Worker voice in corporate governance

abrdn Financial Fairness Trust

HIGH PAY CENTRE

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Introduction

Since its foundation in 2011, the High Pay Centre has been a proponent of greater worker voice in corporate governance, supporting policies that would give working people more say in the governance of the organisations to whom they dedicate a very significant portion of their waking lives.

Voice at work is a fundamental determinant of job quality. If workers are unable to influence matters that affect them at work, they will feel unvalued and consequently will lose motivation and purpose. Employee involvement in how reward is set is also likely to lead to fairer pay structures.

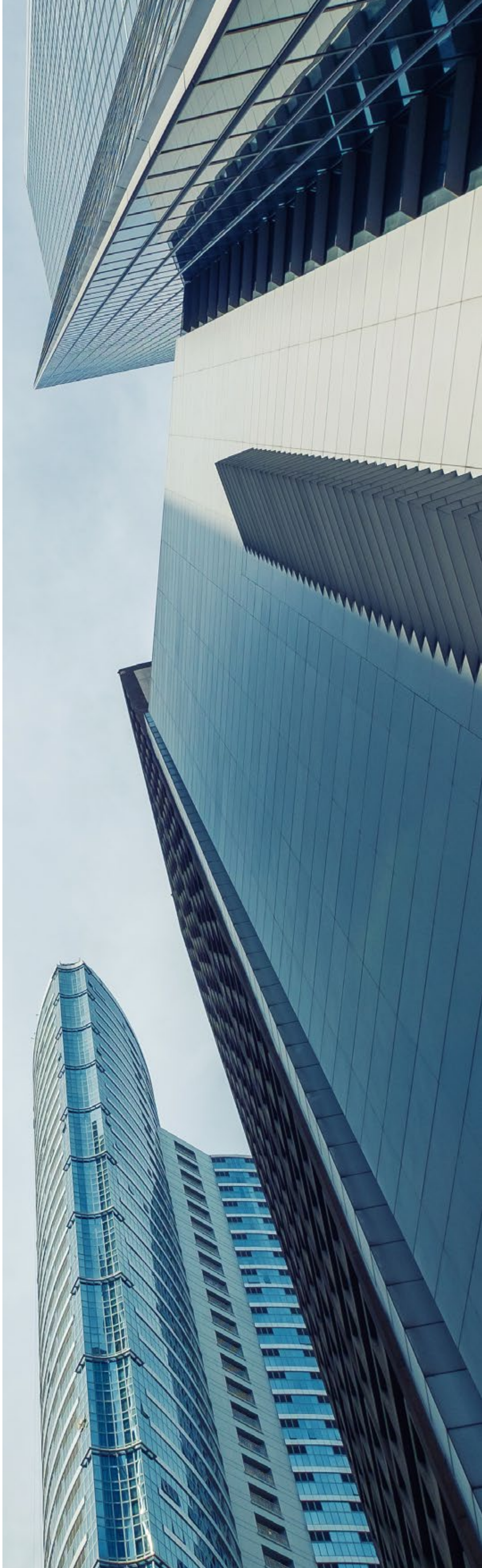
Research has found multiple benefits to stronger worker voice. A 2014 report by the Institute of Health Equity and Public Health England identified 'greater employee control over their work' and 'greater employee participation in decision-making' as key features for improving health and wellbeing in the workplace,[1] and a lack of voice and autonomy at work have been found to lead to poor health outcomes.[2] Voice was also identified as one of four key drivers of employee engagement in a government-commissioned report in 2009.[3] Giving workers a voice is therefore both a moral issue of providing fulfilling work that is not detrimental to physical and mental health, and an economic one, as lack of motivation and high turnover amongst staff constitutes a business risk.

Worker voice can be broadly defined as the ability of workers to express their views and concerns, and for these to influence matters that affect them at work. Greater voice means greater agency and empowerment in the workplace, in the sense that workers are actively involved in their company's decision-making processes and therefore in shaping the strategic direction of their employer. Workers can be involved in decision-making at all levels of the company. However, this report focuses on worker voice in corporate governance, that is, worker voice at board level.

[1] Public Health England and UCL Institute of Health Equity [PHE and IHE] (2014) Briefing 5a: Workplace interventions to improve health and wellbeing, GOV.UK, via https://www.gov.uk/ government/publications/local-action-on-health-inequalities-evidence-paper.

[2] See Marmot MG et al (1991) 'Health inequalities among British civil servants: the Whitehall II study', The Lancet, 337(8754), pp 1387–1393, cited in IPPR (2022) 'A healthy labour market', and Pfeffer, J. (2018). Dying for a paycheck: How modern management harms employee health and company performance—and what we can do about it. New York: HarperCollins.

[3] Clarke & McLeod (2009) Engaging for success: enhancing performance through employee engagement, via https://engageforsuccess.org/wp-content/uploads/2021/02/Engaging-for-Success.pdf.



Worker voice in UK corporate governance

In the UK, the power to influence the governance of firms resides overwhelmingly with shareholders rather than workers. This is despite the fact that firms are more dependent on workers than they are on shareholders in order to operate and exist.

Shareholders can vote on strategic decisions and the appointment of board members. Directors have a legal duty to act in the interests of shareholders, but only to 'have regard' for those of other stakeholders.[4] Meanwhile, UK workers have almost no rights to participation in corporate governance. This is in contrast with the majority of corporate governance systems across Europe, which give workers the right to representation on company boards.[5] The 2019 'European Participation Index' maintained by the European Trade Union Institute ranked the UK 26th out of 28 European countries (EU member states plus the UK) for 'democracy at work' ahead of only Latvia and Estonia.[6]

While shareholders can diversify their investments, meaning they can mitigate the risk of the failure of an individual company, it is much harder for workers to diversify their employment. Therefore, they carry much greater risk in relation to company decision-making than shareholders do, and yet have very little opportunity to influence that decision-making.[7] These imbalances, together with the body of evidence highlighting the importance of worker voice and participation, has led to greater interest in reform of corporate governance structure (see Box 1).

Box 1: Worker voice – recent reforms

Both the 2018 revision of the Corporate Governance Code (the Code) and the creation of the Wates Corporate Governance Principles for Large Private Companies (the Wates Principles) set out provisions on how companies should strengthen worker voice in corporate governance.

The Code suggests that companies adopt at least one of three mechanisms for workforce engagement: a worker director, a designated non-executive director (NED) or a workforce advisory panel. The Wates Principles are less specific, simply stating that "companies should develop a range of formal and informal channels that enable them to engage in meaningful two-way dialogue" with workers and other stakeholders.

Neither the Code, nor the Wates Principles are mandatory. Companies with a premium UK stock market listing must comply with the Code or explain why they have failed to do so. Large private companies are required to publish a corporate governance statement, and are encouraged to use the Wates Principles as a template for its content.

These reforms have had a positive but limited impact. A 2021 review of the impact of worker voice provisions in the 2018 Corporate Governance Code conducted for the Financial Reporting Council found mixed results. While there was 'a great deal of innovation… exemplified by pockets of good practice',[8] nearly a third of FTSE 350 companies had not adopted one of the three core options for worker voice and 'in the vast majority of cases decisions on approaches to workforce engagement were made by the board without consultation with the workforce.'[9] Many annual reports 'downplay the importance of workforce engagement'.[10] Only one company has appointed a worker director following the update to the code.

[4] Section 172 of the Companies Act 2006.

[5] TUC (2013) Workers' voice in corporate governance: a European Perspective, via https://www.tuc.org.uk/sites/default/files/WorkersVoiceinCorporateGovernance.pdf.

[6] The index uses measures of both formal rights and the extent of participation on three levels: in the board, at the establishment level and through collective bargaining. Available via https://europeanparticipationindex.eu/#EPI_Countries.

[7] TUC (2016) All aboard: making worker representation on company boards a reality, p.11, via https://www.tuc.org.uk/sites/default/files/All_Aboard_2016_0.pdf.

[8] IPA and Royal Holloway (2021) Workforce engagement and the UK corporate governance code, via https://www.frc.org.uk/getattachment/56bdd5ed-3b2d-4a6f-a62b-979910a90a10/FRC-Workforce-Engagement-Report_May-2021.pdf, p7.

[9] Ibid, p.6.

[10] Ibid, p.7.

Similarly, a 2022 review of the application of the Wates Principles found that of those companies covered by the Principles:

- Only 18% discussed in their corporate governance statements what dialogue the board has with the workforce to understand the effects of company policies and practices.
- 13% discussed what dialogue the board has with the workforce to predict future developments and trends and/or realign strategy.
- And just 9% discussed how this dialogue has impacted board decision-making.[11]

This suggests that there is substantial scope to improve worker voice in corporate governance in the UK.

The High Pay Centre has maintained that stronger worker voice in governance structures and processes can:

- **Create pressure on employers in low-paying sectors to go further to boost the pay, conditions and wellbeing of their workforce** and alleviate the major pressures on living standards resulting from the 'cost of living' crisis.
- **Bring different life experiences to the boardroom to challenge limited perspectives**. In particular, greater familiarity of operational matters at the company. Working people may also be keener advocates of investment in human capital and skills that can enhance workers' professional prospects than other board members more used to managing financial performance metrics and potentially less au fait with the skills required on the frontline of the company.
- **Be an intrinsically worthy objective in itself**, rather than a means to an end, in the sense that democratising workplaces and giving people more agency over a significant part of their lives is fairer, more empowering and likely to have a positive impact on their wellbeing.

The current economic circumstances mean these arguments have a potentially more receptive audience than would be the case if the prevailing business culture and corporate governance practices were delivering widespread prosperity. Instead, the UK is experiencing a 'cost of living crisis' and widening economic inequality.[12] Business investment and productivity continue to underwhelm, with many arguing that giving workers more of stake in corporate governance should be part of the solution. Workers are incentivised to advocate for more of a stake in new technologies, training and better management, given the link between productivity and pay, whereas shareholders may be less supportive of measures necessitating upfront costs with the potential impact on shareholder returns.

It is therefore a useful moment to consider in more detail what practices would strengthen worker voice in corporate governance, how they might be implemented and how to persuade employers of their merits.

This report examines public attitudes to worker voice, and to business practice, more generally via an opinion poll on the topic. It then draws on interviews with business leaders, investors and trade unionists to explore in more detail existing provision of worker voice in corporate governance at UK businesses.

The research highlights examples of good practice and ways in which companies have overcome barriers, using these insights to provide recommendations for businesses on how to strengthen worker voice in corporate governance. The report also argues that there are limits to what voluntary action by businesses can achieve, and that regulatory and policy change is therefore needed.

[11] Financial Reporting Council (2022), The Wates Corporate Governance Principles for Large Private Companies The Extent, Coverage and Quality of Corporate Governance Reporting via https://www.frc.org.uk/getattachment/e8759f3d-d189-448e-979a-f6bb6d335c83/The-Wates-Corporate-Governance-Principles-for-Large-Private-Companies_Februrary2022.pdf

[12] Analysis of ONS data from July 2022 showed that pay for the top 1% of earners was rising at a rate of 9.1% (for a three-month moving average), whilst pay for the bottom 10% was rising at a rate of 1.3%. See CEBR (2022) A tale of two labour markets, via https://cebr.com/reports/a-tale-of-two-labour-markets-following-a-couple-of-underperforming-years-highest-earners-now-enjoy-annual-pay-growth-of-10-while-lowest-earners-see-just-a-1-rise/

Public opinion

Understanding public perceptions and expectations of business is critical to establishing the right regulations and recommendations for corporate governance practices. While businesses should not be responsive solely to public opinion, public sentiment towards business is a critical determinant of the environment in which business operates. If businesses are perceived to act in a manner that is contrary to the public interest, this increases the risk of a consumer or regulatory backlash.

Businesses themselves appear increasingly conscious of the need to demonstrate and focus on the value they provide for workers, customers and wider society as well as for their shareholders. Initiatives such as the 'Purposeful Company' project supported by the CEOs of major companies including Barclays and Unilever, the Future Corporation programme at the British Academy, and the Better Business Act coalition of 900 businesses, are all dedicated to this end.

However, fear of an unfavourable regulatory environment and commitments to align business practices with the interests of society as a whole are somewhat inconsistent with the 'risk registers' published by UK-listed companies in their annual reports. Very few of these cite growing anti-business sentiment or changes to the UK regulatory regime as a potential risk to the company.

This may reflect that companies are relatively sanguine about the impact of regulatory changes, or that they do not expect them to materialise. However, bearing in mind the debates highlighted in the introduction to this report regarding ongoing issues including wage stagnation and quality of work, and more recent events such as the 'cost of living crisis' and the pandemic, it is useful to understand current public attitudes to business and how these might lead to specific policy reforms, in order to assess the extent of negative views of business and how to mitigate them.

Our polling[13] asked respondents to select three issues from a list of possible business objectives that they felt businesses should care about the most and three that they think businesses do actually care about.

The responses suggest substantial discrepancies between the public's priorities and their perception of businesses' priorities.

Table 1: Opinion polling on business objectives[14]

	Businesses should care about most (%)	Businesses care about most (%)
Better pay & working conditions for their workers	58	18
Paying a fair amount of tax	48	17
Delivering value for money for customers	40	23
Protecting the environment	40	15
Helping to improve society	26	14
Improving diversity of their workforce	18	15
Innovating new products	14	35
Generating higher profits for shareholders	10	54

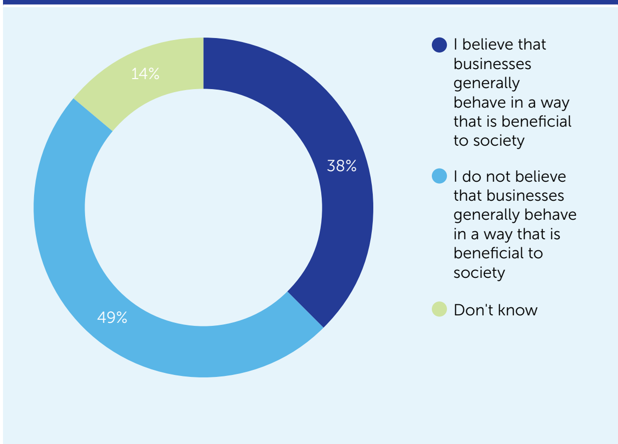
These perceived discrepancies are clearly influencing the public's view of business's impact on society. More respondents felt that this impact was negative than positive.

[13] See Appendix for polling methodology - for some questions, total percentages do not add up to 100% due to rounding up individual response totals to the nearest whole number.

[14] Respondents were asked two questions:

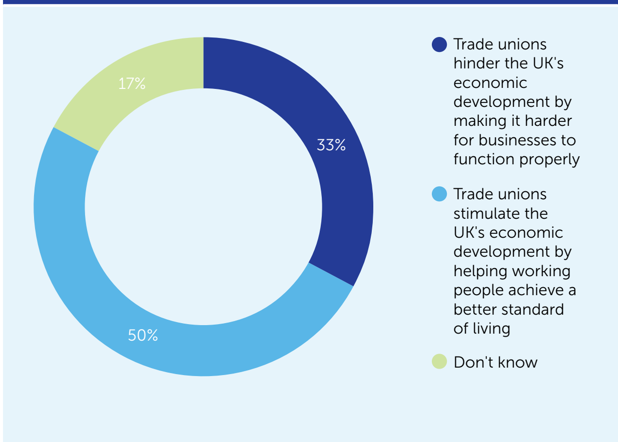
1) 'Which issues do you think the UK's biggest businesses should care about? Select up to three'.
2) 'Which issues do you think the UK's biggest businesses do care about? Select up to three'.

Figure 1: Which of the following statements is closest to your view?



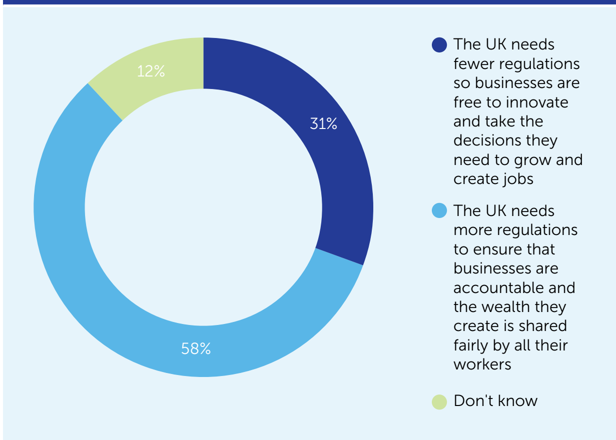
This finding contrasted with perceptions of trade unions. Half of respondents felt that unions were good for the UK's economic development, while only a third thought they were harmful to business.

Figure 2: Thinking of trade unions, which of the following statements is closest to your view?



Most respondents also felt that the problem with business regulation was that there was too little rather than too much of it.

Figure 3. Thinking of business regulation, which of the following statements is closest to your view?



On corporate governance and worker voice specifically, respondents felt that workers have too little say in the running of their companies, and that addressing this should be a priority. Figure 4 shows that 79% of the public felt that it was important that workers have a greater say in the running of the companies that they work in. This sentiment was consistent across the political spectrum: based on how respondents voted in the 2019 General Election, 77% of Conservative voters and 86% of Labour voters felt that this was important.[15]

Similarly, Figure 5 shows that 60% of respondents thought that lower- and mid-level employees have too little say in how their companies are run. For Conservative voters, this was also 60%.

Only a slightly smaller number – and still a clear majority – thought that companies should be required to include an elected workers' representative on their board (55%). This was 54% for Conservative voters.

Figure 4. How important, if at all, do you think it is that workers have a greater say in the running of the companies that they work in?

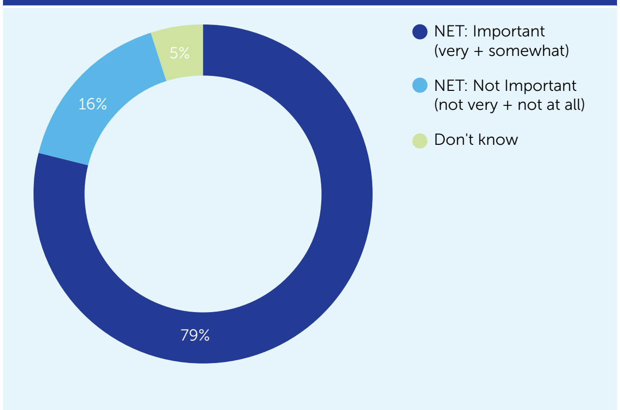
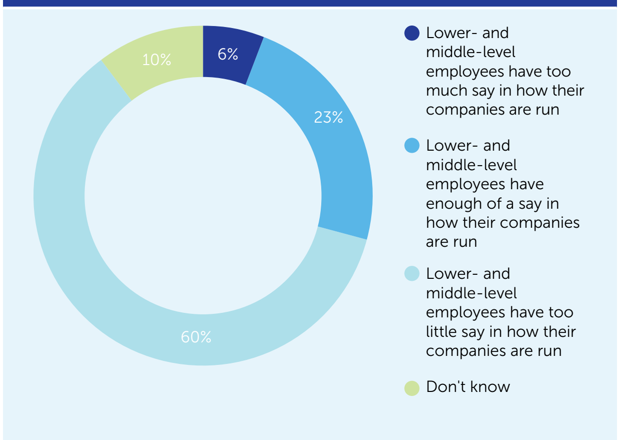


Figure 5. Which of the following statements is closest to your view?



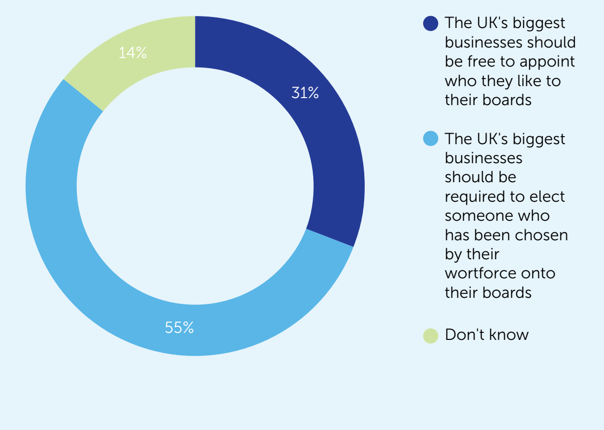
79% of the public felt that it was important that workers have a greater say in the running of the companies that they work in.

77% of Conservative voters felt that this was important.

86% of Labour voters felt that this was important.

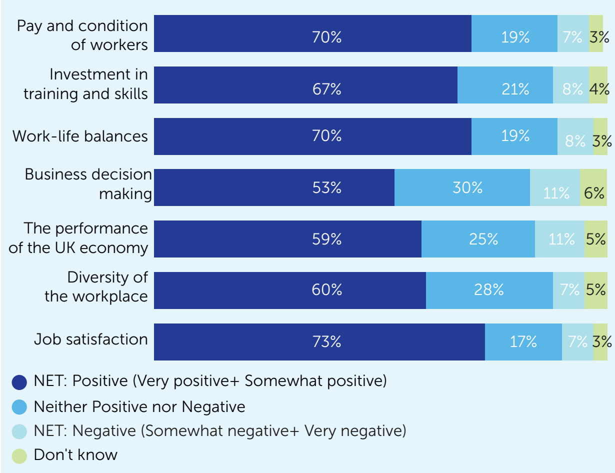
[15] Voting was broken down into Conservative, Labour, Liberal Democrats and Other.

Figure 6: Which of the following statements is closest to your view?



Respondents were universally positive about the impact of worker voice on multiple aspects of running a company, as shown in Figure 7. The positive impact on job satisfaction and pay and working conditions was most widely agreed, but a majority felt that it would have a positive impact on business decision-making and the performance of the UK economy too. Notably, 58% of Conservative voters thought that greater worker voice would have a positive impact on the performance of the UK economy.

Figure 7. If workers were given more of a say in the running of the companies that they work in, what kind of impact do you think it would have on the following?



The findings suggest that businesses have considerable work to do to improve their standing with the public. Negative public sentiment represents an understated threat to business, and greater worker voice would be an effective way of mitigating this.

Putting workers on boards specifically is likely to be popular with the public, with an expectation that it would align business practice more closely with the interests of wider society. It is interesting that the findings also show strong support amongst Conservative voters for stronger worker voice in corporate governance.

This indicates that all political parties should be focusing on ways to reform governance structures and processes accordingly.

58%

of Conservative voters thought that greater worker voice would have a positive impact on the performance of the UK economy.

Interview findings

Our qualitative research involved a series of stakeholder interviews, with business leaders, trade unions and investors.[16] These interviews focused on UK companies with over 250 employees, and covered a range of sectors and ownership types, including UK-listed, non-listed and non-profits. Throughout the course of these interviews, four mechanisms with the potential to enable worker/boardroom dialogue leading to meaningful worker voice in corporate governance were repeatedly identified:

- Employee forums
- Worker directors
- Trade unions
- Worker ownership and investor stewardship.

This section covers each of these mechanisms in turn, based on perspectives and experiences from the stakeholder interviews. The sections look in particular at:

- how the different mechanisms pro-actively feed worker perspectives on business practice and strategy into the boardroom;
- how they lead to consultation on these issues by boards;
- and the ultimate impact that they have on strategic decision-making.

We focus on highlighting good practices, which are summarised at the end of each section and in the conclusion to this report.

[16] See Appendix for details of the methodology used.

Employee forums

Employee forums are a useful conduit for feeding the perspectives of the workforce into the business strategy and board level decision-making. However, their effectiveness depends on the extent to which the board choose to engage with and be accountable to the forum. Employee forums also need to ensure they are representative of the wider workforce.

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If the forum's remit does not include some form of input into board decisions relating to major business practice and strategy issues, it cannot be said to provide worker voice in corporate governance.

Background

A formalised collective consultation mechanism that ensures two-way communication between the board and the workforce is essential for giving voice to the whole workforce. Many companies operate employee forums with which the board might engage. However, if the forum's remit does not include some form of input into board decisions relating to major business practice and strategy issues, it cannot be said to provide worker voice in corporate governance.

One of the three options for workforce engagement set out in The Corporate Governance Code is a 'formal workforce advisory panel'. Roughly 28% of the FTSE 350 established an advisory panel in response to the Code, and several more already had something resembling this in place, i.e. a permanent and formalised body with staff representatives. The Code only applies to a small part of corporate Britain, however, and several non-listed companies we spoke to had also established some kind of employee forum.

In addition to the Code, which applies on a 'comply or explain' basis, the UK also has the Information and Consultation of Employees (ICE) regulation, giving workers a legal right to request that the company establish a mechanism for information and consultation of employees. This regulation was put in place in 2005, and required a formal request from at least 10% of the workforce (with a minimum of 15 employees) to trigger the negotiations to set up the mechanism. From April 2020, the formal request threshold was reduced to 2%. Take-up of has been low, however, partly due to the high threshold put in place in 2005: both unions and the business community pushed for it to be set at a high level as both were opposed to the regulation (unions were concerned that it might be used to bypass union recognition, whilst the CBI feared that it might encroach on management decision-making).[17]

[17] CIPD (2020) Information and Consultation of Employees: what, why and how, pp.7-8, via https://www.ipa-involve.com/Handlers/Download.ashx?IDMF=bb007690-3295-413b-b42d-05b8efdf77de

These initiatives provide a legal/regulatory basis for employee forums, but in most cases forums were instituted voluntarily by companies rather than as a response to the code or the ICE regulations.

Employee forums bring worker voice to the board in collective form rather than through an individual Non-Executive Director with responsibility for workforce-related issues. Similarly they operate as an 'arms length' mechanism, where representatives meet and offer views that may be then separately discussed further in board meetings rather than the workers being present in the boardroom themselves. It is therefore important that they are co-ordinated and structured in such a way as to convey worker voice accurately, effectively an meaningfully.

Our interviews covered a mixture of listed and non-listed companies with employee forums. Most of these had long-standing employee forums in place – established before the 2018 revision of the Code in the case of listed companies - and have adapted the mechanisms over the years in order to make them more effective channels for worker voice. As a result, these companies' experiences constitute useful case studies of how barriers to worker voice can be overcome.

Research insights

Involvement of indirectly employed workers

If forums are not properly representative, then worker voice in corporate governance is weaker, regardless of how constructive the relationship is between the forum and the board. None of the companies we interviewed include any types of indirectly employed workers in their employee forums. The Trades Union Congress (TUC) defines indirectly employed workers as those who are 'employed through agencies, umbrella companies or other third parties, the self-employed, casual and other seasonal workers or a significant proportion of those on zero-hours or short-hours contracts'.[18] Indirect employees often carry out roles without which the company would not be functioning, such as cleaning, catering, security, or IT, and frequently make up a substantial proportion of the company's workforce. As a result, boards need to be taking these workers' views into account in order to make informed decisions. Indirect employees can be just as great a source of risk and value creation to a company as its direct employees in terms of workforce matters such as turnover, motivation, productivity and whistleblowing: it is therefore in the board's interest to hear their views. We acknowledge that it can be difficult to know which indirect workers to include as some are extremely transient. We recommend that companies use the Living Wage Foundation's definition of indirect employees: 'those who work regularly, for 2 or more hours a week, for 8 or more consecutive weeks a year'.[19]

The Code and the Wates Principles both use the term 'workforce' (which covers both direct and indirect employees) throughout in relation to in governance. However, the Companies Act uses the term 'employee', meaning that companies are only required to report on, and have regard to, their direct employees. This inconsistency is further explored in the Conclusions and Recommendations section of the report.

Recruitment

A common barrier to effective employee forums identified by business representatives was that those who were elected to the forum did not understand what the role entailed and/or were not there for 'the right reasons.' Again, this represents a further issue in terms of how effectively the forum can act as a voice of the workforce in corporate governance. One company mentioned employees getting elected in order to raise their own individual concerns, rather than aiming to represent the views of the workforce. Several business leaders identified the risk that the employees who 'shout the loudest' have their voices heard even when they're a minority, meaning that changes get made by the business that do not reflect the interests of the workforce as a whole.

[18] TUC (2021) Restoring Trust in Audit and Corporate Governance, p.3, via https://www.tuc.org.uk/sites/default/files/2021-08/TUCresponseAuditCorporateGovernance.pdf

[19] See https://www.livingwage.org.uk/faqs#t136n1584

This highlights the importance of making clear to the workforce what the role of workforce representative (rep) involves. It should be emphasised that the role involves bringing collective and strategic concerns from the whole workforce, rather than individual concerns.

Once reps are in the role, they should be provided with professional training from an external organisation, as well as having clearly defined responsibilities in terms of reporting back on the forum's activities and their individual contributions to the workers' they represent

Mentoring and learning from good practice elsewhere are also helpful approaches: at one company, the chair of the employee forum was partnered with a chair of an employee forum from another company.

Individual reps should also represent a small enough number of constituents that they are able to engage with all of them. This may mean that larger companies need to have multi-tiered employee forums, with reps escalating issues and views to those leading the forum, who then meet with the board.

Building workforce trust and engagement

It is essential that the workforce have trust in the employee forum and feel that it is acting in the interests of the workforce. Trade unions emphasised that there is a direct link between the independence of the voice mechanism from management and its effectiveness, including in relation to voice in strategic decision-making and major business issues.

Even if forums are fully consulted on major strategic decisions, the value they generate in providing a view from the frontline of the company is greatly compromised if they fear repercussions from offering a critical view. No matter how 'good' a company's culture is in terms of openness and honesty between management and the workforce, the quality and types of discussions that occur in an employee forum will always be more limited if it is not independent of management. Therefore, reps should be appointed to the forum by workforce elections, and provisions made for workforce representatives to meet with other staff without management being present.

Business interviewees also made the point that senior leaders have to support and champion whatever the model of workforce engagement is so that workers feel they have permission to engage with that model and also to challenge the leadership. One principal officer of an employee forum said that it was helpful to provide training not only to the workforce reps, but also to the senior leadership on how to engage with the employee forum.

Trade union involvement

Some workplaces have both union agreements (which may not cover all of the workforce) and a workforce forum. In a small number of cases there was minimal or no communication between unions and the workforce forum, meaning that they essentially operate separately. If two or more mechanisms for worker voice in corporate governance exist, they should work together and complement each other. Other mechanisms such as employee forums should not be used as alternatives to trade unions, which are fundamental to fair employment and a democratic society.

In the examples of employee forums we came across, the forums have regular meetings with management, usually including some combination of the CEO, the designated stakeholder NED, the HR Director and other board members and senior management. Unions reps should also attend these meetings, as unions are a key stakeholder in workforce issues and in the company. At one FTSE 350 firm with several long-standing union agreements, union reps sit on the employee forum.[20]

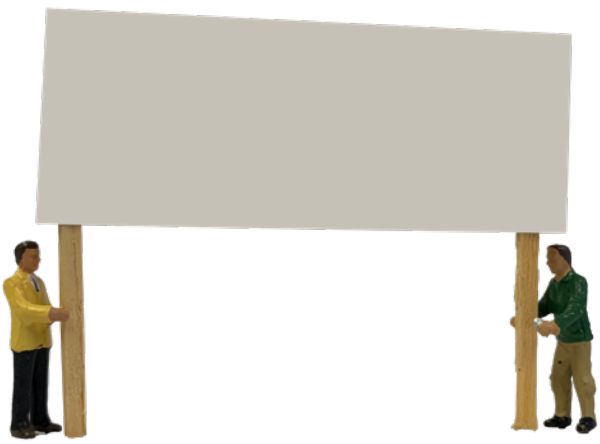
Agenda and accountability

The agenda for meetings should include input from both the employee forum and the board. This enables a two-way dialogue and exchange of information: the forum can raise issues of concern to the workforce and the board can raise topics on which it wishes to consult with the workforce. On major strategic issues in particular, it ensures that the workforce can voice their views. However, their opportunity to feedback is still to some extent dependent on the board's willingness to update and consult. If the forum's terms of reference assure periodic access to key individuals such as the CEO or Chair, the forum members can at least invite updates on ongoing or new major business strategy/ practice issues.

[20] IPA/Royal Holloway (2021) Workforce engagement and the UK corporate governance code, p.26.

For worker voice to be effective, it needs to be not just heard but acted upon. Boards should inform the forum of the impact that their feedback has had. One business leader said that doing this 'in a tight timeline' makes it feel more relevant to the workforce. Another company addressed this issue by publishing the minutes of the meetings between the employee forum and the CEO, with a time-delay of two months to account for sensitive material.

Inevitably, the workforce will not always be unified on key issues and workers in different types of roles may have different priorities. One company initially found that meetings between its employee forum and the CEO were not productive as reps disagreed on key points. As a solution to this, the HR Director introduced alternate meetings with the CEO and meetings just with employee forum. This allowed reps to sort out their disagreements and clarify their thoughts before meeting with the board, making the board meeting more meaningful.



Good practice recommendations

- Indirect employees should be involved in employee forums as well as direct employees.
- In advance of holding elections, leadership should make it clear to the workforce what the role of workforce rep involves, with specific requirements in terms of representing the concerns of their electorate and reporting back on their work.
- Independence from management is essential for an effective forum: reps should be elected by the workforce.
- If the company has an agreement with a trade union or unions, union reps should attend the employee forum meetings.
- Training should be provided to reps on how to represent the views of all their constituents, and to board members/senior leaders on how to engage with the employee forum.
- Reps should be given adequate time out of their normal roles to engage with constituents.
- The board, and specified key individuals, should have a responsibility to meet regularly with the forum, and to report back on how issues raised by the forum have been considered and acted on: this should be in the Terms of Reference for the forum.
- Similarly, the board should be required to discuss major business decisions that will affect the workforce with the forum, and take its perspective into account during the decision-making process
- The agenda for meetings between the employee forum and the board should include items from both parties.
- The forum should be able to publish, with full editorial control, an annual summary of its engagement with the board detailing how effective and meaningful the engagement has been.

Worker directors

Worker directors give the workforce the direct power to influence who sits around the boardroom table and thereby the issues that get discussed and acted upon. However, they are uncommon in UK companies. There are undoubtedly specific challenges that relate to worker directors, but much of the resistance from businesses is based on misconceptions around the purpose and nature of the role.

> *Only 5 UK-listed companies currently have worker directors and there is also very little take-up amongst non-listed companies. However, in the small number of instances where companies do have worker directors, board members report that the role is valuable.*

Background

Workers have the right to be represented on company boards with full director status in 19 European countries (18 EU member states plus Norway).[21] In 13 of these countries, rights are widespread, covering private or public limited companies as well as state-owned companies.[22] In the UK, however, workers have no right at all to representation on company boards.

It is commonly argued that the UK's unitary board structure is an impediment to the election of worker directors, and that this can only exist in countries with two-tier board structures such as Germany. This is a misconception, as there are several European countries with unitary board systems or with a mixture of unitary and two-tier systems where workers have rights to representation on boards.[23] Worker directors are full board members, meaning they participate in board meetings and are responsible, with other directors, for the decisions taken and the governance of the company. This offers a more direct and formalised level of 'worker voice' in corporate governance than employee forums, trade unions or investor representations on behalf of workers, which only feed into the board, but it does not necessarily guarantee that it is more effective or meaningful.

As a consequence of the absence of a right to representation on boards for UK workers, worker directors are rare in the UK. Only 5 UK-listed companies currently have worker directors and there is also very little take-up amongst non-listed companies. However, in the small number of instances where companies do have worker directors, board members report that the role is valuable. Research commissioned by the FRC on workforce engagement in the FTSE 350 covers case studies of two companies with worker directors.[24]

[21] There are significant variations between countries in terms of what kinds of companies are covered by these requirements, and the proportion/number of worker representatives on the board.

[22] TUC (2013) Workers' voice in corporate governance: a European Perspective, via https://www.tuc.org.uk/sites/default/files/WorkersVoiceinCorporateGovernance.pdf

[23] Five countries – Sweden, Norway, Spain, Greece and Ireland – combine a unitary board structure with worker participation rights. There are also nine countries with worker participation rights where companies can choose either unitary or two-tier board structures (Croatia, Denmark, Finland, France, Hungary, Luxembourg, the Netherlands, Portugal and Slovenia) (TUC (2014) Workers on board).

[24] IPA/Royal Holloway (2021), pp.28-9.

Whilst the two firms have substantially different approaches to the recruitment and function of these worker directors, in both cases the other board members have found worker directors very valuable additions to the board. They found that worker directors provide a greater diversity of perspectives on the board, have in-depth knowledge of how the company operate and can therefore give helpful guidance on decisions relating to workforce matters, and that they brought about increased employee trust in the board resulting in greater employee engagement. The study also included interviews with the worker directors themselves, who likewise felt that their appointment had resulted in greater employee engagement.

Research insights

The case for worker directors, and existing concerns

HPC interviewed business leaders at an EU company with UK operations, a UK subsidiary of a plc and a non-profit, all of which had worker directors elected by the workforce and expressed positive views that closely echoed those of the board members at listed companies. The HR director at the subsidiary of a plc stated that:

> *It works, and actually it's stellar for employee engagement, because they go back and they are part of the decision-making process; there's absolutely no question about it. I think we underestimate the ability of the workforce to elect the right people. … They genuinely add value – they add value in the debate, but they also add value in the clarity you put on papers when you know the workforce are going to read it.*[25]

A few companies which did not at present have worker directors said that they were considering it or had considered it in the past. One HR manager at a subsidiary of a FTSE 100 retail company said that whilst they didn't have a worker director, electing one would be a valuable opportunity for the board because:

> *From a diversification point of view, it gives a different view completely. We have seven male board members and one female board member on our board at the moment, so I think a worker director would bring a different perspective*

However, the majority of business leaders gave arguments against worker directors. Many of these are founded on understandable concerns and questions around how the role would function. However, most of the issues raised are either practical ones that can be overcome by putting the right processes and training in place, or they are based on misconceptions of what the function of a worker director should be. The fact that these concerns have not been borne out at the firms who have introduced worker directors indicates that it is possible to overcome them. The next section addresses the barriers identified by businesses, investors and unions to worker directors, and how these can be overcome.

[25] Originally quoted in CIPD/HPC (2021) The Role of the RemCo, p.18, via https://highpaycentre.org/wp-content/uploads/2021/07/8158-Role-of-REMCO_FINAL-1.pdf

The role and remit of worker directors

The most commonly expressed concern was that one or even three worker directors can't possibly represent the views of the whole workforce, especially in the case of large multinational companies. This is a misunderstanding of the purpose of the role. While worker directors' views will be informed by the experiences of other workers, their purpose should be to bring individual workforce perspectives to the boardroom[26] as opposed to being a spokesperson whose views act as a proxy for those of each and every worker.

Worker directors bring greater social and professional diversity to the board. Whilst many boards have made progress in terms of increasing gender and ethnic diversity over the past decade, and have often been vocally in support of this aim, there has been far less interest and progress in diversity of social and career backgrounds. Boards are still almost entirely comprised of former or serving business leaders who have spent most of their careers in high-paid roles focussing on financial metrics, far removed from the realities of most people's lives. Workers who are closer to that reality can improve the quality of the board's decisions, and can challenge the 'group-think' that results from a homogeneity of social backgrounds. For many companies, workers will also be closer in their social and career backgrounds to the company's customer base.

As worker directors are there to provide a workforce perspective and to diversify the board, they should act as a supplement to collective consultation mechanisms that aim to represent the views of the whole workforce: they are not a substitute for these.

Recruitment and training

Another common concern was that it is too challenging for an ordinary worker to carry out the duties of a board member and that a worker director would compromise the board's activities. Business leaders mentioned the huge amount of paperwork, the legal responsibility and confidentiality concerns.

To some extent, this reflects a lack of faith in the abilities of candidates for the worker director roles and in the judgement of their colleagues who elect them. It is worth noting that it is boards' aggregate expertise that matters, and just as some worker directors (and more conventionally appointed directors) may lack expertise in some subjects covered in board discussions, other directors may lack experience of matters better understood by the worker directors.

Gaps in worker directors' knowledge can all be addressed through well-designed training and mentoring, as has been demonstrated at the FTSE 350 firms with worker directors. The TUC has pointed out that 'union representatives in the UK already navigate the complexities of confidentiality in their collective bargaining role and also when sitting on statutory and other bodies such as the Low Pay Commission and ACAS'.[27] It is also important to make very clear to the workforce what the role involves ahead of the election process so that individuals putting themselves forward understand the duties of a director and are willing to undertake them, while the electorate will be clear of the need to elect individuals who they think will be able to manage the responsibilities.

[26] See Rees and Offenbach (2020) Towards Democratic and Sustainable Business: Possibilities for Corporate Governance Reform, p.21, via http://labourbusiness.org/wp-content/uploads/2020/08/Rees-Offenbach-Towards-Democratic-and-Sustainable-Business-2020.pdf and TUC (2016), All aboard: Making worker representation on company boards a reality via https://www.tuc.org.uk/sites/default/files/All_Aboard_2016_0.pdf.

[27] TUC (2014) Workers on board: the case for workers' voice in corporate governance, p.28 via https://www.tuc.org.uk/sites/default/files/Workers_on_board_0.pdf.

Conflicts of interest

Business leaders made the point that worker directors have vested interests as they represent a particular stakeholder group. They argued that workers would therefore be unable to carry out their directors' duties, which require them to consider the interests of all stakeholders.

This is another concern that can be addressed through providing training for worker directors to ensure that they understand their role and remit, and directors' legal duties. Notably, companies do not raise this concern regarding other non-independent board members – such as the CEO, an investor director or the founder of a firm. For example, executive directors usually have their remuneration tied to share prices, meaning that their interests are more aligned with shareholders than with any other stakeholder group. If firms consider that it is possible for these directors to consider the long-term interest of all stakeholders as well as their own perspectives and interests, they must apply the same logic to worker directors.

Mandatory worker directors

Many business leaders were opposed to the idea of mandating worker directors, as they suggested that compelling a recalcitrant company to do something against their will is likely to result in tokenism and box-ticking. They argued that worker directors will not make a difference at companies where employment practices are poor.

We recognise the argument that the appointment of worker directors alone is not a silver bullet: as discussed, worker directors need to be supplemented by collective consultation mechanisms. However, one investment professional we interviewed made the point that the refreshing of boards to bring new talent and perspectives is useful and might well change the culture over time. This suggests that compulsion can be an effective way of bringing about change.

Boardroom balance and the appointment/election process

Businesses argued that the responsibilities of a worker director and the inevitable focus on their work are too much for one employee to bear. One of the business leaders referenced the 30% club, saying that just as if less than 30% of the board are women, they'll feel isolated and will therefore act less effectively, the same applies to worker directors. Conversely, unions argued that this was an argument for having at least 2 worker directors, and ideally they should make up one third of the board.

As with employee forums, union interviewees noted the direct connection between the independence and effectiveness of worker directors. Worker directors should ideally be elected by the workforce: there will be far less workforce trust in the process if it is carried out on management's terms. However, if worker directors are elected by management, this is still preferable to the alternative of having no worker directors.

Designated NEDs

The option to appoint a non-executive director (NED) with responsibility for workforce issues/engagement – though not elected or given a mandate by workers - as one of the three options on workforce engagement set out in the 2018 Corporate Governance Code was seen as a dilution of an initial commitment to worker directors. The designated NED is the option most commonly taken up by code signatories (roughly 40% of firms have adopted a designated NED without adopting either of the other options).[28]

It is likely that the revision of the Code and its provisions on workforce engagement have pushed boards to put more time and consideration in workforce issues. However, existing research on the role of the designated NED indicates that on the whole these NEDs are not particularly active in strengthening worker voice.

[28] IPA/Royal Holloway (2021), p.5.

A survey of designated NEDs carried out by PIRC found that since taking on the role, 41% of designated NEDs had not been allocated any extra hours to fulfil their commitment to workforce engagement, and 60% were not paid extra for taking on the role.[29] One investor we interviewed said that the stakeholder NED at a major consumer services company had suggested they had been told they couldn't attend an employee forum by their HR Director.

Taken together, these findings suggest that in many cases, the role of the designated NED is underdeveloped, poorly defined and adding little value to the board or the workforce. The research commissioned by the FRC on workforce engagement in the FTSE 350 reinforces this, finding that 'for firms without [workforce advisory] panels and relying solely on designated NEDs, there is often some ambiguity regarding the role of these NEDs and how they should interface with existing engagement structures.'[30]

Union officials also told us that they have seen little or no change on the ground in response to the 2018 revision of the Code. They had no examples of being invited to engage with stakeholder NEDs and hadn't had any feedback from workers about engagement with the stakeholder NEDs. They suggested that if there had been any significant activity on the ground, they would be more aware of it than they are. This again supports the findings that designated NEDs are having a minimal impact on workforce engagement.

Good practice recommendations

- The issue of worker directors should be approached from the perspective of diversity and democratisation – bringing different professional and life experiences to the decision-making process in order to improve decision-making. Worker directors provide a workforce perspective and a knowledge of operational practices but they should not be expected to represent all workers
- Given that worker directors are not there to represent the entire workforce, they should be supplementary to collective worker voice mechanisms that give voice to the whole workforce, such as board consultations with trade union and employee forums on major business practice and strategy issues, and not a substitute for these collective mechanisms.
- Worker directors should ideally be elected by the workforce, though appointment by management is preferable to having no worker directors.
- It should be made clear to the workforce what the role involves ahead of the election process so that individuals putting themselves forward understand the duties of a director and are willing to undertake them.
- Companies should provide training and mentoring for worker directors on how to carry out the role and comply with their directors' duties. This should include managing conflicts of interest and confidentiality.
- Boards should have at least 2 worker directors, and ideally the worker directors should make up one third of the board.

[29] PIRC (2021) WORK – No.10 Dec 2021.

[30] IPA/Royal Holloway (2021), p.5.

Trade union / boardroom dialogue

Trade unions provide a mechanism for boardroom/workforce dialogue, where representatives of the workforce can speak freely on their behalf while boards can discuss strategy and major decisions with the workforce through their unions (negotiating or compromising where relevant). However, union presence has declined significantly from its peak and is concentrated in particular sectors. Negative perceptions on the part of business leaders of unions mean that some businesses are reluctant to engage them as partners in corporate governance.

Background

Trade unions are best known for their role in collective bargaining and settling industrial disputes. but unions can also play a consultative role in corporate governance, providing an independent mechanism through which workers' views on business practices can be communicated to management in a frank and open way, without the fear of repercussions that sometimes limits the company's workforce to speak up. However, a series of legislative changes over the last 40 years have made it harder for trade unions to organise in the UK.[31]

23% of UK employees are trade union members while this proportion falls to less than 13% of employees in the private sector.[32] Within individual companies where there is a union presence, it is often the case that only part of the workforce is represented by a union or unions.

While there are variations depending on the company and sector, the decline in trade union membership over the last 40 years is likely to mean that, in general, the opportunity to provide worker voice at boardroom level through trade unions has also weakened.

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[31] https://researchbriefings.files.parliament.uk/documents/CBP-7882/CBP-7882.pdf.

[32] Department for Business, Energy and Industrial Strategy, Trade Union Membership, UK 1995-2021: Statistical Bulletin via https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077904/Trade_Union_Membership_UK_1995-2021_statistical_bulletin.pdf.

Research insights

Fostering a constructive relationship

Fostering a constructive relationship between boards and unions in general requires effort and good faith from both sides – and indeed engagement on corporate governance issues can help this. Involving the unions in discussions on strategy and planning can ultimately help the board achieve the 'buy-in' for their decisions that they need from their workforce.

Several of the business leaders we spoke to had extremely positive views of the role that unions can play in advising the board and improving its strategic decision-making. One chair of a FTSE 100 industrial firm said:

> *union officials are so close to the business that they see what's wrong well before someone in the boardroom can find out by reading a report. So there is huge value in listening to them.*

Positive views of the role that unions can play in corporate governance tended to exist at companies where there are long-standing relationships and relatively high union density. Companies like this are in a minority in the UK, and we acknowledge that the business leaders who are willing to engage in this research project are more likely to be those who are already 'doing' worker voice relatively well. Nonetheless, these positive experiences of trade unions are at odds with the impression given by parts of the government and the media that the relationship between business and unions is an inherently oppositional one.

Union representatives made the point that unions provide companies with a lot of resource in terms of feeding worker voice into corporate governance structures and processes. One union official said:

> *It's a complicated, difficult process bringing worker's voices to the surface, and unions have a lot of expertise in this regard, basically because they can only stay alive as organisations on the basis of their legitimacy and their ability to represent the views of workers. Unions put a lot of time and effort into doing things like training people up and doing surveys. So if organisations want employees' perspective, they'd be foolish to pass up on this resource.*

Unions also noted that for workers with little familiarity with several layers of the organisational hierarchy between them and senior management, raising issues can be an intimidating experience. Union representatives can thus speak more freely, offer an opportunity for ideas and input from the frontline of the company that might otherwise never reach the boardroom to be related without fear of repercussions or resentment.

Business leaders at companies where there are long-standing collaborative partnerships with unions shared approaches that they felt helped to foster a constructive relationship between the board and the unions. Several business leaders said that if there is a major change happening, unions should be involved very early on in the decision-making process rather than being told what's happening when it is too late to change the outcome. However, this does also highlight the point that engagement with unions in corporate governance processes can be at the whim of the board. To mitigate this, union recognition agreements should formalise the union's role as a mechanism for worker voice in corporate governance.

Unions also noted that where they are given reasonable access to the workplace and able to inform workers about union membership, all workers get the opportunity to join a union. This generally results in higher membership meaning the union is more representative in its engagement with boards, and it is a more useful channel for worker perspectives into board decision-making. We were given the example of one large retailer that provides all new employees with literature from their recognised trade union, so that members can make an informed decision about union membership.

At one FTSE 100 company, the chair of the board told us that the board has meetings with the unions where pay negotiations are off the table, where the purpose of the meeting is to discuss wider company strategy, have open dialogue and to listen to what union officials have observed. Whilst pay negotiation is of course important, the chair of the board found that having wider discussions on topics beyond pay is useful and can in fact facilitate the pay discussions. At this company, when unions are having formal meetings with management or board members, they have a non-executive Director (NED) present to independently assess the quality of the dialogue. At another FTSE 100 company with a long-term union partnership, the unions meet the chair of the RemCo once a year, and have regular meetings with the Chief People Officer and the CEO. The company is soon to launch a new strategy, and the executive in charge of this has met with the union.

Challenging pre-conceptions

In a few cases, business leaders said that unions were too adversarial, wanted to disrupt operations and didn't have the long-term interests of the business at heart. However, union representatives made the point that they have responsibility for representing their members interests, meaning that when business strategy is predicated on egregious practices such as fire and rehire, unions cannot act in a cooperative manner. They also felt that some boards pick and choose what strategic issues they want to cooperate with unions on, citing training and skills as one area where they are happy to engage, in contrast with working conditions and pay, and the relationship with the company's profits and financial position, which they were much less keen to discuss.

It was clear from our discussions that many unions do want to cooperate with boards if possible. One of our trade union interviewees said that unions and boards should have the same overarching goal, which is the long-term success of the company and good working lives and fair pay for its staff.

A recent survey of Unite union reps found that in 75% of cases, reps felt that employers were behaving responsibly on Health and Safety.[33] This illustrates how, while Unions are often portrayed in public discourse as being mindlessly critical of employers and obstructive, they are happy to work in partnership with good employers. The fact that 75% of survey respondents readily acknowledged responsible employment practices shows that confrontations and adversarial relationships with employers are the exception and not the rule. It also suggests that those who said they weren't happy with their employer had well-founded rather than pedantic or obstructive concerns.

Inevitably, there will be times when unions and boards disagree on what should be done, but the union representatives felt that the mark of a good relationship is when boards continue to involve unions in decision-making when things are not going smoothly.

[33] Unite the Union (2021) Working through Covid: a report of a survey of Unite workplace representatives, via https://www.unitetheunion.org/media/3835/unite_working-through-covid_reps-survey-report_word_april-2021.pdf

Unions emphasised that employers who invest in unions by supporting union reps and giving them facilities time ‘get a better deal’ as they’re investing in the relationship. Where employers enable union reps time to build relationships with staff, the Unions are then able to convey workforce views in a more accurate and representative way, leading to better-informed decision making.

They also suggested that any non-independent voice mechanisms (including in-house employee forums, company surveys and designated stakeholder NEDs) should seek the involvement of unions and should act as a supplement, rather than a substitute for unions. They argued that involving unions in other voice mechanisms increased workforce trust in those other mechanisms, as illustrated in the case study below.

Good practice recommendations

- Relevant unions should be allowed periodic access to workplaces, regardless of whether there is already a union presence or not, to tell staff about the benefits of trade union membership, and ensure that staff are aware of their rights and know who the relevant trade unions are for their sector.
- Companies should provide new employees with information about their recognised trade union, so that the union can be more representative and reflect a wider proportion of the workforce in discussions with the board.
- Companies should invest in relationships with unions by providing reps with facilities time
- Where a union has a presence within a company, the company board should engage with the unions on strategic matters. The board should have meetings with unions where pay negotiations are off the table, where the purpose of the meeting is to discuss wider strategic issues and to listen to what union officials have observed
- The board should involve unions in decision-making processes in all areas that affect the workforce – unions’ role as a mechanism for worker voice in corporate governance should be formalised in union recognition agreements.
- At companies where there is a partnership with unions, any non-independent voice mechanisms (including in-house employee forums, company surveys and designated stakeholder NEDs) should seek the involvement of unions and should act as a supplement to them.

Ownership and stewardship

Worker ownership, either directly or through pension funds that represent the investments of working people, offer an alternative channel for worker voice in corporate governance. However, worker ownership in the UK is minimal and pension funds represent a declining share of company ownership. Investor engagement on and influence over issues of importance to workers is currently limited and high varied.

> *Only around 5% of the companies in the FTSE ALL-Share index had adopted an ownership model where the employees owned over 10% of the company's shares.*

Background

The UK's low ranking for workplace participation in corporate decision-making partly reflects our shareholder-policed corporate governance system. Company directors' primary duty in company law is to take decisions in the long-term interests of their members (i.e. shareholders) while only having regard for the interests of other stakeholders such as workers, customers or suppliers.

Through their votes at AGMs, shareholders have a say on the election and re-election of directors to the company board; remuneration practices; and the approval of annual reports and accounts. They can also table resolutions related to the governance of the company. Large shareholders also meet with boards informally and discuss and feed into major strategic issues.

Though workers can also exert informal influence through trade unions and works councils, they do not have equivalent formal powers to shape the board's composition and decision-making unless the board includes a worker director.

This would matter less if worker share ownership was more commonplace. However, there are currently few examples of significant employee ownership at the UK's biggest companies. The UK Employee Ownership Index tracking companies where more than 10% of shares are held by employees has not been updated since 2016. Despite the fact that at that point, the companies in the index had outperformed the wider FTSE All-Share index over the previous ten years by 130%, only around 5% of the companies in the FTSE ALL-Share index had adopted an ownership model where the employees owned over 10% of the company's shares. Outside the listed sector there are only twenty UK companies with more than 1,000 employees that are more than 25% employee owned.

Even this small total is potentially misleading, given that it refers to employee ownership – many, often low-paid, jobs are outsourced to workers who are not directly employed by companies. So those employees that do have shares in their company may not be representative of the company's actual workforce.

Similarly, the proportion of UK shareholdings that ultimately reflect UK worker interests through their pension funds has declined as pension funds have diversified and globalised their portfolios. Research by the High Pay Centre, TUC and Commonwealth found that the proportion of UK shareholdings representing UK pension savers has dwindled to around 6% of the total market, after accounting for at least a quarter of shareholdings from 1981 to 1998.[34]

Research insights

Asset Owners

The declining proportion of shareholdings owned by or invested on behalf of pension funds weakens the link between the interests of the business and the interests of society as a whole. Savers whose working lives – or the working lives of their friends and family for those who are retired – are affected by prevailing employment practices will want to see a return on their investment, but they will also be interested in the employment practices that those investments support. This ought to feed through into investors stewardship activities, so if pension funds' shareholdings are declining as a proportion of the UK market, it may be the case that strategic engagement with companies that reflects the voice and interests of workers is also in decline.

Despite the significantly diminished proportion of shareholdings that they represent, it can be argued that they still provide some form of worker ownership and voice. There are examples of this being put into practice: for example, the pension scheme Railpen, which mainly manages the pension funds of railway workers has been encouraging companies to introduce worker directors and is publishing guidance for companies on how to do this effectively.[35] We also spoke to a pension fund which annually pro-actively polls members to find out on what business issues they should be prioritising for engagement with investee companies.

However, these practices appear to be the exception – and it is difficult for pension savers to act as the voice of the workforce in companies where they are invested via their pension when they lead busy lives and are completely detached from where their pension is invested. One pension fund advisor noted in an interview that pension funds have a fiduciary duty to secure the best possible return for their members, so unless the members are forcefully making the point that they only want to be invested in companies with positive employment practices, funds have a responsibility to invest (or to direct their asset managers to invest) wherever they will achieve the best return.

Previous High Pay Centre polling found that 66% of savers want their funds to be invested in an ethical way and 37% said they would still prefer ethical investment if it meant lower returns (52% disagreed).[36] 42% said that the pay and conditions of the workforce should be an important consideration when their pension provider was deciding whether to invest in a company, only slightly less than the 50% who said that the financial returns generated for the pension fund were important. However, 53% rated their understanding of pensions investment as low, and combined with a lack of time, it seems very unlikely that pressure to engage over employment issues will come from pension savers. This does not necessarily mean it is now what savers would want their funds to be doing.

[34] High Pay Centre, TUC and Commonwealth (2022), Who benefits from returns to shareholders? via https://highpaycentre.org/who-benefits-from-returns-to-shareholders/.

[35] This guidance is yet to be published, but a short discussion of Railpen's intentions can be found at: Railpen (2020) Voting policy 2022, p.6 https://cdn-suk-railpencom-live-001.azureedge.net/media/media/dlopqu3s/voting-policy_2022.pdf.

[36] High Pay Centre (2022), High Pay Centre briefing: Pension saver views on the social and environmental impact of investments via https://highpaycentre.org/high-pay-centre-briefing-pension-saver-views-on-the-social-and-environmental-impact-of-investments/.

Investor engagement

Shareholders beyond the workforce could still have an incentive to engage with companies over workforce-related issues, where they believe that poor employment practices are adversely affecting the business or creating a systemic risk to economic conditions. Asset managers who want to promote the long-term sustainability of companies can therefore play a useful role in pushing companies to improve their employment practices.

However, the investment professionals we interviewed said that whilst there is a small community of asset managers matched by a small community of clients (asset owners) who take workforce issues seriously, the vast majority of investors don't. This point is reinforced by the fact that one chair of a FTSE 100 board we interviewed said that they had never been asked a question about employee relations by a shareholder in the 20 years that they had been in post.

A further barrier to stewardship mentioned by our interviewees was that the extent to which investors can engage with companies and the kind of access and data they get is limited, and that it is difficult and time-consuming to get a good idea of a company's culture. Previous research by the High Pay Centre has found that annual reports are dedicating increasing amounts of space to employment models and working practices but the information is often inconsistent; lacks data that can be used for historic or sectoral comparisons; and largely emphasises the positive.[37] It is therefore difficult to substantiate.

The FRC tried to address the issue of heterogeneity in stewardship standards by aiming to 'create a market' in stewardship, with a tiering system that ranked investors. An asset manager interviewee suggested that this simply reinforced the existing situation, as when it was introduced, most of the well-known asset managers who already had relatively large ESG functions were put in the top tier. Meanwhile, hedge funds mostly didn't even sign the FRC's stewardship code, so weren't classified in a lower tier.

In terms of solutions, one investor suggested a two-pronged attack was needed; setting the high standards and rewarding those who meet it as well as setting out a basic minimum standard that represents responsible investment activity with repercussions for investors who don't meet that standard. Policies have also been suggested to limit the power of short-term investors such as hedge funds and shift the investment industry towards focussing on the long-term: for example, voting rights per share could increase with respect to the length of ownership.[38]

Conflicting stakeholder interests

More fundamentally, however, we do need to acknowledge the limitations of investor stewardship. Rees and Offenbach make the point that the current legal and institutional context, 'which combines no-liability shareholding with increasingly open and global financial markets', is structured in a way that promotes socially irresponsible forms of governance.[39] Or, to put the issue in simple terms, the interests of capital and labour don't always align (the same can be said about the interests of capital and the planet, or capital and wider society).

Investors ultimately aim to achieve the best possible returns for their clients: where they feel that worker voice in corporate governance may improve productivity or employee engagement leading to lower returns, they are incentivised to challenge boards over those issues. But where worker voice leads to a focus on a broader range of stakeholder interests, as opposed to prioritising returns to shareholders, investors may actively oppose it as a concept.

[37] High Pay Centre, CIPD, Pensions and Lifetime Savings Association and Railpen (2022), How do companies report on their 'most important asset'?, via https://highpaycentre.org/how-do-companies-report-on-their-most-important-asset-2/.

[38] For a summary of these policies, see Rees and Offenbach, p.14.

[39] Rees and Offenbach, p.13, summarising Ireland P (2018) Corporate Schizophrenia: The Institutional Origins of Corporate Social Irresponsibility, in Boeger, N. and Villiers, C. (eds.) Shaping the Corporate Landscape: Towards Corporate Reform and Enterprise Diversity, Oxford: Hart Publishing.

Evidence from voting on shareholder resolutions in the US bears out this point – across 25 resolutions in 2019/20 asking companies to elect worker directors, in just 19% of votes cast by 26 major asset managers were in support of the resolution, with 79% against and 2% abstaining.[40] These headline figures mask significant variation from firm-to-firm: three of the 26 firms (Aviva, Mirova and Robeco– all European firms) supported more resolutions than they opposed, while six firms, (US giants Blackrock, JP Morgan, State Street plus European firms Allianz and Baillie Gifford) opposed every resolution at companies where they held shares.

It should also be noted that some asset managers automatically vote against worker directors because they have a policy on board independence rather than because they are opposed to worker directors per se. Nonetheless, these findings suggest substantial opposition from the investment world to worker interests and perspectives.

Good practice recommendations

- Companies should enable their workforce to secure a meaningful shareholding, as a means of giving them a formalised voice in corporate governance as shareholders.
- The extent of worker shareholdings should be disclosed by all companies in annual reports, enabling a more accurate and up-to-date understanding of the extent of worker shareholdings and the outcomes it delivers in areas such as financial performance, corporate governance or pay and working conditions.
- Companies should provide more detailed reporting on their employment models and working practices so that investors fully understand the composition, skills and capabilities, engagement, well-being and voice of the workforce in whom they are investing.
- As a corollary, investors should also encourage companies to provide informative reporting on their workforce, including mechanisms for voice in corporate governance, encompassing consistent data with contextual narrative. They should also support disclosures – perhaps in annual reports or sustainability reports - by employee forums detailing the extent and impact of their engagement with board-level decision-making.
- Investors should adopt a more supportive approach to worker-directors, acknowledging that they bring perspectives and insights to the company that are impossible for anyone qualifying as 'independent' (ie from outside the company) to contribute.
- Pension funds should proactively seek the views of their members on the social and environmental impact of their investments, including on employment issues including worker voice and participation in decision-making, and incorporate this into their stewardship practices and/or their mandates for asset managers.

[40] This data was originally gathered by PIRC, who can be contacted via their website: www.pirc.co.uk. The percentages reflect the proportion of total resolutions supported by

Conclusions and recommendations

Our research has found some positivity amongst business leaders and investors towards the worker voice agenda, and many useful examples of good practices that other companies can learn from. Particularly noteworthy were the companies with long-standing trade union partnerships where constructive relationships of trust had been fostered through time and effort from both sides, resulting in trade unions playing a valuable consultative role at board level. There were also several examples of companies that had spent many years adapting and improving their employee forums to bring worker voice into board decision-making.

However, we found widespread risk aversion to devolving processes outside of the boardroom or allowing alternative voices into corporate governance, except when micromanaged by existing board members with minimal accountability for acting on the issues raised by workers.

This has resulted in substantial opposition amongst business leaders to the appointment of worker directors (especially as elected by the workforce) as well as inhibiting the ability of trade unions, works councils or other mechanisms to offer genuine independent worker voice. We believe that this necessitates changes to policy and practice for the following reasons:

- **Business performance:** reduced cognitive diversity results in worse decision-making processes and a lack of open, honest communication between different levels of the company
- **Pay and working conditions:** Well-paid and fulfilling work is a vital by-product of business success and one of the main reasons public policy is focused on business growth. While worker voice in corporate governance is not intended solely to promote worker interests, good work is less likely to be a business priority if worker voice is weakened.
- **Trust in business:** Our polling clearly demonstrates concerning levels of public cynicism towards business, and suggests that stronger worker voice could have some effect on this.

One message that comes through clearly from our findings is that the Corporate Governance Code and Wates Principles, as voluntaristic sets of rules, have had little impact on workforce engagement. Non-compliance with these guidelines is not subject to any kind of meaningful consequences; hence they cannot compel resistant companies to strengthen worker voice in their corporate governance structures. While the investment industry is taking an increasing interest in 'ESG' issues, the debate around the meanings of this term and the pressure on investors to maximise their clients' financial returns, suggest that it is unrealistic to expect shareholders to drive a re-balancing of corporate governance in favour of stakeholders other than shareholders.

Happily, there is much that policymakers and business practitioners can do to address this situation. In this respect, we would recommend the following policy and regulatory changes.

- **Equalise the Wates Principles with the Corporate Governance Code on workforce engagement.** While privately-owned companies require less exacting financial reporting requirements than those traded by publicly-listed companies, there is no reason why similar-sized employers should be encouraged to offer different levels of worker voice because of their ownership structures. At present, Corporate Governance Code recommends three detailed options for implementing worker voice with which companies must comply or explain. The corresponding document for private companies, the Wates Principles simply state that 'companies should develop a range of formal and informal channels that enable them to engage in meaningful two-way dialogue with workers and other stakeholders. The Wates Principles should be updated to match the provisions in the Code setting out three options for workforce engagement, and future updates to stakeholder issues in both codes should be synchronised.
- **Add guidance to the Code and the Wates Principles on the role of worker directors**. This should include a discussion of the purpose of worker directors (to diversify the board and bring workforce perspectives to the boardroom rather than to attempt to represent the whole workforce), guidance on how to address common concerns such as confidentiality and conflicts of interest, and an outline of good practice for the introduction of worker directors.
- **Add more detailed expectations to the Code and Wates principles on employee forums, covering the forum's access to and accountability from the board**. Some form of employee forum represents the mechanism used for incorporating worker voice into governance structures for 28% of listed companies, and forums are also used extensively in the non-listed sector and elsewhere. However, their effectiveness as conduits for voice depends on them having access to and accountability from the board. A forum should not be considered to be providing meaningful voice – and therefore compliant with the Code - unless its terms of reference include guaranteed periodic access to the board, and a mechanism for ensuring that their views are acted upon. This could involve a report in the annual report or sustainability report edited by the forum members detailing its activities and impact, based on the reports by board committees
- **Acknowledge trade unions as a means of delivering worker voice in corporate governance in the guidance to the Code and the Wates Principles.** Our research has identified worker directors; employee forums; and trade union dialogue with boards as the key vehicles for achieving worker voice in corporate governance. The Code already identifies worker directors/Stakeholder NEDs; and advisory panels comprised of workers as options for delivering worker voice. The omission of trade unions fails to acknowledge a key means for boards to consult with worker representatives and this should be corrected in the next edition of the Code, and the Wates Principles. As with employee forums, regulators should apply high standards when assessing compliance – board commitment to discuss major business practice and strategic decisions with unions and take their feedback into account should be included in union recognition agreements before a company should be considered compliant.

- **Change the term 'employees' to the term 'workforce' in the Companies Act.** In legal terms, 'employee' only refers to direct employees and does not include those who are indirectly employed through third parties or the self-employed. The Companies Act refers to 'employees' throughout: changing this to 'workforce' would require companies to report on, and have regard to, their whole workforce, rather than just direct employees. In particular, the use of 'employees' in Section 172 of the Companies Act, which sets out the legal responsibilities of companies to have regard for the interests of all stakeholders, allows companies to exclude consideration of workers who contribute to their operations. The Code and the Wates Principles refer to 'workforce' throughout, however as these are voluntarist, companies are still not legally bound to report on their indirect employees.[41] This is very likely to be a key reason why our research has found that the vast majority of companies' workforce engagement mechanisms only cover direct employees.
- **Require companies to inform workers of their rights and access to 'voice.'** The low level of take-up of right to be consulted in the ICE regulations is attributed to lack of awareness. Similarly, many workers in industries where trade unions have not had a traditional presence have not had the opportunity to learn about the case for union membership in terms of voice. Employers should be required to issue all new starters with information about their rights at work, including literature from the relevant trade unions in their industry.
- **Mandate the appointment of worker directors by workforce election.** Companies should be required to appoint at least two worker directors, who should make up roughly one third of the board. This policy should be accompanied by guidance along the lines of the good practice listed above, on how to manage the process of appointing worker directors to ensure that the roles are carried out effectively.

[41] For more information see TUC (2021) Restoring Trust in Audit and Corporate Governance, p.3, via https://www.tuc.org.uk/sites/default/files/2021-08/TUCresponseAuditCorporateGovernance.pdf, pp3-14.

- **Abolish the requirement for worker directors at listed companies to be subject to election/re-election by shareholders at AGM.** Worker directors are intended to be elected by a different stakeholder group and provide a different perspective from the directors typically selected by shareholders. The majority of the board are and would remain subject to election, but where it exists, shareholder opposition to worker voice at boardroom level would be neutralised. This could enable an increase in the so-far disappointingly low number of worker directors.
- **Guarantee trade union workplace access and recognition, as a means of achieving worker voice in corporate governance.** Trade unions should be given stronger rights of access to workplaces, to inform workers of the benefits of collective bargaining. Any union should be allowed to access any workplace where it believes work relevant to the union is done, provided the request is made with reasonable notice and for a reasonable amount of time. The barrier to statutory recognition of unions should be lowered – if 2% of workers indicate that they would like to join a union, this should trigger the process for a recognition agreement. This would bring the threshold in line with the 2% trigger for the Information and Consultation of Employees regulations.[42]
- **Take worker voice into account when considering companies' bids for public procurement contracts.** A number of public bodies, including local authorities, have promoted a 'community wealth building' approach to procurement where the employment models of the competing parties are taken into account. Worker voice is integral to good work, so bodies awarding public contracts could be encouraged to account for the strength of voice when making their decision, so as to promote good work and maximise the social value achieved by public spendingt.

For businesses, we would reiterate the benefits of the good practices identified by our research in relation to the key mechanisms we identify for delivering worker voice in corporate governance.

Employee forums/boardroom dialogue

- Indirect employees should be involved in employee forums as well as direct employees.
- In advance of holding elections, leadership should make it clear to the workforce what the role of workforce rep involves, with specific requirements in terms of representing the concerns of their electorate and reporting back on their work.
- Independence from management is essential for an effective forum: reps should be elected by the workforce and be able to meet with workers independently from management.
- If the company has an agreement with a trade union or unions, union reps should attend the employee forum meetings.
- Training should be provided to reps on how to represent the views of all their constituents, and to board members/senior leaders on how to engage with the employee forum.
- Reps should be given adequate time out of their normal roles to engage with constituents.
- The board, and specified key individuals, should have a responsibility to meet regularly with the forum, and to report back on how issues raised by the forum have been considered and acted on: this should be in the Terms of Reference for the forum.
- Similarly, the board should be required to discuss major business decisions that with the forum, and take its perspective into account during the decision-making process.
- The agenda for meetings between the employee forum and the board should include items from both parties.
- The forum should be able to publish, with full editorial control, an annual summary of its engagement with the board detailing how effective and meaningful the engagement has been.

[42] Further recommendations on the practical details of these proposals can be found at IPPR (2018) Prosperity and Justice: a plan for the new economy, p.120-122, via https://www.ippr.org/files/2018-08/1535639099_prosperity-and-justice-ippr-2018.pdf.

Worker directors

- The issue of worker directors should be approached from the perspective of diversity and democratisation – bringing different professional and life experiences to the decision-making process in order to improve decision-making. Worker directors provide a workforce perspective and a knowledge of operational practices but they should not be expected to represent all workers.
- Given that worker directors are not there to represent the entire workforce, they should be supplementary to collective worker voice mechanisms that give voice to the whole workforce, such as board consultations with trade union and employee forums on major business practice and strategy issues, and not a substitute for these collective mechanisms.
- Worker directors should ideally be elected by the workforce, though appointment by management is preferable to having no worker directors.
- It should be made clear to the workforce what the role involves ahead of the election process so that individuals putting themselves forward understand the duties of a director and are willing to undertake them.
- Companies should provide training and mentoring for worker directors on how to carry out the role and comply with their directors' duties. This should include managing conflicts of interest and confidentiality.
- Boards should have at least 2 worker directors, and ideally the worker directors should make up one third of the board.

Trade Union/boardroom dialogue

- Relevant unions should be allowed periodic access to workplaces, regardless of whether there is already a union presence or not, to tell staff about the benefits of trade union membership, and ensure that staff are aware of their rights and know who the relevant trade unions are for their sector.
- Companies should provide new employees with information about their recognised trade union, so that the union can be more representative and reflect a wider proportion of the workforce in discussions with the board.
- Companies should invest in relationships with unions by providing reps with facilities time
- Where a union has a presence within a company, the company board should engage with the unions on strategic matters. The board should have meetings with unions where pay negotiations are off the table, where the purpose of the meeting is to discuss wider strategic issues and to listen to what union officials have observed
- The board should involve unions in decision-making processes in all areas that affect the workforce – unions' role as a mechanism for worker voice in corporate governance should be formalised in union recognition agreements.
- At companies where there is a partnership with unions, any non-independent voice mechanisms (including in-house employee forums, company surveys and designated stakeholder NEDs) should seek the involvement of unions and should act as a supplement to them.

Ownership and stewardship

- Companies should enable their workforce to secure a meaningful shareholding, giving workers a meaningful and formalised voice in corporate governance as shareholders.
- The extent of worker shareholdings should be disclosed by all companies in annual reports, enabling a more accurate and up-to-date understanding of the extent of worker shareholdings and the outcomes it delivers in areas such as financial performance, corporate governance or pay and working conditions.
- Companies should provide more detailed reporting on their employment models and working practices so that investors fully understand the composition, skills and capabilities, engagement, well-being and voice of the workforce in whom they are investing.
- As a corollary, investors should also encourage companies to provide informative reporting on their workforce, including mechanisms for voice in corporate governance, encompassing consistent data with contextual narrative. They should also support disclosures – perhaps in annual reports or sustainability reports - by employee forums detailing the extent and impact of their engagement with board-level decision-making
- Investors should adopt a more supportive approach to worker-directors, acknowledging that they bring perspectives and insights to the company that are impossible for anyone qualifying as 'independent' (ie from outside the company) to contribute
- Pension funds should proactively seek the views of their members on the social and environmental impact of their investments, including on employment issues including worker voice and participation in decision-making, and incorporate this into their stewardship practices and/or their mandates for asset managers.

Measures to strengthen worker voice in corporate governance will not on their own, individually or collectively, resolve the many economic and employment issues currently facing the UK.

However, our research shows that they could make a very positive contribution to the vital causes of better pay and working conditions; a more collaborative, democratic business culture; more engaged, productive companies; and better working lives.

Appendix: Methodology

Interviews

The High Pay Centre carried out 18 interviews in total, including business leaders, unions and investment professionals. We have also drawn on individual interviews and roundtables with over 30 business leaders carried out previously for a project with the CIPD on pay and people governance.[43] The interviews covered a wide range of sectors. These included oil and gas, banking, retail, manufacturing, IT, insurance, financial services, utilities and prison facilities management. The interviews also covered a mixture of ownership types: publicly listed, private, foreign-owned and non-profit.

Polling

Survation carried out polling on behalf of the High Pay Centre. The survey was conducted via an online panel. Residents aged 18+ living in the UK were sampled, and the sample size was 1,104. Differential response rates from different demographic groups were taken into account.

Steering group meetings

The High Pay Centre held two steering group meetings before and after carrying out the research with representatives from the investment industry, trade unions, civil society and academia.

[43] CIPD and High Pay Centre (2021) Role of the RemCo: How to achieve good governance of pay, people and culture, via https://highpaycentre.org/wp-content/uploads/2021/07/8158-Role-of-REMCO_FINAL-1.pdf.

The High Pay Centre

The High Pay Centre is an independent, non-partisan think tank focused on fairer pay, worker voice and responsible business practice.

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