). Every attempt must be made to resolve the issue at the area meeting. If the area meeting concludes that further local work is likely to lead to resolution that should be arranged with an agreed tight timescale, and a provisional date set for a national meeting in the event of a continued failure to agree.
- IR Section must be informed of the outcome of the area meeting.

The last 21 days - national level (para 9d)

- If not resolved within the second 21 days or timescale set by the area meeting, the failure to agree will be automatically referred to national level. IR Section will make arrangements with the governor, area manager and the POA NEC to meet within 21 days.

Status quo

- Status quo will prevail until the procedure has been exhausted. This means that the governor will impose no change in that area(s) specified in the failure to agree (para 12). The definition of status quo should be agreed between the governor and the trade union at the time the failure to agree is registered. If, after discussion, agreement on status quo is not reached, the governor should refer to IR Section, and the local branch officials to the NEC for advice.

Operational emergency

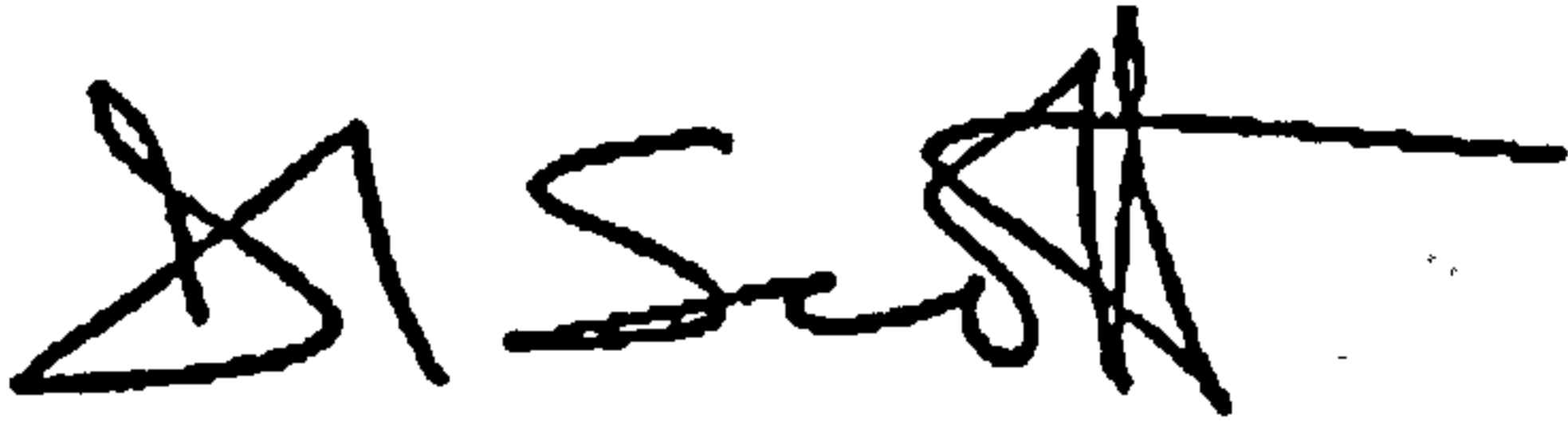
- The terms of the agreement, in particular status quo, may be overridden in a clear operational emergency where events make such action necessary (para 13).

Review

3. There will be a joint review with the POA of the operation of the IRPA at the end of the six month period (June 1996). The aim of the review will be to establish if the agreement has worked effectively and speedily to resolve failures to agree registered at local level, and if it has not, what changes are required to be made.

Current failures to agree

4. IR Section will be approaching governors about current outstanding failures to agree (in the first instance over 9 months old) with the intention of obtaining the agreement of the governor and local POA branch committee to withdraw them, or to put them back into the procedures.

A handwritten signature in black ink, appearing to read 'D. Scott', with a long horizontal stroke extending to the right.

DAVID SCOTT
Director of Personnel

Index under: Industrial Relations

ANNEX

INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT (IRPA)

The IRPA emphasises the importance of resolution of issues at local level, and provides a framework for resolution at area and national level where there is a failure to agree.

2. This IG should be read in conjunction with NTS 78/1993 and IG 88/1995 as it does not replace the IRPA.

3. The following elements are critical to the effective and speedy operation of the agreement (references are to paragraphs in NTS 78/1993):

- It deals only with local issues - national issues are dealt with by the POA NEC and the appropriate part of Prison Service Headquarters.
- It deals with failures to agree about withdrawal from or changes to local agreements (para. 7), and collective grievances (para 8).
- Every attempt should be made to resolve an issue at local level before a failure to agree is registered (paras 7,8) and these efforts should continue throughout the procedure, irrespective of the level reached in the procedure. There is a responsibility on the governor to consult the trade union fully, and in a timely manner, on matters of joint interest when proposing change, and on both sides to join in discussion in a genuine attempt to reach agreement.
- After a failure to agree is registered, the aim is for all discussion at each stage (local, area and national) to be completed within each 21 day period (para 10). It is expected that a failure to agree will normally be resolved within a maximum period of 63 days of being registered.
- Status quo will prevail until the procedure has been exhausted. This means that the governor will impose no change in that area(s) specified in the failure to agree (para 12). The definition of status quo should be agreed between the governor and the trade union at the time the failure to agree is registered. If, after discussion, agreement on status quo is not reached, the governor should refer to IR Section, and the local branch officials to the NEC for advice.
- The terms of the agreement, in particular status quo, may be overridden in a clear operational emergency where events make such action necessary (para 13).

Edited book

(1999) (edited with White, G.) Employee Relations in the Public Services, London: Routledge.

ROUTLEDGE STUDIES IN EMPLOYMENT RELATIONS

EMPLOYEE RELATIONS IN THE PUBLIC SERVICES

Themes and issues

EDITED BY

SUSAN CORBY AND GEOFF WHITE

CARDIFF
UNIVERSITY
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CŴRDM



1 From the New Right to New Labour

Susan Corby and Geoff White

The public services are those public sector organisations providing public goods to citizens, excluding the public corporations. The main UK public services are central and local government, health care, education, the police, fire services and the armed forces and their employee relations have always differed from those in the private sector. This difference does not relate primarily to the absence of profit, a characteristic the public service sector shares with the private 'not for profit' sector, although clearly this limits the resources and strategies of both types of organisations. Nor does it relate to the greater strength of trade unions and collective bargaining in most of the public services compared with the private sector, because this has not always been the case and in some public services, i.e. the police and the armed forces, trade unions are outlawed. The difference is that, unlike the private sector, the fabric of public service employee relations is shot through with the all-important dimension of political power. As Storey has commented, the dilemmas for public sector managers 'derive . . . from the inherently political nature of the values and objectives which must inescapably govern the direction taken' (Storey 1992a: 55).

We start from Storey's proposition. Public service employee relations are different from those in the private sector because of the overarching importance of the political dimension and hence require separate detailed description and analysis. We begin by considering in depth the distinguishing characteristics of the employment relationship in the public services but, because today's public services do not exist in a vacuum, we then examine the context. Accordingly, we trace the historical development of employee relations in the public services and show how they have been affected from the 1980s by neo-classical economics and new public management. This has led to major changes in organisational structures and occupational composition. Next we discuss the issues posed in the book and the themes and trends common to many of the aspects of the employment relationship in the public services: the public/private sector boundary; decentralisation; flexibility; the erosion of collectivism and the decline of the public service ethos. Finally, we consider the implications of the election of a new Labour government in 1997.

A distinct approach

Public service employment relationships are unique in the degree of political control to which they are subject, as we have emphasised. Admittedly the private sector is also subject to the outcomes of political power through the employment policies and legislation of government and its economic and social programmes. In the final analysis, however, private sector employers remain free to regulate the employment relationship as they choose. In contrast, public service managers are governed by the political objectives of their elected masters, who – in a democracy – will normally change from time to time.

Five main features have been identified in the role of the state as an employer (Fredman and Morris 1989: 6). First, the state has the powers to initiate legislation and to govern. Second, it is not dependent on the output of its employees for its income, which it gathers through taxation. Third, it claims to represent the 'national' interest in order to justify its actions, which gives moral authority to its employment decisions. Fourth, constitutional constraints apply, at least in theory, to many public service employers which do not apply to others. For example, employment decisions in the public services may be subjected to judicial review (as in the case of the withdrawal of trade union recognition at GCHQ – the intelligence-gathering centre – without consultation), whereas similar decisions in the private sector would not be reviewable in the courts (Fredman and Morris 1989: 9). Fifth, public service employers operate through bureaucratic structures; a system of power relationships built on hierarchy rather than ownership of capital. This bureaucracy is designed to ensure that there are clear chains of command leading ultimately to ministerial accountability to Parliament and that there is consistency, equity and impartiality in the delivery of services to the public, even if on occasions bureaucracy may appear to impede such delivery. The public services have also been noteworthy for the power of professional interests over general management objectives. All these features have important implications for the employment relationship.

Nevertheless, the degree of political control varies. Civil servants are directly subject to the wishes of the government. There are no mediating forces and so employee relations changes in the civil service may be accomplished by ministerial decree, such as the introduction of contracting-out and the ending of national collective bargaining. In other public services there are mediating forces which may limit the authority of central government. They range from the relatively powerful, as in local government, where the controlling political party may differ from that of central government, to the relatively weak, such as the courts of governors of universities or the directors of NHS trusts. Whether there are mediating forces or not, however, the government controls the purse strings. Even local government, which has powers to raise revenue, derives half its funding from central government and other public services, such as the NHS or the police, are almost completely dependent on government funds.

Accordingly, central government can influence the way that employee relations are conducted through either the allocation of funds or legislation. An example of the first was when the government held back part of the funding for a pay increase for universities in 1992/93 until they could demonstrate that performance appraisal systems had been introduced, despite the supposed independence of higher educational institutions from central government. An example of the second was the passing of specific local government legislation aimed at introducing compulsory competitive tendering in 1980 and 1988.

At the same time, the public services are subject to other sources of power apart from central government: local democratic structures in the case of municipal government, Parliament and its committees in the case of central government, community health councils in the case of the NHS and local police authorities in the case of the police. So the political dimension encompasses a plurality of interests and the public services 'are enveloped in a much more complex web of relationships than simple customer-provider' (Storey 1992a: 56).

Historical background

Regularised employment in the public services can be traced back to the mid-nineteenth century and, in particular, to the social reforms which led to local government systems for towns and counties and to a growth in central government. The Northcote–Trevelyan report of 1853 introduced the concept of a meritocratic civil service with open recruitment conducted by independent boards and promotion based on performance, and led to the establishment of the Civil Service Commission in 1855, although open competition for jobs did not become obligatory on all departments until 1870.

Employee representation in the public services largely stems from the end of the nineteenth century, although there were unions organising in the public sector from as early as the 1870s. Not only did the craft unions organise their specific trades within the Royal Ordnance factories, Royal Dockyards and Stationery Office but there were also specifically public sector unions. The Post Office telegraphists held their first strike in 1870 and the National Union of Elementary Teachers was founded in 1870, partly in response to grievances over the 'payment by results' system for schoolteachers introduced in 1862 (Clegg *et al.* 1964: 31). Writing in 1920, the Webbs noted that the greatest development of trade unionism was among 'the employees of the National and Local Government [which was] . . . entirely a growth of the past thirty years' (Webb and Webb 1920: 507). These new, specifically public service, trade unions either represented a particular department (such as the Postmen's Federation and the Tax Clerks' Association) or a particular class of employees (such as the Second Division Clerks' Association) (Clegg 1976: 377). The constituent unions which created Unison, the largest public service union – COHSE, NUPE and NALGO – could trace their

origins back to the turn of the century. Despite this growth in public sector unions, national collective bargaining remained unsecured.

The breakthrough for employee representation came following the Whitley Committee of 1917, which recommended the establishment of collective bargaining and joint consultation throughout British industry. To give a lead, in 1919 the government adopted a Whitley system for its own employees: the national joint council for the civil service. In 1919 it also set up the Burnham Committee, based on Whitley principles, to deal with schoolteachers' pay and conditions. In local government collective bargaining was established at the level of regional provincial councils, with a national council to deal with disputes which could not be handled locally, although national level collective bargaining along Whitley lines was not introduced until after the Second World War, with the establishment of the national employers' body in 1948. In 1948 the creation of the National Health Service (NHS) led to new national bargaining systems for health workers based on Whitley principles.

In short, the Whitley model of joint regulation of the employment relationship predominated in the public services. Moreover, from the Second World War until the end of the 1970s, governments encouraged the development of trade unionism in the public services (apart from the police and the armed forces). As a result, union membership grew substantially, especially among white collar professionals. Unlike the private sector there was sometimes legal support for such collective organisation, as in education, where there was a statutory requirement to bargain.

The post-1945 public sector employee relations model was characterised by strong centralised and complex bargaining structures at national level; a diversity of bargaining groups and bargaining agents along sectoral and occupational lines; a commitment by both sides to conciliation and arbitration to avoid industrial conflict; and, for many public servants, a continuing emphasis upon pay comparability with the private sector. Other features (Hepple 1982) included *de facto* job security, pensions and sick pay for most public servants, effective grievance machinery, procedures for promotion and indeterminate boundaries of negotiation and consultation which often in practice worked to the advantage of the unions as the definition of the scope of collective bargaining was itself left open to interpretation and bargaining.

Indeed, some commentators have argued that up to the 1970s the government was a 'good employer' (Hepple 1982; Fredman and Morris 1989), though others have questioned this. Colling (1997: 658) comments that 'cost constraint, and its ramifications for the management of the public sector, were more prominent features of the "golden era" than is acknowledged in conventional accounts, which tend to emphasise the quest for consensus'. Moreover, as Thornley (1994) has indicated, the 'good employer' model did not stop public sector employers from keeping pay levels very low for many public servants. Nevertheless, the low paid groups in the public services, e.g. NHS ancillaries or support grades in the civil service, were usually paid better than their private sector counterparts (Low Pay Commission 1998: 45).

Be that as it may, until the early 1970s, public sector employee relations were relatively quiescent. Thus the Donovan Commission (Royal Commission 1968) had little to say about the public sector, which it saw as a haven of relatively peaceful industrial relations (coal mining apart). Furthermore, the 1960s and the first half of the 1970s witnessed a burgeoning of the welfare state, for instance the establishment of new universities, the raising of the school leaving age, the introduction of statutory maternity pay and a state earnings-related pension scheme. This expansion of public services and thus of labour in the public services led to a growth in employment costs which were largely underwritten by government (Winchester 1983).

From the mid-1960s to the 1970s, however, this peace was broken by a series of economic crises. In 1964 the Labour government made a prices and incomes policy central to its economic strategy, and new governments elected in 1970 and in 1974 first abandoned their predecessors' incomes policies and then introduced their own measures of wage restraint when faced with economic difficulties, which were exacerbated by the marked rise in oil prices from 1973. In 1976, in response to intervention by the International Monetary Fund, the Treasury introduced cash limits into the civil service and the NHS, with the result that public expenditure in these areas was no longer demand-led.

These government policies were increasingly opposed by the public sector unions, primarily because the government chose to set an example for all employers by strictly adhering to the prescribed pay limits for its own work force and, unlike the private sector, there was little, if any, collusion between the employer and unions to avoid the limits. Accordingly, from the early 1970s industrial action began to spread rapidly through the public sector as civil servants, local government workers, health workers and teachers began to exert their industrial power. This culminated in the 'Winter of Discontent' in 1978/79 which was an important factor in the fall of the Labour government.

The Conservative governments, 1979-97

In 1979 the election of a radical Conservative government under the leadership of Margaret Thatcher had profound effects on the future direction of employee relations in the public services. The slowing down of economic growth world-wide, with the less economically efficient countries such as Britain being hard hit, coincided with the new government rejecting the political consensus shared by all shades of government since the Second World War.

During the years of Conservative Party opposition in the 1970s leading right wing intellectuals and 'think tanks' developed radical critiques of the welfare state as 'under- and poorly-managed . . . an unaccountable monopoly, . . . professionally dominated, and lacking in client involvement' (Ferlie *et al.* 1996: 31). Building on the work of Hayek and Friedman, the New Right held that the market was the most efficient way of allocating goods and services,

with contracts between suppliers and customers. Accordingly, public services should wherever possible be subjected to market disciplines or proxies for them and government services should be provided by the private sector, if that was the most cost effective form of provision.

When the Conservative party took office, although it had an overarching ideology, it proceeded cautiously and pragmatically. For instance, it adopted a step-by-step approach to competitive tendering in local government. Indeed, the government's most pronounced changes did not begin until half-way through the period 1979–97, with major reorganisations of the civil service from 1988 and of the NHS from 1990 and the privatisation of civil service agencies from 1993. There were also sub-sectoral differences. For instance, the government imposed considerable change on the civil service but relatively little change on the police. Moreover, at times political and ideological considerations did not coincide, and the former predominated. An example is the creation of a pay review body for nurses and paramedical staff in 1983 and for teachers a decade later, rather than leaving the pay of these groups to be determined purely by market forces (see chapter 4). Bearing in mind these complexities, however, developments can be grouped analytically under four headings: involvement of the private sector in the provision of public services, proxies for market mechanisms, privatisation and producer capture.

Involving the public sector

Initially the government involved the private sector in the public services through compulsory competitive tendering (CCT), under which there are rival bids by the private sector and in-house teams, with contracts being awarded to the most cost effective. From 1980 central government required local authorities to put out to tender building repair, maintenance, highways and sewage work and then, in 1983, it required the NHS to put out to tender catering, cleaning and laundry services. The government extended CCT to other local authority services: building cleaning, refuse collection, street cleansing, catering, ground maintenance, vehicle maintenance and then sports and leisure management through the Local Government Act 1988. It also required local authorities to take cognisance of commercial criteria, for instance outlawing criteria based on gender equality. The Local Government Act 1992 marked a further step in CCT: the government required local authority white collar services such as housing management, legal, personnel and computing services to be put out to tender, as well as further manual services such as security and car parking (Escott and Whitfield 1995). To be better placed to win tenders and retain in-house services, local authorities often established direct service organisations, semi-autonomous units whose managers were given freedom to seek changes in working conditions and working practices.

Meanwhile, in the civil service, market testing, as competitive tendering was called, resulted in nearly £3 billion of activities being reviewed from April 1992 to September 1995 (Cabinet Office 1995). At the same time the

government took civil service tendering further with so-called strategic contracting out, whereby parts of departments or agencies were contracted out without any in-house bid being sought.

In addition, from the early 1990s the government resorted to the Private Finance Initiative (PFI). Under the PFI the private sector is a provider of both capital and services. This means that the scope of partnership is wider than under CCT/market testing. In addition, because the private sector is investing significantly, it becomes an influential partner, especially as PFI contracts are spread over many years (twenty-plus), unlike the shorter contracts (five years or less) awarded under tendering. Initially the PFI was used for transport projects but it was extended to hospitals, information technology and property. In 1994 the government announced that henceforward the Treasury would not approve any capital projects unless private finance options had been explored (Cabinet Office 1995).

Market mechanisms

Second, there were proxies for market mechanisms essentially from the late 1980s. Thus, in the civil service, executive agencies were set up following the so called Next Steps report by Sir Robin Ibbs (Efficiency Unit 1988). Separated structurally, financially and operationally from their policy-making parent departments, agencies operated semi-autonomously under a 'framework agreement', i.e. a quasi-contract, specifying their objectives, and were headed by a chief executive. By 1 April 1997 there were 110 agencies in the home civil service. In addition Customs and Excise, the Inland Revenue, the Crown Prosecution Service and the Serious Fraud Office operated on Next Steps lines, covering nearly 77 per cent of civil servants (Government Statistical Service 1998).

The mixture of ideological rationale and opportunism inherent in Conservative government policy is reflected in the changes to the structure of the NHS, as a result of the National Health Service and Community Care Act 1990. Towards the end of the 1980s there was a spate of newspaper stories about patients failing to obtain appropriate health care and there was thus political pressure on the government to reorganise the NHS. Its solution, a quasi-market, was both a pragmatic and an ideological response. In brief, the Act created an internal market where health authorities and general practitioner (GP) fundholders purchased health care from NHS hospitals, renamed trusts, each with a board of directors. Alternatively, purchasers could buy health care from private sector hospitals. In 1991 the first fifty-seven hospitals in England transferred from direct management by health authorities and became NHS trusts with certain financial and personnel 'freedoms' (NHS Management Executive 1990). By April 1997 all the hospitals in the UK had become trusts.

In education, too, there were changes designed to emulate market mechanisms and to respond to parents' concerns about the quality of schools.

Thus under the Education Reform Act 1988 and the Further and Higher Education Act 1992 further education colleges and higher education polytechnics (now new universities) and colleges, previously under local authority control, became independent corporations managed by boards of governors. As to schools, legislation in the 1980s in England led to 'local management of schools' whereby school governing bodies were given significant control over staffing and expenditure on services and head teachers became in some respects like managing directors of small businesses, having control of 85 per cent of their budget. Where schools chose grant maintained status, they could opt out of local education authority control entirely and had full freedom to determine the terms and conditions of staff, though in practice they rarely used it.

Privatisation

Third, New Right theories were used to justify privatisation. Initially privatisation centred on the nationalised industries and public utilities and not civil service agencies (Goldsworthy 1991). From 1992, however, privatisation was extended to civil service agencies, of which over a dozen had been privatised by the general election of 1997. In addition, parts of departments or agencies were privatised, for instance the information technology limb of Inland Revenue (Government Statistical Service 1998).

Preventing producer capture

A further ideological strand in the Conservative government's approach from 1979 to 1997 was public choice theory (Downs 1967): the notion that public service bureaucrats are as likely to act in their own self-interest as in the interests of citizens and that they seek status by budget maximisation and empire building. This theory of producer capture was extended by the New Right to professional bodies and public sector trade unions.

Producer capture could be obviated in a number of ways: by competitive tendering, internal markets and privatisation, as described above, by staff reduction targets for the civil service to be achieved by April 1984 (Blackwell and Lloyd 1989) and by capping local government rates from 1985. It could also be overcome by limiting the autonomy of professionals, a politically popular approach. For instance in the 1980s a national curriculum with standardised assessments in schools curtailed the professional independence of schoolteachers and the introduction of general managers and performance measures dented the power of doctors.

Perhaps the best example of the combination of ideology and opportunism is the Citizen's Charter, which sought to counteract producer capture by promoting public servants' responsiveness to their clients/customers (Cabinet Office 1991). The Citizen's Charter, launched in 1991, had six key principles: standards, information and openness, choice and consultation, courtesy

and helpfulness, putting things right and value for money. These principles, with their customer orientation, were estimable, at least superficially, and the Citizen's Charter spanned a range of public services, including the Inland Revenue, the prison service, the police and education (Cabinet Office 1992) It also spawned mini-charters, such as the patient's charter, the job seeker's charter, the parent's charter. (The use of quality control systems to control public servants and limit their autonomy is covered in detail in chapter 8.)

As to the trade unions, their power was weakened in the economy as a whole both by legislation (Wedderburn 1989) and by macroeconomic policies which led to levels of unemployment in the mid-1980s of 10 per cent or more, compared with 2–5 per cent in the 1970s (Burchill 1997). Public service unions in particular were weakened by the fall in the number of employees (see below) and by the government as employer adopting an anti-union approach (see chapter 10). Examples include the exclusion of unions from the Government Communications Headquarters (GCHQ) – the intelligence-gathering centre; the civilianisation of posts in the prison service, designed to weaken the hold of the Prison Officers' Association; and the removal of some 2,000 senior civil servants and half a million schoolteachers in England and Wales and half a million nurses from collective bargaining.

New Right theories meshed with the Conservative government's desire to constrain public expenditure. For instance, privatisation, justified on the grounds of neoclassical economic theory, raised money for the public purse. Similarly, staff reduction targets in the civil service and the NHS, justified on the grounds of public choice theories, reduced the government payroll. New Right theories also meshed with the Conservative government's desire to make the public services more cost effective and productive.

New public management

This new managerialist approach was dubbed the 'new public management' (Dunleavy and Hood 1994) but at least three definitions are available (Farnham and Horton 1996: 24). First, new public management is used as shorthand for the ideological tradition of 'managerialism' and 'neo-Taylorism' (Pollitt 1993). Second, new public management is used synonymously with business-centred management practices imported from the private sector (Hood 1990). Third, it is an umbrella term covering the transformation of bureaucratic, paternalistic and democratically passive public services into efficient, responsive and consumer-oriented ones (Ranson and Stewart 1994). Significantly, the rise of new public management ideas does not seem to be limited to the UK (Organisation for Economic Co-operation and Development 1992).

First, managerialism and neo-Taylorism: this emphasises the control of government spending, decentralising management, setting targets and measuring and rewarding performance. Examples include the introduction of general

managers into the NHS, the imposition of service standards on public servants through the Citizen's Charter (Cabinet Office 1991), the financial management initiative in the civil service (which devolved financial responsibility to cost centres) and the Rayner scrutinies. Named after Sir Derek Rayner of Marks & Spencer, these involved intensive study of a particular area aimed at improving efficiency and were pioneered in the civil service and then introduced into the NHS (Harrison 1988).

There is evidence that public servants believed that they were being subjected to work intensification, which is one of the effects of neo-Taylorism. Studies have reported that employees in the NHS (Edwards and Whitston 1991; Lloyd and Seifert 1993), in schools (Sinclair *et al.* 1995) and in universities (Wilson 1991) perceived that they were working harder and for longer hours.

There are a number of examples of the second way the term 'new public management' is used: business-centred management practices imported from the private sector. For instance, in 1996 the Conservative government introduced the private sector technique of benchmarking into the civil service on a pilot basis. It entails measuring civil service agencies against the Business Excellence Model: nine criteria developed by 200 private sector organisations (Cabinet Office 1998). Individual performance-related pay (IPRP) is another example of a practice widely used in the private sector and then transposed to the public services. Casey *et al.* (1992) found IPRP to be common (nearly 90 per cent) in organisations in the private sector. It became widespread in the civil service during the 1990s, although essentially restricted to senior managers in the rest of the public services (Incomes Data Services 1997). Other private sector techniques and practices introduced into the public services include accrual accounting and outsourcing. Of course this raises the question of whether such private sector techniques are appropriate in the public services. For instance, a study by the Institute of Personnel and Development (IPD 1998) of 1,158 organisations found that over half (51 per cent) of the public sector respondents believed that IPRP was having a negative effect on staff morale, as compared with 34 per cent in the private sector (see chapter 4).

As to the third way the term 'new public management' is used, this encompasses the organisational changes outlined above as well as the adoption of the managerialist approaches which have fallen under the headings of the first two definitions.

Employment patterns

Whether or not the public services have been made more efficient, employment patterns in the public services have changed. The post-war growth in public sector employment ended in the early 1980s, and there was a general decline from that point. As can be seen from table 1.1, however, the trends in employment varied within the sector. The armed forces, for example, have seen a continuous decline in numbers, whereas the police have seen

Table 1.1 Analysis of UK work force in employment: head count, mid-year (000)

Category	1961	1971	1981	1987	1995	1996	1997
Total work force in employment	24,685	24,669	24,498	25,266	25,835	26,031	26,526
Private sector	18,826	18,042	17,313	18,907	20,602	20,905	21,469
Public sector	5,859	6,627	7,185	6,359	5,233	5,126	5,057
Public corporations	2,200	2,009	1,867	985	1,524	1,510	1,521
NHS Trusts	—	—	—	—	1,085	1,102	1,121
Other	2,200	2,009	1,867	985	439	408	400
General government	3,659	4,618	5,318	5,374	3,709	3,616	3,536
Central government	1,790	1,966	2,419	2,312	1,058	989	941
HM Forces	474	368	334	319	230	221	210
NHS	575	785	1,207	1,212	97	84	78
Other	741	813	878	781	731	684	653
Local government	1,869	2,652	2,899	3,062	2,651	2,627	2,595
Education	785	1,297	1,454	1,486	1,188	1,191	1,187
Social services	170	276	350	398	412	406	400
Police	108	152	186	191	207	207	207
Construction	103	124	143	128	83	79	65
Other	703	803	766	763	761	744	736

Source: Safford and MacGregor (1998). *Economic Trends*, Office for National Statistics, © Crown Copyright 1998.

continuous increases until recent times. Central government has seen a significant reduction from 1987 to 1997, whereas the apparent decline in local government employment can be largely explained by the statistical reallocation of some education staff to the private sector. NHS employment has remained more or less static since the early 1980s, although NHS trusts (where the majority of NHS staff now work) have been reclassified as public corporations rather than 'general government' as before.

More important, there has been a change in the occupational composition of the public services. The proportion of manual workers employed has declined, while the proportion of non-manual employment has increased. This partly reflects the steady pressure of compulsory competitive tendering on local government and NHS manual worker staffing levels and has left a primarily white-collar administrative, technical and professional work force in the public services. The gender balance has also shifted in favour of female employees, who now make up almost two-thirds of the work force in the public services, although in the economy as a whole they make up about half the work force.

This changing occupational composition of the public sector is particularly important when we make comparisons with the private sector, which retains a more balanced work force in terms of manual and non-manual occupations. In general, women tend to be better paid in the public sector, compared with the private sector, while for men it is the reverse. This largely reflects the larger numbers of female professionals and managers in the public sector

(e.g. social workers, schoolteachers, nurses and professions allied to medicine), compared with the private sector. Also, the public services are more labour-intensive than the private sector, 'with labour costs approaching 80 per cent of costs' (Farnham and Horton 1996:14).

The following chapters

Unlike some other books on employee relations in the UK public services which take an organisational or sub-sectoral approach, this book adopts a thematic approach. It extracts key issues, allowing a more rigorous and coherent cross-sectoral critique than can be obtained from descriptive, organisation based texts. Nevertheless, every attempt has been made not to neglect the heterogeneity in the public services. For instance, the arrangements for determining pay vary quite widely and include pay review bodies and collective bargaining (see chapter 4) and the approach of the police and local government in respect of equal opportunities varies greatly (see chapter 5). Moreover, in some chapters a mini-organisational case study has been used to substantiate the arguments, for example accrual accounting in the NHS in chapter 2, or emphasis has been placed on a certain sub-sector where there has been most change, for example the employment status of civil servants in chapter 3.

The book's structure is separated into three parts: context, issues and players. Each chapter discusses the impact of particular sets of government policies on the employment relationship, aiming to be analytical, not prescriptive, and raises key questions. Thus a central question in chapter 2 is whether the provision of public services by the private sector is cost effective or not, particularly when the largely hidden costs of planning and monitoring are taken into account. The main question posed in chapter 3 is whether the importation of private law concepts has made public service employment indistinguishable from that in the private sector or whether there is now a new form of public employment. A key question raised by chapter 4 is whether changes in payment systems designed to make pay systems more like the private sector are reducing fairness, comparability and the 'employee voice' in pay determination. Chapter 5 asks whether equal opportunities are undermined by decentralised organisational structures because newly empowered line managers do not understand the equality dimension of their roles, or whether equal opportunities are enhanced because line managers have 'ownership'. Chapter 6 considers whether employment flexibilities are a result of public service employers seeking to contain costs or whether they are a result of employees seeking to make their work compatible with their domestic responsibilities. Chapter 7 considers whether competitive tendering has led to greater efficiency in service delivery or simply increased control by public service managers over their workers. The main question in chapter 8 is whether new quality initiatives are an attempt to improve services to the public or whether they are a technique for management control of the work force, using traditional appeals to the 'public interest' to defend a

cost-cutting agenda. Chapter 9 asks whether personnel managers are adopting a strategic role or whether their role continues to be predominantly administrative. Chapter 10 considers whether union merger activity has led to a decrease in inter-union competition or exacerbated union recruitment rivalries.

The themes

In addition to the issues explored in the individual chapters, the UK public services exhibit five themes and trends which span the book:

- the blurring of the public/private sector divide;
- decentralisation;
- the growth of flexibility;
- the erosion of collectivism;
- the decline of the public service ethos.

The blurring of the public/private sector divide

'There is no absolute frontier between the public and private sectors,' the previous government said (Cabinet Office 1995: 127) and we have already shown how structural and organisational changes such as privatisation, competitive tendering and the NHS internal market have made the boundary less distinct. The Private Finance Initiative takes this further because the government retains an ongoing role in PFI projects, usually as the main purchaser of the services provided by private consortia.

This blurring of the boundary, however, extends to the importation of private sector managerial techniques into the public services and to the unions. Public service unions, having followed their members, now recruit in the private sector, while predominantly private sector unions have increasingly been seeking recruits in the public services to bolster their falling membership and, for instance, the Manufacturing, Science and Finance Union (MSF) merged with the Health Visitors' Association in 1990 (Certification Officer 1991). The legal boundaries, too, have faded. For instance, civil servants now have contracts of employment like other employees although, like other public service employees, they have a special position under European Union law (see chapter 3).

Also, people from the private sector have increasingly been brought into the public services. For instance, non-executive directors of the boards of NHS trusts and health authorities have mainly been drawn from the private sector and in the years 1994–95 to 1996–97 inclusive, seventy-four senior civil servants were appointed from the private sector (Civil Service Commissioners 1997). Although the number is small as a proportion of the 3,000 strong senior civil service, it is an innovation, as traditionally senior civil servants have been recruited almost entirely from the more junior grades.

Decentralisation

There has been widespread decentralisation in the private sector and in the public services in the last two decades, both organisationally and financially. Another important facet of decentralisation in both the private sector and the public services has been the decentralisation of collective bargaining. In the public services this has been manifested in the civil service (four central agreements replaced by some 200 agreements), in further education, to some extent in the NHS (a complex system of local pay in a national framework from 1995 to 1997), but less so in local government or higher education. There has also been decentralisation of personnel management arrangements, for instance in the civil service stemming from the Cassels report in 1983, and in the polytechnics/new universities stemming from their incorporation in 1988.

Significantly, decentralisation has provided an impetus to union amalgamations: both the merger of Unison from three partner unions essentially in health, local government and the utilities and the series of mergers of civil service unions from 1988 to 1998 which resulted in a single union, the Public and Commercial Services Union (PCS), in place of four unions. It has had an impact on the role of personnel managers, starting to turn them from administrators into operators (albeit more gradually than the rhetoric suggests – see chapter 9). It has also had an impact on equal opportunities, with central equal opportunities units in local government and the civil service, for instance, being reduced or disbanded and responsibility being handed to the line (see chapter 5).

Yet the trend to decentralisation is not straightforward and there are centripetal pressures: the centre has an interest in exerting control, for instance to ensure efficiency, quality and consistency. Thus in the private sector there are many examples of so-called tight/loose arrangements and Marginson *et al.* (1988) found that often companies did not allow their establishments any discretion in many industrial relations issues. Research by Kessler and Purcell (1996) indicates that there are still constraints on decentralisation in the public services.

In the public services the centripetal pressures are compounded. This is because in the last resort ministers are accountable to Parliament for the public services. Thus there have to be centralised structures countervailing the new decentralised forms. There are numerous examples of centripetal pressures. For instance, in the civil service although collective bargaining is carried out in a myriad of departments and agencies, the Treasury keeps tight control and managers in agencies/departments need approval of their negotiating plans and further approval if there is any deviation in any detail (e.g. even shifting 0.5 per cent of performance pay from satisfactory performers to better performers at Vehicle Inspectorate in 1996 (Corby 1998)). In the NHS, both the Conservative Health Secretary and then the Labour Health Secretary ordered so-called self-governing NHS trusts to cut

their management costs (Brindle 1997). In education, central government imposed a national curriculum. It also introduced legislation to cap local authorities' tax-raising powers from 1985 and to require local authorities to put services out to competitive tender in 1988, as noted above.

Employment flexibility

Another common denominator is the growth of flexibility and again this trend is not limited to the public services. It has marked more of a departure from tradition in the public services, however, than in the private sector, as the former were characterised by hierarchy, centralism and rigidity until the 1980s. Moreover, the new ideas about public management and cost pressures set the context in which flexibility has become a major objective of many in the public services (Horton 1997).

Flexibility has many aspects, including organisational structures, pay, working time and work organisation. Looking at organisational flexibility, as we have seen, traditionally the public services were organised into large bureaucracies but the Conservative government policies resulted in the fragmentation of these large organisations, such as the NHS, local government and the civil service, into semi-autonomous structures. The stated aim was that these organisations should react more sensitively and rapidly to their customers' needs. Storey (1992a) points out that the Audit Commission was influential on this front, as it repeatedly indicated that bureaucracy was no longer an appropriate organisational mode for the public services. Similarly, pay in the public services, traditionally centralised and specific, has become more flexible; for instance (as we said), no longer is there civil service-wide pay determination and the 1997 local government single status agreement has a unified pay spine but without any specified rates of pay for particular jobs. Such flexibility enables employers to respond to local labour markets, or the imperatives of their set of activities, and to reward performance (see chapter 4).

Working time flexibility takes a number of forms, including temporary and fixed term contracts, part time work and annualised hours. According to the Labour Force Survey, workers in public administration, education and health were far more likely to be on temporary contracts than other employees, with fixed term contracts being a particular feature of temporary work in these public services (Sly and Stillwell 1997: 352). Also, there are high levels of part time employment in many areas of the public services, although this varies from nearly half of all employees in the NHS to virtually none in the armed forces. The Labour Force Survey also indicates that annualised hours contracts are particularly common in higher education and in schools compared with the economy as a whole (Casey *et al.* 1997). (See chapter 6.)

It should be stressed, however, that, as far as work organisation is concerned, there is little functional flexibility in the public services. Thus in

the NHS it is limited to the ancillary grades, with little functional flexibility among doctors and nurses (Corby and Mathieson 1997), and among manual workers in the direct service organisations of local authorities (White 1997).

The erosion of collectivism

Another trend is the erosion of collectivism and the growth of individualism. Again this is not limited to the public services. Nevertheless, as the public services have been characterised by extensive management/union involvement, this is a marked break with the past. Thus membership of public service unions has fallen in the last two decades, though far less dramatically than amongst private sector unions (2 per cent, compared with 40 per cent over the period 1979–96). Apart from the *cause célèbre*, GCHQ, there has been union derecognition in a few NHS trusts, particularly ambulance trusts such as Lincolnshire, Essex and Northumbria, as well as at the National Maritime Museum. Claydon (1996), comparing 1984–88 with 1989–93, found that the share of health and education in cases of union derecognition rose from 3.4 per cent to 9.6 per cent. This, however, must be seen in context: publishing, paper and print accounted for 22.9 per cent of cases of derecognition in 1989–93. Since Claydon's study the civil service unions have been partially derecognised in respect of 2,000 senior civil servants who have been taken out of collective bargaining and given personal contracts. These staff are now covered by the Senior Salaries Review Body.

Even where there was not derecognition, there has been an erosion of collectivism. For instance, by 1997 virtually all civil servants had at least an element of their pay determined by some form of individual performance-review and in some civil service agencies unions' views were given little or no consideration by management (Corby 1993/94, 1998). According to the Workplace Industrial Relations Survey of 1990 (Millward *et al.* 1992: 361), 'the proportion of workplaces in central government where managers said that management strongly recommended trade union membership for all employees halved between 1984 and 1990'. There are, however, signs that the 1997 Labour government may halt this trend (see below).

Nevertheless, public service unions, whatever political party is in power, are faced with managers' adoption of human resource management (HRM) and its inherent individualism. We do not set off at a tangent to discuss the competing and problematic definitions of HRM but adopt Storey's approach. He says that it is 'a set of interrelated practices with an ideological and philosophical underpinning [which] appears to align closely with prevailing ideas of enterprise, and the freeing up of managerial initiative' (Storey 1989: 3). The interrelated practices include direct forms of communication and involvement such as team briefing, staff attitude surveys and quality circles/teams. As Guest (1989) has pointed out, HRM values are fundamentally unitarist and assume that there are no inevitable differences of interest between managers and workers.

There are many examples of HRM practices in the public services, including team briefing, staff attitude surveys, total quality management and business process re-engineering (Corby 1993/94; Colling 1997). This is supported by Storey's research (1992b), two of whose fifteen case study organisations were public services: the NHS and Bradford Metropolitan Council. He points out, however, that HRM practices in these public services typically 'carried the mantle of being "experimental" (therefore probably temporary) add-ons' (Storey 1992b: 271).

Interestingly the unions, while far from welcoming the adoption of HRM techniques by employers, have adopted a similar approach towards their own members. There are many examples from the public service unions, although the phenomenon is not limited to them. For instance, stressing the union/individual member link, the Royal College of Nursing (RCN) established a twenty-four-hour hot line to give advice to members (Brindle 1998) and under the constitution of the Public and Commercial Services Union major decisions are determined by individual member ballots rather than branch meetings or the annual conference (Public Services, Taxes and Commerce Union 1997).

The decline of the public service ethos

Finally and more nebulously there has been the decline of the public service ethos. 'Ethos' is defined by the Organisation for Economic Co-operation and Development (OECD 1996: 14) as 'the sum of ideals which define an overall culture in the public services' as opposed to ethics which are 'the rules that translate characteristic ideals or ethos into every-day practice'. The public service ethos is based on values of standardisation, probity, risk aversion and fairness, and entails detailed rules for managers. The new public management emphasises entrepreneurial characteristics such as business need, cost minimisation, innovation and flexibility for managers to deploy their resources as they think fit.

The decline in the public service ethos owes something to the fact that managers recruited from the private sector into the public services sometimes did not appreciate the political dimension. Sir John Bourn, then Comptroller and Auditor General, said that such managers often had an inadequate grasp of the importance of accountability to Parliament and were often surprised to learn that they were subject to scrutiny for their handling of public money (Willman 1994). Similarly, Trosa (1994: 38) found that agency chief executives recruited from the private sector did not realise that, on occasion, they would have to make compromises between a preoccupation with efficiency and political requirements.

Not only does the risk to the ethos arise because private sector people have come into the public service, it also arises because public servants are increasingly involved in commercial operations with the private sector. They may lack judgement or expertise and/or take risks with public money.

Several examples have been uncovered in the NHS (Wighton 1998; Brindle 1995).

Civil servants have a particular ethical dilemma. To what extent do they owe allegiance to their minister or to Parliament? Although this dilemma is not new it was thrown into relief by the trial of Clive Ponting in 1985, who deliberately leaked confidential information in an effort to expose what he considered were his minister's misleading statements to Parliament. Various attempts have been made to address such ethical issues, including a memorandum by Sir Robert Armstrong – then the Cabinet Secretary – and the Nolan Committee which recommended independent scrutiny, awareness of obligations and codes of conduct. This resulted in 1996 in a civil service code with a right of appeal to the First Civil Service Commissioner (see chapter 3).

The Labour government is taking further steps as it is seized of the need to inject an ethos of accountability and probity. Accordingly, it has said that NHS trusts will be required to open up their board meetings to the public (Department of Health 1997) and is proposing that every local authority should bring in a code of conduct, based on a national model but tailored to its circumstances. It is too early to judge how effective these measures will be. Whatever the practice, however, the language of public servants has undoubtedly become entrepreneurial. As a regional manager in the Employment Service said: 'We now use words like "business agenda" but before . . . that would have sounded not only strange, but silly' (Corby 1998).

Beyond the millennium

As we have already pointed out, the government has a central role in public service employee relations. In 1997 there was a change of government from Conservative to New Labour. To what extent did 1997 represent the end of an era? We argue that it did not: 1997 marked the end of a chapter, not a new book, as the 'plot' has continued. In particular, the new government has adopted its predecessor's stance on public expenditure controls, though perhaps influenced more by pragmatism than by ideology. In any event, this continuity can be seen in many aspects of employee relations.

First, New Labour is retaining many of the employee relations institutions bequeathed by the Conservatives. This is well illustrated by pay determination machinery such as the pay review bodies, the Police Negotiating Board and the departmental/agency bargaining units in the civil service. Pay determination arrangements may change in the NHS but the threat of equal pay claims, rather than government policy, is likely to be the driving force.

Second, when it comes to pay policy, rather than institutions, there has been little or no change as yet. Thus the government, both before and after 1997, continued to support a policy that all public sector pay increases must be funded from within existing budgets through efficiency or other savings. This policy, introduced by a Conservative Chancellor, Kenneth Clarke, in 1994, was continued by Labour Chancellor Gordon Brown until 1999.

Beyond then there are no signs that the tight constraints on public sector pay will be lifted. On the contrary, the Chancellor is adamant that he will keep a tight grip on running costs, including wages in the public services. Moreover, the national minimum wage will hardly affect pay in the public services, at least in 1999 and 2000, as it is to be set at a level below virtually all the minima applying in the public services (Low Pay Commission 1998: 45). Performance-related pay continues to apply in the civil service, though in the NHS it seems that the move to local pay, vigorously resisted by the unions, is to be replaced by a national pay system 'with appropriate local flexibility' (Incomes Data Services 1998: 127).

Third, the structures of the public services seem set to continue. David Clark, then Chancellor of the Duchy of Lancaster, said of executive agencies in the civil service that the Labour Party was happy to support them 'in opposition as well as now in government' (Cabinet Office 1998). In the NHS 'the new system will go with the grain . . . The Government will retain the separation between the planning of hospital care and its provision' (Department of Health 1997: 11). In schools, New Labour in effect is proposing to extend the Conservative government's principles of grant maintained status to all schools and give them 100 per cent delegation of their budgets (Targett 1998b).

Fourth, New Labour is continuing and taking further the strategy of involving the private sector in the provision of public services, for instance in building and running private prisons and NHS hospitals under the Private Finance Initiative started by the Conservative government (Buckby 1997). Similarly, private sector companies are to participate in some 'education action zones', government-designated failing schools in socially deprived areas (Targett 1998a). Moreover, although the Chancellor of the Duchy of Lancaster said that the privatisation of civil service agencies 'is not on the agenda' (Institution of Professionals, Managers and Specialists 1998a), the Chancellor of the Exchequer subsequently announced plans partially to sell off the Royal Mint, one of the first agencies, as well as air traffic control, the Tote and the Commonwealth Development Corporation. Furthermore, a number of buildings and land owned by civil service departments are to be sold and local government is to be expected to raise revenue from property sales (Elliott and Macaskill 1998). Meanwhile, strategic contracting-out looks set to continue: for instance, the back-office operations of National Savings. Similarly the new government is continuing with market testing in the civil service, albeit its approach 'is pragmatic, not dogmatic' (Cabinet Office 1997), and with 'best value' in local government, albeit the criteria will not revolve around cost alone (Department of the Environment, Transport and Regions 1998).

Fifth, New Labour is extending its control over public service professionals. For instance, it is proposing a range of institutions and measures to control doctors, such as a National Institute for Clinical Excellence, a Commission for Health Improvement, which will carry out spot checks and

regular inspections, evidence-based service frameworks and so-called clinical governance whereby trust boards will have a duty to investigate adverse events. Similarly, there is to be a General Teaching Council to regulate teachers in England with representatives drawn not only from the teaching unions but also from local authorities, universities, school governors, parents and business (Carvel 1998).

Nevertheless, despite these continuities, the employee relations climate is different. Unions have been restored to GCHQ. Union leaders have much more access than before the general election to ministers. The public service unions, like their counterparts elsewhere, will benefit from the government's proposed statutory recognition procedure (Department of Trade and Industry 1998). In the civil service the Cabinet Office has urged departments and agencies to ensure that civil servants' letters of appointment and departmental staff handbooks state clearly that union membership is officially encouraged (Institution of Professional, Managers and Specialists 1998b). In the NHS, nationally the unions are to be involved in a task force on improving the involvement of front line staff and locally, through staff consultative committees, in dialogue about decisions affecting local health services (Department of Health 1997). The government, in its White Paper on the NHS, has said that the NHS: 'relies on the commitment and motivation of its staff . . . Involving all staff in service developments and planning change, with open communication and collaboration, is the best way . . .' (Department of Health 1997: 50, 51). This statement could apply to any part of the public services but it is still too early to assess whether it represents more than rhetoric.

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5 Equal opportunities

Fair shares for all?

Susan Corby

This chapter covers equal opportunities on grounds of gender, race and disability. Inevitably, however, there is more emphasis on gender, because it has had a higher profile for a longer period of time in terms of research and practice. Because this chapter's focus is employment, it does not cover the steps unions are taking to involve their female and ethnic minority members in union activity. (This is covered in chapter 10.)

There are two main arguments in this chapter. First, it is argued that the public services can be conceived of as a continuum as far as action on equality is concerned. At one end there is local government, which is generally held to be in the forefront, followed by the civil service. These have what Cockburn (1989) would call a long agenda on equal opportunities. Moving along the continuum, the National Health Service (NHS) has begun to devise equality measures, as has higher education. At the other end of the continuum are the uniformed services (armed forces, police, fire services) where there are well publicised instances of sexism and racism and which, to use Cockburn's phrase, have a short agenda on equal opportunities (Cockburn 1989). In other words, it is misleading to bracket all the public services together. (See Figure 5.1).

The second main argument is that progress towards equality is threatened by actions affecting the public services generally: these include the shift in the rationale for equality, organisational restructuring, the pressure on costs, contracting out and the use of performance pay.

Background, 1920–80

In the early decades of the century, discrimination against women in the public services was considered legitimate. Thus when the Sex Disqualification (Removal) Act 1919 was passed a proviso was inserted to allow restrictions to be placed on the mode of admission of women in the civil service and their conditions of service. Treasury regulations of 1921 required women civil servants to be single or widowed and it was lawful to reserve to men particular appointments in the civil service which were based abroad (Fredman and Morris 1989). In the early 1920s a few local authorities tried

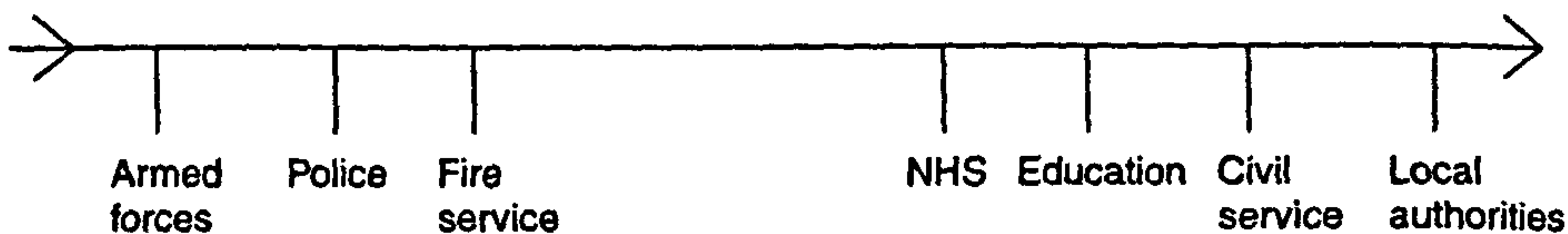


Figure 5.1 Action towards equal opportunities

to take a more progressive approach to their women employees, paying women the same as men for broadly similar work. However, in 1925 in *Roberts v. Hopwood*, a case centring on the London borough of Poplar, this policy was successfully challenged as *ultra vires*. It was held that Poplar's payment systems were unlawful as they were motivated by 'eccentric principles of socialistic philanthropy, or by a feminist ambition to secure the equality of the sexes'. Accordingly, it was not until after the Second World War that further significant progress was made. In 1955 the government introduced equal pay in the civil service, i.e. fifteen years before there was legislation on equal pay, as did local government, while teachers were given equal pay in 1962.

In 1970, i.e. five years before the Sex Discrimination Act, the civil service, concerned about the loss of experienced female civil servants, set up a committee, chaired by E. M. Kemp-Jones to make recommendations to enable women to combine a career in the civil service with their family responsibilities. Its recommendations, published the following year, were virtually unprecedented elsewhere in Britain. They included the provision of part time work, increased maternity leave and the establishment of a workplace nursery (Civil Service Department 1971). Some ten years later a joint management/union review group in the civil service, finding that only some of the Kemp-Jones recommendations had been implemented, produced a report (Management and Personnel Office 1982) which became the basis of a programme of action on women in 1984.

These developments owed much to legal imperatives: the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and equality legislation from Europe, not only the equal pay and equal treatment directives of 1975 and 1976 respectively but also progressive decisions from the European Court of Justice.

The developments also owed much to political imperatives. Until 1979 central government accepted that it had to be a good employer and set an example to other employers. After the Conservatives came to power in 1979, the government jettisoned what was a 'good employer' approach in many respects, such as consulting and bargaining with trade unions (Fredman and Morris 1989). Nevertheless, the Conservative government repeatedly emphasised its 'commitment to the civil service as a good employer, ensuring

equality of opportunity' (Cm 2748 1995: 2). Yet, because of its *laissez-faire* ideology, it was against further regulation and rejected arguments for strengthening the discrimination laws, maintaining that voluntary action by employers was best. Thus it needed to show that it could make that approach work.

Meanwhile local government was proactive. Like central government, it was motivated by the good employer model. Furthermore, Labour-controlled local authorities paid increasing attention to the values of fairness and justice, with the result that equality was given a high priority, particularly by left wing Labour authorities such as the Greater London Council (GLC) (until its abolition in 1986) and London boroughs such as Lambeth and Camden. Another driving force was councillors' responses to local electorates in multi-racial areas in the context of local authorities' obligation under the Race Relations Act 1976 to eliminate racial discrimination and to promote racial equality in carrying out their functions.

In the 1980s over 200 local authorities adopted equal opportunities policies, while unions and management jointly revised pay structures for local authority manual grades in 1987 to take into account 'equal pay for work of equal value' principles (Coyle 1989). The GLC was at the forefront of the drive to equality, setting up a range of political and organisational structures to support its policies. In addition, it and its sister organisation, the Inner London Education Authority, copied the practice of contract compliance from the US federal government. In 1983 they made compliance with equal opportunity procedures and practices a condition of securing a contract to provide goods and services and established a contract compliance equal opportunities unit to review the practices of contractors seeking retention on an approved list. A study (Institute of Personnel Management 1987) found that the unit had some success, resulting in significant numbers of companies changing their employment practices and procedures and the GLC's approach being copied by nineteen other local authorities, but then the Conservative government implemented the Local Government Act 1988, which outlawed contract compliance with regard to sex and disability and circumscribed it in respect of race.

The present position

It is perhaps unsurprising that the public services have taken major initiatives on women. Altogether, 4.75 million people work in the public services (over 5 million in the public sector) nearly 3 million of whom are women, i.e. almost two-thirds. This compares with the proportion of economically active women of just under a half. But this overall figure conceals wide discrepancies. In 1996, 79 per cent of employees in the NHS were women but the equivalent figure for the armed forces was 7 per cent. Also just over half (52 per cent) of women employed in the public services worked part time, whereas very few men did (8 per cent).

According to the Labour Force Survey, the number of ethnic minorities in the public services as a whole in 1997 was in line with the proportion of ethnic minorities in Britain who were economically active. Yet there were wide variations. For instance, the proportion of ethnic minorities in the armed forces was 1.4 per cent, compared with 5.7 per cent in the civil service and 7 per cent in the NHS.

Just as there is considerable variation in the number of women and ethnic minorities employed in the public services, there is also wide variation in the extent of action on equality. Cockburn (1989) argues that organisations can be distinguished on the grounds of having an equal opportunities agenda of shorter or greater length. At its shortest, the agenda involves measures to minimise bias in recruitment and promotion procedures. At its longest, its most ambitious and progressive, it is a project of transformation.

The uniformed services

At one end of the continuum are the uniformed services, where there are well publicised cases of sexism and racism and the equal opportunities agenda is short. The justification for discrimination against women pivots on the argument that women do not possess the physical ability and strength to perform operational duties. To accept physically inferior women as colleagues undermines the notion of the danger of the work so crucial to the uniformed serviceman's occupational image and sense of masculinity. Moreover, the high female wastage rates and limited female promotion to higher ranks reinforce the notion that women are uneconomic to employ. Indeed, the armed forces were initially not covered by the Sex Discrimination Act, but servicewomen dismissed on grounds of pregnancy established the right to bring actions for compensation under the Equal Treatment Directive. After some high profile cases and sometimes high awards, the Act was amended in 1994 to include the armed forces but to permit discrimination 'for the purpose of ensuring the combat effectiveness of the armed forces'. Meanwhile the spate of sex discrimination cases has continued.

The rationale for discrimination against those who do not comply with the occupational norm of a white, heterosexual male also stems from the emphasis on teamwork and cohesiveness, especially in the armed forces and/or in times of danger, when reliance on colleagues may literally be a matter of life or death. There is an assumption that, for a team to be effective, it has to be homogenous (Office for Public Management 1996). This is epitomised by the fact that at the time of writing it is lawful to dismiss homosexuals from the armed services.

As to racism in the armed forces, a report by the Office for Public Management (OPM) found that it was 'pervasive, long-running and deeply entrenched . . . Many people, including some at senior levels, believe that there is no problem to address – it is simply a media construction . . . [They believe that], if there is a problem at all, it is confined to the occasional

and unintentional mistreatment of an individual' (Office for Public Management 1996: 7). Indeed, equal opportunity policy statements were not issued until 1995 for the army and 1996 for the navy and the Royal Air Force (RAF) and formal policies do not necessarily change practice: the OPM found that racist name calling and racial taunts were general practice. It also found that some in positions of leadership were openly resistant to the prospect of increasing the proportion of ethnic minorities to the same level as their proportion in the population.

The OPM's findings are not inconsistent with those of the Commission for Racial Equality (CRE) (1996a). The CRE carried out a formal investigation into the Household Cavalry, which, it found, systematically failed to recruit blacks and Asians. But the CRE withheld a non-discrimination notice in 1996 when the MoD agreed to implement a wide-ranging equality action plan. A year later the CRE remained dissatisfied with the degree of progress (*Equal Opportunities Review* 1997). Indeed, it was not until October 1997 that service personnel were able to take claims of race discrimination to an employment tribunal and that the army introduced an equal opportunity action plan, a recruitment campaign targeted at ethnic minorities and a confidential telephone support line outside the chain of command for those complaining of sexual or racial harassment. In addition, ethnic minority recruiting targets were set by the minister for all the armed services (*Equal Opportunities Review* 1998). In response the CRE lifted its threat of a non-discrimination notice in March 1998.

As to the other uniformed services, although the police and fire services sought exemption from the Sex Discrimination Act, arguing that women could not/should not perform all the duties of an officer, they did not obtain it, unlike the armed forces. Nevertheless, the police are exempt in certain respects, including height requirements. The Metropolitan Police were the first force to issue a policy statement in 1987 and between 1984 and 1988 worked with the Equal Opportunities Commission to advance women's opportunities, while in 1989 the Home Office issued a circular urging all chief officers to eliminate discriminatory practices. Accordingly, there has been progress in the representation of women in all ranks of the service since 1990, and in 1995 they comprised 16 per cent of all police officers (Hansard Society 1996). Nevertheless, discrimination persists. The police culture is essentially hostile to women: there are still informal barriers, the virtual exclusion of women from some police specialisms and a lack of commitment amongst some chief officers (Little 1996). As the Hansard Society (1996: 17) said, 'it remains possible to identify a conflict of values between leaders and others within the service as a whole, which severely hinders women's opportunities'. Moreover, a Home Office study of ten forces found that four out of five policewomen said they had been sexually harassed (Millward 1993). Probably the best known case of discrimination in the police is that brought by Alison Halford against the Merseyside police force, alleging discrimination on grounds of non-promotion. It was settled out of

court in 1991, though other cases have been the subject of awards. Even where the case has not succeeded, such as *Waters v. Commissioner of Police of the Metropolis* 1995, the police have attracted adverse publicity, avoiding liability on a technicality. Thus the commissioner was not held liable because the sexual assault of Waters by her male colleague in police accommodation took place when both parties were off duty.

However, police culture is hostile not only to women but also to ethnic minorities and, although some police forces have recently started a drive to encourage more people from ethnic minorities to become police officers, much remains to be done if a presence equivalent to the proportion in the labour force is to be achieved. According to the Police Complaints Authority (1997: 9):

The number of allegations of sexual or racial harassment made by police officers against colleagues is a matter for concern. If the police are seen to treat their own colleagues in this way, how can they be relied upon to manage similar sensitive situations at the interface with the public?

In the fire services there is also severe under-representation of women, blacks and Asians relative to their presence in the labour force, and perhaps the worst case of discrimination concerned Tania Clayton, a female fire-fighter. An industrial tribunal found in her favour, as did the Employment Appeal Tribunal in 1996, and it was held that she had suffered numerous, often long running, acts of discrimination by colleagues and more senior officers. Against this background, progress, which had been slow, has started to be made. For instance, the height requirement for firefighters was abandoned in 1997. A distinguishing feature of the fire service, however, unlike the other uniformed services, is the proactive stance of the Fire Brigades Union, especially more recently. For instance, it financed the Clayton case even though some of its members had been involved in discrimination against her. It has established a national 'fairness at work' committee, appointed regional equality officers, set up a confidential telephone support line for members who are harassed and gives advice to representatives, including an education pack on negotiating a complaints procedure on workplace bullying (Fire Brigades Union undated). In contrast, in the armed forces there are no unions, while the Police Federation, which has a representational role but is not a union in law, has often been less than progressive.

National Health Service

Moving along the continuum, there is the National Health Service (NHS). Unlike the uniformed services, the majority of its employees are women, many of whom work part time, but women in general and part time women in particular are in a minority in senior positions. There have been a number of reports into women's employment in the NHS, identifying

formal and informal barriers to women's promotion, including that by Davies (1990), Goss and Brown (1991) and the Equal Opportunities Commission (1991). In response the Department of Health, on behalf of the NHS in England, became a founder member of Opportunity 2000, a business-led, voluntary campaign to increase the quantity and quality of women's participation in the work force by the year 2000. It established a women's unit as part of the NHS Executive and set eight Opportunity 2000 goals to be achieved by 1994 as a milestone towards the year 2000 (NHS Management Executive undated). However, only one of the eight goals was met in full, although significant progress was made in respect of some, but not all, the others (*Personnel Today*, 1994).

The Department of Health has been faced with cases of speech therapists claiming equal pay for work of equal value (settling some claims out of court), but these cases have implications for pay in other female dominated professions in the NHS, such as nursing and physiotherapy.

As to racial equality in the NHS, a number of studies have identified formal and informal barriers to the recruitment and promotion of ethnic minority staff. These include work by Baxter (1988), the King's Fund (1990) and Beishon *et al.* (1995) in respect of nursing, and by the CRE (1996b) into consultants and senior registrars. In 1993 the NHS Executive issued a programme of action for ethnic minority staff and began annual ethnic monitoring (NHS Management Executive 1993). However, over a third of NHS employers (38 per cent) did not provide information on the ethnic origin of at least 90 per cent of their staff in 1996. Moreover, in the North Thames region and the West Midlands region, where there are high numbers of ethnic minorities in the population, non-compliance was 60 per cent and 57 per cent respectively (MSF 1997). Of those providing information, sixty respondents reported that they did not employ any blacks or Asians, including the West Yorkshire Ambulance Service, Leicestershire Mental Health Service Trust and Oldham Family Health Service Authority, all in areas of high concentrations of ethnic minorities. The statistics also show a significant drop in the proportion of younger Asian and black nursing, midwifery and health visiting staff: whereas 12 per cent aged forty-five and over were non-white in 1996, the comparable figure for those under thirty-five was 6 per cent (MSF 1997).

Accordingly, there are signs that much needs to be done, particularly in respect of racial equality, while equality for disabled people has barely reached the agenda. A 1994 survey found that trusts were 'giving considerably higher priority to setting numerical goals to address the under-representation of women than that of ethnic minorities or disabled people' (*Equal Opportunities Review* 1994).

Perhaps in recognition of this, the NHS women's unit was superseded by an equal opportunities unit in 1996. Its immediate tasks include developing training materials for board members of NHS trusts, commissioning a wide range of positive action programmes and improving the use and collection of

ethnic monitoring data. If these initiatives are sustained, the NHS may move along the continuum. Moreover, especially since the 1997 general election, NHS managers have been making greater efforts to involve the unions (many of whom have long-standing progressive policies), realising that a joint approach is more likely to succeed than a purely managerial one.

Education

In the universities, too, equality for women has a higher profile than equality for ethnic minorities and disabled staff. Nevertheless, although over a quarter of academics are women, they are concentrated in the lower grades, comprising only 8 per cent of professors (Griffiths 1997). Moreover, although nearly all the universities and colleges of higher education had equality policies and issued guidelines on recruitment and selection procedures, only a minority had an action plan or trained *all* their staff involved in recruitment and selection, according to a recent survey. As to disabled people, only 41 per cent of respondent universities and 25 per cent of colleges had a policy on the employment of disabled people (Commission on University Career Opportunity 1997).

Higher education, with its diversity of pay structures covering groups such as academics, clerical and administrative workers, technicians and manual workers, is potentially vulnerable to claims of equal pay for work of equal value. Accordingly, the employers are developing a new job evaluation scheme which aims to compare all jobs from porter to professor. As Towers Perrin, the management consultants used by the employers, have found that women are consistently underpaid compared with their male counterparts, radical changes in pay structures seem likely.

As to primary and secondary education, most school and local education authorities have equal opportunities policies but they do not view equality issues as a 'high priority', according to research carried out for the Equal Opportunities Commission over the period 1984 to 1994 (Arnot *et al.* 1996). This has been exacerbated by local management of schools (LMS), which makes schools responsible for budgets (see chapter 1) and, as resources are scarce, has resulted in equal opportunities often being seen as a luxury.

The civil service

Moving along the continuum, the civil service has attempted to take action towards greater equality for women for several decades, with the 1984 programme of action being superseded in 1992 by a new programme. Statistics over the period 1984 to 1997 indicate that both the proportion and the number of female civil servants have grown even though overall there has been a fall in staff numbers. Moreover, there are now greater proportions of women in senior grades: for instance 15 per cent of posts in the senior civil service were filled by women in 1997, compared with 6 per

cent in 1984. Perhaps the progress of women in the civil service owes much to the development of part time working at all levels: the number of part time staff grew from 15,774 in 1984 to 55,000 in 1997, with 12 per cent of women at Senior Civil Service level working part time. As to ethnic minorities, the first programme of action only dates back to 1990. Some progress has been made: 5.7 per cent of civil servants were of ethnic minority origin in 1997, compared with 4.2 per cent in 1989. However, although the number of ethnic minority staff has risen in the first management grade (executive officer), from 2.9 per cent in 1989 to 4.8 per cent in 1997, it has barely risen over the same period in the Senior Civil Service. Indeed, ethnic minority staff comprise 1.6 per cent of the Senior Civil Service (Government Statistical Service 1997).

Last but not least, in 1994 a programme of action for disabled people was introduced. Here again, there are disproportionately few disabled civil servants in the higher grades. In 1997, 3.8 per cent of all civil servants were self-declared disabled people but there were only 1.3 per cent in the Senior Civil Service (Government Statistical Service 1997).

The civil service, however, is alive to the need to make further progress. In 1998 a single, overarching programme for action to achieve equality of opportunity replaced three separate programmes for women, race and disability. In addition, it is seeking to improve the ethnic monitoring arrangements in departments and agencies, giving bursaries to disabled civil servants who have demonstrated outstanding potential and implementing the recommendations of the 1995 advisory panel to improve the representation of ethnic minorities and disabled staff in the Senior Civil Service, for example on posting policies, mentoring schemes and rehabilitation leave for those newly disabled (Cabinet Office 1998).

The official side of the civil service has a long tradition of involving the trade union side in equality issues, e.g. the joint review group on the employment of women in the civil service 1980–82 and joint efforts to promote ethnic monitoring in the civil service in the late 1980s. However, since Labour took office in 1997 there has been a deeper partnership on equality.

Local government

Local authorities, of all the public services, have been the most proactive on equality for the longest period of time. They have what Cockburn (1989) would call a fairly long equal opportunities agenda. However, it is important to note that, essentially, the main thrust has come from the large metropolitan authorities and that many small and more rural authorities have been slower to act. Overall, though, a multiplicity of initiatives have been taken, including target setting, measures to enable employees to combine work and parenthood, special women-only training for skilled manual jobs, mentoring, networking and fast track schemes for ethnic minority staff, secondments, sponsorship and bursary schemes for ethnic minority staff, job open days for

disabled people, automatic shortlisting of disabled applicants and council sub-committees on equality and equality units. Most important, resources have been deployed and political will has been demonstrated at least in some councils.

In addition, local government has led other sectors nationally in addressing equality between full-timers and part timers, who are predominantly women. To this end, for instance, the sick pay schemes for manuals and non-manuals and the occupational pension scheme were changed in 1993 and the rules on holiday entitlement in 1994 (White 1997). Also at national level the Local Government Management Board (LGMB) has adopted various measures, such as a women's leadership programme to help women become chief executives and career development centres for black and ethnic minority managers. Yet progress still needs to be made. For instance, according to the LGMB (1996), in 1996 only 7.5 per cent of chief executives in local authorities in England and Wales were women and white managers in general were responsible for greater numbers of staff than black or ethnic minority managers.

The main union, Unison, has often very actively supported equality measures and together with the other unions concerned negotiated a new framework agreement on pay in 1997. The agreement, which covers 1.5 million local government workers, makes equal value a central principle. It provides for single status and a single pay spine for all below chief officer, and is based on a jointly developed job evaluation scheme. (See chapter 4.) Although the scheme is not mandatory, any authority which does not apply it runs the risk of legal challenge. Meanwhile, bonus payments, which are more common among male than among female manual local government employees (Local Government Management Board 1995), are being reviewed by a joint working group at the time of writing.

A public/private sector divide?

These initiatives, described above, are threatened by a number of recent developments which are discussed below. First, however, consideration is given to whether there is a public/private sector divide on equality, given that the public services range from the most progressive (local authorities) to the most backward (the armed forces). In the private sector, too, examples can be found of progressive companies and backward ones. Yet there are differences. The Opportunity 2000 campaign, which aims to improve the quantity and quality of women's jobs, reports that private sector member organisations appear to focus on career development and other enabling measures which help women to advance their careers and move up through the organisation. Public sector member organisations appear to focus on eliminating the barriers which impede women's progress by launching initiatives which help employees to strike a better balance between work and home, i.e. family friendly facilities (Opportunity 2000 1996). Moreover,

a survey by the Department of Social Security (1997) found that women employed in the public sector were more likely to continue in paid work after the birth of a baby than women employed in the private sector (79 per cent, compared with 57 per cent in 1996), while an earlier survey found that the private sector lagged well behind the public sector in the levels of seniority at which it employed women and in the encouragement it gave mothers to continue working (Summers 1991). But although the public sector may lead the way on gender equality, it does not do so on racial equality. According to the 1992 survey of industrial tribunal applications, whereas 5 per cent of cases involved public sector employers overall, the figure rose to 38 per cent in respect of race discrimination (Tremlett and Banerji 1994). The reason for this is not clear: the proportion of ethnic minorities in the public sector is roughly in line with the proportion of economically active ethnic minorities.

The threats

Equal opportunity initiatives, as we have seen, are to be found in many areas of the public services, particularly central and local government. To some extent the socio-legal environment in which they are formulated is supportive: there is increasing awareness of equality issues, as the growth in the membership of Opportunity 2000 and the creation of a sister campaign to cover ethnic minority issues, Race for Opportunity, attest. Moreover, the spate of equality legislation continues, such as the European directive on parental leave and the government's review of the disability discrimination legislation. Yet, at organisational level, progress on equal opportunities in the public services is threatened. The main threats are the shift in emphasis from the social justice case to the business case as a rationale for equality initiatives, organisational restructuring, cost pressures and new contractual relations. In addition, performance pay in the civil service may be discriminatory.

The rationale for equality

Organisations' rationale for equal opportunities is being based increasingly on the business case. It is argued that equal opportunities can help organisations to compete in the labour market, attract the best people for the job and promote on the basis of merit, not stereotype. Moreover, it is argued that equal opportunities can enhance organisational effectiveness: organisations perform better if managers are diverse and have different perspectives and are better able to understand the organisation's customers. Although business case arguments are to be found throughout the public and private sectors, their prevalence in the public sector represents more of a break with the past. The private sector has always been profit oriented, while the social justice case resonated in the public services, where central and local government particularly were motivated by arguments of equity and fairness.

In theory, these business case arguments, based on self-interest, are likely to be persuasive and offer a way to get equality identified as a strategic issue and trigger action. But in practice the business case may threaten progress on equality. As Dickens (1994) points out, it is contingent and partial. Economic rationality in terms of cost benefit can point away from equal opportunities as well as towards it. An illustration of Dickens's point is provided by an NHS personnel manager who explained a lack of measures to improve the retention of female staff by the lack of turnover of qualified nurses (Corby 1995).

Organisational restructuring

Another threat to equality is organisational restructuring. As outlined in chapter 1, unified bureaucracies in the public sector have been broken up into semi-autonomous units, such as executive agencies in the civil service, hospital trusts in the NHS, grant maintained schools in education and direct service organisations in local authorities.

The effect on equality of these looser structures is detrimental. The centre is disempowered and can no longer drive policies forward. It can set a framework, issue codes and manuals on, for instance, recruitment and selection. It can also disseminate good practice and act as a forum for the exchange of information. Yet it cannot directly control. Thus the report by the Commission for Racial Equality (1996b: 5) on the appointment of NHS consultants and senior registrars said:

The greatest concern today is that the structural changes which have taken place in the NHS mean that responsibility for recruitment to senior medical posts is now dispersed from regional health authorities to a large number of trusts, whose equal opportunity policies and practices are likely to be less well developed.

The looser structures also make monitoring more difficult. For instance, the civil service unions claimed that the delegation of pay and personnel management to departments and agencies prevented effective equality monitoring in the civil service (Institution of Professionals, Managers and Specialists 1997) and the Cabinet Office essentially confirmed this (1996: 13). More recently, however, the Cabinet Office (1998) has pointed out that against a background of delegation to departments and agencies of most human resource management responsibilities, including those for equal opportunities, progress has continued to be made.

Allied with this organisational restructuring is devolution to the line. It has been argued that line managers' enhanced powers in such traditional personnel management areas as recruitment and promotion are favourable to equality. As the report of the advisory panel on equal opportunities in the senior civil service put it, line managers traditionally considered

'personnel responsibilities in general and equal opportunities in particular to be someone else's problem. The new approach reinforces the responsibilities of line managers' (Cabinet Office 1995: 25). The research evidence, however, is less sanguine. For instance, a report on civil service promotion procedures, which looked at seven departments and agencies, found that many line managers were unaware of the potential for discrimination on grounds of gender, race and disability in staff appraisal reports and that there were departmental variations in the provision of training for line managers and in briefings for promotion board members and chairs (Stewart 1993). Updating this research, the author points out that most of the recent changes in promotion procedures have resulted in greater delegation to line managers, which will allow even greater variations (Stewart 1996).

In local government, research for the Equal Opportunities Commission (Escott and Whitfield 1995) found that managers of direct service organisations (DSOs), i.e. the semi-autonomous units within local authorities, appeared to have a poor understanding of equal opportunities.

Cost pressures

This devolution of responsibility to line managers is taking place at the same time as cost pressures on the public services increase. This has harmful effects on equality for four reasons. First, central equality resources are being cut back and so there is less support on equality issues for line managers. For instance, at Manchester City Council, separate equality units for race, gender and disability were first merged and then abolished. In 1996, according to the Council of Civil Service Unions, the equality unit in the Cabinet Office was reduced, with a loss of a third of its staff, while the equality unit in the Department of Transport was closed.

Second, cost reductions have led to lower staffing levels and organisational delayering. As women and ethnic minorities are concentrated at the base of organisations and at the lower levels in each occupational hierarchy, a reduction in promotion opportunities because of delayering means there is less likelihood of changing the organisation's gender and race profile. Furthermore, reduced staffing levels can lead to increased work loads, which may disproportionately impact on women. Coyle (1995) found in her study of five organisations (three in the public services) that excessively long working hours for managers had become the norm. Partly this is due to work intensification, because organisations have become flatter. Partly, long working hours have become an indicator of commitment. As a result, many women have 'to make a stark choice between their careers and their families' (Coyle 1995: 60).

Third, the severe funding restrictions throughout the public services inevitably impact on the resources available for equal opportunities. Oswick and Grant (1996), looking at fourteen public service organisations, found that among eight categories of personnel specialisms, cutbacks had affected

equal opportunities and training most, while industrial relations and management services had fared best, experiencing only moderate reductions. Similarly, Coussey (1997), who looked at two civil service agencies and two local authorities, found that equality training was being sacrificed. In addition, in 1996 the Department of Social Security shelved for three years its ethnic origin follow-up survey in the department and its three agencies because there was no separate resource allocation for it (*Personnel Today* 1996).

Fourth, cost pressures across the public services are prodding organisations to economise on staff costs. For instance some local authorities, such as Islington and Camden, have cut maternity benefits and leave for the care of dependants (Incomes Data Services 1997). Also the number of casual staff and staff on fixed term contracts has risen and this has adversely impacted on women. For instance, according to the LGMB, in 1995 women comprised 69 per cent of permanent teachers but 85 per cent of non-permanent teachers. According to the National Association of Teachers in Further and Higher Education (NATFHE) women were almost twice as likely to be employed on fixed term contracts in the new universities as men (Hart 1998). Furthermore, the use of casual staff can in practice obviate equal opportunities in recruitment. Thus in 1996 the Civil Service Commissioners said:

In more than one case we found . . . that very large numbers of casual staff were being recruited, without fair and open competition, as the normal means of staffing a high proportion of continuing routine tasks. We also found instances of extensions to appointments made without fair and open competition being allowed as a matter of routine.

(Civil Service Commissioners 1997: 19)

Contracting out

Another significant threat to equality in the public services is contracting out. The full details are given in chapter 7. Here the focus is on the adverse impact which tendering has had on equality. Research carried out for the Equal Opportunities Commission in Great Britain was based on thirty-nine local authorities and four services: cleaning and school catering, which have predominantly female work forces; refuse collection, which has a predominantly male work force, and sports and leisure management, which employs equal numbers of men and women. The research found that women, especially part time women, suffered a decline in hours and a decline in take home pay, unlike their male colleagues; and women were more likely than men to lose their jobs, while the number of disabled workers employed decreased (Escott and Whitfield 1995). Research by the Equal Opportunities Commission for Northern Ireland (1996) into health and education paints a similar picture, while Kelliher (1996), looking at NHS catering in England, found that concessions on hours and working practices were more often obtained from women, especially part timers, than men.

Since 1993 the Transfer of Undertakings (Protection of Employment) Regulations have applied to the public sector. The regulations aim to protect the terms and conditions of employees who are contracted out, but they do not apply to all contracting-out. Nor do they apply to public service employees who agree to modify their terms and conditions so that they are better placed for an in-house bid. So the gender impact of contracting looks set to continue. Moreover, although the move towards competitive tendering in the public services came from the Conservative government which held office until 1997, the Labour government seems set to retain tendering (see chapter 7).

Performance pay

Another threat to equality is the use of performance pay. Admittedly, performance pay is less prevalent in the public than in the private sector. It is found in the civil service for all grades, with some departments and agencies entirely basing an individual's pay progression on performance. But it is less significant elsewhere in the public services, where it mainly applies only to senior managers in the NHS and some local authorities (see chapter 4). There is some evidence that merit pay schemes discriminate against women and ethnic minorities. Cabinet Office figures (*Bulletin* 1991) indicate that as the grade rises the balance of performance markings changes, with more staff marked as performing significantly above the requirements of the grade at higher levels than at lower levels of the civil service. As there are fewer women than men and fewer ethnic minorities than whites at higher levels, there is a disproportionately adverse impact. Furthermore, a study by the Commission for Racial Equality, in which three departments participated, revealed that the performance ratings of ethnic minority staff in certain grades were significantly lower than those of white staff in the same grades (Cabinet Office 1993: 21). In addition, a Department of Transport study (Civil Service College 1995) found that in every grade ethnic minority staff received a significantly lower proportion of higher box markings than other staff. Nevertheless, performance pay looks set to continue in the civil service, as it provides managers with a way of rewarding the few while limiting the cost of the overall pay bill.

Conclusions

This chapter has shown that there is wide variation in the extent of initiatives in and progress towards equal opportunities in the public services, with some organisations having longer equality agendas than others. In the uniformed services there are numerous instances of overt sexism and racism, with the main emphasis being placed on measures to minimise bias in recruitment and promotion procedures. In many local authorities there is a record of positive action.

Just as one can describe a glass of water as half full or half empty, so one can view progress on equality from two perspectives. For instance, taking an optimistic stance, one can highlight the fact that the number of women in the first management grade of the civil service (executive officer) rose from 29 per cent in 1984 to 47 per cent in 1997. Alternatively, taking a pessimistic stance, one can highlight the fact that, although women comprise 51 per cent of all civil servants, they comprised only 15 per cent of senior civil servants in 1997 (Government Statistical Service 1998). Similarly, one can say optimistically that the percentage of ethnic minority civil servants is higher than the percentage of ethnic minorities in the economically active population. Alternatively, looking specifically at Asian representation in the civil service, one can say pessimistically that 'Britain remains an unequal and unfair society' (Vaz 1997: 28). Whatever one's perspective, the evidence suggests that much remains to be done, especially in respect of ethnic minorities and even in those organisations which have made a significant attempt to further equal opportunities.

Yet it remains doubtful whether much progress will be achieved. On the one hand, ministers are voicing concern about equal opportunities, including the Home Secretary in respect of the civil service and the Health Secretary in respect of the NHS, and the legal environment is supportive, e.g. the European Court of Justice has made a spate of progressive decisions. On the other hand, a number of developments in the public services threaten further progress. These include the organisational restructuring that has taken place, which has led to the breaking up of unified organisations into semi-autonomous units; delegation of personnel management to line managers who may be unaware of the equal opportunities dimension of their activities; pressure to cut costs, with equal opportunities providing a relatively easy target; and the continuation of tendering and outsourcing, which have had an adverse impact on part time women. Thus, ministers' warm words apart, the outlook for significant progress on equality in the public services remains at best uncertain.

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10 Trade unions

The challenge of individualism?

Hamish Mathieson and Susan Corby

Trade union organisation has always been influenced by the character of the employment relationship, the structure of industry and labour markets and the composition of the labour force.

(Winchester 1988: 493)

No consideration of public service trade unions can be isolated from the political, legal and economic context in which they operate. Nor can trade unions be divorced from their main function of negotiating pay. However, readers are referred to other chapters in this book, as the context is not rehearsed here. Instead, this chapter focuses on the public service unions themselves, essentially since 1979. After briefly looking at the background, it examines trends in union membership and density, then goes on to consider union behaviour in terms of structure, organisation and industrial action. The main points are that:

- Union membership in the public services is becoming an increasing proportion of all union membership.
- Public service union density has declined, albeit to a lesser extent than in the private sector.
- On the whole, single occupation unions have grown more than their multi-occupation counterparts.
- There has been a spate of union merger activity.
- Public service unions have become more political and more militant.
- There has been a noticeable move to managerial unionism; with a shift from an activist focus to a member focus.

Background

From the end of the First World War to 1979 public service unions essentially operated in an environment which assisted their growth and development. The government, as either direct or indirect employer, encouraged collective bargaining and joint consultation, for instance through so-called Whitley Committees. It also encouraged union membership. From 1979,

however, this changed. The Conservative government was of the view that the public services were 'the home of powerful trade unions which were unconstrained by market forces' (Kessler and Bayliss 1995: 149). Accordingly, public service employers withdrew union recognition in some organisations. The most high profile case was the withdrawal of union membership rights at Government Communication Headquarters (GCHQ) in 1984, but other examples include the withdrawal of union recognition at the National Maritime Museum and in some NHS trusts, such as Northumbria Ambulance and Mulberry. The government, as employer, also withdrew collective bargaining rights, for instance from schoolteachers and certain senior civil servants.

Allied with this was a shift in emphasis from a collectivist to a more individualistic approach, for instance the use of performance pay in the civil service, communications by managers to employees individually, rather than through workplace representatives, and a range of quality initiatives (see chapter 8). Also, essentially through contracting out, privatisation and increased control over labour costs, there has been a reduction in the number of those directly employed in the public services, thus cutting the pool of potential and actual union members. In addition, there was a legislative programme imposing increasing legal restraints on all trade unions in respect of industrial action and making industrial action by prison officers unlawful.

In sum, the environment became more hostile for public service unions from 1979 to 1997 as employers departed from consensus-based formal jointism to display, to a greater or lesser extent, the characteristics of union marginalisation. This is illustrated by the handbook for civil servants. Up to the late 1980s the *Handbook for the New Civil Servant* encouraged civil servants to join the union appropriate to their grade and play an active part. Then it was changed to say that civil servants were encouraged to play an active part in their union, if they decided to join. By 1997 at least one large executive agency in its handbook for new recruits was silent about union membership (Corby 1998).

With the change of government in 1997 came signs of a more friendly environment for public service unions. For instance, union rights were restored to those at GCHQ, albeit on a no-strike basis. Nevertheless, there has been no marked break with the past in terms of public expenditure (see chapter 2) or pay (see chapter 4).

Having briefly considered the background, this chapter now looks at trends in union membership and density.

Union membership and density

Union membership

Union membership in the public services grew during the twentieth century until 1979 (Fryer 1989). The most remarkable growth was in the post-war

Table 10.1 Membership of public service trade unions, TUC-affiliated and non-TUC-affiliated, and police federations, at the end of 1979, 1985, 1991 and 1996

<i>Organisation</i>	<i>1979</i>	<i>1985</i>	<i>1991</i>	<i>1996</i>
TUC-affiliated unions	2,899,094	2,729,054	2,561,442	2,578,245
Non-affiliated unions	527,742	695,823	790,809	791,099
Total	3,426,836	3,424,877	3,352,251	3,369,344
Police federations	113,050	120,462	126,885	124,710
Total for public services	3,539,886	3,545,339	3,479,136	3,494,054

Sources: Certification Office data; Police Federation data.

period. According to Bain and Price (1983), public service union membership grew by 160 per cent between 1948 and 1979. However, in 1979–96 aggregate membership growth has been reversed: total membership, including the police federations, fell by 1.3 per cent, or 1.7 per cent if the latter are excluded. (The police federations have a representational role but they are not trade unions in law.)

The decline in the membership of unions organising predominantly or exclusively in the public services (a 2 per cent decline) is far less severe than for the whole economy, where membership fell by 40 per cent over the period 1979–96. As a result, union members in the public services are becoming an increasing proportion of total union membership. The proportion was 26 per cent in 1979 but by 1996 it had risen to 42 per cent. In addition, some of the large private sector TUC-affiliated unions such as GMB (formerly GMBATU, the General Municipal Boilermakers' and Allied Trades' Union), the Transport and General Workers' Union (TGWU) and the Manufacturing Science and Finance Union (MSF) have significant numbers of members in the public services. In 1996 about one in three GMB members was employed in the public services. The figures for MSF and the TGWU were one in seven and one in nine respectively. Taking into account the contribution of the general unions, almost half of total union membership was located in the public services in 1996. Moreover, eight out of the seventeen unions with over 100,000 members were public service based (Certification Office 1997).

As table 10.1 shows, TUC and non-TUC unions fared differently. TUC-affiliated public service unions lost 11 per cent of their membership between 1979 and 1996, whereas non-affiliated union membership increased by 50 per cent. The bulk of the increase in the membership of non-affiliated public service unions occurred in the first half of the 1980s. Farnham and Giles (1995) attribute the increase to a favourable combination of expansion in employment for public service professionals, the shock of restructuring and concern among moderate staff about taking the sort of industrial action favoured by TUC-affiliated unions.

Tables 10.2 and 10.3 look at unions individually. Kelly categorises unions as militant or moderate. Militant unions are defined as willing to take industrial action, having an ideology of conflicting interests and relying strongly on the mobilisation of members. Moderate unions are defined as taking industrial action infrequently or not at all, having an ideology of partnership and strongly relying on employers. (For a full discussion of militant and moderate trade unions see Kelly 1996.) In fact, the militancy/moderation thesis does not explain the membership gains and losses among public service unions. For instance, the moderate Association of Professional Ambulance Personnel (APAP) experienced a severe decline (43 per cent from 1985 to 1996), but the moderate Association of Teachers and Lecturers (ATL) grew by 91 per cent over the period 1979–96. Over the same period the militant Prison Officers' Association (POA) significantly increased its membership (by 33 per cent), but the most militant of the teachers' unions, the National Union of Teachers (NUT), declined by 7 per cent.

Another inadequate explanation is TUC affiliation. Some unions which have seen sizeable increases are TUC-affiliated, such as the Association of First Division Civil Servants (FDA), which caters for senior civil servants and has seen its membership increase by 63 per cent between 1979 and 1996. But some are not, such as the doctors' union, the British Medical Association (BMA), which has seen a 54 per cent increase over the period 1979–96.

Size is also an unconvincing explanation. Looking at the period 1979–96, the 300,000 strong nurses' union, the Royal College of Nursing (RCN), grew by 90 per cent and the 200,000 strong teaching union, the National Association of Schoolmasters and Union of Women Teachers (NAS/UWT), by 54 per cent. Yet the Royal College of Midwives (RCM), with 35,000 members in 1996, grew by 75 per cent from 1979 to 1996 and the British Association of Occupational Therapists (BAOT), with 15,000 members, grew by 139 per cent. A more robust explanation may be related to occupational coverage. The more general unions have declined while most, though not all, single occupation unions have grown.

A further important trend is the continued feminisation of public service trade union membership. According to the Certification Officer the number of female members rose by 333,935 or 18 per cent between 1979 and 1996. At the same time the number of male union members declined by 391,427, or 25 per cent. As a result the proportion of female membership of public service trade unions was 66 per cent in 1996. This is slightly higher than women's share of the public sector labour force.

Union density

The strength of unionisation may also be measured by the proportion of actual members expressed as a percentage of potential members, i.e. those in employment in the relevant occupation/sector. This provides a more

Table 10.2 Membership of TUC-affiliated public service unions, at the end of years 1979, 1985, 1991 and 1996.

<i>Union</i>	<i>1979</i>	<i>1985</i>	<i>1991</i>	<i>1996</i>	<i>% change 1979-96</i>
<i>General public services</i>					
National and Local Government Officers Association ^a	753,226	752,151	759,735	-	+0.8
National Union of Public Employees ^a	691,770	663,776	551,165	-	-20.3
Unison ^b	-	-	-	1,374,583	-
Total	1,444,996	1,415,927	1,310,900	1,374,583	-4.9
<i>Central government</i>					
Association of First Division Civil Servants ^c	5,820	5,509	9,994	9,473	+62.8
Civil and Public Services Association ^d	223,884	146,537	124,566	116,681	-47.9
Civil Service Union Inland Revenue Staff Federation ^e	45,464	31,212	-	-	-
65,257	55,118	57,011	-	-12.6	
Institution of Professionals Managers and Specialists	102,142	89,238	90,434	77,818	-23.8
National Union of Civil and Public Servants ^f	107,957	84,275	112,761	-	+4.4
Prison Officers' Association	20,469	23,777	27,224	27,322	+33.4
Public Services Tax and Commerce Union ^g	-	-	-	149,262	-
Scottish Prison Officers' Association	2,567	3,021	4,099	3,218	+25.4
Total	573,560	438,687	426,089	383,774	-33.1
<i>Education</i>					
Association of University Teachers	30,881	31,232	32,960	37,054	+20.0
Educational Institute of Scotland	48,550	43,324	47,169	50,185	+3.4
National Association of School Masters/Union of Women Teachers ^h	152,222	169,839	179,937	238,472	+56.7
National Association of Teachers in Further and Higher Education	70,652	77,386	73,907	70,157	-0.7
National Union of Teachers ^h	290,740	253,672	214,675	271,299	-6.7
Undeb Cenedlaethol Athrawon Cymru ⁱ	-	-	-	3,613	-
Total	593,045	575,453	548,648	670,780	+13.1
<i>Local government and related</i>					
Association of Magisterial Officers ^j	-	-	-	5,280	-

Table 10.2 (Continued).

<i>Union</i>	<i>1979</i>	<i>1985</i>	<i>1991</i>	<i>1996</i>	<i>% change 1979-96</i>
Community and Youth Workers Union ^k	—	—	—	2,393	—
Federated Union of Managerial and Professional Officers ^l	—	—	—	10,897	—
Fire Brigades Union	41,533	45,895	51,881	55,341	+33.2
Greater London Staff Association ^m	17,089	15,449	—	—	(-9.6)
National Association of Probation Officers ⁿ	—	6,225	6,765	6,779	+8.8
Total	58,622	67,569	58,646	80,690	+37.6
<i>Health</i>					
British Orthoptic Society ^o	—	—	—	1,032	—
Chartered Society of Physiotherapy ^p	—	—	—	47,903	—
Community and District Nursing Association ^q	—	—	—	4,133	—
Confederation of Health Service Employees ^r	212,930	212,980	201,993	—	-5.1
Health Visitors' Association ^s	12,185	15,952	—	—	+31.0
Hospital Consultants' and Specialists' Association	3,756	2,486	2,351	2,264	-39.7
Society of Radiographers ^t	—	—	12,815	13,086	+2.1
Total	228,871	231,418	217,159	68,418	-70.1
Total for public services	2,899,094	2,729,054	2,561,442	2,578,245	-11.1

Source: Certification Office data.

Notes

- a Percentage change in membership refers to the period 1979-91. Includes members in the public utilities.
- b UNISON was formed by the amalgamation of COHSE, NALGO and NUPE in 1993. Includes members in the public utilities.
- c Figures for the Association of First Division Civil Servants from 1991 include those for the Association of HM Inspectors of Taxes, which transferred engagements in 1989.
- d The CPSA and Public Services Tax and Commerce Union (PTC) amalgamated in 1998 to form the Public and Commercial Services Union (PCS).
- e IRSF amalgamated with NUCPS in 1996 to form PTC. Percentage change in IRSF membership relates to 1979-91.
- f The NUCPS was formed as a result of the merger of the Society of Civil and Public Servants and the Civil Service Union in 1988. NUCPS amalgamated with the Inland Revenue Staff Federation to form the Public Services Tax and Commerce Union in 1996.
- g PTC was created on 1 January 1996 out of the merger of IRSF and NUCPS.
- h Membership figures include non-serving teachers, retired and student members.
- i UCAC (National Association of Teachers in Wales) affiliated to the TUC in 1995. Membership increased by 40.8% over the whole 1979-96 period. For 1979-91 figures see table 10.4.
- j Affiliated to the TUC in 1995. Membership increased by 13.1% over the whole 1979-96 period. For 1979-91 membership figures see table 10.4.

- k Affiliated to the TUC in 1995. Membership increased by 51.2% over the whole 1979-96 period. For 1979-91 membership figures see table 10.4.
- l MPO affiliated to the TUC in 1996. Membership increased by 75% over the whole 1979-96 period. For 1979-91 membership figures see table 10.4.
- m The GLSA transferred engagements to the GMB in 1988.
- n Affiliated to the TUC in 1983. Figures relate to 1985-96.
- o BOS affiliated to the TUC in 1996. Membership declined by 15.1% over the period 1985-96. For 1985-91 membership figures see table 10.4.
- p Affiliated to the TUC in 1992. Membership increased by 32.9% over the whole 1979-96 period. For 1979-91 membership figures see table 10.4.
- q CDNA affiliated to the TUC in 1996. It received a certificate of independence from the Certification Office in 1995.
- r COHSE amalgamated with NALGO and NUPE in 1993 to form Unison.
- s The HVA merged with MSF in 1990.
- t Affiliated to the TUC in 1990. Membership increased by 59.4% over the whole 1979-96 period. For 1979-85 membership figures see table 10.4.

Table 10.3 Membership of non-TUC-affiliated unions in the public services with over 1,000 members, and Police Federation, at end of years 1979, 1985, 1991 and 1996

<i>Union</i>	<i>1979</i>	<i>1985</i>	<i>1991</i>	<i>1996</i>	<i>% change 1979-96</i>
<i>Central government</i>					
Association of Government Supervisors and Radio Officers ^a	12,026	-	-	-	-
Association of HM Inspectors of Taxes ^b	2,518	2,426	-	-	(-3.6)
Immigration Service Union ^c	-	1,192	1,724	2,183	(+83.1)
Prison Governors Association ^d	-	-	1,155	1,032	(-10.6)
Prison Service Union ^e	-	-	-	2,316	
Total	14,544	3,618	2,879	5,531	-62.0
<i>Education</i>					
Association of Cambridge University Assistants ^e	1,166	1,096	1,159	1,085	-6.9
Association for College Management ^f	-	-	1,466	3,277	(+123.5)
Association of Educational Psychologists ^{g,j}	-	1,163	1,728	2,096	(+80.2)
Association of Head Teachers in Scotland ^f	-	-	1,240	1,466	(+18.2)
Association of Teachers and Lecturers ^g	87,407	113,453	141,504	166,793	+90.8
Association of University and College Lecturers ^h	3,006	3,021	3,019	3,029	+0.7
National Association of Educational Inspectors, Advisers and Consultants	1,095	1,394	2,341	2,452	+123.9
National Association of Head Teachers	23,329	29,762	38,140	43,617	+87.0

Table 10.3 (Continued).

<i>Union</i>	<i>1979</i>	<i>1985</i>	<i>1991</i>	<i>1996</i>	<i>% change 1979-96</i>
National Association of Teachers in Wales (Undeb Cenedlaethol Athrawan Cymru) ⁱ	2,566	3,064	3,311		- (+29.0)
National Society for Education in Art and Design ^j	2,495	2,223	2,505	2,365	-5.2
Professional Association of Teachers	19,294	39,333	41,174	40,178	+108.2
Scottish Further and Higher Education Association	1,748	1,679	1,780	1,253	-28.3
Scottish Secondary Teachers' Association	8,720	7,598	7,246	7,116	-18.4
Secondary Heads' Association	4,451	6,704	7,776	8,696	+95.4
Total	155,277	210,490	254,389	283,423	+82.5
<i>Local Government and related</i>					
Association of Magisterial Officers ^k	4,668	3,928	4,170		- (-10.7)
Association of Public Service Finance Officers ^l	3,220	2,877	-		- (-10.6)
Association of Public Service Professional Engineers ^l	1,938	1,841	-		- (-5.0)
British Union of Social Work Employees ^m	-	1,235	2,480	3,818	(+209.1)
Community and Youth Workers' Union ^k	1,583	2,001	2,246		- (+41.8)
Federated Union of Managerial and Professional Officers ⁿ	6,225	8,770	11,956		- (+92.1)
National Association of Fire Officers ^o	3,933	3,999	-		- (+1.7)
Retained Firefighters' Union	8,741	5,340	4,198	4,061	-53.5
Total	30,308	29,991	25,050	7,879	-74.0
<i>Police federation</i>					
Total ^p	113,050	120,462	126,885	124,710	+10.3
<i>Health</i>					
Association of Clinical Biochemists	1,870	2,260	2,561	2,244	+20.0
Association of NHS Officers ^q	5,179	4,477	4,318		- (-16.6)
Association of Optometrists ^r	-	4,541	4,956		- (+9.1)
Association of Professional Ambulance Personnel	-	4,584	2,978	2,626	(-42.7)
British Association of Dental Nurses ^s	2,574	2,631	2,642	2,406	-6.5
British Association of Occupational Therapists ^t	6,417	7,682	11,503	15,367	+139.5

Table 10.3 (Continued).

Union	1979	1985	1991	1996	% change 1979-96
British Dental Association	12,424	15,516	15,206	15,435	+24.2
British Dietetic Association ^u	—	2,375	2,936	4,128	(+73.8)
British Medical Association	65,624	78,147	86,043	101,334	+54.4
British Orthoptic Society ^v	—	1,216	1,185	—	(-2.5)
Chartered Society of Physiotherapy ^w	36,052	31,528	36,521	—	(+1.3)
General Dental Practitioners Association ^j	2,074	2,428	3,656	1,980	-4.5
Hospital Physicists' Association ^x	1,264	1,423	1,481	—	(+17.2)
Royal College of Midwives	20,631	26,518	34,710	35,194	+70.6
Royal College of Nursing	161,962	251,127	293,193	307,094	+89.6
Society of Chiropodists and Podiatrists ^y	4,497	5,145	5,761	6,458	+43.6
Society of Radiographers ^z	8,211	11,222	—	—	(+36.7)
Total	328,779	452,820	509,650	494,266	+50.3
Total for public services	641,958	817,381	918,853	915,809	+42.6

Sources: Certification Office data; Police Federation data.

Notes

- a Merged with IPCS in 1984.
- b Percentage change relates to 1979-85. Transferred engagements to FDA in 1989.
- c Percentage change relates to 1985-96.
- d Percentage change relates to 1991-95.
- e Figure relates to end-1997. PSU received a certificate of independence in 1995.
- f Percentage change relates to 1991-96.
- g This organisation was named Assistant Masters' and Mistresses' Association until 1992.
- h Last figure relates to August 1997. This organisation was named the Association of Polytechnic Teachers until 1990 and the Association of Polytechnic and College Teachers until 1992. AUCL merged with the Association of University Teachers in September 1997.
- i Percentage change relates to 1979-91. UCAC affiliated to the TUC in 1995.
- j Received a certificate of independence between 1985 and 1991.
- k Percentage change relates to 1979-91. Affiliated to TUC in 1995.
- l Transferred engagements to FUMPO in 1986.
- m Percentage change relates to 1985-97.
- n Received a certificate of independence in 1985. Affiliated to the TUC in 1996. For 1996 membership see table 10.2.
- o Percentage change figures relate to 1979-85. Transferred engagements to EETPU in 1990.
- p Figures relate to England and Wales.
- q Percentage change relates to 1979-91. Transferred engagements to NALGO in 1992.
- r Percentage change figures relate to 1985-91. This organisation's certificate of independence as a union was withdrawn by the Certification Officer in 1994.
- s This organisation was named the Association of British Dental Surgery Assistants until 1994. Received a certificate of independence between 1979 and 1985.
- t Last figure relates to 30 September 1997.
- u Last figure relates to end February 1997. Affiliated to the TUC in 1997.
- v Percentage change figures relate to 1985-91. Affiliated to the TUC in 1996. For 1996 membership see table 10.2.
- w Figures relate to 1979-91. Affiliated to the TUC in 1992. For 1996 membership see table 10.2.
- x Transferred engagements to MSF in 1993.
- y Affiliated to the TUC in 1997.
- z Figures relate to 1979-85. Affiliated to the TUC in 1990. For membership figures 1991-96 see table 10.2.

accurate estimate of union penetration, as it reduces the risk of inflating figures by the inclusion of retired and unemployed members.

Union density in the public services, like union membership, was highest in 1979, when it was estimated at 96 per cent in central government, 78 per cent in local government and education and 76 per cent in health services (Waddington and Whitston 1995). Across the public services as a whole density was 80 per cent. By 1987 density in central government had declined sharply, to 76 per cent, and in health services marginally, to 73 per cent, while in local government and education it had risen by almost five percentage points. Accordingly, in 1987 across the public services as a whole, union density remained virtually unchanged (79 per cent, compared with 80 per cent in 1979). This presented a sharp contrast with the marked decline in union density in manufacturing, from 73 per cent to 60 per cent over the period 1979 to 1987 (Waddington and Whitston 1995).

Labour Force Survey findings (see Bird and Corcoran 1994; Cully and Woodland 1997) permit detailed analysis of density trends since 1989. The findings make sobering reading for public service unions and put membership trends in perspective. Union density has declined across the public services from 80 per cent in 1979 to around 55 per cent in 1996. The largest drop has occurred in central government (from 96 per cent to 61 per cent) but a substantial decline has also taken place in health services. For example, density in hospitals fell by thirteen percentage points between 1989 and 1996 to 54 per cent. In contrast, union density in schools was more stable – 63 per cent in 1989 and 59 per cent in 1996 – and density levels among particular segments of the public sector workforce, such as teachers, nurses, firefighters and professions allied to medicine, remained high, over 75 per cent in 1996. Moreover, public service unions' density levels are still significantly higher than that of all unions.

The decline in union membership and density has been explained by the reluctance of individuals to join a union born out of anti-collectivist ideology and failures in union organising capacity (Bailey 1994; Kelly 1990). Waddington and Whitston (1997), however, qualify this. In a large scale survey of over 5,000 respondents across the public services they reported that collective reasons, such as the need for mutual support and improved pay and conditions, were central to the decision to join a union. Over 70 per cent said that they had joined to obtain 'support if I had a problem at work'. But in health services members were also concerned that the union served perceived 'professional' needs at work, such as legal advice and training. Waddington and Whitston concluded that their evidence 'provides little support to those arguing that individualisation has dissolved labour movements since 1979' (1997: 537). Such conclusions echo those of Kerr, whose study of local government and health workers found that 'there appear to be no fundamental attitudinal reasons why non-unionists in these industries would not join a union' (1992: 52).

Waddington and Whitston also examined the role of union organisation in the recruitment of new members. Respondents were asked whether their recruitment into the union had been the result of an initiative taken by the

union, or of themselves, or on the recommendation of management. Findings relating to the public services indicate that a higher proportion of members had joined as a result of their own initiative in contacting the union (a third) than had been recruited by a workplace union representative (a quarter). Only 5 per cent had been encouraged to join by management. The relative weakness of workplace recruitment is highlighted by comparison with engineering and other manufacturing, where shop stewards accounted for half of recruitment. These findings suggest that deficiencies in local union organisation in the public services are hindering recruitment efforts.

Union structure

Open/closed unions

The analytical distinction drawn by Turner (1962) between 'open' and 'closed' unions is useful in seeking to classify unions in the public services by their recruitment strategies. An open union is one which is 'actively recruiting, or seeking mergers with other unions in new occupational or industrial areas', while a closed union 'concentrates on its existing territory, aiming to make that a strong point of organisation and bargaining strength' (Coates and Topham 1980: 35).

Many public sector unions are closed, for instance, the teachers' unions such as the NUT and the NAS/UWT, the National Association of Probation Officers (NAPO), the Fire Brigades' Union (FBU) and APAP. Seifert, referring to the unions catering for the professions allied to medicine, considers that they seek 'to control the qualifications of their professions and to act to enhance and protect the labour supply side of their activities' (1992: 96). As noted above, there are also a few open unions operating in the public services, such as MSF, GMB and the TGWU. They are predominantly private sector, multi-occupational unions eager to increase recruitment in the public services to make up for losses in their traditional heartlands.

Moreover, there are degrees of openness and closedness. A union can, for example, be closed vertically, in that it has no ambition to recruit a range of grades and occupations, while being open horizontally, recruiting a grade across industrial boundaries. For instance, the RCN is open only to qualified nurses but recruits both those employed in the National Health Service (NHS) and in private health care organisations. The position is not static. For instance, the civil service union, the Institution of Professional Managers and Specialists (IPMS), has followed its members when their organisations have been privatised, as has Unison.

Number of unions

The total number of independent unions in the public services rose from fifty-eight in 1979 to sixty-four in 1985 and then fell to fifty-three at the

beginning of 1998, the quickened pace of amalgamations reducing the number. Nevertheless, despite amalgamations, there is still much multi-unionism, though its form varies. For instance, in central government, where there are eight unions with over 1,000 members, there are relatively clear jurisdictional lines. In local government and in health care, where there are twenty-two unions with over 1,000 members, there are overlapping organising territories. For instance, five unions seek to represent nurses.

Looking solely at the TUC camp, the number of unions remained relatively constant throughout the 1980s but actually rose in the 1990s. This reflects a spate of affiliations of relatively small unions, such as the Society of Radiographers and the Chartered Society of Physiotherapists. By 1997 53 per cent of all public service unions were TUC-affiliated, while the proportion of total TUC-affiliated unions accounted for by unions in the public services rose from 23 per cent in 1979 to 37 per cent in 1997.

Mergers

Change in union structure encompasses both merger activity and arrangements which fall short of merger but aim to improve co-operation between unions (Willman and Cave 1994). Although merger activity in public service unionism was muted in the 1980s, more radical developments followed in the 1990s in all areas except education. Mergers take two principal forms in law: a transfer of engagements, which involves the absorption of the transferring organisation into a larger body whose legal identity remains unchanged, or amalgamation, where a new union replaces the amalgamating organisations. Undy *et al.* further distinguish between the two forms of merger by noting that in amalgamations 'the two parties are likely to see themselves as having similar status or as equals'. In transfers of engagements 'the minor union . . . is normally involved in surrendering autonomy in exchange for some gain such as security' while the larger union 'will probably not change significantly their present system of organisation and power structure in order to accommodate the incoming union' (1996: 48).

In the civil service, for example, the union for executives, the Society of Civil and Public Servants (SCPS), amalgamated with the union for support grades, the Civil Service Union (CSU) in 1988, then the amalgamated union, the National Union of Civil and Public Servants (NUCPS), joined up with the Inland Revenue Staff Federation (IRSF) in 1996, then that amalgamated union, the Public Services Tax and Commerce Union (PTC), joined up with the union for clerical workers, the Civil and Public Services Association (CPSA) to form the Public and Commercial Services Union (PCS) in 1998. Underlying such structural change has been a decline in civil service employment (see chapter 1) combined with the devolution of bargaining over terms and conditions to departments and executive agencies, which has put a strain on unions' resources and caused intensification of effort in servicing members. As the PTC leadership said: 'large savings will be possible inside

a single union. Plain logic and common sense say that you need a single union to represent all the grades and types of work in which you are now involved' (PTC 1997: 2).

Changes in the external environment are also important in explaining the amalgamation between three unions: the Confederation of Health Service Employees (COHSE), the National Union of Public Employees (NUPE), which mainly organised manual workers in local government, water and the universities and unqualified health workers, and the National and Local Government Officers' Association (NALGO), which mainly organised administrative and clerical workers in local government, health, education and the utilities. Together these three unions formed Unison in 1993. The areas where these unions organise have been subject to privatisation, contracting out and restructuring into semi-autonomous provider units. Like the civil service, this has resulted in a decline in the number of employees and, in the health services at least, some proliferation of bargaining units.

The merger to form Unison sought to fulfil a number of objectives. First, it aimed to eliminate the potential for inter-union competition for members, of which there was a history in the 1980s, particularly between NALGO and NUPE (Undy *et al.* 1996) as, unlike the civil service, there are no discrete organisational lines in health and local government (see above). Secondly, the merger sought to enhance the eligibility of the new union to represent all sections of the workforce, a potential attraction for employers in terms of recognition for local bargaining (Waddington and Whitston 1995). Thirdly, the merged union sought to deploy the attributes of size and resources as part of its recruitment appeal, particularly among the professions allied to medicine in the NHS, which are often without direct representation at single bargaining tables in NHS trusts (Corby 1992).

However, as Terry notes, the formation of Unison is likely to do little to reduce its underlying recruitment rivalries with the traditional general unions. The latter, such as the GMB, which formed a public services section in 1992, and the TGWU, are 'constantly looking to expand their membership base into new sectors and occupations' (Terry 1991: 100). Similarly, the formation of Unison does nothing to prevent the continued competition for nurses between Unison and the RCN.

A number of mergers were effected through transfers of engagements. They took three forms. First, small TUC-affiliated unions became absorbed into larger TUC-affiliated unions. Examples include the 16,000 strong Greater London Staff Association taking shelter in the GMB in 1988 and the 16,000 strong Health Visitors' Association joining MSF in 1990. Second, small non-TUC-affiliated organisations joined large TUC unions. Examples include the 840 strong Scottish Health Visitors' Association merging with Unison in 1996 and the Association of University and College Lecturers (AUCL), with 3000 members, joining the Association of University Teachers (AUT) in 1997, providing the latter with a toehold in the 'new' universities and giving rise to competition with the National Association of Teachers

in Further and Higher Education (NATFHE), the erstwhile polytechnic lecturers' union.

Third, smaller non-TUC-affiliated organisations moved into larger non-TUC-affiliated organisations. For example, in 1986 no fewer than nineteen organisations of local authority officers, most with membership levels in tens and hundreds, voted to merge with FUMPO, a specialist and senior managerial public service union.

In short, although merger activity has led to some simplification of union structure in the public services, there are still a plethora of unions and many areas of inter-union competition.

Inter-union co-operation

An exclusive focus on merger activity ignores the growth in other forms of inter-union collaboration. Firstly, federal arrangements have been attempted as an alternative to a full merger. Thus IPMS, faced with declining membership and the need to service members covered by an increasing variety of bargaining units, became part of a federation with the Post Office's Communication Managers Association (CMA) and British Telecom's Society of Telecom Executives (STE) in 1992. These three unions sought savings by pooling common non-bargaining services, such as research, education, legal services, press and publicity, while maintaining their separate identities and industrial autonomy (Willman and Cave 1994). However, the federation fell apart in 1995. According to the IPMS annual report of 1995, this was because of a 'clash of cultures and the independence required by all partner unions'.

Another unsuccessful attempt at federal arrangements occurred in higher education. With the ending of the so-called binary divide between universities and polytechnics, the two unions for academics, NATFHE, which organised in the polytechnics, and the AUT, which organised in the universities, set up a confederation in 1993 aimed at developing common policies and sharing staffing and other resources (IRS 1993b). However, this was discontinued in 1996, largely because of policy differences, and in fact, as a result of AUCL's merger with the AUT (see above), there is inter-union competition where previously there was none.

More successful than these short lived federations have been the service agreements between MSF and the midwives' union, RCM, and between Unison and the occupational therapists' union, BAOT. Under these agreements the two large TUC-affiliated unions, MSF and Unison, provide industrial relations services such as negotiation and shop steward training for their smaller, non-TUC associates (Bryson *et al.* 1995; Labour Research 1995).

Formal mechanisms apart, there is evidence, from NHS trusts and schools, that there has been more workplace level collaboration in the 1990s than hitherto, notably across the TUC/non-TUC divide (Bryson *et al.* 1995; Ironside *et al.* 1997; Lloyd 1997).

Political funds

The public service unions are becoming increasingly politicised: thirteen such unions, all of them TUC-affiliated, established political funds following membership ballots under the 1984 legislation. Only one union, the small Retained Firefighters' Union, which is not affiliated to the TUC, closed its fund. The only large TUC public service union not to have a political fund is the 250,000 strong teachers' union, the NUT. In 1995, 70 per cent of members of public service unions contributed to political funds. Moreover, public service contributors accounted for 36 per cent of all union members paying into such funds.

However, having a political fund is one thing. Affiliation to the Labour Party is another. None of the unions which have set up political funds in the last decade has affiliated to the party. Moreover, none of the civil service unions is affiliated to the party, mindful that civil servants are politically neutral. As to Unison, members have a choice of two political funds: a general fund which is politically neutral or a fund affiliated to the Labour Party.

Union organisation and representation

This section looks at the impact of public service restructuring on internal union organisation and membership relations. A significant feature is the growing importance of the lay workplace representative. Such representatives go under a variety of names, for instance 'steward' in many unions operating in the NHS and 'branch secretary' in many unions operating in the civil service.

Workplace vitality?

Workplace union organisation in the public services was largely absent until the 1970s. Its development has been attributed in part to employer initiative: managerial sponsorship of shop steward organisation flowed from 'the traditional "good employer" model of widespread union recognition and union-based consultation and negotiation . . . being extended to the workplace' (Terry 1995: 206-7). At the same time the dominance of a decentralised, lay member based concept of union government, which Heery and Kelly (1994) call 'participative unionism', ensured official union support for the increased role of stewards, at least in certain unions, e.g. NALGO, NUPE, COHSE.

Yet until the 1990s union structures tended to be highly centralised, with national officers concluding national agreements, which applied with little variation. Accordingly, workplace representatives were largely concerned with recruitment, information giving and individual case work. In the 1990s, however, when national bargaining arrangements either ended, as in the

civil service and a few NHS trusts, or became looser, as in local government, workplace representatives expanded their role to cover negotiating terms and conditions, receiving support from union headquarters, for instance new training courses and information bulletins (IRS 1993a; Labour Research 1996b). Moreover, Unison developed a software package, Local Negotiator, which draws on electronic databases to allow negotiators to calculate the effect of a pay claim on members' earnings or the employer's pay bill (Labour Research 1996a). Research by Corby and Blundell (1997) into three NHS trusts suggested that stewards were coping remarkably well with their enhanced roles.

Fairbrother (1996), looking at some civil service local offices in the Benefits Agency and two social services departments in local authorities, argues that the moves towards decentralised forms of management and the consequent growing importance of workplace unionism offer the prospect of union renewal. There is an opportunity, claims Fairbrother, for egalitarian forms of union organisation rather than hierarchy, and for involvement rather than remoteness, although he admits that this is not a straightforward or inevitable process. As yet, there is little evidence to support or refute Fairbrother's contention, but Colling (1995), looking at competitive tendering in local authorities, found that in the main there had not been union renewal.

Steward/FTO relationships

Many public service unions, in an attempt to match the increasingly devolved industrial relations arrangements of employers, have decentralised their structures. For instance, Unison has 'service groups' with their own policy-making conferences for the different industrial sectors in which it organises, and the civil service union, the PCS, has 'occupational associations', which have limited autonomy: the national executive committee has 'final direction' where it considers matters 'affect the union's general interest' (PTC 1997: 11).

The public service unions have also set up regional offices. For example, the RCM in 1992 established an office for the north of England, based in Leeds, in addition to its headquarters in London. The civil service union, IPMS, had five regional offices in 1997, whereas a decade ago it had none. Such developments have brought full-time officers (FTOs) physically closer to their workplace representatives.

Kelly and Heery (1994), looking at unions operating in both the public and the private sectors, found that relations between workplace representatives and full time officers were on the whole harmonious. There was a large measure of consensus and a high degree of interdependence. Other research in the NHS and schools came to a similar conclusion (Lloyd 1997; Corby and Blundell 1997; Ironside *et al.* 1997), while in another study 59 per cent of those with experience of decentralisation said that relations had improved, compared with 10 per cent who said they had worsened (IRS 1992).

Managerial unionism

Many public service unions have exhibited features of managerial unionism, as outlined by Heery and Kelly. They define managerial unionism as responding to members' instrumental needs, often identified by surveys of members. Managerial unionism arose in the 1980s, partly in response to the decline in membership and partly out of a critical analysis of the perceived weaknesses of the activist based, often politically driven, so-called participative trade union model of the 1970s. It was allied to concern about the unions' representativeness of the particularities of membership interests and composition (Terry 1996) and resulted in the union leadership 'designing and promoting union services to match [members' needs] and planning the organisation, training and deployment of its own human resources to support service delivery' (Heery and Kelly 1994: 7).

Heery and Kelly maintained that managerial unionism is widespread throughout the public and private sector. Undoubtedly, numerous examples from the public services support their contention. Thus the teachers' unions such as the ATL, AUT and NUT have emphasised their role in defending the professional interests of members, while other unions such as those for professional ambulance staff (APAP), the Federated Union of Managerial and Professional Officers (FUMPO) and the Professional Association of Teachers (PAT) 'have deliberately stressed their lack of militancy in an attempt to diminish both the psychological and potential economic costs to employees of taking out membership' (Heery 1996: 184). The RCN, after research among its members, established a twenty-four-hour telephone hot line to give advice to members on employment, professional and legal issues (Brindle 1998).

Constitutional reforms which have accompanied the amalgamations creating Unison and PCS also reflect the tide of managerial unionism. For example, in the new 'member centred' PCS 'greater emphasis is placed on the votes and opinions of all members, including those who may not be able to attend regularly at local branch meetings' (PTC 1997: 3). So at the heart of the new constitution is the 'overriding authority' of individual member ballots. All branch officers and senior lay representatives are elected by individual secret ballot, replacing branch bloc voting. Moreover, decisions taken at delegate conference (now held every two years, instead of every year, as in the partner unions) can be overridden by a membership ballot called by the national executive committee. While the PTC joint general secretary claimed that the new union would 'give power to ordinary members, [who] will take all the important decisions' (Labour Research 1997) others will interpret the rule changes as enhancing the position of the national leadership and diminishing the influence of traditional activist and conference based systems of decision making.

A number of public service unions have taken initiatives designed to serve and articulate the interests of particular groups of members. The most

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innovative are those taken by Unison. It has adopted the principle of proportionality, i.e. set targets to ensure that women are represented in its decision making processes in proportion to their numbers by the end of the century. Thus it has reserved seats on its national executive committee for women and low paid women. It has also established so-called self-organised groups for gays and lesbians, black members and disabled members. In 1994 42 per cent of its national executive were women. The figure for 1997-98 was 65 per cent against a female membership of 78 per cent in 1996 (Labour Research 1998). A number of other public service unions also reserve seats on their national executive committees for women, but progress in increasing the number of female full time officers has been less marked. For instance, in Unison women account for 38 per cent of national officers. Only four very small TUC affiliates have female general secretaries at the time of writing. The largest is the 7,000 strong probation officers' union, NAPO. The position is slightly better among non-TUC affiliates, where both the RCM and RCN have female general secretaries.

Public service unions have also shown interest in the application of managerial techniques to organisation questions. In the cases of Unison and PTC the impetus to seek outside advice on union management (from Cranfield Management School and a freelance personnel consultant) arose from their requirement to manage the post-merger situation. Senior officials and national executive committee members of other public service unions, such as the FDA and NATFHE, have also attended Cranfield courses on strategy development and strategic management skills together with appropriate human resource issues.

Industrial action

In the 1950s and 1960s industrial disputes were rare in the public services. In the 1970s, however, this changed, primarily in response to a series of incomes policies and public expenditure reductions (see chapter 2), culminating in the so-called winter of discontent in 1979. In the process, the public sector unions 'banished their traditionally moderate image' (Winchester and Bach 1995: 309). Indeed, for many trade unions the strikes of the 1970s were their first experience of official industrial action. For instance, the senior civil servants' union, the FDA, took industrial action for the first time in 1979, taking part in a one day protest strike by all the civil service unions. As O'Toole (1989: 174) said:

It is not clear how many FDA civil servants took part in industrial action, but it is known that a considerable number did, including people in the rank of under secretary and also including a number of private secretaries to ministers. Both these groups have sensitive responsibilities and it is, to say the least, surprising that such members should have participated in industrial action.

Industrial action in the public services remained a conspicuous feature of the 1980s and 1990s, when an emphasis on managerial efficiency came to the fore (see chapter 1) and public expenditure was constrained (see chapter 2). Table 10.4 shows a comparison of working days lost per thousand employees for all industries and for the public services from 1980 to 1996. While health services were generally well below the incidence rate for the economy as a whole, the rest of the public services were well above the overall incidence rate from 1986 to 1996.

This rise in militancy occurred at the same time as there was a reduction in the use of arbitration, either because the arbitration option was not available, as in the twenty-week civil service dispute of 1981, or because the arbitration option was eschewed, as in local government in 1989. It also occurred at a time when the legal constraints on industrial action were progressively tightened as a result of government legislation. Although these constraints applied to all unions, public service unions were particularly affected by the requirement that a dispute must be between workers and *their* employer if there was to be immunity and by the outlawing of secondary

Table 10.4 Working days lost per 1,000 employees in the public services 1980-96 (000)

Year	1	2	3	4	5
1980	531	49	-	48	-
1981	201	682	-	24	-
1982	249	109	-	618	-
1983	180	32	-	4	-
1984	1283	214	-	17	-
1985	298	257	-	25	-
1986	89	120	-	9	-
1987	163	244	-	5	-
1988	166	65	-	25	-
1989	182	587	-	103	-
1990	83	46	-	232	-
1991	34	96	-	1	-
1992	24	132	-	1	-
1993	30	168	12	2	-
1994	13	11	36	1	-
1995	19	69	36	6	23
1996	59	114	70	3	3

Sources: Annual review articles, *Employment Gazette* 1981-95; *Labour Market Trends* 1996-97.

Notes

- 1 All industries and services.
- 2 Public administration and defence 1980-82; public administration, sanitary services and education 1983-92; public administration and sanitary services 1993-94; public administration, defence and social security 1995-96.
- 3 Education, research and development 1993-94; education 1995-96.
- 4 Professional and scientific services 1980-82; medical and health services 1983-94; health and social work 1995-96.
- 5 Other community, social and personal service activities 1995-96.

action. Thus disputes across a service, especially when bargaining was decentralised, notably in the civil service, would normally result in service-wide industrial action being unlawful. Moreover, prison officers' right to take industrial action in any circumstance was removed in 1994 (see chapter 3) and union membership was withdrawn from workers at GCHQ in 1984, as mentioned above.

Analysis of data in table 10.5 shows that the proportion of strikes accounted for by the public services grew steadily from 6.7 per cent in 1980 to 43.6 per cent in 1993, falling back to 32 per cent in 1996. Moreover, the proportion of working days lost in the public services also grew. In the period 1980–89 the number of working days lost in the public services as a proportion of working days lost in the economy as a whole was 19 per cent, but the figure was 42 per cent in the period 1990–96.

There have been notable changes in the form of strike action. Large prolonged national strikes, such as those involving civil servants, health workers and teachers in the 1980s, gave way to localised action. An analysis of official data relating to all strikes leading to the loss of over 5,000 working days in 1990–96 reveals that a substantial majority of days lost were lost because of strikes confined to specific geographical areas. Staff groups involved were civil

Table 10.5 Strikes in the public services 1980–96

<i>Year</i>	<i>No. of strikes</i>	<i>% of total</i>	<i>Working days lost (000)</i>	<i>% of total</i>
1980	89	6.7	258	2.1
1981	84	6.3	1165	27.3
1982	124	8.1	1201	22.6
1983	115	8.5	121	3.2
1984	162	13.4	786	2.8
1985	135	15.0	990	15.4
1986	167	15.5	460	23.9
1987	123	12.1	945	26.6
1988	125	16.0	290	7.8
1989	172	24.5	2388	57.8
1990	177	28.0	520	27.3
1991	130	35.0	363	47.7
1992	110	43.4	329	62.3
1993	92	43.6	341	52.5
1994	57	27.8	92	33.1
1995	89	37.8	201	48.4
1996	78	32.0	297	22.8

Sources: Annual review articles, *Employment Gazette* 1981–95; *Labour Market Trends* 1996–97.

Notes:

Figures relate to the following categories used in the official statistics: 1980–82, 'Public administration and defence' and 'Professional and scientific services'; 1983–92, 'Public administration, sanitary services and education' and 'Medical and health services'; 1993–94, 'Public administration and sanitary services', 'Education, research and development' and 'Medical and health services'; 1995–96, 'Public administration, defence and compulsory social security', 'Education' and 'Health and social work' and 'Other community, social and personal services'.

servants, council workers, firefighters, social workers, librarians, residential care workers, community workers and further education lecturers (*Employment Gazette* 1991–95; *Labour Market Trends* 1996–97).

Accompanying the localisation trend has been a tendency for unions to employ rolling strikes, selective strikes and strikes of short duration. In 1995–96, for example, Merseyside firefighters held eight nine-hour strikes and twenty-one one-day strikes (Darlington 1998) and some civil servants carried out a programme of strikes in selected offices and Job Centres in the Employment Service which resulted in a total loss of 73,600 days. Such action ensures that the individual member's loss of pay through withdrawal of labour is limited and/or the call on the finances of the unions is limited, especially as some non-manual unions in the public services, such as NALGO (now part of Unison) and IPMS have given strike pay equivalent to take-home pay to those striking continuously. There is also evidence of the increasing incidence of unofficial strike action in the public services, particularly among non-manual workers in local government services (Gall and Mackay 1997).

Assessing the cost/benefit of strikes is well nigh impossible, as there are so many factors which are difficult to measure. For instance, in future years an employer may settle higher than would have been the case because the strike threat comes to be seen as credible. Undoubtedly, however, some unions have scored qualified successes: for instance, the health unions achieved the retention of national pay bargaining, albeit having to make some concessions to local top-up pay bargaining, after their dispute in 1995.

Not only has the form of strikes changed, but so have the reasons for strikes. Disputes over pay issues accounted for the lion's share of working days lost through the 1980s, but in the 1990s non-pay issues came to the fore, notably working time. This may be contrasted with patterns across the private sector. In the 1980s there was a roughly equal balance between pay and non-pay reasons for strikes, while in the 1990s pay reasons have predominated (*Employment Gazette* 1980–95; *Labour Market Trends* 1996–97).

Another noteworthy aspect of public service industrial action has been the extent to which it has been a reaction to strategic public policy objectives. For example, 265,000 working days were lost in the period 1988–96 as civil servants, council workers and NHS ancillary workers struck against plans for contracting-out, market testing and the privatisation of services.

Finally, however, a note of caution should be injected. Although we have highlighted a trend towards greater militancy by public service unions, it must be remembered that some public service unions either enshrine a policy of no industrial action in their rules, for instance the PAT, or in practice do not take industrial action, for instance the Immigration Service Union. Moreover, although in 1995 both the RCM and the RCN abandoned their rules prohibiting industrial action, they have not yet altered their practice.

Conclusions

This chapter has shown that public service unionism is relatively healthy, compared with its private sector counterpart, in terms of both union membership and density. Moreover, a disproportionately large number of unions operate in the public services: fifty-five out of 181 independent trade unions. To put it another way, 19 per cent of the workforce are employed in the public services, but 30 per cent of all unions are predominantly public service unions. Although there has been some rationalisation of union structure through mergers, there is still inter-union competition for members in many parts of the public services, and in the universities a merger has actually increased inter-union competition.

A key conclusion of this chapter is that the boundary between public sector and private sector unions is becoming blurred. For instance, public service unions have followed their members into the private sector when the organisations in which they worked were privatised, while some public service unions have merged with predominantly private sector unions. Furthermore, public service unions are coming into the mainstream of the wider union movement. They are increasingly willing to take industrial action. There have been a string of affiliations of professional associations to the TUC, particularly since 1990. Public service unions are substantially represented on the TUC general council and a dozen public service unions have set up political funds in the last decade. Workplace representatives in the public services are no longer largely confined to individual case work and information giving but, like their private sector counterparts, are increasingly involved in negotiating terms and conditions. Finally, public sector unions, like their private sector counterparts, are engaged in so-called managerial unionism.

Clearly all unions, whether in the public services or not, have not found the period 1979–97 an easy one. Will they find life under a Labour government easier? Their future strength will depend primarily on external factors, including 'the general economic climate, labour markets, government pay policies and the funding and organisation of the public sector' (Lloyd 1997: 444). On these criteria, the Labour government seems to exhibit little difference from its predecessor. It has continued with some privatisations, for instance the Benefits Agency medical service and the renewal of a contract for a privately run prison (Blakenhurst), and market testing.

However, these criteria ignore the political environment. The new Labour government is showing greater willingness than its predecessor to consult the public service unions. It is also adopting a more pragmatic stance. For instance, the 'Twelve Guiding Principles' of market testing formulated by the Cabinet Office (1997) for the civil service after the general election says, twice: 'Our approach to this is pragmatic not dogmatic.' There are also signs of a partnership approach. The Cabinet Office and the civil service unions nationally have co-operated in drawing up guidance to departments and agencies in certain areas, such as racial equality. In the NHS, the

government will require NHS trusts to involve staff and will establish a task force at national level to improve the involvement of front line staff in shaping new patterns of health care, and this will include NHS unions and employers (Department of Health 1998). At this juncture it is not known whether this friendlier environment, albeit with the employer strategies substantially unchanged, will lead to a growth in public service unionism or merely reduce the extent of the decline.

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