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The impact of employment legislation on small firms: a case study analysis

PAUL EDWARDS, MONDER RAM AND JOHN BLACK

INDUSTRIAL RELATIONS RESEARCH UNIT, WARWICK BUSINESS SCHOOL

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Grant Fitzner
Director, Employment Market Analysis and Research
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Contents

Executive Summary 7

1. Aims, objectives and focus 11

2. Methods and case study organisations 19

3. Small firms, the law and informality 30

4. Perceptions of regulation 35

5. The role of markets 40

6. Adjustments within the firm 49

7. Costs and benefits of regulation 59

Conclusions 70

References 76

Appendix: Case study organisations 81

Cons1  82  Food1  93  Care1  120
Cons2  85  Food2  97  Care2  123
Cons3  89  Food3  101  Care3  127
Cons4  90  Food4  106  Care4  129
Cons5  90  Locks1  109  Care5  134
Cons6  91  Locks2  115  Care6  141
List of Tables

1  Summary characteristics of case study firms          26
2  Impact of legislation on the firm and overall perceptions                  38
3  Formalisation and modernisation of employment relations in 12 cases            52
4  Overall employer assessments of impact of employment regulations                        66

Abbreviations

ET  Employment Tribunal
CIT  Critical incident technique
IERs  Individual Employment Rights
NMW  National Minimum Wage
NVQ  National Vocational Qualification
SIC  Standard Industrial Classification
WERS98 1998 Workplace Employee Relations Survey
WTD  Working Time Directive
WTR  Working Time Regulations
Executive summary

The impact of employment legislation on small firms is mixed, and is contingent on the market context and the individual situation of each firm. The effects mainly arise from the context of the legislation as opposed to its content. Therefore when analysing the impact on small firms, the focus should not be on the impact on small firms as a whole but rather the impact of specific legislation under certain circumstances.

Aims and objectives

It is widely argued that employment legislation raises firms’ labour costs and adds to their administrative burdens. These issues may affect small firms particularly acutely for reasons including their limited administrative resources and their economic vulnerability. Previous survey research has shown that these negative effects are often limited, but it has not addressed why this is so. There are also potential positive effects of the law, for example, if regulations stimulate improved disciplinary procedures or a better work-life balance.

This study therefore set out to provide a detailed qualitative picture of the impact of employment legislation on the employment decisions and practices adopted by small firms. The aims included an assessment of the adjustment mechanisms in place, the costs and benefits of regulation and any effects on decision-making and firms’ competitiveness.

Analysing law and practice

The research identified three channels through which the law can affect small firms. A direct effect entails a specific response, for example a change in wages as a result of the National Minimum Wage (henceforth NMW). An indirect effect would include the formalisation of disciplinary practice after an Employment Tribunal case. There may also be a broader affinity between a firm’s approach and the direction of public policy, where a firm’s practice is consistent with legal developments without there being specific causal linkages.

In addition, the research identified four sets of factors shaping the effect of employment laws on practice.
• If managerial perceptions define the law as an intrusion, efforts may be made to minimise its impact. Alternatively, laws may be perceived to be beneficial, for example through the creation of a ‘level playing field’.
• The nature of laws varies. Some laws, such as the NMW have universal coverage whereas others (for example, on unfair dismissal) come into effect only when a firm takes a specific action. It is also likely that longer-established laws, for example on maternity leave (introduced in 1975), will be more embedded in practice than recent legislation (such as the NMW introduced in 1999). Finally, laws in relation to collective rather than individual employment rights (mainly on trade union recognition and strikes) are likely to have little take-up among small firms.
• The market context will affect firms’ ability to respond to employment legislation. The greater the financial and competitive pressure that firms face, the more difficult it will be for them to absorb any costs of regulation. By contrast, firms in stronger positions may not only be able to absorb costs but may also find that the law acts as a stimulus to modernisation.
• Distinctive adjustment processes within small firms may act as a filter that affects compliance costs. For example, the informality of procedures in small firms can result in maternity leave being handled through face-to-face arrangements rather than necessitating formal administrative systems.

Perceptions of employment regulations

In five of the 18 firms, discussion with managers identified views that legislation was imposing administrative costs and making it harder to run the business. However, such perceptions reflected attitudes towards law in general; in the firms themselves concrete effects were either absent or small. In the remaining firms, views on the law in general were less clearly articulated.

Nature of regulation: direct and indirect effects

Experience of collective employment laws on trade union recognition, strikes and redundancy were not reported by the small firms studied.

Of laws governing individual employment rights, older laws such as maternity leave were largely taken for granted. Few firms reported direct experience, and where there was such experience the issue was handled informally (see section ‘Adjustment within the firm’), for example by arranging cover from existing workers. No experience of parental leave was reported.

Some firms had experience of cases going to Employment Tribunals. Experience with this aspect of law tended to encourage the formalisation and development of procedures to handle disciplinary matters.

The Working Time Regulations had few effects. Most firms had working hour schedules that meant that the main provisions of the Regulations governing
maximum hours of day and night work did not apply. Where the Regulations
applied, their introduction had not been controversial, and no significant
record-keeping costs were reported.

The NMW had a direct effect on one firm, which decided that administering
the NMW in respect of its homeworkers would be difficult, and as a result the
workers were brought into the factory. There were significant indirect effects in
the care homes (see below).

**Market context**

The wider context of competitive pressure was the main influence on a firms’
overall business success. However in some circumstances, employment laws
played a contributory role. For example, care homes were facing funding
pressures as a result of the level of income that they received from social
services departments. Regulations on standards of patient care, record
keeping, and staff training imposed additional pressures. With rises in wages
in other sectors as a result of the NMW, several homes faced substantial
recruitment and retention problems. The main adjustment mechanism was the
working of long hours by managers. In individual cases market pressures
were reduced, notably in a home caring for young people which had strong
demand for its services and which did not compete in the same labour market
as the other homes.

In manufacturing firms, labour supply issues were not significant. Some of the
firms were moving towards higher value-added products, sometimes
accompanied by the introduction of new technology. In such contexts, the
negative aspects of legislation could be absorbed. Positive effects were
mainly of an affinity kind. For example, one firm was changing its policy on
work-life balance issues as part of its conscious modernisation of its
employment relations; legislation here was characterised as a ‘wake-up call’.

Among the consultancies, several had chosen consciously to avoid what was
termed a ‘high pressure’ approach. They sought niches where demands were
less intense. This meant that pressures to work long hours were limited, and
there was also the space to deal with work-life balance issues.

**Adjustment within the firm**

Informality operated in almost all the firms in relation to the handling of
maternity leave and time off for family needs. Part-time staff might change
their hours to cover a particular gap. Shorter-term needs for time off were
handled on a face-to-face basis, in ways that some workers who had
previously worked in large firms appreciated.

‘Informality’ was not, however, a characteristic of all firms or all aspects of
their employment relations. Some were already formalised – for example in
the use of disciplinary procedures – while others were moving in this direction.
The main legal drivers here were Employment Tribunal cases, but more fundamentally changes in business policy associated with strategies of modernisation.

Costs and benefits; long-term influences and affinity effects

On costs of regulatory compliance, there was no evidence that managerial decision-making was constrained by the existence of regulations. The main effects were of an administrative nature, and given the limited overall effects of regulation they were felt to be small. Firms found it hard to produce concrete estimates of these costs, since they did not engage in the necessary detailed accounting. The main negative impact of the costs was the amount of management time involved, but this time was rarely specified by firms.

In some cases, the legal costs of dealing with Employment Tribunal cases were considerable, but the benefits of adopting a more professional approach were also identified.

The benefits of employment regulation were identified mainly by firms adopting a strategy of moving up-market (i.e. producing higher value goods or services). Benefits were mainly seen in terms of encouragement (for example the ‘wake-up call’ cited in the section ‘Market context’ above). In addition a broader affinity effect can be identified, in that regulations were consistent with the ways in which some firms were moving. An example includes a firm that felt that a flexible approach to family needs brought it business benefits, and thus saw legislation in this area in a positive light even though the legislation had no direct effects on its behaviour.

About this project

The research was carried out as part of the Department of Trade and Industry’s employment relations research programme. It was undertaken by Paul Edwards, Monder Ram and John Black from the Industrial Relations Research Unit, Warwick Business School and the Department of Corporate Strategy, de Montfort University.

The research involved case studies with 18 firms. Four sectors were chosen: management consultancy, food manufacturing, key and lock manufacture, and care homes. A total of 101 interviews were conducted with owners and senior managers, and in addition employee handbooks and rulebooks were consulted.
Aims, objectives and focus

Introduction

The Labour Government elected in 1997 has introduced a significant programme of employment legislation, including new laws on trade union recognition, a National Minimum Wage (NMW), working time regulations, and rights in relation to the work-life balance. Such laws are controversial. ‘Employers have increasingly complained’, says one assessment, ‘that the growing regulatory burden on business is imposing higher employment costs on employers, constraints on flexibility in labour use and excessive administration’ (Dickens and Hall, 2003: 149). In May 2002 the chair of the Better Regulation Task Force stated that businesses ‘feel overwhelmed by the volume and complexity of [employment] regulations’.¹

Much economic theory argues that any external change that raises firms’ costs will have consequences for employment levels or profitability or both (for a review, see Edwards and Gilman, 1999). Yet surveys, discussed below, have shown that the effects are less widespread than is often thought, while there is also some evidence that regulation can have ‘positive’ as well as ‘negative’ effects. Very little detailed research has been conducted, however, into the mechanisms involved. Surveys show what happens in representative samples of firms, but find it hard to explain why firms behave as they do. The present study set out to examine the processes through which firms respond to employment regulation.

The focus is small firms (those employing 50 or fewer workers). The reasons for this choice reflect the well-known importance of such firms in the economy and the fact that some (but not all) regulation is likely to affect them particularly acutely, since they have fewer administrative resources than do large firms. A caterer and hotelkeeper is quoted as having to respond to a stream of different regulations: ‘small wonder that we managers of small businesses spend less and less time looking after our clients and more and more time snowed under behind the scenes’ (Better Regulation Task Force, 2002: 5). In addition many firms face intense competition, while managers are

felt to resent any ‘outside interference’ (Curran and Blackburn, 2000). Such firms are thus particularly likely to reveal the effects of employment regulation.

**Aims and objectives**

The fundamental aim specified for this study in the DTI’s project brief was to ‘provide a detailed qualitative picture of the impact of employment legislation on the employment decisions and practices adopted by small firms and to establish the costs and benefits associated with compliance and non-compliance’. The focus is both new and long-standing legislation, and the benefits and costs associated with each piece of legislation and with the cumulative effects of laws in this field. There were four central objectives:

- To provide an assessment of the amount and nature of regulation perceived by small firms and where relevant to detail mechanisms used ‘to ensure compliance or avoidance’.
- To identify the circumstances under which legislation is perceived as ‘imposing a disproportionate burden on business or constraint on decision-making or impact on competitiveness’.
- To explore coping strategies and the factors promoting positive and cost-effective outcomes.
- To provide information on any effect on relationships with employees, for example the formalisation of working relationships.

**Methodology**

In pursuing these objectives the overriding focus of a qualitative picture should be underlined. The study was not intended to provide survey estimates of the impact of legislation but to assess the processes through which firms respond to legislation and the ways in which legislation is perceived. It is now a commonplace that small firms vary in many respects, and much of the small firms’ literature has taken as its starting point the problem of treating small firms as though they are necessarily similar to each other and distinctively different from large ones (Storey, 1994). What was important for the present study was not to seek typical or average cases but to identify cases, which illustrate different conditions and circumstances. Hence cases were chosen systematically from three sectors – care homes, consultancy and manufacturing – on the basis of their ability to shed light on the impact of employment regulations in a range of market and business contexts (see chapter 3 for further discussion).

The purpose of qualitative research on the issues identified here is to examine processes and relationships within firms. This has three aspects.

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2 A further objective was to establish whether compliance costs differ by size and age of the company. However, the difficulty of assessing this through case study work was recognised at the outset and it became increasingly so during the course of the fieldwork. Accordingly, although the case studies yielded useful information on this question, particularly in relation to processes, it was accepted that this objective was less central than the others.
First, research is more detailed than is feasible in a survey, so that, for example, a fuller picture of a firm’s response to legislation is developed. A recent survey, discussed further below, concludes, for example, that small firms display a ‘curious, but not illogical, pattern’: their knowledge of employment rights is vague but they are still prepared to be critical of the effects of legislation on the firm (Blackburn and Hall, 2002: 73). Detailed inquiry can throw light on the nature and significance of this pattern.

Second, the process of responding to legislation is addressed. Rather than assume a clear ‘impact’ of legislation, the ways in which it is interpreted and filtered in a firm are addressed. For example, why are some laws largely ignored?

Third, the processes within a firm can be placed in context to offer an explanation for observed behaviour. Such explanation is analytical rather than statistical: it does not ask how strong a relationship is between two variables, but instead addresses the mechanisms between cause and effect (Edwards, 1992; Eisenhardt, 1989; Mitchell, 1983). Under what conditions do certain linkages operate, and why? For example, why do certain types of firm react in one way to legislation, and firms in other circumstances act differently?

Turning to the context of small firms, research to date indicates that many firms manage in largely informal ways (Holliday, 1995; Rainnie, 1989). This embraces a lack of administrative systems and the fact that the owner-manager is likely to deal personally with many aspects of the business. In relation to the present research, it was thus likely that there would be substantive and methodological issues in establishing ‘impact’.

Substantively, firms may respond to legislation without formal consideration; they will generally not have personnel specialists to draft procedures, and they are likely to deal with employment legislation alongside many other issues. Methodologically, therefore, it was to be expected that there would not be detailed records, that recollections will have been hazy, and that conscious and explicit estimates of the cost of a certain activity will not have been made. Conscious of this fundamental issue, the research did not set out to provide concrete estimates of ‘impact’. Instead, it was designed to reveal how small firms respond to employment regulations and how they think about the costs and benefits.

As explained in chapter 3, four reasonably closely defined sectors were chosen, reflecting different business conditions and different patterns of pay and working hours. They were management consultancy, care homes, food manufacture, and the manufacture of locks. Eighteen firms were studied between September 2001 and February 2002, using interviews, analysis of documents and a small amount of observation.
Modelling the effect of employment laws

The main areas of employment law of interest to the DTI in this study were as follows. Dates when the key provisions were first introduced are shown in parenthesis.

- Maternity and parental leave and allowances (maternity leave and pay, 1975; parental leave, 1999)
- Unfair dismissal protection and related rights (1971)
- Contractual issues including wages and holidays (1963)
- Working Time Regulations (WTR) (1998)
- Redundancy payments (1965)
- Equal pay and discrimination issues (Equal Pay Act 1970; Sex Discrimination Act 1975)
- Trade union and industrial disputes legislation (union recognition, 2000; industrial disputes legislation, numerous from 1980)

Other areas affecting firms as employers, for example health and safety, were less central. They were, however, to be addressed if they emerged in the course of empirical research.

A model to assess the effects of these laws emerged as the research unfolded. It has four elements.

First, the mental image of the law which owners and managers of firms hold may shape their responses. If they feel fundamentally that legal regulation is wrong, they may do everything that they can to minimise its effects. Alternatively, there are various ways in which the law could be felt to be helpful, a standard case being its establishment of a ‘level playing field’. In practice, matters are likely to be less clear-cut. As noted above, knowledge of the law may be less precise than images of resistance or welcome would suggest. Broad perceptions may none the less shape how the law is understood and put into practice.

Second, in relation to the law itself, three points stand out.

- As shown above, some of these laws go back to the 1960s while others are much more recent. It is likely that the older laws have become more embedded in business practice than the newer ones.
- Some laws have universal application, for example the WTR, whereas others apply only if a particular event has taken place, for example a redundancy.
- It was also likely that such collective issues as trade union recognition and industrial disputes would feature rather little among small firms since levels of union membership are low. (Twelve per cent of ‘small businesses’ [stand-alone private sector workplaces with between 10 and 99 employees] recognised unions in 1998: Cully et al., 1999: 266).
The recent, universal, and individual rights issues feature most strongly in the analysis of this report.

Third, the impact of the law is likely to vary across sectors of the economy. As discussed in chapter 5, a useful approach is to examine the position of a firm in its sector, using analysis of competitive advantage (Porter, 1985). Competitive advantage is shaped by the nature of the industry and the ways in which a given firm positions itself in that industry. In the words of Porter (1990: 33-4),

‘the basic unit of analysis for understanding competition is the industry. An industry (whether product or service) is a group of competitors producing products or services that compete directly with each other. . . . Many discussions of competition . . . employ overly broad industry definitions [which] are not strategically meaningful industries because both the nature of competition and the sources of competitive advantage vary a great deal within them.’

The present importance of this approach is that the impact of employment regulation needs to be examined in relation to reasonably meaningful industries and the competitive conditions within them.

The fourth and final component of the framework is the nature of small firms. Looking at firms in general, Hepple (1983: 394) felt that it could be ‘said with confidence’ that legislation has given a ‘tremendous stimulus to the introduction of individual grievance and disciplinary procedures’ with the ‘professionalisation of industrial relations management’ being a direct response to the need for legal expertise. Small firms, however, are often felt to be informal and to lack professional approaches to the employment relationship. The ways in which law is put into practice may be distinctive in small firms as compared to others.

Legal provisions, competitive conditions, and relationships within the firm will interact. For example, employers do not necessarily use all the powers that the law grants them, for reasons including fear that the existing fabric of employment relations will be disrupted (Evans, 1987). A useful model here is provided by Henry (1983), who distinguished the ‘public justice’ of legislation and regulations from the ‘private justice’ of procedures, norms, and practice within the firm. He argued that the two spheres would shape each other. For example, existing approaches to discipline and dismissal in large firms influenced legislation on these matters, which in turn encouraged the development of procedures noted by Hepple. In chapter 6, Henry’s approach is extended to small firms.

In operationalising this model, three categories can be identified.

- A direct effect, for example a change in wages as a result of the NMW. This would reflect widespread knowledge of the legislation, difficulties of evasion, and acceptance that the legislation is in some sense ‘fair’. The
generally ready acceptance of the NMW reported by the Low Pay Commission (2000) and endorsed by the CBI (2000) suggests that in broad terms this may be the picture regarding the NMW. There may, however, be pockets where the NMW is ignored (Gilman et al., 2002), and of course there remain issues as to exactly how firms have adjusted to the NMW, and at what cost. Research on the WTR, however, suggests a much less extensive knowledge and application in this area (Arrowsmith, 2000; Goss and Adam-Smith, 2001).

- An indirect effect, such as the encouragement from the presence of the WTR to record hours more precisely or a formalisation of disciplinary practice after an Employment Tribunal case.
- And a broader affinity between a firm’s approach and the direction of public policy. There need be no specific direct or indirect effect of the latter on the former; an example is a clarification of the handling of time off for family reasons. At one extreme, a firm may be doing something, which is consistent with legal developments with there being virtually no specific causal processes. At the other extreme, firms may see that the law is suggesting certain developments and decide that it is time to do something, which they might have done but to which the law acts as an encouragement; this end of the continuum comes close to the indirect effects situation.

**Costs and benefits**

As for costs and benefits, costs were identified under three headings.

- First, there are the direct costs of dealing with a piece of legislation. This includes administrative costs, for example managerial time devoted to learning about the WTR, making any changes in practice, and the costs of any increased record-keeping. It also includes wage costs, most obviously where the NMW leads to increased wage rates.
- Second, there may be influences on decision-making, for example if legislation means that firms are more constrained in hiring because they fear that unfair dismissal legislation may then limit their freedom to dismiss workers.
- Third, there may be wider effects. A commonly debated example is maternity and parental leave provision, the argument being that when workers take their right to time off it is hard for small firms to fill the gap (this effect being in addition to direct costs of employing replacements). It is also possible that costs associated with specific laws are small but that the cumulative effect of compliance is considerable. In terms of the effects of such costs, the implication is often that the ‘flexibility’ or ‘competitiveness’ of firms is harmed. These matters are analysed in chapter 5, where the meaning to be attached to terms such as competitiveness is considered.

Benefits are less obvious and also harder to assess because they may be long-term and of a potential kind while costs are immediate and concrete. It is
also important to take account of different stakeholders, notably managers of
a firm, employees of the firm, and society in general. From the point of view of
a firm, the following non-exhaustive list may be offered. Managers may benefit
from the WTR because the regulations encourage a more efficient utilisation
of labour, from the NMW because it encourages more modern payment
systems, from unfair dismissal legislation because it encourages a more
rational and considered approach to hiring and firing decisions, or from
legislation on the work-life balance if it makes recruitment and retention of
staff easier. More generally, as the *Fairness at Work* White Paper noted (DTI,
1998: para 1.9), minimum employment rights can underpin ‘effective
relationships’ and reduce the incentive to resist change. Workers in a firm can
gain from improved wages, fairer disciplinary systems, and rights to deal with
family needs. Societal benefits could include a generally more efficient small
firms sector, if the benefits noted by the White Paper are generalised.

The present project was not designed to deal with all these issues. But it
should be stressed that the costs and benefits in relation to existing firms are
only one part of an assessment of overall gains and losses arising from
legislation. For example, a specific firm may go out of business but if the
efficiency of the economy as a whole is improved there may be countervailing
social benefits.

**Structure of the report**

The next two chapters explain the context of the empirical research. Chapter 2
outlines the methodology of the study. Chapter 3 examines two sets of
research, one on the effects of the law and one on the operation of small
firms. These literatures respectively demonstrate rather small effects of the
law and hint at reasons, to do with the flexibility offered by ‘informal’ working
practices, why this is so. The empirical analysis builds on these suggestions.

It has been argued above that the effects of the law are mediated by four
factors: the overall attitudes held by owners of small firms, the nature of
individual laws, the market context in which firms operate, and the internal
dynamics of each firm. The first theme is pursued in chapter 4. The other
three themes are combined in two chapters. Chapter 5 analyses market
conditions and provides the main discussion of the NMW and the WTR, while
chapter 6 addresses internal dynamics, covering laws on work-life issues and
disciplinary procedures.

After this analysis of the process, chapter 7 turns to the results in terms of
costs, benefits and competitiveness. The other analytical device for thinking
about the impact of law is the distinction between direct, indirect, and affinity
effects. These effects are highlighted as the discussion proceeds, particularly
in chapters 5 and 6. Finally, the Appendix contains details of each firm,
organised in a standard format of market context and different types of
legislation.
In relation to the four central objectives outlined above, the key discussions are as follows.

- An assessment of the amount and nature of regulation perceived by the firms is given in chapter 4, in relation to overall perceptions, while chapter 7 addresses costs and benefits in the firm itself. Mechanisms to ensure compliance turned out not to be a major issue; they are examined in chapter 5. Avoidance reflected mainly small firms’ informal practices as discussed in chapter 6.
- Issues of burdens on business, constraints on decision-making and the impact on competitiveness are covered in chapter 7.
- Coping strategies turn mainly on responses within the firm as analysed in chapter 6, though specific responses to the NMW and the WTR are considered in chapter 5. The factors promoting positive and cost-effective outcomes are introduced in chapter 6, in relation to modernisation strategies, and examined further in chapter 7.
- Issues of relationships with employees are covered in relation to formalisation and the handling of discipline in chapter 6.
2

Methods and case study organisations

This chapter explains the logic of the case study approach adopted. It then outlines how this logic was applied through the selection of sectors and firms for study. Summary information on the firms is included, to act as an aide-mémoire during the reading of the analytical chapters. The Appendix gives details on each firm in a standard format (following the methodological suggestions of Gomm et al., 2000).

Strategy of case selection

Surveys such as those discussed in chapter 3 paint a convincing picture of the pattern of response to legislation, but they are not designed to examine the processes through which firms filter such external influences. Case studies complement statistical generalisation with ‘analytic generalization’ (Yin, 1994), which is predicated upon the ‘cogency of theoretical reasoning’ (Mitchell, 1983: 207), in this case the reasoning showing the processes that link the external influence to concrete behaviour. One way to reveal such processes is to examine how they work in different contexts; the study thus follows a ‘multiple case logic’ (Eisenhardt, 1989). The concern is not with ‘typicality’ even if there were such a thing as a typical small firm. Even if ‘one could choose typicality in all major dimensions that seem relevant, it is nonetheless clearly true that there would be enough idiosyncrasy in any particular situation so that one could not transfer findings in an unthinking way from one typical situation to another’ (Schofield, 2000: 79). The approach, rather, is to take a range of situations and to show how processes vary between them.

It is in principle desirable to select firms according to an analytical design, so that firms of different types can be identified. In the present case, firms might be selected either in the light of their experience of employment legislation or to represent different market and business contexts.

Under the first head, firms might be compared on whether or not they had experience of legislation. For example, in their study of Employment Tribunals and workplace practice, Earnshaw et al. (1998, 2001) compared firms with and without recent ET experience. Yet the present requirement was to study a wide range of legislation, so that there was no single criterion on which firms could be selected. Earlier research on the effects of the NMW and WTR
between 1998 and 2000 identified seven distinct forms of response and showed that the precise approach followed by a given firm could turn on very specific features of its operations (Arrowsmith et al., forthcoming; Gilman et al., 2002). In the hotels sector, for example, the NMW tended to be absorbed with little impact on the running of businesses but in a minority of cases reflecting specific circumstances it acted to stimulate some, generally modest, changes in the management of employee relations. Crucially, these seven forms of response were analytical devices to summarise the main tendencies observed; they were not knowable in advance.

A related approach to researching the impact of legislation might be to find firms which are innovative in responding to, for example, legislation on the work-life balance. For example, Bevan et al. (1999) identified eleven firms operating what were identified as family-friendly policies. Bevan et al. (1999) chose their eleven cases from very diverse companies, which employed between 22 and as many as 600 employees. Yet for the present study it would be hard to define innovation across the whole range of legislation, as well as unlikely that any but a handful of firms are innovative in all areas. The fundamental aim of the study was to address a range of experience and not to focus on good practice.

Alternatively, the results of the Kingston study (Blackburn and Hart, 2002) might be used to identify firms that said that employment legislation had, or had not, had an impact on the business. Such a perceived impact is, however, a less clear indicator than concrete experience of an ET, and whether or not clear differences should be expected is not clear. The survey was also not constructed to generate other pertinent information to conceptualise ‘impact’. For example, data on wages and hours would be desirable to assess what kind of impact the NMW or WTR might have had. The danger, therefore, would be that a collection of cases would emerge with very little comparability of market context.

Turning to selection on the basis of market and business contexts, chapter 2 of the Kingston study identified efforts to capture dimensions across which small firms vary. Yet it showed they need not be mutually exclusive. It is also the case that none of the studies cited has used the dimensions ex ante to identify firms for study. The dimensions emerged as a way of understanding differences between firms selected on the basis of their industrial or other characteristics.

There is also one obvious but important feature of small firms. Studies of large organisations have some well-established facts from which to start. The characteristics of, say, banks, chemicals firms, and NHS Trusts are reasonably well known, and rationales for looking, say, at the banking sector in general or at individual banks can be derived from existing information. Which banks, for example, are known to have experimented with new working hours policies and which have not? Such information is not available in small firms research, and case studies have to be conducted on a more inductive basis.
A final set of considerations is pragmatic. Gaining access to small firms for
detailed case studies is not easy. Even had it been possible to identify a
sampling matrix, there would be bound to be a selection bias according to
firms’ willingness to participate.

For these reasons, the research followed most case study researchers by
seeking out cases based on prior knowledge of the research team. Two
considerations were borne in mind.

First, comparison within some fairly tightly defined sectors would greatly
strengthen the significance of the results: contrasts between sectors can
reveal the effects of different external conditions while contrasts within a
sector can show how common conditions are mediated differently within the
firm. By ‘tightly defined’ was meant a more precise sector than, say, ‘business
services’ or ‘engineering’. The Kingston team kindly provided listings of their
survey respondents to the present researchers (who gave appropriate
guarantees as to confidentiality and how the listings would be used). An
examination of the lists, followed up with telephone calls to a small number of
firms which had indicated in the survey their willingness to be contacted
further, showed that firms within even quite similar SIC categories were in
different circumstances.

Second, cases were chosen in an incremental fashion. Initial contacts were
made with firms known from previous contacts. Other firms were then added
so that varying market positions were identified. For example, in one sector
initial contacts were with firms in an urban area, and firms with rural locations
were subsequently purposively sought, to allow for different labour market
contexts. Similarly, a specific sub-sector was added to the research because it
was able to throw light on themes, which had arisen during the early phases.

In short, the study has the broad objective of assessing a complex issue
(impact of a wide range of legislation) in relation to firms of a variety of kinds.
Nothing in the general literature on small firms or in case studies of the impact
of employment legislation points to ready analytical criteria for the selection of
firms. The best approach, therefore, is to identify some reasonably clearly
defined sectors, which will vary between each other in relevant respects.
Having identified sectors, it is then necessary to find firms within them. These
two issues are addressed in turn below.

**Selection of sectors**

A key criterion was to include service and manufacturing sectors and to
identify contexts where particular effects of legislation might be expected. The
research team was also keen to avoid reproducing existing knowledge. For
example, clothing firms have been studied quite extensively, with strong
emphasis on ‘sweatshop’ conditions. As noted in chapter 3, ‘fraternal’
situations (where employers and employees work alongside each other, as in
small building firms) are also unlikely to generate issues of interest. Members
of the research team had also recently completed investigations of related studies on pay in the restaurant sector (Gilman et al., 2002; Ram et al. 2001), where evasion of statutory employment regulations was noticeable. For the present study, it was important to address different conditions, including those where good practice and innovation can be identified. Four sectors were identified.

**Management consultancy** is a sector where long working hours are common and where meeting client demands is a central concern. Issues of workforce flexibility, possibly around maternity leave or the WTR, might thus feature strongly and were the main reason for choosing this sector. Management consultants also form a growing segment of the small business population (Ram, 1999a); constitute an important part of the ‘New Economy’; and are exemplars of what Castells (1998) refers to as the new ‘informational capitalism’.

Two **manufacturing** industries were chosen. Food production is a sector where low pay is common and hence where the NMW might be expected to be salient. Issues of flexibility might also be significant. The lock and key industry was added after the first round of interviews in other sectors. Reasons included the fact that trade unions were absent in all the firms visited to that point, while the lock industry has a tradition of union presence. The sector is also interesting for the degree of overseas competition, whereas most of the other firms operated in mainly domestic markets.

**Care homes** were chosen because of the need for 24-hour cover, so that issues around the WTR would be likely to feature particularly strongly. The NMW was also likely to affect a sector where low pay is common. Finally, care homes operate under clear regulatory regimes governing patient care, and it was felt interesting to examine employment legislation alongside other regulatory requirements. Seventy per cent of care homes are small independent operators. As it has turned out, the sector has attracted considerable attention since the study was planned. For example, two articles in the *Financial Times* (17 April 2002) report major issues in the sector. In Kent the number of homes was reported to be ‘falling fast’ because income per resident was insufficient to sustain some businesses, while the manager of a home in Birmingham was quoted as ‘scraping by’.

The research plan was flexible in that the emphasis given to different sectors was permitted to change. Initial research suggested that there were rather fewer issues in consultancies than had been expected, which led to the study of two cases using single interviews with a managerial respondent. As Gomm et al. (2000:107) stress, all cases do not have to be studied in the same depth: a core can be investigated in detail, while others may be examined more briefly to check the likely generalisability of findings from the main case studies. Similarly, initial research in care homes was in metropolitan areas, and later homes were identified in more rural areas to allow for any difference of location. The eventual selection of the lock industry also emerged from discussion of several possible alternatives.
Geographical location is a further possible discriminator. Local labour markets are in fact highly differentiated. The general literature on labour markets shows that people search for jobs within criteria specified by personal contacts and preferences, so that even in one town there are several distinct markets for semi-skilled manual labour (Blackburn and Mann, 1979). A well-established finding in the ethnic business literature is that labour market choice is further constrained by ethnic considerations. Firms themselves structure their market choices. They define the labour they seek against criteria of ‘suitability’ (how well workers will fit in, whether they come from known sources) as well as ‘objective’ standards (Jenkins, 1986). Earlier research on three sectors in the Midlands found that firms in the same small town, or in neighbouring streets, recruited in different segments of the labour market, reflecting their different market conditions (Gilman et al., 2002).

The upshot is that geographical location is not a very helpful indicator. The labour markets facing the food companies in the West Midlands are for example quite different from those for consultancy in the same region. This is not to say that the labour market is irrelevant. Managers in the firm identified as Food1, for example, identified low levels of unemployment locally as a constraint on recruitment. Further, in the case of care homes, the differences in funding levels between local social services were remarked upon by respondents. But such matters have to be addressed within the situation of each firm, and are not suitable ways of selecting the firms in the first place.

Selection of firms

An initial possibility was to select firms from the 1,071 participating in the Kingston survey. We needed, however, tightly defined sectors and, in line with the point that small firms are a very diverse group, the survey covered a very broad range. Even a sector as broad as ‘light engineering’ contained only 20 cases, and management consultancies and care homes cannot be identified very clearly. Three firms studied were chosen from the Kingston survey. They are identified as Cons4 and Food1 and 2 in Table 1 below.

Other firms were approached via the research team’s own contacts. Cons1 was contacted via Warwick Business School links, and its manager provided a list of six other consultancies. Two of these were studied (Cons5 and 6). Cons2 and 3 were identified using local connections.

Food3 and 4 were identified from local contacts in the West Midlands region, as were four of the care homes. The remaining two homes were identified by approaching ‘cold’ some homes in a different region. The locks firms were found through personal contacts.

The depth of each case study varied according to the size of the firm and the complexity of the issues. The main point here was that rather few issues emerged in the consultancies, and in the smaller ones a single interview with an owner or senior manager was sufficient. The final three consultancies
listed (4, 5 and 6) were used primarily to provide a check on the picture emerging from the other three, and limited detail is given on them in the Appendix. In 14 cases, interviews were conducted with at least three people in each firm. Some firms were visited three times, with repeat interviews with some managers and with observation of the work process as well as interviews with employees. In these cases, the fact that visits were spread over time allowed analysis of events, which had taken place between them.

In sectors apart from locks, the fieldwork was conducted between September and December 2001. This has the benefit of including a time (1 October) when the NMW was raised. The locks sector was added last, and was studied between December 2001 and February 2002. A total of 101 interviews were carried out. In addition, as detailed in the Appendix, employee handbooks were consulted and tours of manufacturing sites carried out.

**Introduction to cases**

Table 1 indicates the location and size of each firm and its main business activity. The final column summarises the key features of market context, full details being given in the Appendix. Some of the key features of the firms are as follows.

Among the consultancies, Cons2 stands out as a rapidly growing firm, with something of a reputation as a ‘leading edge’ company. Addressing work-life issues was part of the strategy, and ‘affinity effects’ were thus observable. Several of the other firms had consciously chosen a path of seeking comfortable niches and thus of moderating work pressures. Cons5 was the clearest contrast, with a clear ‘high pressure’ atmosphere.

The food firms also contained one firm (Food4) qualifying as a ‘leading edge’ case; it was moving up-market in the sense of developing business with major supermarkets as opposed to local traders. Food3 offers an interesting comparison in that it had similar ambitions but was much less advanced. Food2 is a producer co-operative, interesting for whether such a firm uses its principles to insulate itself from the law or whether the law does have effects even here. Food1 is notable for its move away from permanent employment to the use of agency workers, and also for the role of new technology in modernising employment relations. Both the locks firms were also engaged in modernisation and the introduction of new management techniques. Locks1 is specifically notable for its move of homeworkers into the factory, in response to the NMW.

The over-arching feature of the care homes was financial stringency and the constraints of working in a highly regulated environment. The main contrast was Care3, which cared for young people – whereas all the others cared for the elderly. The firm was in a stronger market position, and it paid its workers considerably more than the others. Other features were the contrast between Care5 and 6, which were in rural areas, and the other homes, which were in cities. It turned out, however, that the city-town contrast was not very decisive,
for the homes in towns faced similar labour market pressures to those in cities. It was the highly rural location of one particular home (5A; see notes to Table 1) that was crucial. Finally Care1 was in perhaps the weakest market position of the six, which raises issues about its long-term survival.
<table>
<thead>
<tr>
<th>Firm</th>
<th>Location, employees</th>
<th>Interviews</th>
<th>Nature of business activity</th>
<th>Market situation and strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cons1</td>
<td>London; 15; 4</td>
<td>4</td>
<td>Bus psychology, change mgnt Economic development, re-generation</td>
<td>Established niche, mainly private sector clients, some squeeze on position</td>
</tr>
<tr>
<td>Cons2</td>
<td>W. Midlands; 14; 6</td>
<td>6</td>
<td>Economic development,</td>
<td>Expanding business, mainly public sector clients, seen as 'leading edge' firm in its field</td>
</tr>
<tr>
<td>Cons3</td>
<td>W. Midlands; 2; 1</td>
<td>1</td>
<td>Organisation development</td>
<td>Mainly public sector clients, very small specialist operation</td>
</tr>
<tr>
<td>Cons4</td>
<td>Midlands town; 2; 1</td>
<td>1</td>
<td>Solicitor Business psychology, change management</td>
<td>Small legal firm; stable, relatively down-market, little recent change</td>
</tr>
<tr>
<td>Cons5</td>
<td>London; 37; 1</td>
<td>1</td>
<td>Training and management</td>
<td>Established market position with largely private sector clients</td>
</tr>
<tr>
<td>Cons6</td>
<td>South England; 7; 1</td>
<td>1</td>
<td>development</td>
<td>Steady growth and move into new markets</td>
</tr>
<tr>
<td>Food1</td>
<td>Midlands town; 5; 5</td>
<td>5</td>
<td>Chocolates</td>
<td>Losing market position, shift to agency workers, move towards labour-saving technology</td>
</tr>
<tr>
<td>Food2</td>
<td>Midlands town; 15; 3</td>
<td>3</td>
<td>Health foods</td>
<td>A producer co-operative. Niche position, steady recent growth, aim to modernise</td>
</tr>
<tr>
<td>Food3</td>
<td>W. Midlands; 27; 11</td>
<td>11</td>
<td>Ethnic foods</td>
<td>Established niche, moving from low end of market to new business with supermarkets</td>
</tr>
<tr>
<td>Food4</td>
<td>W. Midlands; 34; 10</td>
<td>10</td>
<td>Ethnic food</td>
<td>Profitable niche, moving up-market, modernisation of employee relations</td>
</tr>
<tr>
<td>Locks1</td>
<td>W. Midlands; 35; 10</td>
<td>10</td>
<td>Keys, key blanks</td>
<td>Middle of market, modernisation train. Move of outworkers into factory</td>
</tr>
<tr>
<td>Locks2</td>
<td>W. Midlands; 42; 4</td>
<td>4</td>
<td>Keys, presswork</td>
<td>Modernisation &amp; new mgmt techniques. TU membership approx. 50% of workforce.</td>
</tr>
<tr>
<td>Care1</td>
<td>W. Midlands conurbation; 16; 16</td>
<td>16</td>
<td>Residential care for elderly Nursing and residential care for elderly</td>
<td>Rather weak market position, low bed occupancy</td>
</tr>
<tr>
<td>Care2</td>
<td>W. Midlands; 50; 13</td>
<td>13</td>
<td>Care of young people and children</td>
<td>Purpose-built facility, growing, but under price pressure; hard to attract staff</td>
</tr>
<tr>
<td>Care3</td>
<td>W. Midlands; 34; 7</td>
<td>7</td>
<td>Care of young people and children</td>
<td>Growing business, strong emphasis on management systems and disciplined approach</td>
</tr>
<tr>
<td>Care4</td>
<td>W. Midlands; 20; 8</td>
<td>8</td>
<td>Care of elderly, esp. with disabilities</td>
<td>Firm describes itself as ‘average’ for the sector, some growth of business, funding pressures</td>
</tr>
<tr>
<td>Care5A &amp;</td>
<td>Midlans. rural; 8</td>
<td>8</td>
<td>Care of elderly</td>
<td>Mid to upper end of market, some expansion; recruitment &amp; retention an issue at Care5B</td>
</tr>
<tr>
<td>Care 5B</td>
<td>Midlands mkt town; 50; 9</td>
<td>9</td>
<td>Care of elderly</td>
<td>Mid to upper end of market</td>
</tr>
<tr>
<td>Care6</td>
<td>Midlands; 23; 6</td>
<td>6</td>
<td>Residential and nursing care of elderly</td>
<td></td>
</tr>
</tbody>
</table>

Source: Authors  * ‘Interviews’ gives the total number of interviews conducted; in some cases, repeat interviews with a respondent were conducted.  
Note: Care5A and B were owned by the same firm and had some common management functions but were located in different towns.
Fieldwork strategy

Unit of analysis. The research took each case study firm as the unit of analysis. That is, the concern was not, for example, to compare managerial and worker perceptions but rather to examine how the firm had been affected by the legislation. In each case the initial respondent was the owner or a senior manager in the firm. The core interview programme with owners and senior managers provided systematic material that could identify broad patterns of response and salient issues for further investigation. Interviews then developed to follow through issues that the first interview had identified, for example speaking to an office manager to obtain details of record keeping. In each firm, an interview was sought with at least one employee, with the aim of obtaining a complementary perspective. For example, a manager may say that workers are happy working long hours, and it is important to assess this claim and to examine the possibility that such long hours are more forced than voluntary. This is important since exclusive reliance on owner-manager accounts of working practices are likely to be problematic (Curran, 1991; Scase, 2003).

Critical issues and incidents. The DTI’s research brief spoke of using the ‘critical incident technique’ to address the handling of key issues. The critical incident technique (CIT), developed by Flanagan (1954), is essentially a set of procedures designed to gather information on specific incidents (event or occurrences) that led to either effective or ineffective behaviour with respect to a particular activity. Although Flanagan deployed CIT from an ‘objectivist’ standpoint, qualitative researchers have also used the method to good effect. For example, Thorpe (cited in Easterby-Smith et al., 1993: 83) examined barriers to growth in small firms by asking owner-managers to explore particular problems that they had experienced in the development of the business. An account duly emerged of how individuals managed problems and the information that they used to do this. The present research team interpreted the CIT to mean that – in the case of a dismissal, for example – an initial interview might indicate that an important event had occurred recently, with an attempt then being made to interview other people involved in the event to produce a detailed account. This was done wherever appropriate, but the following comments need to be entered.

First, it is a common finding in qualitative research (perhaps particularly so in small firms), that recollections can be vague and that people involved in events have moved on. In the case of a dismissal, the latter point is necessarily true; and it was not in the scope of the research to track down ex-employees who had been dismissed. Every reasonable effort was made to obtain details of critical events at a level sufficient for the purpose at hand, namely, to obtain examples of actual practice but not to achieve a complete reconstruction of an event.

Second, it is possible to distinguish between critical events and critical issues or processes. The latter are central or driving factors in a firm’s development, which shape attitudes to the law. As shown below, there were some firms with
a clear path of rationalising employment relations, and approaches to the law were consistent with such a path. The research accordingly used critical events and issues as devices to guide the fieldwork.

**Assessing costs and benefits.** As noted above, small firms are unlikely to have a close perception of specific costs and benefits. It was important not to lead them into identifying effects, which were not in fact present. For example, asked directly whether the WTR have raised costs, firms may reply in the affirmative even though in practice the possibility that costs are raised did not materialise. Employment laws were identified under the categories given below, and firms were asked about their concrete experience under each. Any specific costs were discussed after an issue had been raised by a respondent. For example, if the WTR were identified as creating costs, respondents were asked to specify what these were. Not surprisingly, costs could be identified more immediately than benefits, but where appropriate possible benefits of specific laws were pursued. An effort was also made at the end of key interviews to ask respondents about overall costs and benefits.

The headings under which legislation was discussed, which were used for the research team’s benefit and not given to respondents, were as follows. The first was workforce flexibility, under which respondents were asked about their experience of maternity and parental leave and the WTR. The latter were included because of possible effects on the organisation of working time, though of course they can also be treated in relation to individual employee rights. Such individual employment rights were the second main area, including the NMW, unfair dismissal and equal pay. Finally, collective rights relating to redundancy and trade unions were covered. Where experience was reported on an issue, further details were sought. This information was placed in the context of broader information on the firm’s employment policies and business strategies.

**Representativeness**

How far can one generalise from firms identified in this way? The fundamental goal is to examine processes linking external events to behaviour within the firm. Statistical representativeness is not the goal. That said, however, the cases reflect a range of situations, and there is nothing to suggest that they are special or unusual.

First, the present selection is larger than the norm in case research on small firms, and makes a more systematic attempt to capture the experiences of firms operating in a range of circumstances. For example, the final column of Table 1 indicates that, in broad terms, nine cases were in reasonably stable and secure market positions, five were experiencing growth, and four were facing decline or significant pressures. There were also examples of variations within otherwise similar settings. For example, Food3 and 4 were similar in geographical position and product lines, but the latter had moved considerably further in an up-market direction. Similarly Care3 was in a different specific
situation from the other care homes reflecting its distinct market (care of young people).

Second, in terms of methods of access, personal contact does not mean any particularly close ties. Food3 for example was identified because one of its managers happened to attend a business event where a researcher was also present. The locks firms were identified after long experience of the sector by one of the research team, but he did not previously know the particular firms studied.

Third, the pattern of replies was broadly in line with other evidence.

- As detailed in chapter 4, the numbers reporting negative or positive effects are in line with the proportions found in the Kingston survey.
- In relation to the care homes, Machin et al. (2002) report a large national survey which found the mean rate of pay of workers to be £4.25 an hour in 1999; this figure is very similar to pay levels in five of our six homes, the sixth (Care3) being, as noted above, chosen to reflect a higher-wage case.
- Other findings are consistent with those of other investigations. The impact of the WTR both in general (Neathey and Arrowsmith, 2001) and in relation to small firms (Marlow, 2002) has been found to be small. Similarly, it is sometimes argued that firms compensate for the costs of regulation by taking a ‘work intensification’ route, for example reducing paid breaks. This has been shown to be rare in small firms in three sectors (Gilman et al., 2002). And a study of firms consciously taking initiatives in the area of work-life balance found that cost-benefit calculations of the relevant policies were rare (Bevan et al., 1999). Our results are in line with all these findings.
Small firms, the law and informality

This chapter briefly sets the research in the context of previous studies. There are two aspects: responses to legislation and research on small firms in general. Research under the first suggests that the impact of the law on employment practice and on firms’ administrative costs are often small. It does not directly ask why this should be so. Evidence on small firms points to the outlines of an answer – namely, the flexibility offered by their ‘informal’ organisation.

Impact of legislation

Turning to responses to legislation, two surveys almost a quarter of a century apart set the context. In 1978, a survey of the impact of employment legislation was conducted of 301 firms employing fewer than 50 people (Clifton and Tatton-Brown, 1979). Key results were that:

- Just over half the sample had had no experience of any of the legislation in effect at the time (covering primarily unfair dismissal, health and safety, and maternity leave).
- When asked to name the main difficulties in running the business, only 2 per cent cited employment legislation as the single main difficulty.
- When asked specifically about employment legislation, 12 per cent claimed to find some aspect troublesome.
- Where laws had an effect, the main impact was on the ease of dismissing workers and reluctance to take on more staff.
- The main influences on business expansion were market-related, and ‘changes in the number of employees . . . have not been directly affected by the employment legislation provisions’ (ibid, p. 32).

In 2000, a telephone survey of 1,071 firms each employing up to 50 workers was conducted by the Small Business Research Centre at Kingston University (Blackburn and Hart, 2002; referred to below as the Kingston survey). This was mainly concerned with knowledge and awareness about individual employment rights (IERs) rather than their impact, though some information on the latter was collected. Key results included:
• Only one-fifth of employers felt confident or very confident of their own knowledge of IERs.
• Highest levels of employer awareness were of the NMW. There was very widespread knowledge of the existence of maternity rights, but the permitted time away from work was known with much less confidence.
• Only a fifth of the whole sample knew the weekly hours limit under the WTR.
• The greatest constraints facing the firms related to market competition (mentioned by 33 per cent as the main factor), followed by government legislation or regulation of all kinds (17 per cent).
• Employment laws were cited as the main aspect of regulation, and employers were found to be more conscious of such laws than had been the case in 1978.
• The impact of employment laws was not widespread. However, negative effects considerably outweighed positive ones: 65 per cent could cite no positive effect. Where IERs had had an effect, administrative workload and the costs of legal advice were the main areas of impact.

Small firms thus appear to be influenced by the law, albeit in indirect ways and with considerable room for ignorance and interpretation. Evans et al. (1985: 33-5) report from a study of 81 firms (52 of which employed 50 or fewer workers) that two-thirds took increased care in dismissal to ensure that the action was lawful. Since the time of that study, significant new legislation has come into force so that responses will be needed on a wider range of fronts. Yet the survey evidence suggests the degree of impact is considerably weaker than the quotes in the opening paragraph of chapter 1 would suggest. The present research aimed to examine such an expectation.

Formality, informality and types of small firm

Issues governing small firms as a group are considered first. The assumption that small firms are similar to each other, and different from large ones, is then relaxed.

Perhaps the central generic theme in studies of small firms is that of informality, which may be defined as a process of management-worker relations based primarily on unwritten arrangements and tacit understandings. To the extent that small firms are highly informal, they can be expected to behave in at least two ways: to avoid formal procedures in such areas as discipline and dismissal, and more generally to rely on face-to-face understandings with employees. Such understandings will mean that explicit statements of rights and duties tend to be avoided. The further implication is that legal obligations will be ignored if they do not relate to the established set of informal norms. For example, if a right to parental leave is perceived as cutting across informal expectations, it may be ignored.

3 The survey did not report the proportion of respondents citing negative effects; it is analysed further in chapter 5.
Some early research stressed the informality of small firms and went further by equating it with harmony (Bolton Committee, 1971). A large amount of subsequent research (reviewed by Scase, 2003) has challenged the equation of informality with harmony, by showing that informal relations can in some circumstances express considerable tension and disharmony. Research has also qualified the extent of informal practices, of whatever kind they may be.

The 1998 Workplace Employee Relations Survey (WERS98) measured formality through the presence of four indicators: formal appraisal systems; grievance procedures; disciplinary and dismissals procedures; and equal opportunities policies. It defined small businesses as private sector stand-alone sites with between 10 and 99 employees (Cully et al., 1999: 263, 272). The researchers concluded that ‘small workplaces do not operate in a purely informal manner’. On the first and last of these indicators, it is true that small businesses were significantly less likely to be formalised than were ‘small multiples’ (workplaces of the same size but owned by larger firms). But there was a smaller gap on the other two measures, and levels of formality were still quite high.

A further analysis of the WERS98 data involving two of the present writers reached a slightly different conclusion (Gilman et al., 2002). It focused on the very small firms in the WERS sample by taking cases with employment at the establishment of between 10 and 49 and also added in the small number of cases where the total size of the whole organisation was below 50. It then divided this sub-set into two: those where there was a controlling interest by an individual or a family, which were called ‘small family’ firms; and those where there was no such interest, called ‘small companies’. These two groups were compared with ‘small multiples’ (defined as in WERS98 as those establishments with 10-99 employees which were part of larger organisations) and all other private sector establishments. The authors found that small family firms and small companies were relatively informal on all the dimensions considered.

This is not to say that informality reigns, and the WERS98 study’s conclusion that ‘pure’ informality does not operate is accurate. Indeed, as Hill (1974) noted many years ago, there is probably no such thing as a wholly informal or a wholly formal employment relationship. Kitching (1997) similarly stresses that large firms also rely on aspects of informality, and that in small firms the nature of informal relationships will vary: the kinds of informal working practice in a small clothing firm, say, will be very different from those in a hi-tech service-oriented firm. But informality may be relatively pronounced in firms employing fewer than 50 people. Moreover, the ways in which rules and procedures operate may differ from larger organisations. In their own study of 81 firms with up to 30 employees, Gilman et al. (2002) found that formal pay structures were rare and that pay setting was often highly dependent on managerial discretion. There were of course expectations and norms, but these tended to be specified inexacty.
The implication for the present study is that firms should not be expected to respond to employment legislation in wholly informal and unstructured ways. They will have their own ways of behaving, which may be well-entrenched, and will also need to recognise that they have to operate in an environment with a wide variety of regulations governing how business may be conducted. But there will be a process of adjustment in which informality is important.

Informality is also not the only force at work. As firms grow, they may seek more formalised relations with workers. This process has been traced in recent case study work demonstrating how firms seeking to modernise their business strategies may also formalise employment relations (Ram, Edwards et al., 2001). An implication for the present study is that part of this process may entail acceptance of employment laws.

It is evident, however, that small firms are not identical. Research increasingly stresses differences between sectors (Scase, 2003). Kitching (1997), for example, identified three distinct patterns of employer-employee relations in three different service sectors; adding other sectors would no doubt widen the range further. Goss (1991a) argued that such patterns could be located theoretically according to the extent to which employers were dependent on employees for their skills and commitment and the ability of workers to ‘resist management’. At one extreme, ‘fraternal’ relationships are characterised by close working relationships, often with the employer working alongside the employee. In this pattern, there is a high degree of mutual dependence. At the other extreme, where dependence is low, employers are powerful and the situation is one of ‘sweating’. In his own research, Goss (1991b) demonstrated that, even within one industry (printing), two quite different patterns of employment relationship existed. High-quality firms tended towards a ‘high dependency’ situation whereas ‘instant print’ firms used lower skilled workers and paid low wages.

Different product market circumstances thus shape behaviour within the firm. Rainnie (1989) developed a model to address such variations. Some small firms are dependent on large firms. Others compete against such firms on the basis of lower prices, and they thus tend to offer lower wages and worse conditions; they are described as dominated. A third group, for example in parts of the hospitality sector, operate in sectors that large firms choose to neglect; they are isolated. Finally, some firms operate in high-risk areas, developing new products and services; they are innovators. Some later research has extended these ideas. For example, Moule (1998) studied a small button manufacturer, which might be classified as dependent on its large customers. Yet it had successfully occupied a niche in the market, which meant that it was less subject to its customers than might be expected and that relations in the workplace reflected a degree of worker autonomy and independence, rather than being driven by the market.

Other work has shown that Rainnie’s categories tend to be too deterministic in linking the market position to the behaviour of firms. Ram (1994) found that firms which would be expected to fall towards the ‘sweating’ and ‘dependent’
categories in fact displayed other features. These were small Asian-owned clothing firms facing intense competition. In some respects, for example wage levels, the firms fitted the ‘sweating’ stereotype. But most workers could pursue some of their particular needs; for example, firms were often willing to vary starting and finishing times to meet family needs, and were thus far from simply autocratic.

It is also possible, as the present research will show, to combine Rainnie’s categories. Firms which are dependent are not necessarily locked in to a position, and may be able to develop innovative strategies to move into more profitable segments. They can do so because dependency relations give them some power. They are not, in short, prisoners of their market positions. Finally, Gilman et al. (2002) found that there is variation even within a market situation. For example, two small hotels, in neighbouring streets and run by two sisters, responded differently to the NMW because of highly idiosyncratic aspects of their market positions.

The upshot is that small firms are likely to filter the effects of law through their ‘informal’ practices, and distinct market positions will shape the nature of this response. For example, the more that firms are ‘dominated’ in the product market, the harder they may find it to raise wages. Yet firm responses are not solely determined by markets. Indeed, for many small firms a key feature of their existence is their independence (Curran and Blackburn, 2000), so that each is likely to develop its own style of behaviour.
4

Perceptions of regulation

The impact of regulation will be shaped by managers’ view of its extent and nature. As noted in chapter 1, ideas of burdens on business have very wide currency. In several of the present cases (notably Cons3 and 4, Food1 and 2 and Care4) initial discussion with managers suggested serious concerns about the impact of legislation. At Cons4, for example, a vocabulary of criticism of the employment legislation was frankly deployed. At Care4 too, as the case description of this company shows, negative effects were identified. According to the opening interview with an owner-manager, problems facing care homes are due to ‘the minimum wage; [and] on top of these new employment laws, everything combined is making it more difficult to stay in this business’.

The common theme here was the view that flexibility was being restricted by, for example, the existence of maternity rights. In the view of managers at Food2, workplace ‘common sense’ was being undermined by laws that may have good intentions and be right in principle but which in practice cut across the practical ways in which businesses need to be run. But deeper inquiry showed that these concerns tended to relate to beliefs about business in general rather than concrete experience in the firm itself. How can this picture be understood? The present evidence is reviewed and then linked to the Kingston survey.

Contrasting perceptions

Reported negative effects of legislation may be exaggerations in a particular sense. It would be wrong to assume from replies given in surveys that a negative comment about the legislation necessarily means that the firm itself has had direct and significant experience of a relevant situation. Two examples will make the point.

Care4 was the case where initial criticisms of regulation were expressed most sharply. Yet, as detailed in the Appendix, there was no experience of maternity or parental leave, the WTR had not required any changes in record-keeping, and increases in pay linked to the NMW were not large. General perceptions of negative effects also have to be set alongside perhaps less obvious positive effects. Experience of an Employment Tribunal had led the firm to modernise its disciplinary procedures. Whether these benefits in some way outweigh the costs is hard to say, since they have different aspects. The point here is that the negative aspects of employment regulation tend to be
stressed in overall comments, which may well reflect the common language of red tape and bureaucracy, while there are also positive aspects of which managers are certainly aware.

At Food2, managers did not refer to the firm’s experience itself in feeling that ‘common sense’ was being undermined. The case is particularly revealing, since as part of its adherence to Christian principles it employed people who were recovering from mental illnesses. Yet there was no suggestion that any legal requirements were making this practice more difficult.

A common device in understanding such a pattern is to argue that people use ‘rhetoric’ which does not necessarily have a basis in reality. In this case, however, the responses cannot be dismissed in this way. A true example of a rhetoric-reality gap would be the apparently common situation (see Sisson and Storey, 2000) in which management claims to generate ‘empowerment’ through teamworking but in fact does little to do so. The gap here is between a specific claim to do something and evidence that it has not in fact taken place. In the present case, the gap is different: between general perceptions of possible effects of the legislation and the fact that such effects had not been experienced by the firm itself. It is of course possible that the perceptions might affect future decisions – for example on the characteristics of workers that the firm sought to recruit – even if they had not affected past ones. These perceptions were part of the way in which the managers made sense of the world (see Weick, 1995).

Overall, therefore, managers were not guilty of operating with a ‘rhetoric-reality’ gap. The gap is more appropriately identified in interpretations of their views: it does not follow from their general perceptions that they are providing detailed concrete descriptions of effects in their firms. The perceptions are part of the managers’ sense of the world in which they operate. Managers at Food2, for example, felt that there was a broad tendency for employment legislation to cut across the grain of how small firms operate, even though in the firm itself no specific problems had been encountered. Such views have to be set alongside concrete experience, but not dismissed.

**Case and survey evidence**

It will be recalled from chapter 2 that three of the firms studied (Cons4, Food1 and Food2) were contacted following their participation in the Kingston survey. As detailed in chapters 5 and 6, results suggested that, in all three firms the effects of legislation were generally small. In Food1, however, there was an indirect effect, as the costs of employment legislation were encouraging the firm to pursue a policy that was already in place, namely, a shift towards the use of agency rather than directly employed labour and the replacement of labour with capital equipment.

How does this picture compare with the firms that can be derived from the survey?
First, there is a fair degree of consistency. The survey asked respondents whether there had been a ‘significant impact on the business’ of any of 11 sets of employment rights. All three of the firms said that there had not, which is consistent with the present more in-depth inquiries.

Second, the more subtle indirect effects taking place at Food1 were, not surprisingly, not identified through the survey. A survey aimed at picking up such effects might well do so, however.

Third, the survey and case studies both point to important issues of different kinds of perception. Looking at the survey first, it identified, in respect of each of 11 employment rights, whether the effect on the business had been positive or negative. We combined responses across the 11 rights to identify whether there had been any such effect; 8 per cent of all the respondents could specify a positive effect of some kind, and 30 per cent a negative effect. Note in passing, therefore, that 62 per cent saw no effect of employment rights on their firms.

This question can be taken as an index of specific employment effects and related to two broader questions. These asked about the degree to which IERs imposed a burden on the business and about whether the overall balance of legislation favoured employers or employees. In the light of the above discussion, a clear but not necessarily strong link would be expected between specific effects, on the one hand, and outcomes and broader perceptions on the other. The latter questions asked: whether ‘in the overall context of recruiting and managing staff’ employment rights were a burden or a benefit; and whether the overall balance of advantage in the legislation lay towards employer or employee, or was broadly fair. The results are shown in Table 2.

The survey shows, as would be expected, that the presence of perceived negative effects tends to increase the chances that employment rights are seen as a burden and that the balance of legislation is felt to be towards workers. Yet it is also the case that, for example, a quarter of those perceiving no negative effects still feel that individual employment rights are a burden while half see the balance as favouring the employee. That is, if employers were responding strictly on the basis of their own experience, these numbers would be closer to zero than they are.

The survey thus finds that overall views can be at some distance from reports of specific effects. The identification of positive effects interestingly had little effect on overall perceptions. Even where such effects were noted, they were not large enough to shift overall views. Indeed, and curiously, more employers stating positive effects saw the balance as favouring employees than was the case where no such effects were noted (65 per cent against 54 per cent).

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4 The survey did not report the proportion of respondents citing negative effects; it is analysed further in chapter 5.
Since only a small minority of firms fell into the former category, not too much should be read into this result (though it is statistically significant). The main point is that reports of specific effects do not determine overall views.

Table 2. Impact of legislation on the firm and overall perceptions

<table>
<thead>
<tr>
<th></th>
<th>Any positive effect</th>
<th>Any negative effects</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes ( n = 86 )</td>
<td>No ( n = 985 )</td>
</tr>
<tr>
<td></td>
<td>Yes ( n = 321 )</td>
<td>No ( n = 750 )</td>
</tr>
<tr>
<td>Individual employment rights are:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A burden</td>
<td>41%</td>
<td>63%</td>
</tr>
<tr>
<td>Of no significance</td>
<td>39%</td>
<td>27%</td>
</tr>
<tr>
<td>A benefit</td>
<td>17%</td>
<td>8%</td>
</tr>
<tr>
<td>Don't know</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Balance is:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair</td>
<td>29%</td>
<td>15%</td>
</tr>
<tr>
<td>In favour of employee</td>
<td>65%</td>
<td>80%</td>
</tr>
<tr>
<td>In favour of business</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Don't know</td>
<td>6%</td>
<td>4%</td>
</tr>
</tbody>
</table>

Source: Calculated from Kingston survey data; results are weighted (weighted and unweighted \( N = 1,071 \)). Figures shown are column %.

As for the present firms, Food1 saw the laws as a burden while Cons4 saw ‘no significance’ and Food2 could see benefits, which were specified as helping to formalise working relationships. Similarly, Food1 was among the 49 per cent of those where no negative effects were noted who felt that legislation was in favour of the employee, while Food2 and Cons4 were among the 38 per cent perceiving a fair balance.

In interviews managers at Food2 and Cons4 were among those who argued that in broad terms employment legislation was unfair and was tending to impose burdens. In our view, it does not help to try to say whether survey or case study responses are ‘right’. A case study approach allowed a more discursive consideration than is possible in surveys, and thus found managers who, when given space, were willing to give a more ‘negative’ view than when asked more specific survey questions. In short, case study results can both be more positive and more negative than survey responses, because they allow deeper reflection.

Conclusions

It is not the case, then, that surveys elicit more negative responses than case studies. Overall, survey and case study results are consistent. The case analysis has shown that general perceptions of the broad impact of law do not necessarily reflect concrete experience within a firm. Blackburn and Hart (2002: 73) conclude that, though ‘the bulk of employers tended to be vague in their knowledge of employment rights, they were prepared to be critical of the

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5 In view of small numbers, the table was collapsed into a 2x2 matrix comparing those specifying ‘in favour of employee’ with all others. A chi-square test indicates significance at the 95 per cent confidence level.
effects of this legislation on their enterprise’. They speculate that such negative views may reflect antipathy to government intervention in general, or resistance to any external advice or guidance (itself rooted in a self-image of the independent and robust entrepreneur, on which see also Curran and Blackburn, 2000). The present study did not set out to analyse such a self-image, but the results are consistent with these speculations. We now turn to how the effects of regulation were felt within the firm.
5

The role of markets

As discussed in chapter 1, the effects of employment legislation will be shaped by two sets of conditions: external factors such as a firm’s product market position, and the internal organisation of the firm. These are plainly inter-related, but it is first important to lay out their separate effects. Their connections are discussed in chapter 6.

It will be shown in the present chapter that firms’ market conditions were powerful influences on the ways in which legislation affected the firms. In the care homes, but not the other sectors, a financial squeeze meant that employment regulation added to pressures from other sources. Yet there were also variations within each sector reflecting forces specific to each firm.

The main examples here are the NMW and WTR. As recent developments they called for a specific response, and the process of doing so can be linked to changing external conditions. Each sector is discussed in turn.

Consultancies

The consultancies were chosen to try to assess the extent of a long hours culture\(^6\) and for example its effect on attitudes to the WTR. They were also of course unaffected by the NMW. In three of them there was in fact a conscious policy to discourage the working of long hours. At Cons1 for example office staff were not permitted to work beyond 7 p.m. without specific prior authorisation, and as an employee explained, ‘there is not much call to work outside normal hours, and immediate needs of clients can readily be met. There is one consultant who is very disorganised and made unreasonable demands, but [the office manager] has stepped in and got him to improve. In some firms [in this sector] support staff are expected to work the hours of the partners, and there is a tendency to take advantage... But a partner here talked to us about the expectations, and there is not that much pressure’ (administrative employee, Cons1).

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\(^6\) Official sources, for example, the New Earnings Survey and Labour Force Survey, do not identify ‘consultants’ as a separate occupational category. But trade journals for the sector, for instance, ‘Consulting to Management’ regularly report a high incidence of long hours working; articles on the basic theme that ‘Consultants work far too hard’ (Weiss, 2002) are not uncommon. Long hours were also a feature of the small-scale academic study of consultants undertaken by Ram (1999a).
Managers at Cons2 similarly argued that long hours were not good for efficiency, and they had an explicit policy that anyone working more than the standard hours would not be credited with all of the extra time worked.

Cons5 was the one case where hours could be long and staff were expected to put in the time required to complete a task. The respondent characterised the firms as a ‘high pressure’ environment. In exchange for long hours and a high level of effort, pay and other conditions were good. Though exact data were not revealed, it was clear that pay levels were higher than they were in Cons1 (also located in London), reflecting the different balances of effort and reward in the two firms.

The reasons for this result lie in the market niches in which these firms located themselves. The general pressure towards long hours in the larger firms in the sector is undeniable, but it does not necessarily affect all of the sector. Cons1’s founders had consciously taken the view that they did not seek a culture of high pay and long hours, and instead preferred a gentler balance. The same was broadly true of Cons2, which had found a profitable niche and was growing fast but did not need to exert great pressure on its staff. The impact of legislation on the firms studied here was mediated by the niches chosen, and it was thus much less direct than might have been expected.

**Care homes**

The contrast with the care homes is striking. They were also chosen to address issues of hours – in this case the management of cover on a round-the-clock basis. In fact, managing working time was not a fundamental issue in these firms, which were instead dominated by labour cost pressures and the consequent difficulties of recruitment and retention. These pressures are addressed first and then working hours are considered.

A critical issue across this sector was the level of income paid by social services departments for each patient. According to one of the partners running Care4, the social services department ‘pay us £240 per resident per week; they pay them [public sector homes] £350’ (partner, Care4).

According to the manager of Care1, the figures were £244 and £400 respectively. Very similar comments were made across all the homes, as detailed in the case study descriptions; the figures also tally with those reported by Machin et al. (2002) from a large postal survey. The details could be subtly different; for example a manager at Care6 saw its local authority as ‘very good’, citing a weekly payment rate of £265.

Perhaps of even greater significance to managers was the wider regulatory context of the sector. Several respondents described in detail substantial and increasing requirements on the keeping of highly detailed records on each resident and the demands of regular inspections by Social Services Inspection Units. In addition to these, other new regulations were on the horizon.
governing the conditions under which rooms could have double occupancy and the training needs of staff. According to a manager at Care5, half of the care staff would have to be trained to NVQ Level 3, with management attaining Level 4. At the same time, new regulations on rooms meant building work or a reduction in the number of residents. There were plans to extend some buildings but these ran across building regulations for green belt land. Bureaucracy was also growing, not least because the administrative arrangements of the many local authorities (‘from Cornwall to Yorkshire’) with which the home dealt were different.

What were the links to labour costs? In late 2001, the rate of pay for basic grade care assistants in the six homes varied between £4.20 and £4.50. In some cases, for example Care5, the difference between this rate and the going local labour market for unskilled labour had narrowed, as the NMW raised the rates for such work. In short, there was pressure from two directions: financial stringency and a narrowing of wage gaps with other firms.7

This contributed to significant recruitment and retention problems, notably at Care2, 5 and 6. Several respondents commented on the difficulty of attracting staff. In the words of a respondent at Care5, local supermarkets were paying up to £5.50 an hour, so why would someone work in the care sector, ‘with your hands in shit’? As another respondent at Care5 said, ‘we have agency staff here all the time because of staff shortages. We advertise in newspapers and the Job Centre. Care Assistants are like gold, because the pay is so poor. For filling up shelves [in supermarkets] they will get paid £5.60 or 70 an hour’.

An alternative source of competition for labour at some of the homes was the health service sector, with employees trained in care homes being a useful recruitment target for hospitals. This competition had intensified in light of the fact that care home regulations have raised the formal qualifications of many carers. Care2 lost about four trained carers a year to the NHS. In the words of an owner at Care6, ‘as the NHS is so short staffed, they are on the lookout for trained staff. It is a constant threat, losing staff that we’ve paid to train up. [The recent pay award in the NHS had made] our staff very unsettled, or as they say, undervalued, and as we are now doing NVQs with all staff, the floodgates are open’.

This is an interesting illustration of the ‘knock-on’ effects of the NMW outside firms, which are affected directly by it. All the homes had paid wages above the NMW level even before its introduction but what seems to have been happening is that other work became relatively attractive. Prior to the NMW care homes paid more than other firms, in part to compensate for the

7 The adult rate of the NMW was £3.70 in September 2001, rising to £4.10 in October.
demands of the job; with increases in pay elsewhere, the attractiveness of the job fell.

Now, such effects are far from automatic. One possible adjustment is to raise prices. The problem for the care homes was that they were squeezed on price and therefore under pressure to restrain wage costs. In other sectors (including, as will be seen, manufacturing firms studied here) it is easier to raise prices to cover rising wage costs.

A second possible adjustment is to cut labour costs, either through capital investment or through work intensification. The latter could include employing fewer workers and expecting them to work harder. Capital investment was difficult, partly because of shortage of capital and partly because it is hard to mechanise a labour-intensive service operation. As for work intensification, one case was found of a specific attempt to recoup increased labour costs through reducing other aspects of the reward package. As earlier research showed, this response seems to have been quite rare across small firms in general (Gilman et al., 2002: 61). The case occurred at Care5, where paid breaks were removed, staff having been give the choice between retaining the breaks with a low pay rise, or losing the breaks in return for a rather larger increase. According to workers, the effect was that they now worked their breaks unpaid, since they were still on the premises and it was hard to decline a request to respond to a call for assistance from a resident.

This development at Care5 was a relatively limited change of practice. Wider changes were contained directly by the close regulations on staffing levels under which the homes operated and indirectly by the detailed reports and logs that had to be maintained, for these implied a significant staff input if regular inspections were to be passed.

There is some evidence in the US that raising minimum wages can improve labour supply by attracting into work people who would otherwise not be in the labour market (Card and Krueger, 1995). Plainly such an effect will depend on such things as whether there is a ready supply of labour and on relative wages in different occupations. It will also be the case that any overall net effect on labour supply will include negative and positive influences. In the case of these care homes, managers felt that workers were preferring less demanding jobs; the most likely explanation is that the NMW has increased wages at the bottom of the labour market, with care homes feeling a squeeze as their relative position worsens. In effect, they were bearing the consequences of any potential rise in labour supply further down the labour market.

The nature of these sector-wide effects varied in specific but important ways between the homes. Care3, the children’s home, was least affected. Its work called for a much higher ratio of staff to clients than was the case in homes caring for the elderly. This gave workers a higher level of job satisfaction and meant that staff were relatively unlikely to leave. In addition, according to the owner, the home is in the ‘first tier’ on account of its trained staff and well-
maintained buildings. It may thus be under less cost pressure than some of the other homes. At the other extreme lay Care1, which had a low bed occupancy rate and was smaller than the other homes while also occupying ageing premises. In the short-term, the impact of employment regulation was borne by existing loyalties. Workers were described as ‘mature ladies’ who liked the home and the social relationships in it. In the longer term however, and in the context of wider regulatory changes in this sector, the ability of such small homes to survive may be called into doubt. For very different reasons, these two firms were relatively insulated from the immediate effects of rising labour costs.

In the other four homes, the effects in terms of costs and recruitment pressures were similar, but they were also mediated by local conditions. This was clearest at Care5, which ran two geographically separate homes under the same management structure. Home A, in a rural location, had the benefit of relatively little labour market competition, but at the cost that the clientele was fairly poor and could not afford to pay extra for better facilities. At Home B, in a market town environment, there was more labour market competition but also a rather wealthier clientele.

The common response to these conditions was that staff were having to work harder and that managers were working extra hours in order to cope. A Care Manager at Care6, for example, reported working between 6 and 8 hours a week over contractual hours in order to deal with the work load. A catering manager at Care5 put the amount of unpaid labour at between 1 and 1½ hours a day. A supervisor at Care4 described the constant ‘juggling’ and ‘arm-twisting’ needed to arrange cover at short notice, in the context of staff shortages. As a final resort, there had been instances where she had covered a shift because no-one else was available.

Turning to working hours, the most common organisation of working time was a three-shift system in which each worker did five seven-hour shifts. In some cases, nights were covered through four ten-hour shifts. In these circumstances, the WTR generally had remarkably little impact. In some cases, action had been required. At Care3, for example, according to the owner, all workers signed an individual opt-out. In other homes opt-outs were limited to a few individuals who might work more than 48 hours a week (as at Care5), or people were rather vague as to whether or not opt-outs had been signed. Whatever specific approach was taken, the issue was not seen as at all salient, with opt-outs being a largely minor matter.

The WTR did not directly impinge on the organisation of work, and their effects on care homes were thus small. The NMW, by contrast, had a greater impact than might have been anticipated and, together with the wider regulatory regime of the care sector, was having a clear effect.
Food manufacturing

The food manufacturing firms, though they paid wages similar to those of the care homes, were in a more favourable labour market position. As we have seen, respondents at the care homes underlined the unpleasant and demanding nature of the work, which was making jobs elsewhere relatively attractive. This was not specified as a concern in any of the manufacturing firms. The firms needed workers with fewer formal skills than was the case in the care homes, and the supply of low-skilled workers was not seen as an issue. In relation to the work process, the researchers’ impression from observation at Food3 and 4, for example, was that the work was not highly pressurised. The ‘wage-effort bargain’ (Behrend, 1957) was more favourable for workers than was the case in the care homes.

That said, pressures to respond to changing market conditions were considerable. In relation to product market conditions and pay, Food4 illustrated most clearly the role of product markets in encouraging a strategy of modernisation. From its establishment in the early 1990s, the firm had consciously aimed to move up-market and it now had a significant part of its business with major supermarkets, which required high standards for quality and reliability. As a senior manager put it, there had been ‘three years of continuous change’. The success of the strategy was reflected in the fact that the firm had won several awards for innovation and growth. Food4’s standard pay, equivalent to about £4.60 an hour (though with higher pay for team leaders and drivers), was not very different from the basic rate in the care homes. But the work entailed only limited unsocial hours (one of the three standard shifts starting at 6.30 a.m., another ending at 6.30 p.m., and a third being conventional day work), working conditions were clean and the work was not physically demanding. Indeed, it could be the kind of factory which was likely to draw labour away from care homes. The NMW thus had no direct or indirect effect. But there was an affinity effect (as defined at the end of chapter 1), in that the firm was moving in ways consistent with the view that an NMW can be a catalyst for modernisation. As discussed below, in other areas of employment regulation the firm identified specific affinity effects. There was in this firm a conscious effort to link employment relations practice to business modernisation, as reflected in the fact that it was the only firm studied to have a specialist personnel manager.

Product market developments were also important at the producers’ co-operative, Food2, though they worked through in different ways. The firm was in an expanding market niche, having seen a significant growth of business in the previous few years which had led to its opening a new retail outlet. It was, however, much less modernised in its business processes than Food4, and the need for improved stock control systems was identified as a future objective. Food2 paid the same wages to all staff, including managers. Since these were comfortably above the NMW level (£5.95 per hour in mid-2001) it had no impact here. In relation to the labour market, the firm sought employees with a specific commitment to co-operative and Christian ideals, so that it is unlikely that workers would be attracted away by any increases in
relative pay in the local labour market. By the same token, recruitment was unlikely to be constrained.

The other two food manufacturing firms were operating at rather lower levels of wages, reflecting less profitable market niches. Only Food3 needs comment here.

Compared to Food4, Food3 paid lower wages (around the NMW level, compared to a minimum at Food4 of £4.60 an hour) and had moved into relatively profitable business with supermarkets relatively recently. The arrival of the NMW had, according to several managers at the firm, focused their minds on the levels of pay that they could offer and the kind of worker that they could attract. At the time of its introduction, a minority of workers had been paid below £3.60, and their pay was therefore increased to this level. In September 2001 pay rates for production workers were between £3.80 and £4.20. To compensate in part for raising wages in line with the increase in the NMW later that year, an attendance bonus which could reach £15 a week for a week without absence was removed. (An identical bonus at Food4 was, interestingly, retained). The removal of the bonus was accepted by workers, some of whom felt that it was preferable to be paid a single rate per hour.

Turning to the working time regimes that product market conditions encouraged in these firms, in three of them working hours were around 40 a week. The WTR thus had little effect. At Food2 for example it was felt that they were of no relevance and the firm carried on as before. Even at Food4 which, as discussed below, was otherwise keen to formalise its employment relationships, there had been no formal notification of the WTR to employees, and no opt-out had been signed; the only specific effect of the WTR was on holidays, since for new employees holiday entitlements had been one day per annum short of the WTR standard, and the necessary small adjustment was made. Formalisation in this firm included a swipe card system for the recording of hours so that the firm’s records were, quite independently of any WTR requirements, capable of demonstrating patterns of hours worked should this be necessary.

Only at Food3 were long hours significant, with some workers regularly working up to 60 hours a week. The basic fact of existence in this firm, which was specifically stressed to recruits at interview, was that work had to continue until a day’s orders had been completed. Though the broad pattern of hours required each day would be known from experience, on no particular day could any worker have any certainty when the day’s work would end. As one employee explained, she started work at 10 a.m. and was expected to stay until all tasks had been finished, which could be as late as 6 or 7 p.m. She added that this was clearly explained at the job interview. Some female packers worked standard hours, but many of the men put in long hours of overtime, which was essential to their earnings needs. Not surprisingly, no one was reported to have welcomed the weekly 48 hours limit of the WTR. Managers stated that individual opt-outs had been signed when the WTR
were introduced, though some workers had no recollection of this. As one worker explained in relation to discussions about the WTR, ‘it was not pushed on to us that we had to agree to carry on as we were, and were told it was up to us. But we did, and that was that’.

The other workers interviewed had no recollection of any discussion on the WTR. Whatever happened, it was a low-key event. No special recording requirements were mentioned.

Key and lock manufacturing

In the key and locks industry, both firms were very long-established. Locks1 saw itself as positioned in the middle of the market, and had had a reasonably stable recent history, but with significant sales growth reflecting a strategy of improving efficiency and maintaining its competitive position. Locks2 has acted in an even more pro-active way. Its traditional business of supplying key blanks to local large firms had declined, but it had replaced this by diversifying into presswork so that total turnover grew substantially. Lean production and teamworking had been introduced. As a result of increased efficiency and diversification out of relatively labour-intensive products, employment fell from 65 to 42 between 1996 and 2001. In both these firms, the extent of the re-positioning of the business appeared to the researchers to be much more significant than was the case in the food firms, reflecting the international nature of competition (e.g. from the Far East and Turkey) and extensive restructuring of large firms in the locks industry.

Modernisation at Locks2 had clear parallels with that at Food4. There was, however, a less clear link to employment practice. The firm paid around £4.55 an hour and had been largely unaffected by the NMW. A strategy of employment relations modernisation was also less in evidence.

Locks1 paid around the NMW level. Important indirect effects occurred. The firm, like many in the sector, had traditionally employed outworkers who packed the finished product; at the time of the introduction of the NMW there were eight of them. There had been no formal contract of employment and no access to holiday pay, pensions, or other benefits. The firm concluded that administering the NMW in respect of the outworkers was not feasible, since it would have been necessary to issue detailed time-sheets and maintain records of goods produced and hours employed. In addition they were not earning the NMW, so that in any event their rates would have had to be increased. Some studies of output levels and pay rates were done by the firm, showing that it was in principle possible for the outworkers to earn the NMW. But the complexity of documentation and uncertainty involved were still felt to be a serious issue. The outworkers were therefore brought into the factory and given formal contracts of employment.

Heyes and Gray (2001) report from a study of homeworkers in the clothing and textiles industries that at least 43 per cent of their sample (of 91 people) were not paid the NMW in 1999.
Working hours in both firms were less than 48 hours a week. The WTR were seen as largely irrelevant.

Conclusions

The impact of the WTR was generally small, a fundamental reason being that working hours in most of the firms studied were neither sufficiently long nor involved such periods of night work that the Regulations would have much effect. This was also the finding from Marlow’s (2002) study where, as here, long hours were not a consistent feature of working practice. In the one firm (Food3) regularly working long hours, workers’ interests lay in maintaining these hours in order to protect their pay levels, and the signing of opt-outs under the WTR had been conducted with minimal debate.

The NMW had greater effects. These were rarely direct, in the sense of a need to raise wages above previous levels (though this happened to a degree at Food3). The main effects were indirect, most evidently at Locks1 (where the arrival of the NMW led to the bringing in-house of work formerly done by homeworkers) and in most of the care homes (where recruitment and retention issues were severe, as the NMW made jobs elsewhere relatively attractive while a funding squeeze made it hard to raise wages in response).

The contrast between the care homes and the manufacturing firms shows the role of different market conditions in filtering the effects of the law. In addition, within-sector variations (such as the relatively favourable product position of Care3 and the relatively beneficial labour market, from a managerial point of view, at Care 5A) were at work.

The conclusion in relation to compliance costs is that the costs to the small firms in this study were small. The WTR imposed few new requirements on them. The NMW affected a minority of firms, mainly through pay rises, but, with the exception of Locks1, there were not significant costs of changing pay systems.
In relation to dynamics within firms, two distinct aspects can be identified. The first is the fundamental nature of informality in small firms, and the way in which this mediated potential impacts of the law. This is the focus of the first section of this chapter. The second is the pattern of change in this informality and the role of the law in bringing about such change, considered in the following section. In terms of particular features of the law, this chapter deals mainly with maternity and parental leave and with disciplinary arrangements.

Continuing processes of informality and flexibility

A theme of our research was the extent to which expectations on work-life balance were impinging on firms. How, for example, were short spells of absence to deal with family responsibilities handled, and were there any clear costs to firms? In this respect, the tradition of informality was of central importance: firms mainly dealt with short-term family needs through uncodified and personal relationships. This situation can reasonably be seen as a feature of many small organisations, for their size means that they can rely on personal knowledge of a particular worker to allow reasonable flexibility. This also appears to have been the case in other studies. Two of the firms visited by Bevan et al. (1999: 48) were similar in size to those studied here; at one, for example, where there were 33 staff, arrangements for special leave were ‘informally applied at the discretion of the owner’. And Marlow (2002: 22) reports from a study of 44 firms in the East Midlands that leave was handled informally; ‘everyone covers for each other’, in the words of one respondent.

As a worker at Food2 commented, obtaining leave for family reasons was done easily and directly, and he contrasted this with the formal approach at his former employer, a large firm where ‘everything was questioned’, for example the closeness of a relationship if bereavement leave was being sought. Similarly, a worker at Food3 said that she could readily take time off to care for her son who was ill. As the MD at Locks2 said, ‘I’m flexible. If people have a suite delivered say, they have unpaid time off’.

In the care homes, it was often necessary to arrange cover at short notice. The quid pro quo would be negotiated on an informal and individual basis. In Care4, for example, the informal bargain was that workers with child care
commitments would be given the prized morning shifts; management secured these ‘reliable’ workers who were in return willing to provide cover on other shifts at short notice. At Care5, flexibility was secured in a different way: there was a pool of part-time workers, who could readily be called in to work an extra shift.

In most of the consultancies, the issue of cover for absence was treated largely as a fact of life and not something that entailed special arrangements. At Cons5 and 6, for example, instances were given of the taking of maternity and parental leave which was covered by a reallocation of duties and the expectation that other employees would take up the relevant tasks. There were plainly limits on the freedom of workers to call on such cover. As the respondent at Cons5 saw it, there was an ‘adult’ atmosphere, and employees were expected to show commitment and not to stand on formal rights; in return for this approach, there was a generous policy on leave which included for consultants sabbaticals to develop their professional skills. In the words of a respondent at Cons1, discussing time off for family leave,

‘There would be no question of a month off or anything like that. It is just something we would do, and is regardless of paternity (sic) leave laws’ (senior partner, Cons1).

Similarly at Cons2,

‘one of our directors had a kid and his wife is disabled so he has to look after it sometimes. We have acknowledged that he can only get in for 9.30, and we try and avoid evening meetings … We allowed that flexibility’ (Director1, Cons2).

This degree of flexibility was probably greater at the consultancies than in the other sectors. As Cons5, for example, in addition to four months’ paid maternity leave, employees could request a further period of unpaid leave of any length, and more broadly there was a system of sabbatical leave open to all staff. This reflects the nature of work organisation in consultancies, which employ professional staff who are used to taking a considerable amount of autonomy in the ways in which they manage their time. The evidence from Cons2 for example illustrates this. A director had taken parental leave but was also continuing to do some work, and the boundaries between working time and domestic time were not sharply drawn. It appears that the idea of work-life flexibility has a degree of affinity with the way in which work is organised in this sector.

As for maternity and parental leave, the legal situation may be briefly stated. The details are set out in relevant regulations (DTI, 1999) and are explained in booklets and factsheets, including one directed at small firms.9 Rights to maternity leave were introduced in 1976 and to maternity pay in 1977. At the time of the study, ‘ordinary’ maternity leave, available to all pregnant workers, was 18 weeks; for those with one year’s service the right is 29 weeks. It is the right to take leave, rather than the fact that it is paid, which often raises

9 Available from the DTI website: www.dti.gov.uk/er
concerns, since small firms may find it harder to fill a gap than would larger firms. Accordingly, since 1980 a firm with five or fewer employees has been able to argue that it was not ‘reasonably practicable’ to take back an employee taking leave, and an Employment Tribunal can rule that such a dismissal was not unfair. Parental leave, introduced in 1999, allows a parent with one year’s service up to 13 weeks’ unpaid leave to look after a child aged up to 5 years.

It is commonly argued that such leave imposes particular problems on small firms because of the difficulty of arranging cover for the person taking leave. Yet only three of the firms reported any recent experience of maternity leave, and none reported experience of parental leave related specifically to the new provisions. Of these three, the issues were reported to be handled with little difficulty. In one case (Cons2) a director stated that he encouraged people to take their entitlements ‘because we hope they come back... it’s all part of motivating staff’. There were some problems at Food3 regarding one worker who failed to return from leave on the agreed date, but this was seen by the manager as more to do with some wider issues in relation to this worker than the principle of maternity leave. As he explained it, the worker was in any event unreliable, and, though the handling of her maternity leave had caused some difficulties, this was an isolated case. In general, the principle of maternity leave seemed to have become accepted as an established set of rights which firms simply took for granted.

Formalisation and the effects of law

As argued elsewhere, much research on small firms treats informality as an unchanging feature of such firms, and shows how firms may respond to product market opportunities by formalising their relationships with staff (Ram, Edwards et al., 2001). The present study develops this perspective, by looking at the specific role of law in the process of formalisation and by identifying different degrees and types of the process. It is also possible to distinguish between the formalisation of the employment relationship (for example, new formal procedures) and the modernisation of the organisation of work (for example, through new technology). The main forces encouraging formalisation were the impact of the NMW, the effects of disciplinary cases, and new technology.

The consultancies are excluded here because the divide between manager and worker was less sharp than in the other sectors and issues of the control of employees through disciplinary procedures and similar means were thus less central, so that formalisation was not a major issue; similarly, new work organisation was much less feasible than in manufacturing. The remaining 12 cases are classified in relation to modernisation and formalisation in Table 3 below.
In three cases, a relatively formal approach was already in place. At Locks2 and Care6, detailed procedures on discipline and other matters were shown to the researchers, and the impression was one of a structured relationship in which disciplinary rules, for example, would be followed in detail. ‘We have procedures for everything’, reported the Care Manager at Care5. The researcher was given a folder of documents which included a Policy on Confidentiality; a Staff Complaint Procedure; a comprehensive job description; a record of training in care; and Company Rules. The last included a variety of policies from health and safety to smoking, and included a section on gross misconduct. There was a separate disciplinary procedure, which had been employed once in recent years in a case of poor performance.

The clearest case was Food4. In relation to discipline, in a recent case a worker had been suspected of falsifying his hours at work, and use of the firm’s CCTV system gave managers evidence that he had arrived later than he claimed. He was dismissed, he appealed, and the dismissal was upheld (see Food4 in the Appendix for details). The firm had also formalised its arrangements in many other areas, notably through the adoption of a ‘family-friendly’ policy. The immediate stimulus was the case of one worker who was highly valued when she was at work but who was having trouble meeting the demands of work because of a sister with health problems. According to the owner of the firm,

‘we could have dismissed her because obviously she wasn’t working her full week … I reckon in a large company she would have been dismissed … In that respect we have been pretty much flexible’ (Owner, Food4).

Alongside this specific case, the firm was reviewing its employee handbook and felt that it made sense to formalise a practice which had been handled informally. There was now a clear principle that employees with family problems could request revised hours of work from their supervisor. According to the personnel manager, there was no identifiable direct cost, not least because the flexibility involved had been practised for some time and hence nothing new was involved.

Food4 was going through a conscious effort to formalise, but the main driver was its wish to professionalise which was in turn linked to its strategy of
moving up-market, as illustrated by the awards for innovation that it had won. The owner explained what he meant by being ‘leading edge’:

‘leading edge in terms of people means, well, trying to get a highly motivated workforce but try to get a highly trained workforce which work in an environment that will enable us to produce more efficiently. And incorporated in that is the training aspect and the contract of employment (owner, Food4).

The law none the less played a supportive role.

‘It’s a bit like a wake-up call. You must look at that which you probably wouldn’t have looked at if you weren’t being forced … I suppose if I was to put it another way, without the working time regulations we probably wouldn’t have thought of putting the friendly family policy in … Because we were forced to review and revise the handbook, it sort of forced you to look at other things’ (Personnel Manager, Food4).

Formalisation

Formalisation at Locks1 was set in train by the indirect effects of the NMW, described in chapter 5, with the move of homeworkers into the factory. The modernisation response followed. As detailed below (p. 82), the shift of work in-house was costly to the firm, which encouraged the use of new technology. A new machine had been introduced and a further one was planned.

There was the potential for further formalisation as a result of several disciplinary cases. As the production director put it, the firm had not in the past ‘got rid of people lightly’ but the rise in labour costs had focused attention on the issue. Managers accepted that there had been procedural failures in some cases, and in two instances had decided not to fight employees’ claims for unfair dismissal. As yet, the kind of approach adopted in some of the other firms, namely, a more explicit proceduralism, was not evident, but it could emerge in the future.

At Care4 and Care5, by contrast, it was disciplinary experiences that had encouraged formalisation. There is evidence that experience with discipline encourages formalisation. The 1998 Survey of Employment Tribunal Applications shows that employers with previous experience of ET cases were more likely than those without such experience to have a written procedure covering the issues that had led to the case; one-fifth of all employers had also changed their procedures as a result of the case (DTI, 2002: 23, 47). This was very clear at Care4, where a worker had taken a case (of dismissal for irregular attendance) to a tribunal about five years previously. The firm won the case, but decided to introduce a formal procedure as a result. At Care5, there was a current case of a manager who had been under suspension, and then ‘asked to leave’, after allegations of acting in ways detrimental to clients. This issue had come to light after several workers had complained at the manager’s ‘authoritarian style’ and one worker walked out (see p. 101 for details). It was admitted by managers that her departure had not been based in any procedures, and it was notable that at another home run by Care5
there was a much more procedural style. Given this context, and also given that some people in the firm wanted a more ‘professional’ approach to recruiting the manager’s replacement instead of traditional word-of-mouth recruitment, it seems likely that there were pressures in train here towards more formalisation.

A respondent at Care4 highlighted one consequence of formalisation. In her view, a cost was that, in the past it had been possible to speak to workers directly and informally, whereas now the need to be procedurally correct made the relationship less personal and in some ways harder to manage.

Modernisation, new technology and the law

There were two examples of modernisation without formalisation. They occurred at Food3 and Food1.

As shown in chapter 5, at Food3 some workers were brought up to the level of the NMW. The need to pay the NMW focused managers’ minds and encouraged improvements in the organisation of work that had already been under discussion; the improvements included a new layout of the flow of work and the introduction of some new machinery. As managers saw it, they had been in business for a long time and were still offering low-wage jobs; their ambition was to be able to afford to pay up to £6 per hour, which would also mean, they recognised, a reduction in numbers employed as technology took over some jobs.

At Food1, a different process was in train. In contrast to Locks1, where the NMW encouraged managers to bring workers in-house, Food1 had reduced its directly employed workforce to a minimum and now used agency staff to cover the significant seasonal peaks in demand. The fact that the core was very small was illustrated by a comment from a worker that on the day of the researcher’s visit work was slack and she might at such times help in the office. An associated development was the introduction of new machinery, with the aim of reducing the need for labour on routine operations. These changes reflected economic conditions: a few years ago, the firm had suffered the loss of markets through competition from what managers saw as cheaper products from parts of Europe, and employment levels had accordingly been cut. But employment laws had also been important, the main issue from a managers’ point of view being the administration of the wage bill and dealing with the gamut of day-to-day employment issues. Using agency labour simply cut through all these issues.

Informality maintained

At other firms, working relationships with workers retained a strongly informal character. The researchers pursued this issue at Food3, for it was of a size and age where some kind of customary norms might be expected to have grown up.
In establishing what might be expected and its significance, it is useful, as noted in chapter 1, to refer to the work of Henry (1983) on the links between the ‘public justice’ of the law and the ‘private justice’ of firms’ own disciplinary arrangements. These arrangements embrace the firm’s rules and procedures but also unwritten ‘custom and practice’, which interprets or in some cases runs counter to these formal systems (Edwards, 2000). It had been common for writings on the workplace to stress this last aspect. Mellish and Collis-Squires (1976) for example argued that custom and practice could in effect insulate workers from formal regulation, be it legal or an employer’s own attempts to rationalise and proceduralise the employment relationship. Such writings, however, mistook a particular case (namely, circumstances in which strong work groups established their own norms, as on the docks, the focus of the Mellish and Collis-Squires study) for a more general condition. Wider consideration showed the case to be unusual at the time, and evidently even less usual by the late 1980s (Edwards, 1988). What Henry did was to look mainly at large firms and show that there was a process of interaction between public and private justice: the law on unfair dismissal reflected the practice of a minority of firms, and once established it encouraged other firms to institute disciplinary procedures though it did not determine the nature of these procedures.

How can this approach inform small firms some 20 years later? Three features about Food3 stand out.

- First, it was potentially the closest of all our firms to the ‘sweating’ stereotype discussed above. Yet there was no evidence of autocracy, and workers felt that the regime was reasonably tolerant; as noted above, part of this tolerance was a very relaxed approach to taking time off to attend to domestic needs.

- Second, there was a personalised and informal relationship between managers and workers. Managers pointed out, for example, that this included a sense of loyalty to the family which had set up the business 35 years previously and employed some workers for much of that time. But there was always the possibility that some particular incident could disrupt normal working relationships. There had for example been a quite serious dispute between two workers in which a knife was flourished; one of the workers was sacked at once. Managing these personal relationships was a continuing task for managers.

- These two features indicate the nature of ‘private justice’ here. The third feature, however, shows that this informality was not insulated from the world of public justice. At the time when Henry was writing, proceduralism was mainly a large firm phenomenon. Since then, laws on discipline have been joined by those on pay, hours, and other matters. Workers at Food3 were plainly aware, albeit in broad terms, of their rights to the NMW, to maternity leave, and to dispute any dismissal. The interplay between private and public justice was less overt than in the firms studied by Henry, where professional personnel departments were directly responding to legal requirements. As Dickens and Hall (2003: 140) put it, decisions are taken in the ‘shadow of the law’, that is, for example, a voluntary decision
on union recognition will be taken in the light of the fact that legal alternatives are available. In the present case, the influence of the law was less direct, but its presence helped to establish assumptions as to what was and was not acceptable behaviour.

Food2, the producer co-operative, adds to this point. Henry (1983: 227) studied nine co-operatives and found that it was not the case that they practised a distinctively communal or non-hierarchical style of discipline. Food2 develops this point, since as a very small co-operative with a clear ethical stance it might be expected to be most likely to have such a style. Though the firm was certainly informal and though it had a strong commitment to shared decision-making, it also had a disciplinary procedure that had been used, and managers were clear that it had to be managed in a disciplined way. Its private justice was distinctive, but this was also shaped by the public law.

Conclusions

In drawing together the implications of legislation, the absence of some effects should first be noted. A trade union was recognised at only one firm (Locks2), and even here there was no regular collective bargaining. No attempts to strengthen the union here (from its current base of about 50 per cent density) were reported, and no efforts to achieve recognition were mentioned in any other firm (including Locks1). The absence of any effect of union recognition laws can readily be attributed to the small size of the firms (making them a relatively unattractive target for unions) and the largely personal and direct ways in which employment relations were handled. Redundancy legislation also had no impact.

As for discipline, at two of the care homes (Care4 and 5) experience of disciplinary cases had encouraged some formalisation of the employment relationship. Other firms, particularly the relatively large ones such as Food 4 and Locks2, were already relatively formal in handling discipline. In other firms, particularly the very small ones such as Cons6, there remained a preference for a very informal relationship without written disciplinary procedures. There were scattered examples of the effects of new rights, for example to be accompanied at disciplinary hearings, but overall the effects of laws on discipline and dismissal were small. In line with survey evidence (Blackburn and Hart, 2002), any constraints of laws on discipline and dismissal in managerial freedom to issue sanctions against workers did not loom large. It appears that, with unfair dismissal legislation now being over 30 years old, firms understand the basic parameters of the law (though they can still fall foul of the specifics).

The same is largely true in relation to maternity leave. Firms routinely reported the taking of maternity leave but there were no significant issues as to its management. In particular, reports that it had impinged on the ability to run the business were absent. Experience of the parental leave rights introduced in 1999 was not reported.
As for responding to day-to-day family needs, the key finding was that here was an area of genuine ‘small firm informality’. Many of the firms gave examples of how time was allowed for personal and family needs. In terms of procedure, there were few or no written rules, and the issue was handled through the discretion of managers. In terms of substance, the number of examples cited suggested considerable flexibility, though of course the constraints of business needs were very clear. Some affinity effects have been identified, for example in relation to the modernisation in train at Food4 and the consistency of maternity leave laws with practice at several of the consultancies, where in some cases respondents explicitly noted the business benefits of respecting family demands. The comment from the personnel manager at Food4, that work-life balance legislation was a ‘wake-up call’, captures the idea.

These findings thus throw light on the issue of avoidance of the law. It should be stressed that none of the firms studied evaded the law in the sense of consciously not complying with legal requirements. One mechanism of avoidance was to ignore provisions which seemed to have little relevance to a firm, for example the generally minimal response to the WTR, as discussed in chapter 5. More generally, issues such as maternity leave and disciplinary practice did not loom large, and existing informality was often sufficient to handle them.

As for formalisation, the factors promoting this development were the NMW, the effect of a disciplinary incident, and new technology. Important here was the nature of competition, for the three firms operating in international markets (Food1 and the two locks firms) were all modernising to a significant degree. Where a firm is already on a path of formalisation, any such factor can encourage further moves along it. But otherwise outcomes are hard to predict. A cost may be, as noted above, that some of the face-to-face and personal character of employment relations is lost.

Yet formalisation is not a complete or a one-way process. The 1998 Survey of Employment Tribunal Applications (DTI, 2002) found that only half of all employers claimed to have a written procedure, and that of these only 58 per cent used the procedure through all relevant stages. The study of discipline by Earnshaw et al. (1998) showed clearly that firms can continue to fail to follow procedures even when they have them in place. It may be that a drive towards formality is counteracted by a tendency to ‘revert to type’. The present results suggest that some firms, such as Cons6, avoid formalisation, while the process of the birth and death of firms will mean that new firms are being founded, many of which will not have formal employment relations structures. Whether or not a disciplinary shock leads to a change of behaviour also seems to depend on specific circumstances. None the less, the combination of external regulation and new technology may mean that traditional informality is being squeezed: either firms retain their highly informal approaches, as at Food2, or they move towards formality, with uncodified and tacit informality having less room to flourish.
How do these results extend the analysis of small firms as summarised in chapter 2? First, they suggest that many models tend to be static and that small firms are often in a process of change. Second, they show that formality and informality are not uniform features of firms: in some respects all our firms were 'informal' whereas in others they were more formal. Such results can help in the improving of models of small firm behaviour.
Costs and benefits of regulation

This chapter builds on the previous two, by looking more broadly at the administrative and other costs of dealing with employment regulations. As noted in chapter 1, this study aims to distinguish three potential burdens of regulation. They are the direct administrative and other compliance costs, constraints on decision-making, and the ‘impact on competitiveness’.

Assessing regulatory burdens
The first two of these areas are self-explanatory. The third has been subject to substantial debate in the field of corporate strategy. The preferred concept is competitive advantage rather than competitiveness. The standard work of Porter (1985) discussed in chapter 1 identifies two types of competitive advantage: low cost or differentiation of products. Porter goes on to argue that each can be applied in relation to broad or narrow targets, so that there are four generic strategies. Firms adopting different strategies will need different characteristics, so that for example to be successful in selling high value-added products in niche markets calls for different strategies from those relevant to selling undifferentiated products in mass markets.

Competitive advantage can be pursued in different ways. The fact that the coherence of Porter’s model has been questioned (e.g. Mintzberg et al., 1998: 104) complicates the issue further. There is no single standard of competitive advantage. For present purposes, the stated aim of examining any ‘impact on competitiveness’ was taken by the research team as shorthand for ‘the effect on the ability of the management of a firm to pursue the firm’s stated goals in relation to its competitive positioning’.

The nature of costs under each potential regulatory burden is well-rehearsed. But if we think first of the management of a given business, it is possible for there to be benefits as well as costs.

- In relation to direct administrative and compliance costs, it is conceivable, though unlikely, that regulation will help to reduce costs.
- As for constraints on decision-making, regulation is often argued to interfere with the speed of taking decisions or to constrain certain decisions altogether. Yet it could also encourage firms to plan in a more efficient and long-term way, for example by managing recruitment and
retention strategically rather than relying on hire-and-fire methods, which
would then contribute to competitive positioning.

- In relation to competitive advantage, the theoretical arguments on
decision-making recur. But there is an additional issue here concerning the
ways in which managerial time is allocated. If regulation leads to the
neglect of productive opportunities, there is a cost. But assertions about
such costs tend to assume that firms are otherwise on their efficiency
frontiers. There is substantial evidence that UK firms in general are
constrained by the markets in which they operate and by the skills
available to them; for example, they tend, compared to counterparts in
other countries, to operate in low-quality markets and thus they do not
pursue innovation as vigorously as they might (Prais, 1995; Keep, 2001).
To the extent that regulation encourages innovation and a shift toward high
value-added activities, it will contribute to the development of the business
and it’s benefits.¹⁰

Moving on from the management of a firm, it may be that costs to them are
benefits to their workers, for example the increase in pay and claimed
reduction in work effort enjoyed by the former outworkers at Locks1. And, at
the level of the economy as a whole, increased spending by firms on legal
services has effects on the supply of such services. More generally still it may
be desirable that firms that cannot live under a certain regulatory regime are in
the long run replaced by those that can. In public policy terms, the cost to
firms of, say, unfair dismissal legislation may be balanced by the fact that
dismissal is handled in a more professional way with evident efficiency
benefits.

Putting estimates on the costs and benefits of regulation is thus a complex
activity. Some case study research has sought hard evidence on costs and
benefits but found evidence difficult to locate. For example, though Bevan et
al. (1999: 71) set out to find such measures in relation to policies on the work-
life balance, they found that none of their firms had ‘conducted detailed
quantitative work to isolate the benefits’ concerned, though anecdotal
comments were offered. Since some of these firms were quite large, and
since they were all leaders in the field, they might be expected to be the most
likely to conduct cost-benefit studies. The absence of such features generally
suggests that we should not expect to find most small firms engaging in
detailed analysis of this kind. The present study set out, therefore, not with the
assumption that hard measures could be derived, but with the aim of
understanding the prior questions of how firms think about costs and benefits
and how far they see value in making cost-benefit calculations.

The following section deals with the first two heads identified in the bullet
points above. This sets the context for the discussion of the broadest issue,
that of competitive advantage.

¹⁰ There may of course be costs, if managers devote more time to such activities and thus
lose leisure time. The concern here, however, is simply with the mechanisms through which
regulation might promote benefits; the balance of costs and benefits is a different issue.
Compliance costs and decision-making

Compliance costs of regulation

To begin with specific increases in the pay bill and administrative costs associated with employment regulation, one indirect cost of employment regulation is subscriptions to legal services. Where these services were used, estimates of the cost varied widely. Several firms (for example Food1 and 4 and Care6) put the cost at around £500 p.a. while higher figures were reported at Care4 for example (£1200 p.a.) with the highest amount being nearly £6,000 at Locks1. Food4’s payment was equivalent to about 0.03 per cent of turnover, though in the other cases the figure would be considerably higher (around 0.4 per cent at Care4). These differences reflect in part two different aspects of costs: routine information and advice, and exceptional, non-recurrent, costs notably where a dismissal has gone to an ET. They do not seem to reflect the size of a firm or the inherent complexity of its employment relationships.

Most managers did not place a high priority on the costs of legal services. In one case (Locks2), there had been a decision about four years previously to subscribe instead of relying on the company’s solicitor, the reason being a perceived vulnerability to claims from employees. Otherwise, firms appeared to have subscribed for some time. Estimates as to whether costs had risen or fallen recently were not available.

Turning to costs within the firms, we have seen that many were minimally affected by employment regulations, and thus had no specific administrative costs to report. In some cases costs emerged in relation to the NMW and the WTR; these are considered in turn.

In relation to the NMW, perhaps the clearest case is that of Locks1. The finance director provided exact figures (see Locks1 in the Appendix) showing that moving the firm’s outworkers into the factory raised wage costs by about one-third. In addition it was claimed that the workers produced at half the rate of that when they were outworkers, so that unit costs more than doubled.

In estimating the ‘burden’ here, however, three other calculations would need to be made.

- The first reflects the fact, noted in the previous chapter, that the workers were paid below the NMW, so that some of these additional costs would necessarily have been entailed in raising outworkers’ pay to the NMW level, together with any impact on productivity that a higher rate of pay might have had.
- Second, the productivity effect may have been a short-term one, and one might ask why it was that, under the discipline of factory conditions, workers were permitted to cut their levels of output.
• Third, this is a case of a transfer of resources from the firm to workers, so that costs to one party are benefits to the other.

In the food sector, Food4, as the most up-market of the firms, had practices in place such as its ‘family-friendly’ policy that were consistent with employment legislation but not driven by it. The case with clear compliance issues was Food3, where wages were increased to meet the NMW. The firm itself had not calculated the costs but an estimate can be given as follows. For simplicity, assume that ten employees work 60 hours a week, a further ten 45 hours, and that ten average 35 hours a week. This produces 1,400 hours of labour. If every hour cost an extra 40p (representing a rise from £3.70 to £4.10), the extra wage cost is £560 a week. In fact, only the lowest-paid were brought up to the NMW level (i.e. differentials were narrowed), but on the other hand overtime rates were also affected by the new basic rate. Total labour costs might have risen by about £400, against which we would have to set the savings on the attendance bonus which was a maximum of £15 a head per week (£450 in total). The total net cost of the new arrangements is thus likely to have been very small.

In the care homes, there were no direct costs arising from the NMW, since pay rates were above this level. But in some cases there were indirect costs as homes increased their pay in line with the NMW. At Care4, for example the extra cost was put at £287 a week, which at around 5 per cent of turnover is a potentially significant sum. There were also indirect costs arising from recruitment difficulties and in some cases the need to use agency labour (though it is notable that Care5 for example maintained a policy of using a pool of reliable part-timers rather than agency staff). The size of the costs due to these issues would be hard to estimate, and attributing a proportion to the effects of the NMW harder still.

Turning to the WTR, the consultancies were little affected by most regulations. The exception was Cons1, where a systematic effort was made to deal with the opt-out provisions of the WTR. The office manager estimated that it took her a morning to prepare a briefing note for the partners, preceded by perhaps two days in research. As she commented, many managers in small firms are not experts in legal or HR matters, and acquiring the necessary information takes time, a theme also mentioned in some of the other firms as discussed below. But to put this in context, she also reported a case of a ‘bad hiring decision’ which had required the dismissal of a consultant, an activity that had taken a huge amount of her own and a senior partner’s time. The researchers’ impression was that the precision and attention to detail in evidence at Cons1 were less evident elsewhere, and hence that this firm’s work in responding to regulations was greater than would be the case in many firms of this kind.

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11 This was mainly to do with the time taken in re-allocating duties, not any specific legal implications; the decision itself was simply seen as a poor decision, and not as being shaped by regulation.
Some other firms identified specific costs in relation to the WTR. At Care3, for example, managerial times in attending a meeting to discuss the WTR was put at £80. In other cases, less attention seems to have been given to the WTR. At Food3, for example, no dedicated meetings were held, while at Care4 the issue was handled in a regular staff meeting and managers could place no specific cost on the activity.

The other main area of direct costs of regulations concerns disciplinary cases and Employment Tribunal claims. The 1998 Survey of Employment Tribunal Applications (DTI, 2002: 46) found that just under half of employers involved in ET cases incurred no legal costs, with the mean cost for all employers being £800. The present results show that, where costs occurred, they could be considerable. At Care4, legal fees and management time in dealing with an ET case amounted to about £1,900. At Locks1, the total costs of two cases (which were settled rather than pursued to a resolution at an ET) were together put at about £7,000, which included about £1,500 in settlements to employees (see Locks1 in the Appendix, for the detailed costings). However, a large proportion of this was the time of the works manager, and it is not clear how an estimate for this time was derived.

Management time appeared to be the main shock absorber in dealing with regulation, whether it covered employment or other matters. Managers at Food3, for example, described to the researchers their working day, which would extend from early in the morning until late in the evening; after the day-to-day running of the business was handled, from about 6 a.m. to 3 p.m., remaining issues of a longer term nature were addressed. Chapter 5 described the extra hours that were put in by managers in the care homes, though it should be stressed that these arose from the overall demands of running the businesses and not necessarily from regulation, still less from employment regulation specifically. It should also be noted that long working hours are a long-standing feature of managers in small firms.

As to whether or not employment regulation has exacerbated this tendency, in the care homes in particular and also in some of the manufacturing firms, the overall extent and complexity of regulation was seen as a distinct source of concern. As has been stressed, managers saw a totality of demands on their time, and did what needed to be done without apportioning proportions between different activities. But in these firms the picture they painted was one of growing demands. To take but one example, the administrator at Care5 regularly worked beyond her contractual hours, and dealing with the gamut of regulations was one reason for this.

One issue affecting several firms was their current size and the associated constraint in terms of administrative resources. At Care5 and Locks1, for

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12 It might be possible to examine surveys of hours of work among small-firm managers, to see whether there is any correlation (a) over time with the degree of regulation or (b) as between sectors, a hypothesis being that sectors such as care homes will reveal longer working hours than other residential sectors such as hotels.
example, managers felt that they needed skills and personnel to deal with staffing issues but that the firms were not large enough to justify employing someone. At Cons1, the time taken by the office manager, who was not an HR specialist, to learn about HR issues was stressed. At Care5, the issue was whether they were now large enough to need two administrative staff rather than the present one. It may thus be that any administrative burdens have discontinuous effects, with the impact being sharpest where firms are stretched with their present resources but lack the grounds to employ more administrative staff.\footnote{As noted at footnote 2 in chapter 1, an objective was to establish variations in compliance costs by the age and size of the company. The research found no distinct effects of these factors in isolation. For example, the pressures facing care homes were common regardless of age or size. Other things being equal, the relatively large homes appeared to the researchers to be better placed than smaller ones to deal with the battery of regulation in the sector, but this is of course not a point on employment regulations specifically. By contrast, in consultancies very small firms have advantages in some markets, and such firms have been taking market share away from slightly larger firms. In short, size has to be related to competitive advantage.}

**Decision-making and organisational choice**

Estimating whether the presence of a particular piece of legislation or set of laws leads to the making of different decisions than would have been taken in their absence is an inexact activity.

Looking first at potential ‘negative’ influences, the longest-debated issue is that of constraints on hiring and firing. The 1978 survey (Clifton and Tatton-Brown, 1979) discussed in chapter 3 found that, though overall constraints were small, it was freedom of action rather than the cost of administration which was the main issue (Clifton and Tatton-Brown, 1979). Given that unfair dismissal legislation was only seven years old, this is not surprising. The Kingston survey found a shift of emphasis to the costs of handling ET cases (Blackburn and Hart, 2002). The present results deepen this finding. Though some managers complained that it was now hard to dismiss workers, this was not a dominant theme. Moreover, as discussed in chapter 4, in some cases it related to general perceptions rather than concrete experience. And, when specific cases were cited, it appeared to the researchers, in respect of at least some of them, that in the strict legal sense managers may have been less constrained than they thought. For example, two cases were reported at Locks1 where a worker’s unfair dismissal claim was not contested (see Locks1 in the Appendix). Managers stated that it ‘was not economical’ to fight the case, which plainly is a matter of their business judgement. Yet the details as reported to the researcher suggested that the firm would have had a good chance of winning the cases. In other cases, firms admitted that they lacked the documented evidence to sustain a dismissal, believing that with such evidence a dismissal would have been justified. As more focused research on this issue shows, it is a matter of keeping records and following procedures, and if this is done the freedom to dismiss remains substantial (Earnshaw et al., 1998).
Turning to broader influences on decision-making, there were two cases (Cons3 and 6) where managers said that decisions not to increase the size of the business were, in part, shaped by the presence of employment legislation. Yet there are also many other reasons for remaining small. As respondents at Cons3 themselves put it, they wished to continue doing what they were doing without the ‘structure’ of a larger organisation.

The other key examples of decisions potentially different from those that would occur in absence of legislation are the shift to the use of agency labour at Food1, in part to avoid managing a direct employment relationship, and the elimination of outworking at Locks1. The latter was a fairly direct result of the NMW, while the former reflected legislation more generally but also the labour management issues that would arise in any event. In both these firms, the decisions were not geared to legislation alone, being linked to the adoption of new technology. ‘Different’ does not necessarily mean ‘worse’. In principle, an interesting test would be the size and profitability of the firms in, say, two years’ time, as compared to the position of similar firms that had taken different paths.

In the other 14 firms, there were no specific cases of managers claiming that they were constrained by employment regulations. We have seen, for example, that the WTR had little effect on day-to-day activity. This fact bears emphasis. A long line of research has shown that the constraints of regulations on such things as recruitment and the ability to dismiss staff are much smaller than initial expectations might lead one to anticipate (Clifton and Tatton-Brown, 1979; Evans et al., 1985). In the researchers’ view, reasons include the fact that, when set alongside the many other influences on a firm, the law is often a relatively minor force. In addition, firms are often able to adjust to new requirements more readily than some expectations would suggest.

This brings us to the ‘positive’ influences on decision-making. The previous chapter showed that regulation can encourage innovation, and discussed examples of the formalisation and modernisation of the management of the employment relationship. Table 3 identified six firms where employment relations were formalised or modernised or both. To these we should add Cons2, where, as one respondent put it, the law was useful in ensuring that good employment practice was not forgotten.

In terms of the implications of that discussion, the research did not find managers who specifically saw the law as leading them to improve their decision-making. Effects tended to be of the indirect and affinity kind, rather than direct. For example, at Food3 the NMW had an indirect effect in encouraging modernisation while at Cons2 a broader affinity could be identified between the firm’s concern for a work-life balance and legislative developments. In the words of a respondent at Food4, the law could act as a ‘wake-up call’. This is perhaps the best way of seeing effects on decision-making. It was not the case that decisions were necessarily made in a
different way, or that different decisions were made, as a result of legislation but, rather, that the context was changed and new issues highlighted.

**Overall impact, and competitive advantage**

Competitive advantage is a long-term issue. It is conveniently approached by considering the firms’ overall perceptions of the burdens of employment regulation. The researchers asked managers to rate the overall negative and positive effects of employment regulations, using a 1-10 scale. Not surprisingly, the former were the more clearly articulated, while the latter were expressed more in terms of some positive features. In summary terms, positive effects are best simply recorded as present or absent. There is also the issue of what managers said when invited and what the specific effect on the firm had been. Table 4 is based on replies to a direct question and also the researchers’ interpretation of the overall accounts given in each case.

**Table 4. Overall employer assessments of impact of employment regulations**

<table>
<thead>
<tr>
<th>Firm</th>
<th>Negative impact (1: weak to 10: major)</th>
<th>Positive impacts (Yes/Some/No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultancy1</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>Consultancy2</td>
<td>1</td>
<td>Some/Yes</td>
</tr>
<tr>
<td>Consultancy3</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>Consultancy4</td>
<td>3</td>
<td>No</td>
</tr>
<tr>
<td>Consultancy5</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>Consultancy6</td>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>Food1</td>
<td>3</td>
<td>No</td>
</tr>
<tr>
<td>Food2</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>Food3</td>
<td>3</td>
<td>Yes</td>
</tr>
<tr>
<td>Food4</td>
<td>1</td>
<td>Yes</td>
</tr>
<tr>
<td>Locks1</td>
<td>8</td>
<td>No/Some</td>
</tr>
<tr>
<td>Locks2</td>
<td>3</td>
<td>No/Some</td>
</tr>
<tr>
<td>Care1</td>
<td>4</td>
<td>No</td>
</tr>
<tr>
<td>care2</td>
<td>7</td>
<td>No</td>
</tr>
<tr>
<td>Care3</td>
<td>3</td>
<td>No/Some</td>
</tr>
<tr>
<td>Care4</td>
<td>7</td>
<td>No/Some</td>
</tr>
<tr>
<td>Care5</td>
<td>8</td>
<td>No</td>
</tr>
<tr>
<td>Care6</td>
<td>6</td>
<td>No</td>
</tr>
</tbody>
</table>

*Source: Authors interviews with small firm managers/employers*

Four points stand out.

- The consultancies, together with firms including Food2 and Food4, did not see any major negative impact on their business; indeed, some of them could specify positive benefits.
- Many of the other firms, when asked specifically to rate the negative effects on a 1-10 scale, chose points towards the ‘negative’ end of the continuum. This was the case at Care5 and 6, for example, and many of the other care homes, notably Care4, took a similar view.
• However, the reason for this tended to lie in the overall situation of the firms rather than employment legislation itself. Most notably in the care homes, the financial squeeze was attributed to the funding regimes under which they operated, together with the general regulatory environment of the health sector.
• The concrete impact of employment regulation was not necessarily as strong as might appear from these responses. When asked about burdens, managers are naturally likely to focus on problems as they see them. As noted above, specific costs were not necessarily high. Managers may not have liked employment regulation, but this is not the same thing as saying that they found it directly burdensome.

Turning specifically to competitive advantage, we can use the foregoing information and the firms' market positions to analyse possible developments. This is less a matter of reporting firms' views, and more of identifying factors that managers themselves may not have consciously articulated.

The consultancies were sufficiently little affected by employment regulations that it is reasonable to conclude that any effect on their competitive position was small. Most of them were operating in specific niches. For example, in the case of Cons3, which provided organisation development to public sector clients, the future size of this business, and whether or not other firms competed for it, was the key contingency, with employment legislation being a much less fateful issue. Cons2 is identified as the one case of positive effects. As described in chapter 6, this firm saw employment law as useful in ensuring, in the words of a director, that ‘managers must keep an eye on things’. To this catalytic role can be added the fact that the firm had a flexible approach to work-family issues, so that legislation on these matters had an affinity with the firm’s preferences and may thus have contributed to some degree to its competitive advantage.

In all the manufacturing firms, competitive advantage was driven by product market circumstances and the firm’s ability to respond strategically. Two firms, Food4 and Locks2, had strategies of modernisation and the opening of new areas of business, and this was also true of Food1 to a smaller extent. Of these three firms, Locks2 and Food1 were operating in international markets and were thus under a distinct pressure to modernise, while Food4 had also identified a market area calling for a clear modernisation strategy. Two others, Food3 and Locks1, were similarly actively seeking new markets while being rather less far down this road than the first three firms. And even Food2, which was in many ways in the most stable position, there was a history of expansion and a strategy of modernisation for the future.

As described in chapter 5, the negative effects of employment regulations were generally felt to be small, for example dealing with the rise in the NMW at Food3. In terms of positive effects, in Food4 in particular, managers saw employment legislation as a nudge in the direction in which they wished to go, with affinity effects being clear. In three other cases similar but weaker effects may have been present. Food3’s continued move up-market was consistent
with a policy of paying higher wages and to that extent was encouraged by the NMW. At Locks1 and 2, a strategy of modernisation was in place, and in the long-term it is conceivable that there may have been some encouragement from legislation and also from any experience of employment tribunals. The strength of such effects is, however, hard to estimate in comparison with those of changes in the market.

In the care homes, chapter 5 stressed that the ‘product market’ was a less clearly defined concept than in manufacturing, and the idea of drivers such as market niches or new technology had less purchase. In the food firms, for example, competitive advantage meant the ability to provide a certain product at a certain price, and the dynamic aspect was provided by the extent to which a firm could identify and move into a profitable niche. Care homes had faced a less sharply defined market, and it is less clear what ‘being competitive’ might mean. Some homes had, it is true, tried to modernise, but the benefits of doing so in terms of capturing new markets were less obvious than they were in manufacturing. Negative effects of regulations tended to stand out. In two cases, Care3 and 4, some positive effects could be discerned, relating respectively to the firm’s relatively strong position and its desire to have a disciplined approach, and to the formalisation of disciplinary arrangements. These effects would appear, however, to be relatively slight.

If one criterion is the ability to survive and to recruit staff, then the main influence in the care homes was the funding regime of local social services departments together with the national regulatory regime for care home management. From the point of view of care home managers, regulation was extensive and intrusive. It was not the aim of this study to examine regulations other than those governing employment, and we cannot comment on the extent and nature of the general regulations governing care services. But it is pertinent to point to the question of whether the gamut of regulation as it affects care homes has been consciously considered. If it has not, then there may be issues to consider as to how different aspects when taken together may be exerting too great an impact in some circumstances.

Conclusions

The research also suggested that firms found it hard to place clear costs on regulatory compliance, for four reasons.

- They did not necessarily keep records of the relevant information.
- Employment legislation was hard to separate from other influences on the business.
- Firms did not see any point in measuring the costs of something that had to be done in any event. It was, for example, possible for the research team to find estimates of the costs of WTR compliance, but the firms produced the estimates in response to a specific request and not because they had themselves costed the activity.
• Many of the costs were absorbed by managers working longer hours, to a degree which could be estimated only in broad terms.

The results are consistent with a long line of research showing that the effects of employment laws on business practice are smaller than some arguments about administrative costs and constraints on decision-making would suggest (Clifton and Tatton-Brown, 1979; Evans et al., 1985). There are two key reasons for this result. First, the number of firms directly affected by the law (for example, the number with significant issues arising from ET cases) is not as large as is sometimes thought. Second, the law does not necessarily impinge heavily on decision-making within firms. The present research has shown that some laws, for example on maternity leave, become absorbed over time while others, for example the WTR, are sometimes ignored and otherwise handled with minimal effects on day-to-day practice. That said, there are situations where employment regulation adds to pressures that arise primarily from other sources (some of which may be regulatory in nature). The care homes were the strongest example of this effect.

The practical significance of these findings is as follows:

• Despite the undoubted growth of legislation to cover such areas as pay and working time, the impact on firms appears generally to remain relatively small.
• The results strengthen the finding from the Kingston survey (Blackburn and Hart, 2002) that there appears to have been a shift of emphasis away from restraints on freedom over hiring and firing towards the administrative and related costs of regulation.
• When placed alongside other conditions, as in the care homes, the legislation can contribute to recruitment and retention problems. By contrast, there are conditions under which the law promotes business modernisation. The effects here were not, though, very strong, and as argued elsewhere the conditions appear to be relatively unusual ones (Edwards et al., 2002).
• Negative and positive effects of legislation appear to be found in particular combinations of circumstances, rather than being generic. Rather than debate whether regulation does or does not have certain effects across all types of firm, it may be more constructive to identify the relevant circumstances and focus attention on any actions, either to moderate negative effects or to promote positive ones.

The last two points are pursued in the concluding chapter.
Conclusions

Previous research has shown that the impact of regulation on small firms is often smaller than might be expected. The present study has indicated why this is the case, developing a framework in terms of the perceptions of the law held by employers, the nature of the law itself, market conditions, and the internal processes of small firms.

On perceptions, chapter 4 showed that some but not all the firms had a broad perception that the law imposed burdens. Yet this perception reflected a view of the position of small firms in general and not necessarily concrete experience. The first part of the explanation is therefore that perceptions of impact relate to the general and not to the firm itself.

Different laws were discussed in chapters 5 and 6. Maternity provisions were generally taken for granted, and their effects were reduced by the operation of informal understandings on time off work. There was no experience of parental leave. Nor was there experience of trade union recognition or redundancy legislation. The WTR generally had few effects. Laws on discipline and dismissal affected firms where relevant issues had arisen, sometimes promoting formalisation of procedures. The greatest effects were observed in relation to the NMW, though these were mediated by the nature of the market.

The main analytical implication concerns the understanding of the ways in which external forces such as the law are mediated by the structure of firms. The law often exerts effects less by direct impact and more by ‘casting a shadow’ over existing relationships. This was the case in relation to large firms when unfair dismissal legislation was introduced, with firms being encouraged to proceduralise very rapidly, and is arguably also true as firms respond to legislation on trade union recognition. The shadow has tended to spread less extensively over small firms, partly because some requirements (for example, on union recognition) may not apply and partly because the firms themselves have felt that the law impinged little on their own practice. The present research has shown that much of the law on working time, for example, was felt to have few implications. But firms are not insulated entirely, and the research has identified the mechanisms which allow the law to have an influence and the circumstances in which its effects are negative or positive.
These mechanisms relate to the final two factors, market position and the character of the firm. Chapter 5 showed that market pressures in the care homes set the context for the operation of the NMW. Firms were unable to raise prices. The NMW made it harder to recruit and retain staff. Yet the need to meet regulatory requirements on patient care restricted the possibility of cutting staffing levels. Profits were thus squeezed, and owners and managers often found themselves working longer hours. The very particular features facing individual firms have also been highlighted; for example Care1 had developed the practice of employing ‘mature ladies’ who were unlikely to leave, and this particular feature of positioning helped to alleviate some of the generic pressures facing the sector. On the other hand, the same firm had a low bed occupancy rate and was less modern than others, so that in the longer term it may find itself squeezed. In other sectors, such pressures were much weaker.

The processes within small firms had two main influences. The first was the way in which generic informality shaped responses to legislation, notably on maternity leave. The other striking feature here was the very limited extent of efforts to estimate the costs and benefits of regulatory requirements. The second was more dynamic. Some firms had already formalised their arrangements as part of a move towards more profitable and secure markets while others were encouraged to formalise through business modernisation, in some cases with the further spur of legislation on discipline and dismissal.

In addition to these four factors, chapter 1 distinguished direct, indirect, and affinity effects of the law. Direct effects were few, for example cases where the NMW led to pay increases or, most strikingly, where in the case of Locks1 homeworking was abandoned. Indirect effects were clear in the responses of the care homes and in the ways in which some firms altered disciplinary arrangements after experience of a tribunal case. There were some affinity effects, notable in the area of work-life balance, where some firms were moving in directions consistent with legislation and where in the words of a respondent from Food4 the law acted as a ‘wake-up call’.

This last point illustrates the fact that competitive advantage has a short-term and a long-term character. In the short term, a particular development, be it a general business move such as investing in new technology or a response to an external requirement such as the NMW, will have costs. Some developments may be undertaken reluctantly, for example the move of workers in-house at Locks1. But in the longer term it is possible that they contribute to the development of the firm. As Porter (1985) stresses, innovation is a key aspect of the ability of a firm to pursue competitive advantage. Several of the firms studied (notably Food4 and Locks2) were consciously innovating in terms of products and processes and in some cases an affinity effect with legislation was identified. In others, for example Locks1, a new approach was in effect forced on the firm and it was not yet clear what effect this might have on its longer-term strategy.
Turning to the objectives of the study listed in chapter 1, the first was to assess the amount and nature of regulation perceived by small firms and to detail mechanisms used to ensure compliance or avoidance. The above discussion has explained the broad processes through which regulation was understood. Reflecting the nature of regulation and the competitive position of most of the firms studied, the amount of employment regulation was not seen as large. But in circumstances such as those faced by the care homes in particular the cumulative effect could be considerable. As for the nature of regulation, it was the costs of administration rather than constraints on decision-making that were most significant. Several firms also saw employment regulation as part of a wider set of regulatory controls, so that the overall regulatory burden was not primarily concerned with employment issues.

The second objective was to identify circumstances under which legislation is perceived as ‘imposing a disproportionate burden on business or constraint on decision-making or impact on competitiveness’. As analysed above, firms’ competitive situations were the key circumstances here. It has been shown that the nature of an industry and each firm’s position in it defined the extent of the effects of the law. If we take ‘burdens’ to mean administrative and other costs of compliance, the evidence suggests few serious effects. The recording of hours for example under the WTR did not entail new systems. On decision-making, there was the odd example where a firm felt that the law was a limit on business growth. Otherwise, of course, it is hard to assess effects here: how firms would have behaved without unfair dismissals laws is a matter of speculation. But specific constraints were not identified.

On competitiveness, it was clear that firms did not see any specific piece of employment legislation as affecting competitive advantage to a significant degree. Where there were effects, they related to the cumulative outcome of different laws, but such effects were not seen as large. The main issue was the interaction between employment regulation and other aspects of the context of the business, but there was no evidence that the regulation itself was a large factor in the overall assessment of competitive advantage.

The third objective was to explore coping strategies in relation to the legislation and the factors promoting positive and cost-effective outcomes. In that effects were generally small, extensive coping strategies were not required. The resource of small firms, in responding informally to domestic needs of workers, has been explained above.

Positive effects relate to the long-term aspects of competitive advantage identified above and were of three main kinds.

• In one food firm (Food4) in particular, the legislation was seen as an encouragement to improving employee relations’ policies. The main factor supporting such effects was a business strategy of growth and modernisation.
In some other firms, broader affinity effects were evident, for example where a firm was seeking arrangements on the work-life balance and was moving in the same broad direction as the law but without there being a specific concrete response to the law.

In some firms, modernisation and formalisation were in train, and the law stimulated such developments. Outcomes from the point of view of the firms were not clearly ‘positive’. For example, at Food1 and Locks1 new technology was being introduced as part of a modernisation strategy, and the law contributed to the changes in labour management that were involved. These changes brought costs, which were itemised in detail at Locks1. Similarly, at Locks2 new products and processes were being developed. The outside observer might conclude that here the law was stimulating developments which might in the long run bring benefits, though for the firms themselves the costs were clear and the benefits were yet to be realised.

The final objective was to address any effect of responses to employment regulation on relationships with employees, for example formalisation. Chapter 6 detailed degrees of formality and the extent to which they were changing. In three cases working relationships already displayed a considerable degree of formality, and the law can be seen as one influence encouraging the firms to maintain this approach. Two of the three were relatively large manufacturing firms with clear strategies of modernisation. In another three firms, formalisation was encouraged. In one of these (Locks1) formalisation embraced a shift from the use of outworkers, and the firm was also pursuing a modernisation agenda. The other two were care homes where formalisation was mainly the result of responses to ET cases. In broader respects, for example any systems of employee representation and voice, there was no evidence of the establishment of any new systems of workplace governance.

Turning finally to wider implications of the research, the importance of context in understanding the impact of law is underlined. It makes little sense to dispute what the necessary effects of laws might be, or even how they affect a ‘typical’ firm. Some firms can absorb legal requirements while others largely ignore them and yet others experience significant difficulties. These difficulties reflect particular combinations of circumstances, as illustrated by the care homes. It may be most cost-effective to focus on such sectors and to consider employment regulations in the light of the regulatory regime as a whole and the wider context in terms of likely supply and demand conditions. It may then be possible to identify ways to help the firms to manage the situation that they face. This could entail minimising negative effects, for example by identifying ways to improve recruitment, but positive effects such as better training and skill development might in principle be identifiable.

Several implications stand out in relation to future research on the measurement of the costs and benefits of regulation.
• The firms in the study did not keep detailed records of the monetary costs and benefits of complying with specific pieces of legislation, a result which, as noted above, parallels that of Bevan et al. (1999). Many small firms lack the means for such accounting, and it also appeared that in the firms studied the value of such an activity, which of course would have a cost of its own, was not evident, given that certain behaviour was unavoidable.
• ‘Hard’ numbers could be placed on some costs, but these were not necessarily the most important costs.
• Any effort to quantify costs across a number of firms would need to ensure that comparable data were being collected. Some of our firms could, for example, put a cost on legal services but the fact that others could not does not necessarily mean that the cost was negligible.
• Costings of managerial time are very hard to establish. In one or two cases, ‘hard’ numbers were given, but it was not clear to the researchers on what basis they had been calculated. In other, and perhaps more typical, cases the costs were hidden since they were covered by the long hours that managers worked.
• Finally, measuring costs implies a benchmark of an alternative situation. But it is not, for example, clear what wages a firm would pay in the absence of the NMW or what maternity leave it would grant if there were no laws in this area.

Measuring the costs and benefits of regulation implies some theoretical model of the behaviour of firms in the absence of regulation. Perhaps one way of approaching this issue in the future would start from the idea of competitive advantage, that is, establishing the conditions in a given industry that shape the opportunities facing a firm together with the strategies being adopted by that firm. External regulation could then be understood as one part of this picture. Where it affects a whole industry, as with regulations on care homes, regulation is an industry-level influence. Some firms in the industry may be better placed to respond than others, for example care homes that can modernise and attract high quality staff. This implies, in line with the literature on competitive advantage, that an industry is an appropriate unit of analysis. We would thus suggest that costs are best analysed in the context of competitive advantage, and that seeking estimates of costs across a large range of firms may have little meaning.

This point also applies to how one might develop research on decision-making and competitive advantage. One test would be whether over a reasonable period of time such firms’ overall performance was different from that of otherwise similar firms. Plainly, this question would need to take account of other aspects of competitive advantage. A longitudinal tracking study of decisions taken at key points and their later effects could throw light on the impact of those decisions affected by legislation but more importantly establish a great deal about decision-making in small firms and its links with innovation and competitive positioning. Such an approach might also throw light on costs, since it would be possible to observe and measure directly managerial time devoted to certain activities, rather than rely on reports.
Whether such detailed observation is feasible in a small firms setting is, however, a matter for debate.

Finally, the overall influence of the law on the conduct of the businesses warrants comment. Although specific effects of individual laws were not strong, this does not mean that small firms operated independently of the law. As Henry (1983) put it, there is an interaction between public and private law, or as wider debate on employment law argues there is a ‘juridification’ of employment relations as practice is increasingly shaped by legal expectations rather than being left entirely to voluntary agreement (Hepple, 1983; Dickens and Hall, 2003). The firms studied here were aware of general legal principles in such areas as maternity leave, pay, working time and discipline. They were far from being autonomous actors. How far any formalisation of the employment relationship proceeds over time or alternatively how far the process of birth and death of small firms acts in the opposite direction, is one issue for future analysis. But perhaps the key one is the extent to which the regulatory environment influences the competitive position of firms. The evidence of this study is that the effects are generally small but that in some circumstances regulation can encourage modernisation. Further analysis of these circumstances may be desirable.
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APPENDIX

Case study organisations

This appendix provides details of the firms studied and of the key events within each. It follows a standard structure, but evidently some cases bear on some issues and not others. We also aim to highlight the central ‘story’ of each case in a readable narrative, so that the case accounts are more than simple descriptions. A commentary section highlights particular themes of interest.

There are two exceptions to the standard structure. First, as explained in describing the research process, three consultancies were studied in less detail than the other cases and they are accordingly discussed relatively briefly. In addition, one other consultancy can be described relatively briefly. Second, in respect of Care4, a distinct section on ‘rhetoric and reality’ is introduced, since the case illustrates this issue particularly usefully and since the theme helps to tell the story of the case.

As discussed in the main body of the report, we identify three categories of response to the legislation:

- *a direct effect*;
- *an indirect effect*;
- and a broader *affinity* between a firm’s approach and the direction of public policy.

These categories are used where appropriate to highlight themes in a particular case. We have also where relevant flagged *critical issues*, which are general features of how case study firms were developing their employment practices, and *critical incidents*, which are specific events (for example a tribunal case) which sparked a response and which have been used to open up analysis of the employment legislation.


Cons1

The firm and its environment

Cons1 was based in London. Founded in 1978, its main business was consultancy in business psychology and the management of change, with a mainly private sector clientele. The firm was well-established in this particular market segment but felt that there may be a growing threat from two directions: larger firms seeking to enter this niche, and the very small firms, often comprising one or two individuals, which had become a growing presence in the consultancy sector. The charging of clients was done on a daily rate basis, rather than the more rigorous chargeable hours systems of big firms.

The firm was a limited company, and had operated under its current structure since 1992. There were currently four directors, comprising the founder, a senior partner, and two other directors. Including the partners, there were 15 employees, virtually all of whom worked full-time. The directors and most of the consultants were men; the office manager and the support office were women. There were in addition 28 associates: independent consultants who are self-employed and who may be called upon to contribute to particular pieces of work. Since they were not employees of Cons1, they are not considered further. Apart from the associates and the occasional office temp, there were no casual or temporary staff.

According to the senior partner, there was a conscious style of not seeking maximum earnings, and instead providing a reasonably relaxed work environment. The level of pay for office staff was thus lower than in some other firms in the sector (including Cons5, also based in London).

Employment legislation: direct effects

Pay, hours and holidays

In essence, there were no discernible direct effects of employment legislation. Pay levels were of course well above NMW rates. As for working hours, consultants as professionals worked the hours that the business demanded. For routine support staff, the standard working week was 37.5 hours. The office manager claimed that there was little call to work beyond these hours, and that she herself was opposed to long hours. She had actively discouraged someone in the habit of staying late from doing so. This perception was confirmed by a member of the support staff:

‘there is not much call to work outside normal hours, and immediate needs of clients can readily be met. There is one consultant who is very disorganised and made unreasonable demands, but [the office manager] has stepped in and got him to improve. In some firms [in this sector] support staff are expected to work the hours of the partners, and there is a tendency to take advantage, which some women play up to by being wanting to be seen to be indispensable. But a partner here
talked to us about the expectations, and there is not that much
desire for us to talk to him in the morning, which is better than not have them not provide
work till late in the day’.

In this context, the WTR had no direct effect on practice. In preparing for the
WTR, it took perhaps two days to find information on it, and the office
manager spent a morning preparing a briefing paper for the directors. When
she joined the firm in 1999 she had found staff logging their hours even
though she saw no point in this. She accordingly decided to dispense with all
records. As part of this process, it was agreed to ask everyone to sign WTR
opt-outs, with it being made clear that this was indeed optional and that no
one would be disadvantaged by not signing; in the event all staff signed.
Anyone unhappy with this was able to have her hours logged as formerly, but
no one took this option.

Support staff received 20-25 days’ paid holidays, plus public holidays. Longer
spells of leave were also acceptable, and examples of this were cited.

Family responsibilities

There had been no recent experience of maternity leave. As for parental
leave, the wife of one partner had had a child recently, which was handled by
allowing the partner a few days off plus some extended periods of working
from home. ‘There would be no question of a month off or anything like that. It
is just something we would do, and was regardless of paternity (sic) leave
laws’ (senior partner).

Discipline, redundancies, trade union recognition

There was no experience of ET cases, redundancies or trade union
recognition. According to the office manager, the discipline procedure was
changed to allow someone to be accompanied, as a direct result of legal
changes. It was hard for the firm to estimate the time involved in this, since it
was one part of a detailed revision of office rules and procedures which took
place over a 12-month period. Much of the attention was on issues such as
copyright and IT and internet usage and protocols. The company’s Employee
Handbook 2001 specifies a four-stage process of oral warning, written
warning, final written warning, and dismissal, with the right ‘to be
accompanied by an employee of your choice’ being specified at the final stage
only. There was also the right of appeal at any stage.

Information on and costs of the law, cumulative effects, and overall perceptions

Information and advice were provided as required by a partner’s wife, who
was a senior HR manager in a large company. Payroll administration, sick pay
and so forth were handled by an accountant. They were not seen as
significant issues. Law in general was seen as having neither positive nor
negative effects.
Employment legislation and business practice

The office manager had been active in formalising the handling of the employment relationship in several areas. This development was the main critical issue at Cons1. The areas included sickness absence (with the introduction of a formal self-certification process and a formal return-to-work interview after sickness, a procedure specified in the Employee Handbook) and time off for personal and family reasons. The main reason for this development was that formerly there were only ad hoc arrangements between each partner or consultant and a member of support staff as to when time off would be allowed, so that there was no transparency or fairness. The office manager introduced what she called her ‘two hour rule’. Formerly, staff might have had, say, a doctor’s appointment at any time of day, with the result that it was hard to monitor how long they were away from work. As she described the new arrangement:

‘The rule now is that anyone can with advance notice take 2 hrs at lunch time instead of 1 (or put the 2 hrs at the end of the day and work through lunch), for any reason. The time is then recouped by working extra in that same week. Also, any doctor’s or other appointment in the morning will be treated as a half-day holiday. The effect has been that people try to schedule appointments in the afternoon.’

The office manager believed that staff welcomed the precision of the approach to time keeping and attendance. The Employee Handbook also detailed rights and expectations, for example on use of the internet, in a very clear manner. The employee who was interviewed endorsed the value of the two-hour rule, and felt that colleagues also found it welcome.

Commentary

With the exception of changes to the discipline procedure, no specific stimulus from the law was identified by members of the firm. Time devoted to changing the discipline procedure is likely to have been small. Yet a clear policy on such matters as time off is plainly consistent with legislation with a family-friendly remit. To that extent, this firm’s approach can be seen as having an affinity with the legislation, albeit in an indirect way.

The lack of pressure on working hours is a good example of the ways in which a specific market context shapes the employment relationship. In its detailed Employee Handbook and its two-hour rule, the firm illustrates a modern and considered approach to balancing business and employee needs. Direct effects of the law were largely absent, and indirect effects were also not evident, but there was a broader affinity between the firm’s policy and legislative intent.
Data

Information is based on interviews with a senior partner, the office manager, and an administrative employee, plus a follow-up telephone interview. The Employee Handbook was also consulted.

Cons2

The firm and its environment

The firm was founded in 1997, as a result of the merger of three separate small management consultancies. It specialised in the provision of economic development/regeneration consultancy to a largely public sector client base. Within this niche, it described itself as ‘leading edge’.

Five directors owned the company and took decisions jointly at regular board meetings. Three other ‘fee-earning’ consultants and two office managers/administrators (all full-time) were also employed. Part-time workers included a business manager and a bookkeeper. Hence, the firms had 10 employees (eight women, two men). In addition, two people were employed in a subsidiary market research business.

According to one of the directors (director1), the firm was a prime example of a ‘fast growth’ business. Since its inception, it had increased in employment from 5 to 12 employees. Annual turnover had also increased significantly. Further growth was planned. Director1 maintained that the availability of a network of associates had been important to the growth of the business.

‘I should just say what’s important is the nature of this firm in that there are a lot of associates who work with you who often appear to be employed because they go in with the team, and half the team could be associates who you have sub-contracted to. In fact some consultancies could be two people but people think there are much bigger because everybody is an associate which is a devious way of doing it.’

Employment legislation: direct effects

Pay, hours and holidays

There were no discernible effects of employment legislation. Pay rates were well above the NMW for all levels of staff. Directors received a basic salary of £28,000. However, with bonuses and expenses that were ‘quite good’, the figure rose to £50,000. Other consultants were paid £30,000. Administrative staff received £12,000, plus a £2,000 yearly bonus. For support staff, the standard working week was 37 hours. Consultants were supposed to work a 40-hour week.

Director1 acknowledged the existence of a ‘long hours’ culture in the sector; but maintained that most of the directors in Cons2 did not work in this way.
However, two directors (including Director1) did work in excess of these hours.

'[We] are the ones that tend to do loads of hours; the others don’t do that much, yes there is a bit of a long hours culture … We are our own employees and directors, but we will say things like ‘we can’t take on any more jobs, it is too much’, and there have been times when I have said I have got too much on. Jokes are made, ‘whoops you have broken the European regulation’. But we talk through it if somebody is in a difficult situation and often we turn down work.’

According to Director2, the company ‘don’t subscribe to a long hours culture’, and had developed systems that ‘penalise people for working long hours’. He explained the philosophy.

‘We just don’t believe that people working fantastically long hours are going to deliver good work … We don’t want people to have to flog themselves … because if they are doing that we are not doing it right. … People are still probably working longer hours than in some other industries but we do penalise within the system people working too many hours. … If people work more hours than the standard they can claim some of that back against their holiday time, but they can only claim a certain amount back. … So if you actually do 5 days more work in a quarter than the hours established you lose them. It’s actually designed to encourage people to manage time and not work every hour and pace themselves. … That said if you work lots and lots of hours because we have a bonus distribution system then you might make more money.’

Hence the WTR had no direct effect. Support staff filled in weekly timesheets, but ‘directors go on trust and are generally happy that we work to our own hours’ (Director1). Director2 maintained that employment regulations ‘didn’t impose any additional burden because I think by and large we were already doing it’.

*Family responsibilities*

Employees were encouraged to take full maternity and parental leave entitlements. One of the directors had recently become a father. He took parental leave. The direct cost of this was estimated at £600. Director1 found indirect costs ‘impossible to calculate’. He explained that the director concerned ‘managed his work around’ his absence, and ‘organised his work to do a little less at that time’. Director1 believed that this approach was beneficial because it had a positive impact on staff morale, ‘We all feel good about it’.

The part-time business manager was pregnant, and about to go on maternity leave at the time of the study. Director1 claimed that he encouraged staff to take entitlements, ‘because we hope that they come back that way, it’s all part of motivating [staff]’.
The arrangements for maternity leave were a topic for discussion with the business manager. She commented favourably on issues relating to flexibility, but maintained that the maternity leave arrangements were left for her to sort out.

Discipline, redundancies, trade union recognition

There was no experience of ET cases, redundancies or trade union recognition. Director1 was not aware of a formal disciplinary procedure, ‘we haven’t set up a disciplinary procedure, we have to do it as we grow’.

Information on and costs of the law, cumulative effects, and overall perceptions

Information and advice were kept ‘in-house’; there was little use of external sources. Employment laws had not resulted in additional record-keeping requirements. Taxation issues and pensions had generated much of the administrative and record-keeping work.

‘There is a lot in terms of taxation issues and making sure we get the pensions right ... the bookkeeper and the business manager spend hours and hours ensuring we have got those things done. Ensuring ... how much you can claim for expenses, that’s part of her job [bookkeeper’s]; ... it’s to make sure all our records that are important for laws are kept’ (Director1).

In fact, employment legislation was viewed in a positive light.

‘I think it is all a part of good employee relations. It actually made sure we didn’t oversight (sic) good employment practice which has helped on the maternity stuff and all that helped keep an eye on things. Even the hours directive means that line managers must keep an eye on things’ (Director1).

Employment legislation and business practice

Three principles appeared to underpin business practice at Cons2: a ‘teamwork’ ethos; freedom to pursue individual work interests; and a consciously flexible approach to work-family issues. As noted earlier, both the ownership structure and the payment system were indicative of a collegial approach to employee relations. This was reinforced by the bonus system. According to Director2, ‘the bedrock of the whole approach has been the bonus system which tries to reward teamwork as well as individual excellence’. He explained how it operated.

‘We recognise the company makes money as a result of people delivering projects and making money, but it also recognises that consultants couldn’t earn that money if they didn’t have the support and skills of the other people in the company ... So the bonus system which is quite complex now is based on a simple premise that all the profits within the company are distributed to the membership of the company, the staff and the directors, and everybody in the company is
a shareholder. And there are two elements of the bonus, three quarters of it are distributed on the basis of earnings based on sales and time spent on the work and 25% of it is distributed equally to [all staff]. It’s based on a share dividend and that in turn is based on how many days you have actually worked. So everyone gets exactly the same but it’s pro rata, so if you work 5 days you have 5 shares and if you work 1 day a week you get one share. So that way everyone gets exactly the same.’

Employees had considerable latitude over the type of work that they performed. This appeared to include support staff as well as consultants.

‘There have been occasions when there was a piece of work we might have been interested in doing, but caused such problems with people working on the administrative side that’s it’s simpler to say well maybe it’s not worth it, because there are costs involved in that. So people have an awful lot of autonomy about which stuff they work on and which ones they want to pursue’ (Director2).

The ‘trade-off’ was that Cons2 is not as busy or profitable as it could be.

Finally, the ‘flexible’ approach to balancing work and domestic commitments was an important feature of Cons2. Director1 gave the example of a colleague, who had recently become a father for the first time.

‘For instance, one of our directors had a kid and his wife is disabled so he has to look after it sometimes. We have acknowledged that he can only get in for 9.30, and we try and avoid evening meetings ... We allowed that flexibility.’

A deliberate attempt was made to accommodate the preferences of employees.

‘It does cut both ways, people who like a routine and like to come to the office and like that routine and meeting people every day, that’s fine too ... Our bookkeeper likes to work at particular times and that suits them. ...She knows and she now understands it isn’t necessary for her to do that (Director2).

Commentary

This case provides an example of a progressive approach to handling employment regulations. Employment relations in the firm were shaped by a combination of deliberate strategy on the part of management, and the mining of a particularly profitable market niche. The economic success of the firm facilitated this broadly enlightened approach to regulatory issues.
Data

Three visits were made. Interviews were held with two directors (two with director1, and one with director2) and the business manager. Two telephone interviews were also conducted.

Cons3

The firm and its environment

Cons3’s main business was the provision of organisation development consultancy to a largely public sector client base. In turnover terms, the company had grown steadily since its inception in 1989. The previous year had been the firm’s busiest to date. The firm’s specialism was the provision of practical hands-on consultancy rather than what the owner described as the ‘theoretical stuff’.

The company was a partnership comprising the interviewee (who effectively delivered much of consultancy for the business), and his wife (who was responsible for administrative work). In the early years, the company had employed consultants directly, but ‘I found that I was working very hard, but others weren’t, so we knocked that on the head’ (owner).

Employment legislation

The owner initially claimed that the ‘onerous’ nature of government regulations was the main reason for not ‘going down the employment route’. However, in further discussion, he admitted that the ‘more realistic’ reason related to the nature of the business. ‘Organisational development is a personal business. People buy the individual not the company … And I really enjoy what I do’.

The key issue for the firm was ‘managing capacity’. The main challenge was ‘keeping the business in a way that we can handle the work without changing structure’.

The owner worked closely with four associates. He described it as a ‘core and periphery’ structure. The owner was effectively the ‘core’, delivering the bulk of the consultancy business. The associates made up the periphery: ‘I deal with the core work; the overflow goes to the associates’. On occasions when the owner was extremely busy, he would transfer contracts entirely to associates for tax reasons: ‘There have been occasions that in order to comply with Inland Revenue, I have given work to associates to put under their banner’.

The owner also uses the services of a secretary whom he paid on a ‘cash-in-hand’ basis. There was no direct experience of the NMW, WTR and maternity and parental leave regulations.
The owner had ‘no interest of growing the business in terms of bodies’. His aim was to ‘stay in control and get out when I want’.

/Data

One interview was undertaken with the owner.

/Other consultancies

/Cons4

Cons4 was located in a town in the West Midlands. It was a firm of solicitors, established in 1984 and comprised the owner-manager, a full-time administrative assistant and a part-time typist. An interview was conducted with the owner-manager and the assistant.
The firm appeared to be relatively down-market, doing basic legal work with no ambition to expand its operations. That said, it had operated for a considerable period of time and had a stable market position.

Direct effects of employment legislation were absent. Most obviously, the NMW was not relevant and there had been no experience of maternity leave. The WTR did not impose any new requirements, and working hours were well within the maxima specified in the regulations. The manager none the less felt that it was undesirable to recruit ‘women of child bearing age’ because of the risk of losing them, and the fact that small firms cannot easily move people around to fill gaps. He provided an extensive commentary on this issue and made other comments on similar lines.

In terms of commentary on this response, whether or not this view will affect any subsequent hiring decisions is impossible to say. It is interesting, first, because it was given in detail in a face-to-face interview and not as an instant reply to a survey question. Yet, second, it was not a direct statement of concrete constraints faced by the business itself. These two aspects arguably need to be seen, as discussed in the analysis section of the report, not as being logically incompatible or as a gap between rhetoric and reality but as two strands of perceptions which can be equally important.

Research on the above cases indicated that the effects of employment legislation in this sector were very small. Pursuing further consultancies in depth appeared to be unlikely to generate new evidence, but it was felt important to conduct some further research to check the picture derived so far. Single interviews in two other consultancies were therefore carried out.

/Cons5

Cons5 was a very useful case, for it was characterised by the interviewee (who was employed as a consultant and was also responsible for office
administration) as a ‘high pressure’ environment. Any effects of a long hours culture might thus be expected to be evident here.

The firm, like Cons1, was based on London and provided business psychology and consultancy on the management of change to a client base of large blue chip firms. It was larger than Cons1, with a total of 25 consultants employed directly, plus 12 office staff. It also fostered an expectation of a high level of work effort. Office staff were expected to work the hours required to complete a particular job. They were rewarded with high wages and a generous benefits package. The interviewee did not wish actual salaries to be reported, but the figures which she quoted were certainly clearly above the pay at Cons1. The total benefits package added significantly to the base salary, including a contribution by the firm to employees’ private pension plans, free membership of a gym, and free lunches.

What was termed explicitly a psychological contract thus turned on rewards and the expectation of commitment in return. Levels of absence were for example low, with no one having had more than four days’ absence in the course of a year. The management of working time had three elements. First, daily tasks were carried out as required to complete the job. In this, office staff had considerable autonomy as to how they worked, to the extent that if they deemed it necessary to hire in temporary clerical help they had the authority to do so. In relation to the WTR, no opt-outs had been signed and there had been no discussion of them.

Second, however, there was the flexibility to deal with domestic demands as was necessary. For example, the partner of an employee had been ill recently, and the employee was able to take time off to deal with this. Other staff were expected to cover. Third, and similarly, maternity leave was generous; though paid leave was close to statutory requirements (at four months) a further period could be taken unpaid for as long as the employee wished, and other staff were expected to pick up the work as required. The firm also had a generous sabbatical leave scheme. In terms of commentary, this leave scheme appears significant in allowing staff flexibility, and maternity leave can be seen as one aspect of this approach.

Cons6

Cons6 was a small consultancy based in the south of England, which was run as a partnership. Three partners owned the business, and there was one other partner, one employed consultant and two administrative staff. As at Cons1, there was substantial use of associates. The firm illustrates the situation of very small firms, in contrast to the larger firms such as Cons5.

The firm was established about ten years ago. It began by specialising in providing NVQ qualifications for managers and has since developed to provide bespoke training and management development together with team building and change management. Its experience of standards-based
activities has also enabled it to work with companies seeking Investors in people (iIP) accreditation. The proportion of the firm’s business coming through government-funded programmes had fallen to about 60 per cent. The business had grown steadily rather than rapidly. As the interviewee put it, ‘there has been a move up from the “cheap and cheerful” training market to the top of the bracket for managerial training, and the aim is to move to the next rung of consultancy work’. There was competition from small ‘one man band’ operations which charged substantially less than Cons6, but it had established good relationships with bodies such as the Learning and Skills Councils and was not felt to be seriously endangered by the small firms.

There had been no recent experience of maternity leave. In relation to parental leave, one consultant had recently taken two weeks’ leave after the birth of a child. This was handled flexibly with other people picking up the work. Asked specifically about the possible inflexibilities for small firms of employment rights in this area, the interviewee argued that generally it is possible to cover gaps, though there was also the expectation that if the firm really needed someone he or she would not stand on legal rights to time off.

In relation to the WTR, there was awareness of the existence of the regulations and it was established that they would not have any specific effects on the business. The administrative staff had core hours of 9 a.m. to 5.15 p.m. and they are encouraged to limit themselves to those hours. The consultant who is an employee was also encouraged to maintain such hours, though with more flexibility in that it may be necessary to start early to reach a client’s premises. There has been no extra record-keeping as a result of the WTR.

Pay was described as being in the ‘middle range’. The two administrative staff earn approximately £18,000 and somewhere over £20,000 a year. There was no overtime but there was an annual bonus.

The firm had had no experience of other specific pieces of employment legislation such as the NMW and unfair dismissal. Some advice on legislative matters was obtained from the firm’s accountants and from electronic information sources. It was not possible to estimate time spent on these matters, but it was felt to be small.

The key issue for the firm in relation to employment legislation was seen as the broad effect of growing larger (a theme similar to that in Cons3). They are for example about to take on another employee which brought them over the threshold of five employees and were now having to think of stakeholder pensions. According to the interviewee, dealing with legislative requirements was perceived as a hassle, and there had been explicit discussion of the costs of growing larger. The business would certainly grow if there was value in doing so, and the law was not the critical factor militating against growth, but it was seen as a ‘limiting factor’ which encouraged the firm to avoid the complexities of legislation by staying small.
In commenting on this case, whether or not the firm’s fears were justified is impossible to say. It may be that the costs of growth would be less than expected. But the fears had been articulated within the firm, which can be taken as an illustration of how some very small firms see employment legislation as one constraint, among many, on growth.

Food1

The firm and its environment

Food1 was a small private family firm engaged in the manufacture of fancy chocolate. It was founded in 1972 by the MD, in a new town in the West Midlands and was owned and run by the MD and his two daughters. The MD had responsibility for strategy, including product and market development. One daughter, the Administration Manager, was responsible for general administration, purchasing, personnel and day-to-day finance. The other was the production supervisor.

Because of what the firm saw as the adverse market environment in the previous decade (a high pound and ‘cheap’ imports from Turkey and Finland), they had moved to a core and periphery labour market strategy. They had moved from about 25 employees in the mid-1990s to around five at the time of the visit, supplemented on a seasonal basis by up to 25 agency staff, drawn from the Birmingham conurbation. According to the MD, an additional reason for the strategy was that low unemployment in the town meant that ‘people here just don’t want to work’ The MD commented, ‘the temps we’re sent are ethnic minorities… about a third are Asian and two thirds are from Eastern Europe… asylum seekers and the like…their English is very poor, but it’s not a problem…they generally work well and do what they are told… many have experienced bad treatment, so if you treat them kindly they work OK’.

The MD’s view of their approach to markets was that they had been ‘at the passive end, but now we are more pro-active. We’re now trying some new products to see whether we can approach new customers… it will involve investment in new machines… I’d say that we are pro-active in the market’.

The workforce had always been largely female of ‘variable ages’, but at the time of the visit seemed to be mature. Of the five ‘full-time’ employees, one was a middle aged male. A follow-up in January 2002 revealed six employees, four female and two male.
Employment legislation: direct effects

Pay, hours and holidays

The Administration Manager claimed that the NMW ‘winches up pay’, while she also complained about the competition from auto-components manufacturers which had moved into the area, who paid well above the NMW. The fact of low unemployment levels in the area was also seen as a problem. Pay rates started at the NMW and appeared to rise with pay for skill. A form of ‘pay for knowledge’ was in operation. The Production Manager explained, ‘as we train people, we pay them for what they can do, that is, we pay them for each machine that they can work with – a skill bonus, say for being able to run the wrapping machine…we encourage people to learn…we want them to do as many jobs as possible, so that we can shuffle them about…we can move people around each hour, this also avoids claims for RSI’. This probably did not amount to much more than 10 or 20 pence per hour. The Administration Manager was reticent on exact levels of pay, although the MD put the standard rate at £4.35 per hour. No bonuses existed, but some overtime was worked, paid at 1¼ time, working until 6 pm when busy. There was no promotion structure, although the floor supervisor received a small unspecified premium.

The standard pattern of work was 8am to 5 pm with 30 minutes for lunch, and two 10 min breaks, finishing on a Friday at 1 pm. They had run a twilight shift of 5-9 pm ‘for a few weeks’ in busy periods, and sometimes a Saturday or Sunday morning. ‘We have no trouble in getting people to work overtime’, the Production Manager observed, ‘with notice, most people will work an extra hour’.

The WTR did not appear to have had an impact. All three directors were vaguely aware of it, but did not see it as an issue, and were unaware of the opt-out provisions. The Production Manager commented that ‘during the peak period the odd person may work 50 hours…if they want to’. Asked about any benefits, she responded, ‘I don’t think that we need regulation – a business which forces people to work 70 hours won’t prosper…you get diminishing returns…productivity will fall off’.

The MD reflected, ‘…you can’t buy loyalty [i.e. through higher pay]…and temps are well motivated. The downside of temps is that they are run by someone else…you rent the temps…the agency may send the best to other employers…you just order the number of temps for the job…there’s no legislation problems with temps – none of that trauma of all that legislation…and you don’t find yourself at a tribunal’.

Family responsibilities

The MD implied that maternity rights were a factor in recruitment. ‘Before this [maternity] legislation women would leave [to have a baby] and reappear after 2 or 3 years…we’ve had no incidence of maternity
leave since we reduced the staff [i.e. to the core] and since we had the legislation...a business this size, we couldn't afford a maternity'.

There had been no demands for, or awareness of parental leave, and ‘equal pay was not an issue’.

**Discipline, redundancies, and trade union recognition**

Personnel procedures appeared to be informal, and consistent with the prevailing informal culture. When asked about the existence of a disciplinary procedure, the response from the MD was: ‘there are regulations on that...we refer to the ACAS guide...verbal warnings are recorded... don’t have any problems with permanent staff’. It did not prove possible to see any documentation in this area. There had been three disciplinary incidents in recent years, which seem to have been handled in an ad hoc fashion, resulting in costs to the firm (which they declined to disclose). However, unlike several other firms in this study, this had not resulted in a more procedural approach to personnel issues.

Illustrative disciplinary cases had occurred about ten and five years previously. In the first, a worker had been laid off; the worker had claimed that this was a redundancy, and had won her case at a tribunal. In the second, as the MD recalled, ‘this guy walked off site.... he didn’t want to do this particular job. We asked him to come back at the time, rang him at home a couple of times on the trot, but he took it to the tribunal. We were advised by our solicitor that we would lose, so we settled out of court... We rarely use solicitors. The solicitor initially said we could win the case, but then said no, so we settled’. No sums were disclosed.

**Information on and costs of legislation, cumulative effects, and overall perceptions**

The general attitude was that of the traditional small family firm, of rugged individualism, where regulation was generally unwelcome. The MD stated that he saw, ‘all regulation as an intrusion’. Yet, because there was such a small core of employees, time spent on personnel issues was not great. The Administration Manager dealt with employment and personnel issues. She spent ‘an hour or two’ on this in busy periods.

A clock card system was operated which ‘solves all the problems of paying wages’. The payroll took ¾ hour a week. The Administration Manager worked 09-13.00 each day. She reported bureaucratic niggles and argued that, though no one wanted a stakeholder pension the firm had still been obliged to set up a scheme.

The firm paid a £500 per year subscription to a legal up-dating firm, and the Administration Manager ‘briefly reads the ‘up dates’, but commented that, “I can’t remember it all.’ She subsequently used the local chamber of commerce more, since she had consulted them by telephone and found them to be
helpful. Occasionally they had used a large solicitors’ practice in Birmingham for actual or potential ET cases.

*Employment legislation and business practice*

Core staff were expected to do as they were told and be flexible. In busy periods, in preparation for Xmas and Easter orders, staff were expected to be fully flexible and move between jobs as required. A shop floor operative observed that there were only two people on the shop floor the day that the researcher visited. She commented that ‘the others do Tuesday to Thursday...it's flat most of the year except November to March... being in a small firm we are all expected to rally round... when it's slack down here I will go upstairs and do some filing.’ The Production Manager explained how staff had the choice, ‘you can be laid off or do a three day week. It’s shorter hours or none at all it’s give and take in a small firm...one of our ladies was allowed time off to take a sick pet to a vet.’

As this example suggests, for core staff, requests for time off were dealt with informally. However because of food hygiene standards, ‘if they are off [for illness] they have to be off for four days – for infection –, so we cover with agency temps’, she commented. The core five seemed to be amenable to this. A shop floor operative seemed content, and saw this flexibility as part of the ‘give and take’ of a paternalistic small firm context, although from her it seems to be more give than take, and the agency temps are outside the boundaries of this paternalism.

*Commentary*

Although complaints were made about regulation, it did not appear to be a significant burden, especially since the move to agency labour, which can be seen to have been as an indirect effect of regulation, but not specifically of the NMW or WTR. The core-periphery strategy, whereby in busy periods most employees were agency workers, is clearly expressed as a strategy designed to avoid what is seen as, ‘intrusive’ and burdensome regulation. The MD reflected that, ‘No, no there is no positive impact of the legislation...we would be better off without it, because we never exploit our employees. We don’t want to employ people direct, because once we’ve had them for 12 weeks, we can’t really get rid of them – we’ve got them for life’. When asked about the negative impact of regulation, he suggested a negative impact of 9 on a scale of 1-10, to which other directors agreed. ‘One of the biggest problems is not knowing – and then it’s too late. I think somebody in government should ensure that all small businesses should have a handbook, plus a help-line; should say what the terms and conditions should be, for instance, statutory holidays’.

Food1, like Locks1, is an example of where market pressures have led to investment in labour saving technology, as well as affecting the pattern of employment. Here, there is a strong emphasis on avoiding labour legislation in general, rather than as a reaction, say, to the NMW. The firm was attempting to avoid the ‘trauma of all that legislation’, as the MD said, by both
‘underselling on the more labour intensive lines’, and investing in labour saving technology. The NMW can be seen to have been a stimulus to the introduction of pay for skills.

Data

One visit was made, with four interviews conducted. A follow-up telephone interview was also conducted. The firm was unwilling to divulge further details on costs.

Food2

The firm and its environment

Located in a town in the Midlands, Food2 produced, packed and retailed bread and wholefood products. It was established in 1976 as a Christian co-operative, and began trading in 1980. The detailed (20 pp., single spaced) Handbook on the co-op’s structure and functioning which was given to all members specified the three ‘pillars’ as Christianity, co-operation and wholefoods. Co-operative principles ran through the whole operation. For example, a proportion of profits was dedicated to charitable causes and everyone including the general manager received the same rate of pay.

The firm had grown rapidly (at about 7.5 % p.a. in recent years according to the general manager) and it had established a new retail outlet in addition to the original one attached to the factory. The premises gave the impression of being a down-to-earth and distinctly old-fashioned operation. Equipment was old but serviceable. ‘Our goods are displayed on simple rugged racking and without expensive displays’, says the Handbook.

Managers stressed that the co-op had to run on clear business lines. It is a work organisation, with all the disciplines that this entails. ‘The business is here to make money and the expectation is that people will work in a hard and disciplined way’ (general manager).

The co-op’s members were entitled to vote on all key matters, including the appointment of managers. New employees usually began as prospective members, and could apply to become members after six months’ employment. Total employment was 21, comprising 14 full-time and seven part-time staff. The gender balance was approximately 50/50.

Employment legislation: direct effects

Pay, hours and holidays

Pay rates in September 2001 were £5.95 per hour, and hence the NMW had no direct effect. It is possible that there has been a less direct effect, with the NMW leading to a narrowing of the gap between what Food2 paid and the bottom of the labour market, thus leading to labour supply problems. Given,
however, that employees were recruited on the basis of their commitment to Christian and co-operative principles. Food2 was in a distinctive labour market position, and no such effect was identified. In fact, the employee interviewed claimed that pay levels were not very different from those in his former employer (a large supermarket). According to the general manager, ‘Every application form is read by members, and potential employees will work for a time with us. There is then a formal interview. The members have to feel comfortable with whom we recruit.’

Standard working hours were 40 per week, with very little variation on a daily or weekly basis (in stark contrast to Food3 for example). There was no night work. The WTR thus had little effect. ‘We carried on as before’ (general manager), that is, there was no discussion of opt-outs and the WTR were in effect ignored. ‘We were broadly aware of the WTR but did not feel that anything needed to be done. There was no discussion about them.’ There was a basic manual system for recording hours; ‘we bought a clocking-in machine but it never worked’. There was no use of opt-outs and as far as two managers could recall very little discussion of the WTR. Holiday entitlement was 23 days plus all public holidays, except one. The firm’s provision was thus well above the holiday requirements of the WTR.

Family responsibilities

There had been no recent experience of maternity or parental leave. As for short-term time off for family duties, this was said to be handled informally as needed. The two-hour rule system used at Cons1 was put to the general manager in an attempt to clarify the meaning and operation of the ‘informality’ here; he grasped the point but felt that there was no need for anything as formal and structured. The employee interviewed confirmed this picture and was happy with the informality, which he contrasted with the proceduralism of his former employer, where ‘everything was questioned, for example how close a relative was before bereavement leave was allowed’.

Discipline, redundancies, and trade union recognition

There was no experience of redundancies or trade union recognition. On discipline, advice was sought two or three years previously from the local Co-operative Development Agency for the design of a procedure. This included the right to be accompanied, and preceded the legislation on this matter. The procedure was otherwise a standard one of three stages. No recent unfair dismissal cases were reported.

Information on and costs of the law, cumulative effects, and overall perceptions

The firm subscribed to Croner’s briefings, which were consulted as required. The researcher gained the impression that the material was used only when a specific issue needed to be addressed, and that this was a rare event. A lengthy discussion between the researcher and two managers (one of whom had long industrial experience, including 18 years as managing director in an
marketing company) reflected on the impact of employment legislation. The managers believed that the hands of management were often tied in the sense that employees were granted rights which may seem sensible in the abstract but which can run against ‘common sense’ and the needs of a business. A firm had, they felt, to think hard about whom to take on, and there was a danger of making a wrong decision and then getting ‘locked into someone’. The possible case of taking on a woman who then took maternity leave and thus created problems for the firm of filling the gap so created was cited. The managers conceded, however, that they had had no direct experience of this issue or similar issues, and that they were speaking in general terms. By the ‘tying’ of hands, they meant that, particularly in small firms, reliance on experience and common sense was being replaced by an unduly legalistic approach.

There was one particular case that they could cite. The following extract from the general manager’s comments describes the case.

‘The only significant issue of discipline was 3 years ago, when a man who was a member of the co-op began making mistakes and was adopting an aggressive and disruptive attitude. We went through warnings etc, but the problem is that they lapsed after a time and we were back at the start. We did feel powerless here and felt that the rights were on the employee’s side. We sought some advice, but in the event the man chose to resign.’

It was too long ago for it to be helpful to seek further details of this case. It seems to have been isolated, and it is no clear how serious the infractions of expected behaviour were. It is also possible that, had a disciplinary route been taken, management could have specified dates for the improvement of performance and increasing sanctions for failure to meet the standards required: managers were not, perhaps, as powerless as they felt.

It should also be noted that a formal part of the co-op’s policy was the employment of ‘associate workers’, described in the employee handbook as:

‘People working here normally for up to 12 months, and are recovering from mental illness. . . . All are invited to the Weekly Meeting [the co-op’s main decision-making forum] . . . Holiday entitlement, wages and working hours are the same for Associate Workers as Members.’

One person had fallen into this category. Another current worker had been taken on for 12 months to help him build up confidence; he was expected to move elsewhere, though he could apply to the co-op if there was a job.

The concrete cumulative effects of employment laws thus seemed to be limited. There was no evidence of an increased administrative or record-keeping burden. But there was a nagging and as yet relatively unfocused concern about possible effects.
Employment legislation and business practice

There was as yet little indication of any indirect effects of the legislation. The co-op was in a strong position in its market niche, and was able to carry on largely as it had in the past. There was thus no pressure from the legislation to cut costs. Nor was there any specific stimulus towards formalising the employment relationship. There were some signs of moves in the latter direction. A clear part of the co-op’s strategy was to modernise its stock control and accounting systems, among other things with the aim of calculating the profit made on different items. Associated this was a view that payroll systems should also be modernised. In contrast to Food4, however, the formalisation of employment relations had scarcely proceeded at all, so that any indirect effects of the legislation are more potential than actual.

Commentary

A producers’ co-operative is an unusual organisational form. Estimates in the 1980s put the number at only around 900, with a total employment of 6,000; 96 per cent of them had fewer than 20 employees (Hobbs and Jefferis, 1990: 296). Certain aspects of Food2 stem directly from its co-operative ethos, notably its policy of wage equality. Yet it has a clear business orientation, as reflected in its modernisation and development strategy. In relation to employment legislation, it was influenced as much by its distinctive niche position as by its co-operative structure so that it was not under cost pressure, for example, and was thus able to pay well above NMW levels (in contrast to Food3 for example). The firm is an example of a degree of insulation from the direct or indirect effects of legislation, while ‘affinity effects’ were also weak.

The managers’ views on employment legislation in general should not be dismissed as mere rhetoric, for they reflected a particular event at Food2 and more general industrial experience. They are best taken as a generalised concern, and can be understood when placed in context. They express a legitimate view; the danger arises when this view is taken out of context, and represented as a fundamental and deeply held critique of legislation, for the managers were not expressing such a view, and their approach had other equally important dimensions. The dedication to helping individuals with mental health problems was clear. It could be argued that, if employment laws were a major constraint, the co-op would either cease to employ associate workers or experience problems in doing so.

Data

This firm was visited once. A detailed account of the history and strategy of the firm and the employee Handbook were consulted. Interviews were conducted with the general manager, a second manager, and a recently recruited employee.
Food3

The firm and its environment

Established in 1966, the firm produced speciality ethnic foods. For much of the time since its foundation it supplied local firms with no particular ambition to expand. Over the last few years, it had witnessed growth in its market, and had developed new business with several supermarkets. Its business was wholesale, with no retail outlets. Over time, there had been a slow tendency towards what one manager termed the de-skilling of the work process, with more mechanised production and less reliance on craft skills and any specific knowledge of the national origins of the product.

Two partners owned and ran the firm, one of whom took prime responsibility for marketing while the other handled finance and production. The latter’s younger brother was the production manager. There were 2 supervisors and two office staff. The rest of the 27-strong workforce, virtually all from an ethnic minority group, was employed as shop floor production operatives. The gender mix was 19 men and 8 women. Most workers worked full-time.

The move to supplying supermarkets began largely by accident when one firm’s original supplier went out of business and Food3 was approached to take on the contract. A contract with a second supermarket was won through taking a stand at an ethnic foods fair.

The two owners and the production manager presented an interesting account of the influence of the supermarkets. A conventional picture is of very tight control of production standards and strong pressure on prices. At Food3, there was relatively little pressure on the former, save for the introduction of a metal detector and the need to computerise to handle orders and deliveries. There was little day-to-day inspection of quality standards or insistence that particular methods be used. A tour of the shop floor revealed a traditional bakery, with no computer-controlled equipment. This lack of direct control was attributed to the fact that the firm was not producing supermarkets’ own-brand products. As for prices, there was strong pressure. ‘I would say in four years we haven’t had a price increase’ said one partner. As he elaborated, supermarkets may run promotions on certain products which means that they use this as one argument to resist price increases.

A key feature of the firm was how it responded to this pressure. As the partner put it, ‘it means that you need to look at yourself, you need to look at your process, you need to see where you can save and you would be surprised once you start looking how much you can actually save’. There was in short a drive to improve efficiency rather than a fatalistic blaming of the customer for the pressure.

The ambition was to continue to develop supermarket business and also to modernise the layout of the site. For example, raw materials and finished goods were stored in the same place, and to move the former to the start of
the production process required moving them some distance. The partners were clear in their desire to drive the business forward by finding new outlets for the product.

Employment legislation: direct effects

Pay, hours and holidays

Pay for shop floor workers was around the NMW level. When the NMW was introduced, some workers were brought up to the rate of £3.60. At the time of the first research visit in September 2001, basic rates ranged between £3.80 (packers) and £4.20 (production line operators) per hour; drivers were on between £5 and £6 per hour. There was also an attendance bonus of £15 or £20 per week for all workers with no spell of absence in the week. Overtime was paid for work over 39 hours per week and for any (occasional) weekend work.

To deal with the rise in the NMW to £4.10, the bonus was to be removed, a change that was accomplished by the second visit in December. Managers reported no problems with this change, and one worker saw it as a benefit in that she was paid a set rate for each hour worked instead of having to rely on an extra allowance. Little or no administrative costs will have been involved: hours are recorded on clock cards, and it was simply a matter of applying the new hourly rate. There had been some thought among managers of changing pay differentials, but apparently no moves in this direction had been made, so that the lower-paid workers were brought up to £4.10. One partner’s view was that there had been an effect on costs, in part because overtime pay increased in line with basic pay, but he was not in a position to estimate what it was.

In relation to working hours, a fundamental principle stressed by all interviewees was that workers had to be willing to work to complete the day’s task, and it was equally agreed that it was very difficult to predict when that would be. As one employee explained, she started work at 10 a.m. and was expected to stay until all tasks had been finished, which could be as late as 6 or 7 p.m.; she added that this was clearly explained at the job interview so that there was no particular grievance (though in her view a more formal shift system would be desirable). Two of the four employees interviewed worked about 60 hours a week, and managers acknowledged that such hours were common for some staff.

On the impact of the WTR, managers recalled some discussion and said that individual opt-outs had been used, but there was no specific discussion of details such as the reference period to be used. Workers were uncertain as to what had been done. As one partner put it, most workers would see the 48-hour limit as a means to reduce their pay, and the workers interviewed saw long hours as necessary to earn a reasonable weekly wage. As one worker explained in relation to discussions about the WTR,
‘it was not pushed on to us that we had to agree to carry on as we were, and were told it was up to us. But we did, and that was that.’

The other workers interviewed had no recollection of any discussion on the WTR. The approach was, in effect, one of carrying on as before, with little awareness of legal requirements. The amount of management time involved would be hard to estimate given the lack of detailed recall of the events, but the issue did not loom large in the minds of the managers interviewed.

In relation to holidays, the basic entitlement was not changed, remaining at twenty days’ paid holiday. The main change related to the need to eliminate a qualifying period which workers used to serve before they accrued holiday rights. Again, no cost estimates were provided.

Family responsibilities

There had been experience of one maternity leave case. This was explained by a partner as follows.

‘This involved a woman who had a generally bad attitude… She kept asking about what we would do, in effect questioning whether we would respect the law [i.e. her right to time off], and asking managers about issues in the middle of the shop floor. I told her what she was entitled to, and she agreed, and also agreed that she would not be seeking any leave additional to the basic. We fixed a date to return to work. That date passed. We consulted [our employers’ association] as to what to do and on their advice wrote to her. She cited childminder problems, and we agreed a new date to return. Then on her return she said that she would need to leave early to feed the child, and asked to leave 2 hours sooner than normal. We consulted the association again. We were advised that we could seek to use a disciplinary route. She became more hostile… She said she was ‘fed up’ not necessarily with the job. She left at 5 that day, then formally asked for a cut in hours, but has since never come back.’

The partner did not see this event as a critical incident, in the sense that it caused nothing to change. He also did not see it as problem with maternity rights as such, stressing that it was the ‘difficult attitude’ of the employee that had caused the issue. In terms of the costs of dealing with instances of this kind, any specific cover would be provided by other workers, perhaps with overtime if necessary. Whether or not a specific cost can be estimated is hard to say; in firms of this kind, juggling orders, changing customer demands, deliveries, and the uncertainties of the production process is what management is all about, and it would make little sense to treat one small event in isolation.

There was no experience of parental leave. As for other issues to do with family responsibilities, the general picture was one of accepted informality. As far as possible workers were encouraged to make medical appointments for the late afternoons, and otherwise needs were handled on an individual basis.
As one worker explained, her son had been ill recently, and she could go home (unpaid) with no difficulty. Two features of the firm would seem to explain this. First, workers are used to working until the work is done, and if someone is away then the work will just take a little longer. Second, the production process is quite simple, so that workers can move between tasks.

**Discipline, redundancies, and trade union recognition**

There was no experience of collective redundancies or union recognition claims. One worker belonged to a union, which he had used on one occasion to support his claim about holiday pay (a claim which the firm accepted).

Disciplinary action was claimed by managers to be rare. One main recent case was that connected with maternity leave discussed above. The two managers with most direct involvement in discipline could recall one or two other issues. The key recent example involved a fight between two workers in which a knife was drawn and the police were involved; the worker using the knife was sacked for gross misconduct. The point about this incident was that it emerged as a personal dispute between two workers rather than a management-worker relationship, the catalyst being a machine malfunction and an argument about who was responsible for dealing with it. The four workers interviewed all confirmed that the shop floor atmosphere was not strict; as one explained, ‘as long as you do your job, no one bothers you’. One supervisor added that he generally had few problems with workplace conduct, though it was occasionally necessary to suggest to a worker that s/he might need to go home to calm down. The general impression was that there could occasionally be an argument between manager and worker which would be resolved by the worker’s leaving for a time and then returning, while worker-worker relationships were not formalised and could break out in occasional bursts of anger. The tensions in the working relationship were handled through informal cooling off rather than more formal mechanisms.

**Information on and costs of the law, cumulative effects, and overall perceptions**

The main source of information was the local employers’ association. The owner-managers’ overall view was that individual employment laws had reasonable objectives, for example on maternity rights. The law with the most clear direct effect on the firm was the NMW, and on this there were no adverse comments: it had been possible to absorb it in the ways described above.

The main concern about cumulative effects turned less on employment laws specifically than on the regulatory environment as a whole. The issue of the moment was the carbon tax, but managers also commented on such things as the Working Families Tax Credit and the costs of handling Statutory Sick Pay. The main absorber of the costs was the partner who dealt with payroll matters: he worked very long hours and felt that administration was increasing the burden. He could not put a total figure on the extra time spent in respect of legal requirements specifically, but he felt that in respect of the WTR alone it
might be an hour or two a month. His best guess at the time he spent on all aspects of administration was one week a month, but he included in this a range of issues including training.

Employment legislation and business practice

Managers saw a clear indirect effect of the NMW in that it encouraged them to modernise the business. As one partner commented, the firm had over the past several years perhaps not developed as fast as it could have, so that ‘we can pay people £5 or £6 an hour’. In his view, the NMW had sharpened the focus on re-organisation. No other effects were noted. Managers denied, for example, that the NMW or maternity rights had improved their labour supply problems.

We also pursued the possibility that the firm might be encouraged to employ workers ‘off the books’ to evade legal requirements. This possibility was greater than it was in our other firms, in that Food3 paid relatively low wages, offered work of a low-skilled kind, and was located in an area where people are likely to be seeking low-paid work. It was not uncommon for people to come in off the street asking for work, but managers were clear that they always insisted on official employment, and none of the workers interviewed intimated that there were any dubious employment practices. This refusal of the temptation to use cheap unofficial labour is plainly consistent with the firm’s ambition to move up-market.

Commentary

This firm is one that could potentially have been hit hard by the NMW and by the possible inflexibilities introduced by the WTR and policies on the work-life balance. It was in fact like a considerable number of firms in other sectors studied in earlier research (Gilman et al., 2002). In these firms, the unstructured nature of pay systems meant that the NMW could be absorbed, while the WTR tended to be ignored and family issues handled through traditional informality. Where market conditions were favourable, some firms were encouraged to shift up-market. Food3 largely fits into this pattern. The main ‘shock absorbers’ in terms of increased costs were the two partners, both of whom worked very long hours and took on the extra chores of regulatory compliance.

The practice of informal ‘cooling off’ has been noted in other small firms that have a largely informal culture (Edwards and Scullion, 1982: 136). One implication for the business is that these informal processes mean that more formalised approaches either by management (via discipline) or by workers (through quitting) are avoided, possibly with consequent cost savings.

Data

Three visits were made. Interviews were held with each of the two owner-managers (one on two occasions); the production manager (twice); two
supervisors; and four workers. There was a tour of the shop floor, and the employee handbook was consulted.

Food4

The firm and its environment

Food4, a specialist producer of ethnic foods, was established in the early 1990s. It operated in a profitable, up-market niche supplying a number of major supermarket chains. The owner had a management team of five employees. The rest of the 34-strong workforce largely comprised assembly workers (15 of whom were women). Annual turnover had increased steadily in recent years.

The major supermarkets accounted for 85 per cent of the company’s turnover. Links to major supermarket chains were regarded as the major critical incident in the development of the business and approach to working practices. According to a senior manager, the firm had gone through ‘three years of continuous change’, reflecting the growth ambitions of the owner and the nature of the business: once the firm started supplying supermarkets, there was increasing pressure in terms of delivery times and the use of an Electronic Data Interchange system for the placing and tracking of orders. The result was a process of modernisation of work practices. The company considered itself ‘leading edge’ in terms of the uniqueness of the product; ‘authenticity’; technology; and training. Its standing was reflected in its winning numerous awards which gave external recognition to its ‘leading edge’ image.

Employment legislation: direct effects

Pay, hours and holidays
The employment legislation had little direct effect on the business. Pay levels were above the NMW. According to the owner, it had little effect because ‘we had prepared 18 months before it actually came in so we had introduced rates above the minimum wage and we made enough inroads financially so there wasn’t going to be any financial impact on our overheads.’

The lowest paid workers received £4.20 per hour, but this was augmented by bonus payments. An attendance bonus of up to £15 a week raised the effective minimum, according to the personnel manager, to £4.60. Team leaders earned between £4.50 and £5.50 an hour, and drivers £5.50-£6. Supervisors earned £300-£320 a week. The contrast here with Food3, which paid lower wages and had eliminated an identical attendance bonus is notable.
The contract of employment was revised to take account of the Working Time Regulations. Most employees worked a 40-hour week. There was a variety of shift patterns:
   6.30am - 2.30pm; 8.00am - 4.30pm; 10am - 6.30am
   Part-timers: 10.00 am - 3.00 am; 4.00pm - 7.30pm

A few drivers did occasionally work over 48 hours; but this was not a regular occurrence, so there was felt to be no need for an opt-out to be signed. The main impact of the WTR was in relation to holidays. New employees used to receive 12 annual days, plus 7 statutory days. This was changed to 13 plus seven days after the introduction of the WTR.

**Family responsibilities**

There had been no recent experience of maternity or parental leave. However, flexibility on matters of family responsibilities was a recurring theme in the interviews. This was highlighted by the firm’s recent adoption of an official ‘family-friendly’ policy.

‘If any individual worker or employee has got family problems, somebody is sick or a child has problems and they want to change the hours they work or leave early or whatever their circumstances then they can go to their supervisor and talk about changes for the week, so they [normally] come in at 6 o’clock or half six can they come at 8 o’clock so to suit the individual circumstances’ (Personnel Manager).

The personnel manager regarded it as a ‘non-paying incentive’, and something that the firm had been following ‘indirectly’ anyway. There was no cost involved.

The owner-manager’s experience of a particular employee was important to the adoption of the official family-friendly policy.

‘We had one member of staff who has got family problems. Her sister [has a recurrent health problem]. She is a very good member of staff. She told us about her situation so we basically worked with her so sometimes she can work a full five days, semi part-time; she doesn’t work a full day. She works five hours a day. Other weeks she may work three days or two days but we haven’t decided to dismiss her and when she is here she is actually a very good member of staff. She runs her department well so on that respect we developed our family-friendly policy … I reckon in a large company she would have been dismissed … In that respect we have been pretty much flexible’ (Owner).

However, it should be noted that the latitude granted to this employee was largely due to the importance of her work role.

**Discipline, redundancies, and trade union recognition**

There was no experience of ET cases, redundancies or trade union recognition. Dismissals were comparatively rare (once a year), but there was regular recourse to the disciplinary procedure. The personnel manager
believed that it was perceived as ‘fair’, with workers accepting the need for standards and consistency.

Although dismissals were rare, one had occurred two weeks prior to a research visit. An assembly-worker had previously had a two-day suspension (which the firm kept on record for 6 months) for failure to carry out instructions, i.e. to come in at the time expected and to notify management when he was available for work. This was all documented. The case leading to dismissal involved his claim on two days to have started work at 5.30 and 6.30. Management were suspicious of his claim, and asked him to confirm it, which he did. But ‘when we checked the CCTV he was seen arriving at 7.45 and 7.57.’ (Personnel manager). He claimed he forgot. He was offered the opportunity to have a friend present at the disciplinary interview, which he declined. He was then dismissed for false information and lateness – though ‘we gave him a week’s notice even though we could have sacked him on the spot’. He then appealed and was accompanied, but the dismissal was upheld.

Information on and costs of the law, cumulative effects, and overall perceptions

The firm used the services of employment law solicitors to keep them up to date on contractual matters. Usually, the personnel manager meets the solicitors twice a year for updates on employment legislation and EU rules generally. It was also common practice to ring them for advice. The cost for these services was £500 per annum.

The cumulative impact of regulations (employment, health and safety, and market-related) was presented in very positive light by the owner. Compliance was seen as a necessary feature of a ‘credible’ business.

Employment legislation and business practice

As the comments above highlight, Food4 viewed compliance with regulations as part and parcel of being a ‘leading edge’ business. The ‘proactive’ (personnel manager) approach to the regulations was consistent with an overall economic rationale that stressed the importance of being a ‘good employer’. Hence, the employment regulations arguably had some positive effects.

‘It’s a bit like a wake-up call. You must look at that which you probably wouldn’t have looked at if you weren’t being forced … I suppose if I was to put it another way without the working time regulations we probably wouldn’t have thought of putting the friendly-family policy in … Because we were forced to review and revise the handbook; it sort of forced you to look at other things’ (Personnel Manager).

Keeping abreast of the employment regulations ‘did not take up much time’ (personnel manager). The personnel manager said that he spent one hour a month on such matters; he estimated the cost at £10.
The firm had also made a decision to implement ‘Investors in People’. This decision was viewed as a means of formalising employment practices, particularly in relation to training.

Despite the prevalence of employee development and training and the managerial emphasis upon flexibility, technical pressures arising from the need to maintain production levels encouraged a stricter approach to working practices. The firm faced recruitment difficulties in the early years of operation. This resulted in ‘compromises … we would employ people who were not quite right [i.e. were not ideal employees] as long as they were good on the machine’ (project manager). Furthermore, he explained,

‘in the last two years, we’ve gone from being very laid back to just laid back. We’ve tightened up on time keeping and attendance … We’ve got a swipe card system so we can monitor it. We can say, ‘You have had 12 days off this year, why?’ That allows us to start disciplinary procedures. This was never done in the past. Now we have to be consistent … The culture when I started with … it was a case of ‘what hours can you do, we will fit around you’. Now it has changed; it is a case of ‘these are the hours that you do’. Because of the production system, you need the full team here.’

Commentary

Food4 illustrated how a firm moving up-market was aiming to improve the management of employment regulations. Management saw clear benefits for complying with employment and other regulation, arguing that such an approach was integral to being a ‘proactive’ company. ‘Indirect’ and ‘affinity’ effects were clearly present. The careful documentation of evidence and the following of procedures was notable in the dismissal case discussed above. However, as indicated in the final quote above and as interviews with employees hinted, formalisation was removing some of the give-and-take atmosphere of the previously less structured approach.

Data

Four visits were made. Interviews were held with the managing director; a senior manager (twice); the personnel manager (twice); and five workers. A tour of the shop floor was carried out, and the firm’s extensive employee handbook was studied. Two telephone interviews were also conducted to ascertain specific information.

Locks1

The firm and its environment

The firm was founded in 1850 in the West Midlands, moving to modern, purpose built accommodation at its present site in 1990. Its markets were
keys, key blanks and key cutting equipment. The firm was a family-run limited company, with four directors. Three were full-time (managing, production and finance directors); the fourth was a ‘sleeping partner’. There were 31 other staff at the main site, comprising distribution, administration, and field sales staff. The warehouse staff were all female, save the supervisor; nine of these employees were part-time packers. In addition, there was a small key blanks manufacturing plant employing 15 people in the north of England, while in the south of England there was a sales centre employing two people, but coordinating the seven field sales staff. There were no ethnic minorities, which was related to the low labour turnover and informal recruitment through the recommendation of friends and family, and also to the fact that Locks1 was not in an area of high ethnic minority concentration.

Locks1 saw itself as positioned in the middle of the market. However, it was attempting to modernise. It appeared to have a strong market position. ‘We are getting leaner and more innovative to retain markets without raising prices… this means not employing more people… we try to think of something new… we are increasing output by 15% a year’, the MD commented.

Employment legislation: direct effects

Locks1, like Locks2, was a traditional Black Country family firm, which in the past had been run with a high degree of informality. It was only in the recent past that the firm, galvanised into action by three critical incidents (on discipline, see below), had attempted to move away from a paternalistic, rugged individualism. This had meant some moves towards being more procedurally conscious and ensuring that adequate external advice was available.

Like many second and third tier supply chain firms in the ‘metal bashing’ areas of the West Midlands, Locks1 had traditionally employed outworkers. The Cradley Heath Chain makers were among the first trades to be covered by the original Trade Boards introduced in 1909. It was, as shown below, a direct effect of the implementation of the NMW that led Locks1 to discontinue the traditional outwork, offering this female workforce the opportunity to work in-house. Outworking piece rates had thus been replaced by the hourly NMW rate.

Pay, hours and holidays

All staff, except the former outworker packers (see below), were full-time, working a 35 hour week. Overtime was worked in busy spells, with a maximum of six hours per week. The packers averaged four hours per day. Their hours, in consultation with the works manager, were largely at their discretion, to suit their particular domestic situation.

The warehouse packers earned £4.10, whilst other warehouse staff were on a variety of slightly higher rates. There was one grade except for supervision,
who were paid at £6.50/hr. Overtime was paid at time and a half. Statutory holidays were paid, with extra holiday for long service: one day for five years.

The WTR were not an issue as no employees worked beyond forty one hours. Hours were recorded in a book in which people booked in and out. There had been no equal pay claims. On sick pay, the Production Director commented, ‘my wife does sick pay ....a certain amount is paid... it varies: a week paid for the warehouse, two weeks for the rest’.

The first critical issue concerned the direct effect of the NMW on labour costs and terms and conditions. Locks1 had previously employed 12 outworkers on a casual basis. They had had no formal contracts and had not been on the firm's payroll, having had no paid holidays nor pension. This informal employment relationship with the outworkers was thrown into relief by the introduction of the NMW, and became unsustainable, following two inter-related critical incidents.

The firm’s driver, who was the spouse of an outworker, was disciplined with regard to the preferential treatment, it was believed, that he was giving his wife with respect to the distribution of outwork jobs (see the second critical incident, below). Following his departure from the firm, the wife was given five weeks’ redundancy notice. She wrote asking for holiday pay. The firm agreed but not to back dating it. She then claimed unfair dismissal and for not having received the NMW as an outworker. She consulted a local solicitor and reported to the Inspectorate on the NMW. The firm’s legal advisors believed that she did not have a case. A member of the Inspectorate wrote to arrange a visit. He carried out a work-study and checked all the outworkers’ quantity sheets and gave them questionnaires. The “redundant” outworker was subsequently awarded £200 in underpayment for the previous two years.

The company carried out some time studies and concluded that, on average, the outworkers could achieve the NMW. They felt that it would, however, have proved complex to have provided time sheets and other documentation. It was thus decided to bring the work in-house, and six of the eight outworkers agreed to this. They then enjoyed the same terms and conditions as the rest of the warehouse staff.

The MD claimed that the rate of production in-house was half that of outworking. The Works Manager reflected on how the introduction of the NMW had affected costs: ‘I used to get 12,000 keys for £16, now I get 5,000 if I’m lucky’. He went on, ‘I feel that we had it very cheaply done when they worked at home. Twenty years ago it was a reasonable rate, but with inflation…well, it wasn’t taken into account. The outworkers never filled in time sheets... they weren’t earning NMW. After consulting the solicitor, we tried to put a casual contract in place... all the part-time workers [should] have the same rights as the full-time. [The IR consultancy firm] did not, as they should have done, suggest a contract with the outworkers. She [the redundant outworker] claimed £380-£400 for a full-time week...she claimed that she worked 33-38 hours a week....she declined to sign the casual employment
[contract]…she claimed that it had been a contract before’. The MD added that the NMW had been paid since its inception.

The finance director estimated the costs of the shift to in-working over a 20-week period as follows:
- Working from home £8,882.09
- Working in-house £11,617.56

Since output was estimated to be 50% lower, this meant that the actual costs were then equivalent to £17,426.34. [i.e. 1.5 times £11,617.56; in fact, however, to have produced at the same level of output would cost 2 times £11,617.56].

Managers also claimed that the outworkers, most of whom were long serving, had liked the former arrangements which allowed the flexibility to mix paid and domestic work. The new situation was also felt to disadvantage some workers, for example one woman with a disabled son who had been able to work at home but not in the factory.

Interviews with four outworkers demonstrated a more complex picture. As one put it,

‘I’m pleased at the change. It’s still flexible. I work around the kids. And it’s better pay. It’s much better with the mess out of the house… and no weekends. Now I work 15 to 20 hours a week… usually about three hours a day.’

A second outworker added that ‘I like the social aspect of working here now. I work 18 hours a week [over] four days… I only live two minutes away… I’m happy working now’.

**Family responsibilities**

Cover for family responsibilities was largely handled informally, with unpaid time off, or time in lieu. The outworkers worked the hours which suited their domestic circumstances. The MD reported that, ‘we have not had a maternity leave… we possibly could, but unlikely as we are not recruiting… Our women are mostly mature… people are allowed to make up time off for domestic reasons… packers now work whatever hours they want, usually about four hours a day’.

**Discipline, redundancies, and trade union recognition**

The firm had not been approached for trade union recognition, although there was a high density of union membership in the lock industry generally. There had been no redundancies in recent years apart from that referred to above. Discipline and potential ET issues had, however, played a significant role and acted as a catalyst for change.

Other disciplinary issues included one at the northern plant, involving an incident with a worker who had refused certain work and eventually went on
long-term sick leave. He had then quit and claimed constructive dismissal. The firm had been advised to pay the claim rather than fight it (see detail below).

With respect to the second **critical incident** concerning the driver, the management felt that they had had several legitimate reasons to dismiss him. These had included the fact that he had been found to be favouring his wife with the best work so that she had earned much more than other workers. There had also been complaints from customers that he had simply left deliveries on the pavement. A dispute had then arisen about working time. A new van had had a tachometer set for a 45-minute lunch break. The driver had been asked to observe this instead of the usual 30 minutes, thus working an extra 15 minutes at the end of the day. He had resisted this, however, and according to managers, there had been some failures to go through a formal procedure in disciplining him. They had ended up paying the driver £1,250 to settle his claim for unfair dismissal. According to the production manager, it ‘would have cost us £5,000 [to go to a tribunal], so it’s more economical to pay up. It’s our second experience... there were holes in what we’d done. It’s not what an ordinary business can handle’.

*Information on and costs of legislation, cumulative effects, and overall perceptions*

The firm estimated the costs of the above incidents to have been as follows.

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payout to van driver in West Midlands:</td>
<td>£1250</td>
</tr>
<tr>
<td>Advocate costs</td>
<td>600</td>
</tr>
<tr>
<td>Payout in northern plant</td>
<td>300</td>
</tr>
<tr>
<td>Estimated time costs for Wks Manager</td>
<td>5000</td>
</tr>
<tr>
<td>Two years underpayment award</td>
<td>200</td>
</tr>
</tbody>
</table>

The production director reported that about 90 per cent of the time of his wife, the finance director, ‘is taken up with things of no benefit to us’ such as wage administration and handling SSP. The works manager claimed to have spent 10 hours a week for six months on the cases of the van driver and his wife: ‘I reckon it has cost a good £5,000’. In addition, the MD cited the complexity of health and safety legislation, for example the need to spend £1,200 on a new fire door after a safety visit by a fire officer.

In the previous four years the firm has used three legal firms, subscribing to the last about two years ago. Costs were stated as follows.

<table>
<thead>
<tr>
<th>Firm</th>
<th>£p.a.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm A</td>
<td>7939</td>
</tr>
<tr>
<td>Firm B</td>
<td>694</td>
</tr>
<tr>
<td>Firm C (current)</td>
<td>5925</td>
</tr>
</tbody>
</table>

Asked about overall effects of legislation, the MD could cite no positive influences, and put negative effects at 8 of a scale of 1-10. ‘The Works Manager takes responsibility for personnel matters, and, there’s more of it in the last two years than in the last thirty’, said the MD.
Employment legislation and business practice

There were several affinity effects of the NMW at Locks1. These had led, significantly, to a radical change in work patterns and relationships, from a traditional pattern of “outworking”, associated with an informal, casual employment relationship, to a formal one with the associated statutory rights. Hence, it had also led to an increase in overall wage costs, and thus it has encouraged a more efficient approach to payroll administration.

The main affinity effects concerned management style and investment in technology. Because of the difficulties with finding labour, the firm had begun to mechanise. ‘We probably would not have thought of this’, commented the Production Director, ‘had this not happened [i.e. NMW and cessation of outwork]… we don’t get rid of people lightly.’ The machine ‘will do 10,000 an hour’, the MD continued, ‘a person will take 40 minutes to do 1,000… this is a reaction we’ve been forced into… although we’d considered it before, apart from these changes, we would have continued to employ the outworkers’. The firm was looking at further mechanisation. Overall, ‘the [employment] rights have gone too far… we are now very reluctant to take on a new unknown quantity.

Recruitment was unaffected and remained ‘by word of mouth… staff stay with us a long time… we rarely need to recruit… most of our people have worked with us for a long time… most having come straight from school… here’s no labour turnover problem… they will join in their 20’s and people stay with us into the 60’s’ (production director).

Commentary

Locks1’s approach could have previously been characterised as ‘robust independence’, demonstrating little knowledge of the legislation, nor seeking it, until the events reported here occurred. The shock of the ET cases had been the catalyst for formalisation at Locks1. The most significant direct effect of legislation had, however, been the change in the pattern of employment. The introduction of the NMW had brought about the cessation of the long standing practice of outworking, which may well have implications for other similarly placed firms. Clearly wage costs had risen. The employees concerned had also seemed pleased with the change in the employment relationship, which had not only bestowed upon them the relevant statutory rights, the most significant to them being holiday entitlement, but had also ended the negative aspects of home working. These included the physical presence and ‘mess’ associated with this work, in their homes. This change had also been accompanied by changes in management style to one that was more sensitive to employees’ rights. An affinity effect, as noted above, was that the increase in labour costs had led Locks1 to move towards more capital-intensive methods of production, by looking to invest in automatic packing machinery.
In Locks1, the aggravation that seems to have been caused by the potential ET cases was significant, as was the time lost. Although a figure of £5,000 was put on lost time for the Works Manager [the researcher was shown a filing cabinet drawer full of the relevant paper work], it was not possible to quantify to what extent these factors had impinged upon other business processes or decision making. One effect, however, was the stated attitude towards recruitment, which was one that had become much more cautious, with a reluctance to ‘take on unknown quantities’.

The issue of size was also interesting. The MD noted that ‘we’re not big, and we’re not small, we’re in between. We need a full-time person [for admin], but we’re too small to be able to afford it… it’s tagged onto the end of other jobs… 90% of [one partner’s] time… on admin’. In other words, the firm was too large to rely on traditional informality but too small to be able to have afforded a fully formalised system.

Locks1 had experienced good growth in recent years. It was possible that this is not unconnected to the low wage costs which the firm has experienced with employing outworkers, and may thus have implications for their future prospects.

Data

Three visits were made, with a total of ten interviews:
• The MD & Works Director
• The MD, Works Director, Financial Director & Works Manager
• Four shop floor packers (former outworkers)
Two follow-up telephone interviews were conducted.

Locks2

The firm and its environment

Locks2 was a small private manufacturing company, established in 1881 in the West Midlands, moving to purpose built premises, away from the core industrial area, in 1950, which were further extended in 1983 with a new administration block. Its staple business was traditionally acting as a supplier of keys to the locks trade, but it had more recently diversified into presswork for suspended ceiling hardware.

The firm was run by the MD, who had taken over the reins one year prior to the visit from his father, who was one of two owners, each holding 50% of the shares. The father worked two days a week. The structure was highly centralised, with the six functional areas within the firm reporting to the MD. The largest of these was the production function, where a Production Manager had five Team Leaders reporting to him. Approximately half the 42 employees were in production work, of whom 50% were female, and were
employed in the lower skill, basic rate pay, more highly labour intensive areas. There were two ethnic minority employees, both in this area of work. Fourteen of the employees were classed as ‘staff’. For these the main means of communication was by email, introduced 18 months previously.

Staff levels had reduced from 65 in 1996 to 42 at the time of the visit. This had been due to the tough market environment in which the industry had seen increasing overseas competition (particularly from the Far East and Turkey) coupled with severe rationalisation. The level of business done with the major local lock companies, to which Locks2 was a major supplier, fell during the 1990s as a result of three major household name lock companies coming under one umbrella group ownership. However, as a result of its pro-active approach, Locks2 had maintained value in key blank output at about £1 million by promoting other outlets via a distributor. The number of keys produced had reduced from £9.3 million in 1995 to £7 million in 2001.

The firm had grown the business by investment in technology and filling the capacity that they had, especially on pressings. Total turnover had thus grown from £1.5 million in 1990 to £2.53 million. The key blanks was still labour intensive, but they had managed to increase productivity. On presswork they had moved to lean production methods and teamworking, which had led to a decrease in the number of workers employed.

‘Because we are suppliers of components’, the MD commented, ‘we can’t be pro-active in products, we can only be more efficient. We have won a number of contracts in the last five years on the quality of our service. We supply blanks to [a major firm], who used to make their own in-house; we guaranteed them development and lean management, although we were not cheaper’.

Employment legislation: direct effects

Pay, hours and holidays

A basic grade machine operator started on a rate of £175/week (£4.54/hour), for a 37½ hour week, reviewed after 12 months. Increments were given in an annual review ‘for ability’, with a potential of up to 10% ‘merit rise’. Little overtime was worked except for the tool room and maintenance personnel who did a maximum five hours per week. Overtime was paid at 1.33 times basic rate for first four hours and 1.5 times thereafter. All basic grade workers were female, save one.

There was an annual overall pay review conducted with the trade union full-time official (see below). The previous year this had resulted in a 2.8 per cent across the board rise, which the year before had been 3.3 per cent. The NMW had had no direct effect, as the basic grade pay had been above the NMW on its introduction. Those on the basic grade were largely women engaged in key blanks. The pressworkers and toolmakers were male, and received a higher level of remuneration, resulting in about 50% of all staff being on £7 or more an hour. The only NMW effect was that the pay of a sub-
contract cleaner had been increased, with the cost being passed on to Locks2. The WTD was similarly not an issue: ‘no one does more than 48 hours.’ On holidays, all staff had 33 days’ holiday (25 annual and eight statutory, plus additional days for long service); these arrangements had been agreed with the union. Absenteeism was not an issue.

There was 100% take-up on the company pension scheme which had been in operation for 15 years. The company matched the employee contribution.

**Family responsibilities**

Flexibility with regard to domestic responsibilities was largely handled informally, with time made up or unpaid leave: ‘I’m flexible. If people have a suite delivered say, they have unpaid time off’, said the MD. In recruitment there appears to be a preference for older women. ‘We have few mothers with young children...three only. We’ve had no maternity leave for eight years. We’ve not got a policy of hiring women of non child bearing age. The young people that we’ve recruited – the under 20s– they have been a waste of time. We’ve not recruited an under 20 in the last five years who’s stayed…parental leave is not an issue’. (MD).

**Discipline, redundancies, and trade union recognition**

Locks2 recognised a trade union for collective bargaining, and union membership stood at around 50 per cent of the workforce. The union was not very active, and there was no regular collective bargaining. The female shop steward was not active or assertive. The union’s full time organiser came in to take part in the annual wage bargaining or, more rarely, when there were issues to resolve. The MD stated that he found it useful to talk to the union officer.

The approach to discipline at the time of the visit was generally pro-active and formalised, whereas as the past, like similar companies in this area, and of this size, informality had been more prevalent. The MD spoke of ‘nipping problems in the bud’. He said that the firm was sufficiently small to detect problems and ‘strike while the iron is hot’. The Production Manager’s view was that

‘it can be impossible to discipline...they can twist and turn....they know their rights, keep one leap ahead. I put in a lot of effort, and it makes my job less appealing when I have to deal with people who don’t care. We have a couple who don’t put the effort in, it’s frustrating. We’ve gone through the verbal warnings etcetera, then the trade union officer comes in. Then we find out the case is not strong enough. The trade union is an aid, yes it helps’.

As an example of disciplinary issues, a power press setter had been disciplined the previous year for poor performance and damaging a tool. According to the MD, the man disliked the pressure which he was put under and had eventually resigned.
On redundancies, in recent years they had had four in 1997, two in 1998 and one in 2001. They had arisen from efficiency gains and had been in indirect areas such as the warehouse. The trade union full-time official had been consulted, before details of redundancy pay had been arranged.

Communication had improved in the previous two years. A Management Team had been created, which periodically set up consultation meetings with any department where developments were being considered. The MD said that ‘ten years ago it was very top down, people were kept in the dark’.

Information on and costs of the law, cumulative effects, and overall perceptions

Before 1997 Locks2 had asked the company solicitor for advice, but more recently they had subscribed to a business advice service, which cost £400 per year. They also used a general business service, which cost £700 a year. The former was employed due to the perception of their vulnerability in the area of labour legislation. The latter, which is an independent training and advice organisation, has been used for several years. Its services had been used increasingly in recent years as the firm has attempted to modernise and become more efficient. The service provided a monthly visit by a training advisor who looked at the firm’s training needs. They also provided the occasional seminar, the most recent having been on the WTD.

Health and safety had been a significant issue. The company had spent between £3,000 and £4,000 on a risk assessment, and the licensing and subsequent removal of carcinogenic oil contained in high-tension switch gear. There had also been a case of a man who had severed a tendon in a machine. The MD had estimated that he had spent three hours each week on this case over several months.

Other regulatory issues included VAT inspections, the firm having just had a three year assessment which had involved a day’s visit by a VAT Officer, who followed audit trails. All accounts and invoicing were computerised, such that the system was very simple and took little time. The weekly payroll took about half a day, as all ‘the systems are in place.’

Employment legislation and business practice

Recruitment was informal and labour turnover low. Flexibility had, in the recent past, been handled by employing production staff on six monthly contracts. For the two employees on these terms, their contracts had not been renewed in mid-2001. There were none at the time of the visit. The MD commented,

‘we have very small labour turnover. There is a small turnover on machine operators. We will put a notice on our notice board, we have traditional recruitment within families, or we put an advert in the local shop window. Family membership used to be rife, it’s less now. Traditionally people have come and stayed for 40 years. Recently we’ve lost people due to retirement. Most people we keep; we generally only lose people by natural wastage’.
The firm issued each employee with a comprehensive employee handbook, which included information on SSP, maternity and parental leave rights, as well as holiday entitlement and a comprehensive H&S policy. The handbook also included data on the quality assurance policy, training & equal opportunities, trade union recognition, grievance procedure and a three stage disciplinary procedure. A ‘documented personnel file’ was kept on each employee, but there was no formal appraisal system.

Twelve months previously Locks2 had introduced an electronic swipe card system, which made the weekly collation of wages more efficient. This, again, was driven more by the push for modernisation than by legislation. Indeed, the firm planned to incorporate this within a shop floor data collection system. All production data would be directly inputted to the computer system for each operative, which would be in place during the next year.

As can be seen from the production and employment figures, Locks2 was significantly less labour intensive than it had been in the early 1990s. This was, in part, due to the capitalisation associated with the shift in output from key blanks to presswork. But it was also part of a strategy to employ more efficient technology and to become leaner. The introduction of Total Quality Management techniques, by designing quality controls into the production process, had decreased the number of staff associated with quality control by three in the previous five years, despite there remaining two people virtually full-time on TQM.

Commentary

Market pressures had led to certain modernisation strategies: (a) productivity advances due to the implementation of ‘world class’ manufacturing systems, (b) a focus on the less labour intensive product lines, coupled with investment in labour saving technology, and (c) product diversification to presswork which by then constituted the major part of its production.

That fewer people were employed at Locks2 than in the recent past, can be clearly put down to market driven efficiency measures, rather than any negative impact of regulation. The firm displayed ambivalent attitudes towards regulation. On the one hand, regulation was stated as a problem, but when probed it was not generally seen as an issue, either on labour legislation, VAT, or payroll. Probed on regulation, as a problem, on a scale of 1-10, the MD’s response had been that ‘regulation is not a real problem, but we have a cost in administration and lost time’.

On positive effects, although as noted above, the modernisation was generally driven by market pressures, the MD did see improvements in H&S practice having been a direct response to H&S legislation. The three hours a week spent by the MD on the disciplinary case, which he estimated to have given an overall total of one week, could not be said by him to have had any detrimental effect on the business.
An affinity effect can be seen in how the Locks2 had become more procedurally conscious and rule oriented. A Health and Safety Committee had been set up in the previous 12 months. The Staff Handbook was very comprehensive, there having been a reduction in informality, associated with their modernisation strategy, a process similar to that at Food 4. The market environment, on the other hand, seemed to have been the major driver towards efficiency measures, to re-structuring the workplace and the process of moving towards ‘world class’ standards in production methods of cellular manufacturing, kanban and quality control. This had meant the introduction of teamworking, improved communication, and the improved efficiency gains which had led to greater productivity per employee. Simultaneously, an emphasis had been placed on the less labour intensive processes, investment in labour saving technology, which largely represents the diversification into presswork, and away from the labour intensive key work.

Data

Two visits were made with four interviews conducted. The Company Handbook was consulted.

Care1

The firm and its environment

Care1, a residential care home for the elderly, was founded in 1987 by the present owner and was situated in the West Midlands conurbation. The owner visited the home about twice a week, but delegated fully the running of the home to the Care Manager. The owner, however, handled all the finances, including wages which he did with the time sheets supplied by the Care Manager, who handled all other aspects of the home management including personnel.

The home was located in a large Edwardian house with a maximum capacity of 14 clients. At the time of the visit, it was running with a bed occupancy of only seven. The home appeared to be at the lower end of the market. It had a worn, rather shabby look about it, and was clearly finding it hard to attract clientele. The Care Manager commented, ‘We cannot get the clientele. We ask Social Services, but they do not supply us with any more clients. We are running at a loss currently… [we are] always seeking new clients… The private sector is falling away…for six months we’ve had no funding from [the local authority]’.

The Care Manager worked a nominal 40-hour week. There was one Assistant Manager, who worked 30 hours per week. The remaining staff comprised six senior care assistants, six care assistants, one cook and one cleaner. All staff were female, only two or three of whom were usually full-time. The Care Manager slept on the premises. For the previous three years staffing has
been static, and was at the minimum level possible, the clientele having fallen steadily from 12 to seven. Six clients were social services funded and one self funded.

*Employment legislation: direct effects*

*Pay, hours and holidays*

The 24-hour cover was by split shifts: day 7-2 and 2-10; night 10-7. All carers worked flexible hours, but never exceeded 40 hours. Cover for sickness was normally managed informally with existing staff, who could normally be relied upon to come in at short notice. The Care Manager said, ‘we won’t use agencies because they don’t know the residents’. She conveyed a very caring and committed attitude to the clientele, explaining that agency staff, ‘can’t possibly know enough about each person to care properly for them’. She also explained that, ‘agency staff get £10 an hour. Our staff get £4.20, and that would cause bad feeling’. There were no bonuses, but she said that she ‘would have liked to do “carer of the month”, but there’s no time’.

Progression to senior care worker was possible. The Care Manager noted that ‘NVQ 2 & 3 is necessary to be a senior… We have put five people through, one at a time, which can be very expensive for a small home.’ The WTR has had little impact. The Care Manager quoted the owner as saying that it was not good to work over 48 hours. ‘There’s no need for an opt-out… we try not to work our staff out. I’m lax on rest periods … we can’t have set times in such a small home. It’s a drawback in a small home. We have a break when it is appropriate.’ The Care Manager reported no issues on the NMW, dismissal, equal pay, or sick pay.

*Family responsibilities*

The Care Manager reported that there had been no maternity cases in recent years, and that parental leave had also not been raised. This was associated with the fact that the staff largely comprised ‘mature ladies’. Any need that staff may have had for time off in emergencies was handled informally by the Care Manager requesting cover from the existing staff.

*Discipline, redundancies, and trade union recognition*

This home, like the other homes, was not unionised. There was a formal disciplinary procedure, which was included in the Staff Handbook, which all carers received, but it had not been used in the past three years. Indeed, the Care Manager said ‘I have never had a disciplinary’.

*Information on and costs of legislation, cumulative effects, and overall perceptions*

Time spent on formal ‘personnel’ matters per se was small. However, generally dealing with staff matters was an issue. ‘The rota – there are problems with the rota – I spend more time with staff squabbles than dealing
with residents’, the Care Manager reported; ‘one hour a day is spent minimum
on staff matters’.

The Care Manager also spent two hours each day on ‘paperwork’ which
included drawing up the rosters, but was largely a matter of dealing with ‘the
excessive bureaucratic regulation’, demanded by the Inspection Unit and
health and safety requirements. She felt that she was a victim of Social
Services with regard to the supply of clients, and of the Inspection Unit with
regard to excessive regulation. The main regulatory problems derived from
The Inspection Unit and Environmental Health:
‘There is so much record keeping ... the Inspection Unit coming up with
new things, new procedures and policies ... They always say, ‘Have
you got these... [e.g. records or safety features]... it’s a lot of red
tape... they never speak to the residents!!... yet they want to look at
every bit of paper. It’s to cover themselves... they will spend all day in
here looking at every last bit of paper, but only ten minutes talking to
the residents.’

The Care Manager provided a long list of records that had to be kept,
amounting to eight pages per resident. Another ‘gripe’, she said, ‘is why can
the council homes get £400 and we can only get £244 for the same services?
.... We can get more money if we put people through NVQ, but we don’t get
the money back. I paid £1,000 for level 4 for myself. I already had levels 1-3
which took seven months’.

The main source of advice was the Inspection Unit, for which there is an
annual registration fee of £300. Asked about other sources of advice, the
response was ‘none really, occasionally we might ask the Job Centre’.

Employment legislation and business practice

Associated with the low occupancy rates, morale appeared to be low in the
home. ‘Where do I go for help in motivating staff?’ the Care Manager
lamented. The main personnel problems were, ‘the attitude of the carers
today’, and ‘the pressure of work.... I’m totally disillusioned... caring has gone
out the window... people don’t get the care they deserve... they don’t want to
care like they used to.... they can’t be bothered’.

Recruitment was not a problem. When the home had advertised in the past,
there had always been an adequate response. ‘Our staff are mature ladies,
and people like working in a small home. Our mature ladies stay for many
years.’ When a job was advertised, generally about four people would apply.
Appraisals were conducted every three months and lasted 30 minutes –
initially, recruits are on a month’s trial.

'Because of the small staff, communication is normally informal and
individual,' but the Care Manager convened a monthly meeting, sometimes
twice, so as include all staff, where any issues, problems or resident special
needs are discussed. ‘Records are also kept on monthly meetings...I also
include team building. At the meeting I explain “carry on care”, which is the system of ensuring continuity of knowledge about each client. The meeting is about one hour, then fire drill, and looking at the med book’. Occasionally, a longer absence would be covered by going to the ‘bank’, which is a list of people known of personally.’

Commentary

Clearly the supply of clients was the big issue at Care1. This was in the context of a market in which margins are tight, and there was competition from the increasing number of homes which were up-grading with modern, purpose built extensions, or as for Care2, fully purpose built. Even at the full occupancy of 14, this home would appear to have been at the margins of the size threshold for viability. The problems of the Inspection Unit and regulation were undoubtedly a burden here, but need to be understood in terms of size and market context. By contrast, it was reported at Care 6 that, when ‘you run a tight ship’, the Inspection Unit was not a problem. Beside care regulation and H&S, employment legislation was not seen as an issue. Despite the problems of the nature of care work and the low pay, recruitment or retention were not problems.

Data

One visit was made with one interview. The handbook was collected.

Care2

The firm and its environment

The business was established in 1998 in a suburban environment as a purpose-built facility. Its four directors raised the capital. Two of the directors worked at the firm for about 14 hours a week, whilst the other two worked for about seven hours a week.

Care2 was divided into two distinct activities, both with high occupancy rates. Each employed about half the total number of staff. The nursing wing had 30 beds (29 occupied), while the residential wing had 40 places (39 filled).

About 30 months prior to the visit, the firm had employed a bookkeeper with the job of organising the firm’s records, including wages. According to the bookkeeper, ‘when I arrived, it was a real mess; there were not any proper payslips even’. She had subsequently organised the work. All paperwork, especially care records, were seen to be important in view of the frequency of inspections by the social services department (one a year announced, two unannounced). Documentation of care practice was a central theme. As an experienced senior nurse put it,

out of a seven hour shift, only one [hour] is hands-on... six is in the office.... When I first came into the business, there was not nearly so much paper work... everything now has to documented... every shift,
every resident has to have a report made... Monthly we've to prepare 29 care plans, [including] nutritional assessment, [and] lifting and handling reports.

Total employment was 60, of whom seven were non-care staff (e.g. cleaners) while the rest cared directly for residents. All but two of the staff were women, with four members of ethnic minorities.

The critical issue at Care2 was the level of payment per resident paid by Social Services departments. Rates for nursing care of between £330 and £350 a week were paid by different local Social Services departments. In the context of demanding standards of performance and the need to meet reporting requirements, these rates were seen as insufficient. There were consequential effects in terms of recruitment and pay, as discussed below.

Employment legislation: direct effects

Pay, hours and holidays

According to the director interviewed, the NMW ‘is a major problem because it is harder to recruit’. This was not an idle statement, for a part of the original business plan was the opening of an Elderly, Mentally Ill (EMI) facility but it had proved impossible to recruit sufficiently experienced nurses, and the social services department had agreed to increasing the residential provision instead.

When the NMW was at £3.60, the firm paid its basic grade care workers £3.80 an hour, which rose to £3.90 after six months’ service. More senior nurses were on £4. Overtime was paid for all staff at a flat rate of an extra 50p an hour. With the increase in the NMW, the lowest rates were brought up to the new figure, but there were some quite vociferous complaints about the impact on differentials. According to a manager, the initial view had been that differentials would be allowed to narrow but she had persuaded the owners that this would worsen recruitment difficulties:

‘I said, you’ve got to pay the differentials, otherwise you will have no staff’.

There were, none the less, still complaints that a trained person would be earning £4.20 an hour, which was little better than, as an administrator put it, ‘someone off the street’ on £4.10.

The administrator also commented that two staff aged under 21 were paid the same as the adult workers. This was because of the need to pay the same for a given standard of care and to avoid ‘disgruntlement’.

An employee also reported that there were concerns at the level of overtime pay. She had argued at a recent staff meeting that people working for agencies received unsocial hours payments which were not used at Care2. She intended to bring this up again.
As for hours, there was a three-shift system with most employees doing about 35 hours a week. Occasionally, on nights someone might have done five shifts of ten hours a week, but this was stated by managers to have been rare and voluntary. There was very little awareness of the WTR, with some employees not recalling the signing of any opt-outs. None of the employees interviewed reported any issues with working hours.

Employees received four weeks’ paid holidays a year. There appeared to have been no effects of the WTR here.

*Family responsibilities*

No experience of maternity or parental leave was reported. There were some rather contrasting accounts of the handling of time off for family reasons. Two carers reported a case of two employees who were given extra, paid, compassionate leave. On the other hand, an employee reported a case of a colleague who was having problems with her shift rota because of a need to take her son to school, and was refused any variation in working time. The employee herself reported no difficulties in this respect. It was clear from interviews with managers that levels of cover were crucial. It seemed that ensuring such cover meant that in some cases flexibility could not be granted, but that in other circumstances the firm dealt with domestic needs in an informal way.

*Discipline, redundancies and trade union recognition*

There had been no redundancy issues. The Staff Handbook laid out a standard disciplinary procedure. The stages of discipline (formal warning, final warning, dismissal) were shorter than in many organisations. Rights to appeal were stated as being through the grievance procedure, which allowed for an employee with a grievance to be accompanied by a fellow employee. Interviewees could recall two cases of dismissal for gross misconduct (stealing, and being drunk on duty), but apart from such unusual cases discipline had been rarely employed.

*Employment legislation and business practice*

The severity of the firm’s recruitment problems was illustrated by a nursing manager, who said,

‘recruitment is a nightmare – you think that you have the right person. They know the facts. Some will ring in the day before and say that they are not coming. Others do one shift and don’t return.’

The view of managers was that raising the NMW had made a difficult problem worse, since the firm was paying wages not very different from those paid in less skilled and demanding work.

Care 2 lost, on average, about four trained carers each year to the NHS. They left to go into Access to Nursing courses. These staff had been taken through to at least NVQ 2, with one in four having reached level 3. The Care Manager
said that young people saw this as a ‘back door route’ into the NHS. That is, particularly where they leave school with no qualifications, this was a way to gain qualifications and get hands-on experience. The costs can be seen in terms of both the disruption and lost time in assessing for the NVQs, which took 4-6 hours each week, when there were normally about six staff who may be going through. Direct costs accrued from the advertising expenses. Because the staff did the training in-house, or in their own time (i.e. at college), there were no other direct costs. People under 25 years of age are exempt from fees, which is the case for most staff being trained.

Once workers had been recruited, a set of working expectations was established, with some incentives for learning new skills. Workers gaining NVQ qualifications received small pay increases (for example, 20p per hour for Level 2). The management of performance was handled through the appraisal system rather than formal discipline. As one manager explained, appraisals were conducted after three and six months' employment and thereafter annually. They were a means of maintaining standards:

‘appraisal has led to people leaving…I will say that “this behaviour is unacceptable…I will need significant improvements in behaviour”. I will ask, ”Is this really the job which you want?” A couple have gone that way.’

In response to its recruitment problems, the firm was actively considering increasing its use of agency staff, including seeking to recruit from abroad. One agency worker, who worked one shift a week at Care2, was interviewed. She was paid rather more than the firm’s employees (£5 an hour) and had a clear contract with her employer, which included an explicit WTR opt-out.

Recruitment of trained staff was an increasing problem. The Care Manager reported that they had spent about £2,000 in advertising costs in attempting to recruit a new Care Manager [NVQ level 4] at a salary of £25,000, with no success to date.

Commentary

The main employment law issue at Care2 was the NMW, but this has to be seen in the context of financial pressures and the resulting recruitment problems: the NMW simply exacerbates these problems. A response in terms of agency staff may ease recruitment, but the costs are potentially greater than those of employing workers directly. Staff seemed to tolerate the wages that could be offered, but there was less of a stable wage-effort bargain than found in some of the food firms. Open complaint about overtime rates illustrates, perhaps, a more active set of discontents over pay than were present at, for example, Food3 where basic rates were similar.
Data

Three visits were made. Interviews were held with a director, six managers or administrators and seven other employees. A follow-up telephone interview was also made. The staff handbook was also consulted.

Care3

The firm and its environment

Care3 specialised in the provision of care for disaffected young people and children. The business comprised three care homes. The co-owner, who had previously worked for social services for four years, founded the company in the mid-1990s. He saw little prospect of advancement, and so decided to set up his own care home. The company had grown rapidly since its inception. There was considerable potential for further growth.

There were a total of 19 full-time staff (of whom 12 were women), and 15 part-time (of whom nine were women). The full-time employees consisted of the two co-directors; 11 resident social workers; one officer-in-charge; two senior social workers; one cook; one secretary; and one maintenance man. Two of these were Asian, four were African-Caribbean and 13 were white.

Employment legislation: direct effects

Pay, hours and holidays

There were no discernible effects of employment legislation. Pay levels for all staff were above the NMW. The main category of staff, resident social workers, was paid £12,000 per annum. There were four grades.

Management tried to ensure that employees worked around 37-38 hours a week, because of the ‘stressful’ nature of the job. Although management tried to ensure that everyone worked less than 40 hours per week, there were times when they would have to exceed these hours. ‘The likelihood is that they will have to work more hours sometimes’ (co-owner).

Arranging cover was not a major problem because of the bank of part-time workers to which the company had access. However, when cover had to be arranged, the first port of call was existing employees because of the importance of ‘continuity of care’. The availability of this bank of workers made it ‘easier’ to persuade full-time employees to work at short notice. As a quid pro quo, management would be more ‘accommodating’ when workers wanted time off. For example, when they wanted to take holidays without providing the three weeks notice required, management would allow the request providing it would not cause major disruption.

The WTR were introduced at one of the monthly staff meetings. Prior to the meeting, a memo was sent to staff outlining the WTR and the potential
implications for their work. The contents of the memo were elaborated upon at
the meeting, at which workers duly signed the opt-out provision. The co-owner
acknowledged that ‘peer pressure’ may have played a role in persuading
workers to sign. The issue was ‘re-visited’ at a further meeting. In terms of
cost, no expenses were incurred for staff time: staff were not paid to attend
these monthly meetings. The co-owner costed his time at £40 per hour, which
amounted to £80 for both hour-long meetings.

*Family responsibilities*

There had been no recent experience of maternity or parental leave. Cover in
the case of emergencies tended to be managed by recourse to ‘bank’ staff.
Bank staff were more expensive than in-house workers; they were paid £18
per hour compared with £12 per hour for employees. The owner estimated
that, on average, bank staff were used twice a month to cover for emergency
absences of permanent staff. They usually worked one shift (for example,
8.30am to 4pm).

*Discipline, redundancies, and trade union recognition*

There was no experience of ET cases, redundancies or trade union
recognition. A formal disciplinary procedure was in place. However, discipline
was not regarded as a problem. ‘We are hands-on. If there is a problem, we
solve it informally through verbal discussion’ (co-owner). Discussion with
employees suggested that discipline was problematic before the arrival of a
new manager. There had been no formal written procedure. The new
manager formalised the approach to discipline, and ensured that the policy
was documented in the ‘policies and procedures’ manual. To date, there has
been no recourse to the new disciplinary procedure.

*Information on and costs of the law, cumulative effects, and overall perceptions*

The company made use of the NSPCC. They had assisted on matters of
recruitment (for example, sitting in on an interview for an officer-in-charge)
and also advised on child protection regulations. Many other matters relating
to personnel were handled ‘in-house’: ‘I have the background to deal with
many of these things’ (co-owner).

The manager agreed that employment regulations ‘aren’t really that
significant’. Regulations specific to the care sector were more important.
Echoing this view, the co-owner maintained that a disciplined environment
‘underpins everything that we do’. Adherence to regulations and procedures
was ‘part and parcel of everyone’s work’. Government regulations on care
home and child protection required documentary evidence on many aspects
of their day to day operations: ‘I can tell you what a child resident ate on a
particular day six years’ ago, what mood he got up in, what social worker s/he
was with … The social workers have to write all this down; it all gets typed up.
We keep the records for 10 years’.
Employment legislation and business practice

In terms of business practice, the change in shift patterns was one of the major developments in the last year. Staff used to work four morning shifts, 8am to 4pm, then four nights shifts, 4pm to 8am; this was followed by two days off. This was abandoned because the staff were ‘knackered and there wasn’t any continuity of care’ (manager).

The new system involved the staff working a three-week rota pattern. Staff started at 2.30pm on one day to 3pm the following day, with sleeping time. They do seven-eight days on then a long weekend, then seven days on with two days off, and this keeps rotating, every third Thursday on the rota pattern they do a 10-2 shift.

According to the co-owner, a day of the manager’s time (salary: £30k per annum) was needed to devise the rota. The staff response had been favourable.

Commentary

Although this case exhibited a positive approach to employment regulations, it was clear that there were (until recently) tensions beneath the surface. The arrival of a new manager has been pivotal in a more ‘professional’ approach.

Data

Three visits were carried out. Interviews were held with the managing director, the personnel manager (twice) and two workers. Two telephone interviews were conducted to elicit specific information. The employee handbook was also consulted.

Care4

The firm and its environment

Care4 catered for older people, particularly with disabilities. It was founded in 1992 by a brother and sister. They were both responsible for the day-to-day management of the business; the sister (Partner S) was a general manager (who claimed to spend ‘100 per cent’ of her time on personnel matters), while the brother (Partner B) concentrated on wages and finance. A deputy manager was also employed; she spent most of her time looking after the residents and supervising staff. The firm had a staff of 20 people. These comprised the two owners, the deputy manager, four senior carers, 12 care assistants, and a cook. All staff, bar the cook and one care assistant, were female. The cook and one carer worked part-time; the rest were full-time.
Turnover had increased steadily in the past three years; and six workers had been recruited during this period. The closure of public sector care homes increased the flow of residents, and was the main factor behind the expansion of the business. However, future market prospects were uncertain for two main reasons. First, social services (Care4’s main client) were facing a funding crisis. Second, private sector care homes like Care4 received significantly less per resident than their public sector counterparts: £240 per resident per week as against £350 according to Partner S). This prevented the firm from matching pay rates in the public sector: ‘the bottom line is payment, we can’t afford to pay as high as social services do, so that’s where the problem lies’ (Partner B).

Contrasting perceptions

During initial discussions with Partner S to establish access, she remarked, ‘yes you can interview us. We’ll show how badly the regulations are affecting us’. In the opening interview, this partner maintained that the problems facing care homes were due to ‘the minimum wage; [and] on top of these new employment laws, everything combined is making it more difficult to stay in this business’.

In his opening comments, Partner B described at some length the seemingly negative impact of the regulations on the business. He maintained that the company ‘couldn’t keep up with all these changes that were coming in’, and consequently enlisted the services of an employment law advisory firm. The NMW prompted the business to ‘shoot our wages … higher, because our work is more demanding’. The Working Families Tax Credit, which ‘they’ve passed onto employers as well’, was a further source of contention,

‘You pay the tax credit; before they used to work it out and pay them themselves, now they work it out and give it to you and you pay it out of your national insurance and tax … Before they [government] make the payments back you have to wait three months and if you’re late with their payments they charge interest and so on … All small businesses are suffering over this, they’re passing all the work of employees onto us.’

As the interview developed, each piece of employment legislation was discussed in more detail. It transpired that the NMW, which is discussed below, ‘did not have much effect’ in terms of increasing administrative requirements. The WTR did not necessitate any additional record-keeping measures. The firm had no experience of maternity or parental leave. As noted below, the company’s experience of an Employment Tribunal was something of a ‘critical incident’ that did lead to greater formality; but there were also benefits in terms of the ‘professionalism’ of management.

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14. The difference from the figures quoted at Care2 probably reflects differences between residential care at Care4 and nursing care at Care2.
Employment legislation: direct effects

Pay, hours and holidays

When the NMW was £3.70, care workers were paid £4.20. When the rate was increased to £4.10, the company ‘had to go a step further’ (Partner B), and pay staff between £4.50 and £4.75. The main effect according to the owners was that the NMW had resulted in recruitment difficulties, reflecting also the fact that they felt unable to raise wages any further because of tightly constrained income.

In this respect, the NMW can also be regarded as a critical incident. There had been a problem recruiting care assistants since the advent of the NMW. Potential recruits were working elsewhere, rather than the care home sector: ‘if you have to clean someone’s shit or if you have to work in a factory and you haven’t got many qualifications then, you’d go and work in a factory’ (Partner S).

Recruitment difficulties prompted management to enlist workers with less experience, which necessitated the provision of additional training for new recruits.

‘What we’re trying to do is train younger girls into doing the work. Whereas [before] we used to get experienced girls who used to be able to do the work, now it’s more like providing training on the side to train the [new] girls. The [new] girls have only one or two months’ experience. It’s very difficult to get experienced girls’ (Partner B).

Management were having to ‘put in more hours’, and pay for additional courses, to bring the new recruits up to the required standard. The additional cost of this training and provision of cover was estimated at £110.

It seemed that employees, as well as management, were under pressure. The supervisor responsible for shift-work arrangements maintained that employees were working harder as a result of the NMW.

‘Because of the minimum wage … it is very difficult to recruit staff. We can use agency staff if we want to, but they are very expensive so what we tend to do is have the staff which we have already, covering for other staff and emergencies which makes it sometimes a long week for some of the girls. … That is one of the major issues I have had over the past two months.

Q: Are they paid more for that or you just in fact absorb it?
It is just absorbed …’

There was 24-hour working; employees usually worked between 35-40 hours per week. The WTR did not result in changes to working hours or record keeping. However, two workers did occasionally work more than 48 hours per week; they were asked to sign the opt-out. The WTR were introduced in a
routine meeting with staff. According to Partner B, the process took ten minutes. He was unable to assign a cost to this activity.

*Family responsibilities*

The firm had no experience with either maternity or parental leave, and hence no problem with complying.

*Discipline, redundancies, and trade union recognition*

There was no experience of redundancies or trade union recognition. However, the firm had been taken to an employment tribunal in 1997. Although Care4 won the case, it was clear that it was a **critical incident**; greater formalisation of disciplinary matters ensued. The company introduced a formal disciplinary procedure as a result of this case. The partner itemised the costs of the tribunal case in the following manner:

- Solicitor’s fees: £1,043
- Management time (10 hours @ £25 per hour): £250
- 4 days at tribunal (24 hours @ £25 per hour): £600
- **TOTAL**: £1,893

As a direct result of the tribunal case, the company also enlisted the services of a firm specialising in providing advice on employment law matters. The cost for this service was £107 per month.

The company’s employee handbook, introduced after the tribunal case, specified a four-stage process comprising a formal verbal warning, a written warning, final written warning, and dismissal. Other than for an ‘off the record’ informal reprimand, workers have the right to be accompanied by a fellow employee at all stages of the disciplinary process. There is also the right of appeal at any stage.

The disciplinary procedure was seen as time-consuming. However, Partner B estimated that only an hour of managerial time was spent on the procedure over a year. He also admitted that the procedure contributed to greater ‘professionalism’, and was therefore of benefit.

‘It makes us more professional but at a cost, we go through all these procedures there is a lot more paper work and documents, before you could call someone in the office and say look this has happened I don’t want it to happen again, now you can’t do that you have to document everything … The benefit is that it’s done in a professional way and it’s the best way to do it obviously, that’s the benefit. If they do take us to a tribunal all the paper work … backs us up.’

However, the supervisor who was responsible for the day-to-day management of staff felt that the formalisation of disciplinary procedures had an adverse effect on working relationships.
‘Before … the girls, if they didn’t do things right they were told off. We didn’t bring them into the office or give them a verbal warning. This sort of thing we have to do now … [Now] the girls … take it personal … It’s like showing your authority, before, I was just one of the people out there, and if they did something wrong, I would tell them they were doing it wrong … It is them and us now … [The procedures] don’t make life easier.’

Information on and costs of the law, cumulative effects, and overall perceptions

An employment law firm specialising in providing information to small firms was the main source of information. The law firm was consulted on ‘every employment issue. Anything from verbal warning, to written warning, to how much holiday pay that they are entitled to’ (Partner B). In the past six months, the law firm’s advice had been sought on sick pay, holiday pay, verbal warnings, and written warnings. Payroll matters and sick pay were handled by Partner B. The employment legislation was seen as having a negative effect; but it was clear that the main sources of irritation were regulations deriving from social services and Inland Revenue rather than the laws that are the main focus of this study.

‘All these regulations are coming and we have to fill in all these forms and send them off. All our management time is going into family credit forms and things like that, we all have to do those forms. The tax people are giving us more forms, the social security are giving us more work and then we have to keep extra paper work and documents’ (Partner B).

He maintained that ‘it takes at least half an hour every month just to make sure that tax credits are up to date’. This would amount to £12.50 every month (if calculated on the basis of £25 per hour).

Employment legislation and business practice

Recruitment difficulties placed a premium on retaining ‘reliable’ workers. In the case of such employees, management were able to organise rota s around domestic responsibilities. As Partner S noted,

‘the problem is getting good carers and she’s a good carer. With XXX I will know that she will be here from Monday to Friday, she is reliable her help is to come to her shifts on time. In this business you need staff who are reliable. Good carers like XXX … pay us by being reliable.’

Despite the reliability of core workers, cover still had to be arranged at short notice. Hours were varied ‘at least once or twice a week’ (Partner S). This was to cover for sickness and other absences. The supervisor, who was responsible for the actual organisation of cover, spoke of the constant ‘juggling’ and ‘arm-twisting’ involved in trying to arrange cover at short notice. She claimed that arranging cover for night staff was ‘one of the major issues’ that she has faced over the last month, ‘because they don’t want to work at
minimum wage’. This difficulty often results in the partners or herself covering for night staff.

Approximately two hours per week of the supervisor’s time was spent on arranging cover. The cost of this activity was put at £20 per week.

Commentary

This case clearly highlighted the gap between employer rhetoric and actual practice. Despite initial assertions, direct effects of the law were largely absent. However, their cumulative impact may have appeared more pronounced, particularly since Care4 operated in a sector that is highly regulated. The main indirect effect was that of the NMW on recruitment and retention. The case also shed light on the implications of formalisation, particularly in relation to disciplinary matters. The critical incident of an ET case had implications for the personalised approach to employment relations.

Data

Four visits were made. There were interviews with the two partners (one on two occasions), a supervisor and two workers. The employee handbook was studied. Two telephone interviews were also conducted to obtain further information.

Care5

The firm and its environment

The main focus of this case was a residential and nursing home (Care5A), located in a rural setting in a Midlands county. A second home, however, was also visited, as it is under the same ownership, and more importantly, the main administrative function was located there. This home is reported separately as Care5B. Both were residential care homes but demonstrated interesting comparisons in terms of the influence of location. Care5B, in contrast to the rural setting of Care5A, was located on the edge of a Shropshire market town. The shareholders of the private limited company that owned the two homes were the woman who founded the home in 1969 and her three daughters.

The premises of Care5A were an extended early Victorian country house, also employing earlier cottage style accommodation. The core buildings were nineteenth century and had gradually been upgraded and extended. There had been steady growth in capacity in the previous 10-15 years. A new wing had been built in 1990, which became the nursing unit, to which a further double room was added later. The home had 62 clients, 15 of whom were privately funded. These comprised 22 nursing, 35 residential and five EMI [Elderly Mentally Ill].
The founder had run the home from its inception in 1969 until 1984, when the first Care Manager was employed. When visited, she and her husband both worked part-time in an overseeing role for both homes. Of the owner’s daughters, one took a relatively minor, though important, role in preparing for inspections; the others played no active role.

The owners saw their business as ‘mid to up-market’. The business strategy was one of modernisation and expansion, but cost controls were primitive. The owner’s husband stated that ‘here we don’t have a budget…we’re seat of the pants… from time to time we’ve looked at the bills for say, sugar….or heating oil…and, my God, we’ve spent a lot’. Some efforts were being made to be more analytical in relation to costs.

Employment legislation: direct effects

Pay, hour and holidays

Care5A employed 50 people. They were all female, save one male nurse. Fifty per cent were ‘mature’, and at least half were part-time. There were no ethnic minorities, which was consistent with a rural location.

There were five staff on salary between Care5A and B; all others were hourly paid. Care assistants earned £4.25 per hour for weekdays, and £4.50 weekends (from October 2001). Senior care assistants earned £4.70. According to the Administrator, in the past it had been possible to pay 30-40 pence above the NMW, but this had proved more difficult because clients had lacked the means to pay the increased costs, particularly at Care5A where clients were often poor. The owner stated that it had been necessary to put off a pay rise, though agency staff had to be paid £6 an hour.

An indication of how financial stringency leads to pressures on staff came from the catering manager, who commenced employment at Care5A 17 years ago as a carer. Pressure meant that she usually worked 1 to 1½ hours unpaid overtime each day.

A critical incident following the introduction of the NMW concerned the elimination of paid breaks. At about the time that the NMW came into effect there was a meeting at which the carers were invited to vote on whether they wanted a certain level of pay rise, or alternatively, a higher rise, but with the proviso that the higher level would involve the loss of paid breaks. There appear to have been few carers at the meeting, where the vote went in favour of the option involving no paid breaks. Several carers complained about this system which they saw as exploitative. Most shifts were seven hours, during which there were two 15-minute breaks. A seven-hour shift meant 6½ hours’ pay. The location of the home, being rural, meant that no one left the premises at break. Carers took the break when and where possible, and being available, felt unable to resist calls for assistance by the clients during the break. ‘You are really on call during your break’, as one care assistant put it. In practice, then, the carers had deductions from wages for breaks which they
effectively did not take. This situation contrasted with that at the other care homes and seems to be relatively rare.

A Social Services Inspector, who was interviewed about homes in general in the county, noted that, ‘the NMW has had a big effect, lots of perks have disappeared...free meals...there is an increase in youngsters being employed. Homeowners have said that they’ve had to cut corners, for example, outings. It’s also made staff more aware of their rights...people start talking...it’s changed the climate’.

The WTR had had little effect. It was only the management who worked in excess of 48 hours, where opt-outs had been signed. Very occasionally a carer might have done a 5 by 10 hour night shift, but no opt-out had been signed. The Administration Manager said, ‘I’ve sent two letters to people...when the directive came out. I assessed who did over long hours on a regular basis and sent the letters; they were written by our Personnel Company...offering an opt out, and [the employees] signed. I haven’t signed an opt out, as [it is] my choice [to work long hours]’.

Working hours were based on a three shift system. About half of carers did five seven-hour shifts. Most of rest did between two and four shifts; occasionally one may have done six.

There were periodic (every four-five weeks) short (30-50 min.) staff meetings. These were chaired by the Care Manager, and were largely concerned with managerial, administrative and care issues raised by management. An exception was the issue of uniforms, which had been brought up two months previously. The suggestion of a particular design had been accepted which was subsequently supplied.

Family responsibilities

There had been four cases of staff taking maternity leave in the previous three-four years. Staff took their statutory rights and no issues were reported, as this had been handled by the willingness of existing staff to supply cover, for which the costs had simply been the additional wages. The administration manager commented that there had been ‘no parental leave as yet. Staff may not be aware, but because it’s not paid, they would not be interested’.

Short-term flexibility was covered by the existing staff, and problems were eased because there were many part-timers who could cover for absences. Agency staff were also used, and were generally felt to be reliable. Managers covered any remaining gaps; for example the residential manager recalled having to cover a night shift on Sunday at short notice after agency staff failed to arrive. Additional costs were incurred where agency staff had been employed to cover for short-term absences. There were, however, rare and no records of the extra costs were available.

Discipline, redundancies, and trade union recognition
The normal structure of management at Care5A was that overall responsibility lay with the care manager. At the time of the initial visit, this person had been suspended pending investigation by the Social Services Department. A deputy manager for each area of nursing and residential would normally report to him. These two deputies, with the help of the personal/admin assistant to the care manager, were effectively running the home.

A current critical incident concerned discipline. The suspension following a detailed, anonymous, letter of complaint that had been sent to the Social Services Inspection Unit. This letter appears to have claimed that the Care Manager’s behaviour in the home had been detrimental to the good care of a client or clients. By the time of the follow-up visit, he had been asked to resign.

There was a background history to this case. Several carers had referred to his authoritarian style of management, and reported that a number of carers had left following confrontations with him, where the disciplinary procedure had not been invoked, nor was the matter pursued, as far as staff were aware, at either an ET or by consulting a solicitor. More recently, however, tensions between one care worker and the Care Manager had resulted in the carer ‘walking out’. This was the person who was believed to have filed the complaint. The owner’s husband reported that

‘this one person… she was very articulate…she had worked here about two years… not from the village… not really care material…a square peg in a round hole… she was late occasionally… [he] eventually said, ‘if you can’t turn up on time, you’d better not turn up at all’…she walked out… she was still on the rota… so I wrote to her, suggesting she come in… there was no reply… we had no proof [of failure to attend or of warnings, i.e. no procedure]…’

Information on and cost of legislation, cumulative effects and overall perceptions

Funding, as in other homes, was seen as a major issue. This was exacerbated by the fact of there being no standardisation across the country with respect to both funding levels and the administrative processes by which funds were claimed. The Administration Manager commented that

‘Social Services are now more involved… more and more paper work… they focus on the detail, not on the quality of care. I’ve worked here for 13 years, and during that period I’ve seen a great increase in the problems of getting funding, that is, the way residents are funded. Before it was just DHSS, but now we need a Social Worker’s assessment, then before a panel… all this before I know the funding. I now deal with up to 20 people in order to get one person into the home. I could spend all week on funding if I wanted to. I deal with 10-15 different councils, from Yorkshire to Cornwall… none are the same, some have invoices – they will give me an order number, against which I invoice. Some will have direct debit… some I have to fill in returns, some weekly, some monthly… there’s no standardisation.’
There was, thus far, little direct additional cost as a consequence of this. However, this was due to the willingness of the administrator to work well beyond contract with no additional pay. Her official hours were 9 to 5, but in practice she worked upwards of 50 hours a week and was often present at 8 pm. She estimated that about 10 per cent of her time was spent on personnel issues.

*Employment legislation and business practice*

A significant direct effect of the NMW, as noted above, is that breaks had ceased to be paid. This, accompanied by the pressure put on staff to be flexible in order to maintain the operation of the homes, and a feeling that communication was one-way, was associated with a sense of powerlessness in the staff.

An emerging issue concerned the regulations on room sizes, with several rooms at Care5A not meeting the new criteria. The member of the Social Services Inspection Unit added that minimum levels of training (half of staff to NVQ3, and management to level 4) would bring further new requirements. The owner’s husband elaborated on further new pressures, for example the level of staffing that would be required in respect of low dependency residents. He felt that existing arrangements were satisfactory but, ‘the new requirement will cost us about £30,000 a year. This is at a time when it is widely agreed that care home fees do not cover the costs, and at the same time that Social Services department is demanding that we have more sitting space and more single rooms. More single rooms means either building work, or a reduction in the number of clients. In the Green Belt, building alterations are either not possible, or very restricted. So they want to reduce our number of clients, when at the same time, they want us to spend more money on both buildings and staff.’

*Care5B*

Care5B, under the same ownership as Care5A, was located on the edge of a market town. The main administration function was located at this home. There were interesting differences between the two homes in terms of labour and product markets, related to the fact that Care5A was situated in a rural context, whereas Care5B was located in a market town. Competition from supermarkets for labour was seen as an increasing problem at the latter, as an effect of the NMW. This will be exacerbated by the forthcoming regulations on care homes that specify 18 years as the minimum age of recruitment. Managers believed that, once young people entered other jobs, it would be very difficult to recruit them into care work.

The Administrator commented upon the current situation at Care5B: ‘we have agency staff here all the time because of staff shortages. We advertise in newspapers and the Job Centre. Care Assistants are like gold, because the pay is so poor. For filling up shelves [in supermarkets] they will get paid £5.60 or 70 an hour’.
In terms of the market environment, community care was a major concern. Because of the increase in this kind of business, the dependency level of clients coming into residential care had increased, putting further pressure on staff. There had been an increase in the entry of home care companies into the market. The Administrator commented that ‘it’s more costly to look after residents nowadays, residential clients are in a much worse condition now. In earlier days, they would have been [classified] as nursing. People used to come simply because they were lonely at home. Care in the community keeps them at home today, but when they need support, it’s much cheaper to come here... it costs £268 a week residential, against about £2,500 in a hospital.’

In short, ‘care in the community’ kept some people out of the care homes, the result being that those who entered the homes had become more dependent than was the case in the past.

Although there was no problem in filling beds at Care5A, this was not the case at Care5B. There were several competitor homes in the area, so that there were, on average, three beds empty at any one time.

In relation to employment issues, Care5B has been more procedurally correct than had Care5A. The only significant issue was someone warned for sexual harassment of another member of staff who then left of his own accord. With respect to this case, managers had consulted a specialist legal firm. The services of this firm had cost £300 a month, with an increase of £50 a year in 2003 to receive a new ‘tips and advice’ service. These costs were carried over the two homes.

The owner’s husband admitted that there had been ‘a rocky history of managers’ at Care5B. Until five years ago, the owner’s sister had managed the home, but after she retired there was a string of managers who had had problems in building up relationships with staff. Results included a large bill for agency workers, estimated at £45,000 a year, as against £16,000 at Care5A.

Recruitment and retention had been a long-running critical issue at Care5B with the above managerial problems exacerbating labour market difficulties. Other jobs in supermarkets were relatively attractive, whereas in the more rural Care5A retention was less of an issue. Staff who were interviewed commented on the convenience of working locally and the social satisfactions of working with friends. As one worker put it, one colleague ‘went to work in a factory, but couldn’t stand the work’ and returned to Care5A. Recruitment was often handled informally, and the replacement for the Care Manager was being sought informally, though one manager felt that this should ‘be advertised and put on a professional level, but the owners want it this way’.
Commentary

It is clear that the administration of both homes (Care5A and B) was under considerable pressure. Although the Administration Manager expressed this in terms of employment law, the evidence pointed more towards the Care Home regulatory regime as the major burden, exacerbated by the variety of different procedures employed by each local authority. Perhaps this is best understood in terms of the cumulative effect of each area of regulation, coupled with what managers see as the continual flux in them. ‘The negative effects of legislation on a scale of 1-10, I would say 8’, she stated; ‘it’s a serious problem, they are always moving the goal posts, it’s such a mine field. I really need another person to learn all the employment law’. Consequences included the working of unpaid hours by managers which in turn could lead to cumulative effects of errors, and certainly leaves the business vulnerable, should the managers concerned leave.

The size threshold effect would thus seem to be an issue here. In comparison to Locks1, where they felt that they were not yet large enough to be able to afford a single individual to deal with the personnel issues, here they were not at the stage to be able to afford a second person.

The homes illustrated how the different situations between rural and urban locations affected both the labour and product markets, within the same management regime. In Care5B, the problems of funding were ameliorated, in a way not possible in Care5A: private supplements from clients, arising from their generally better financial position, were available at, whereas at Care5A clients were generally from a less affluent rural background. However, recruitment and retention were more of a problem at Care5B, due to the competition from the less onerous, cleaner occupations available in the town. This situation may well become more acute with the introduction of the new National Care Standards Commission, which comes into affect in 2002, which will make 18 years the minimum age for recruitment. The fear expressed is that this will create acute recruitment problems, as presently 16 year olds often, although not exclusively, come into care work, ‘for want of something better paid’. This also links with the issue, also referred to elsewhere, of how the NMW has tended to equalise the pay between, say, clean light assembly work, and care work which is heavy, ‘with your hands in shit’, coupled with the unsocial hours.

There were mixed messages about expansion. On the one hand there were complaints about the squeeze on costs, and, as at the other care homes, how the Social Services allocation for clients had not kept up with inflation. Managers had also complained about the problems of getting planning permission for expansion in a green belt area. Forthcoming regulations on the ratio of single to double rooms have led to a plan to invest £200,000 in building redevelopments, plus a lift. This investment would, however, because of the need for more double rooms, reduce total capacity by one client. An investment of £700,000 had been made several years prior at Care5B.
Data

Nine interviews were conducted. Two visits were made to Care5A. A follow-up visit to Care5B was made to interview the Administrator for both homes. One Employee Handbook was collected.

Care6

The firm and its environment

Care6 was a 20-bedded care home, split equally between residential and nursing care. The home was owned by a married couple, the wife (Owner F) taking overall financial control, whilst the husband (Owner M) was largely an ‘odd job man’. The home was established in 1981 in an Edwardian country house, and taken over by them in 1995. In market terms, the owners saw their home as ‘three star’. The overall, day to day, management of the home was the responsibility of a female Care Manager, who had two deputies reporting to her, one for each area of care, who covered for her on alternative weekends.

In addition to the 20 residents, four of whom were privately funded, the home had five day care clients, who each attended 2-3 days a week. The owners asserted that margins were very tight due to the funding levels, despite full bed occupancy over the previous four years. They claimed that this had resulted in their not having taken a holiday during the previous three years. Indeed, they claimed that the economics of the home were such that they would be unable to continue in business at the current scale of operation. They had thus invested in a new purpose-built wing, costing £300,000, which would add another ten beds. This, they argued, had only been made possible by a recent personal legacy of £100,000. ‘If we weren’t having the new wing, this [old] wing would not be viable’. Staff levels will increase by 11 or 12 when the new wing is operational. The new care regulations will put further pressure on the home, as four of the existing rooms did not meet their requirements, and the current situation of five double rooms will have to be reduced to three by 2007. The cost of modifying the existing four rooms was estimated to be £41,000.

As at Care5, the situation of the home influenced their market for clients. In this case it was the concentration of care homes, which in their location was low, whereas elsewhere in the region, there was a high concentration, creating competition for clients, as well as for staff. Thus Owner M asserted that although occupancy at Care6 was close to 100%, it was lower in other homes in the region. He also suggested that competition for staff had pushed the labour costs up in those areas. Although staff had not been lost to nearby homes, they were lost to the higher paid nursing profession (see below). Recruitment had been made easier by the closure of a nearby 50-bed private
residential home which had been situated in old, non-purpose-built, accommodation.

Of the total of 23 employees, 16 were care staff. All staff were female, save two male carers. Fifteen of the 23 were full-time, while the remainder worked two or three seven-hour shifts.

*Employment legislation: direct effects*

*Pay, hours and holidays*

Hours were collated from a clock card system. A three shift, round the clock, system was operated, of two seven-hour day shifts, plus a twelve-hour night shift. The WTR were not an issue for staff, as ‘all senior staff have signed the opt-out’, as had the night shift workers. Other care staff generally worked a maximum of 35 hours, or 36 on nights. Very occasionally night staff may have been be asked to do an additional night, making their hours up to 48. This was avoided as much as possible for, as the Care Manager said, ‘three is enough for good practice, they get too tired otherwise.’

There was flat pay rate of £4.40, which had been £3.90 prior to October 2001. An additional 10p an hour was paid for each NVQ level achieved. Prior to the introduction of the NMW there had been no paid holidays. At the time of the visit the statutory requirements were being met. Unlike Care5A, breaks were paid. Owner M commented that ‘as the regulations require staff to be well trained, they should command a better wage, but because of the level of funding this is impossible. The level is determined by Social Services…[This local authority] is good, they pay £265 [for shared room], but even there, the true cost is above that…our workers ought to be earning up to 50p an hour more.’ The cook earned £5.00 and the deputies £5.50 an hour.

As a **direct effect** of the NMW, the owners claimed that the increased wage costs were in the order of £16,000 a year, on a total wage bill of c.£150,000. Owner F said that ‘the NMW has impacted very badly. The previous owners had paid no holidays; initially we paid two weeks. We brought the wages up when we arrived. We were paying above, so we felt that we had to keep the differentials.’ The Care Manager explained that wages had risen from £2.90 to £3.20 when she had arrived four years previously.

As in other care homes, the Care Manager’s working hours were well beyond contract. She claimed to spend 6-8 hours each week in her own time, in order to keep up with the paper work, for which she had requested payment.

This links with retention issues. The additional 10p an hour was paid for each level of training as, ‘it values them a bit more’. However, retention was a serious problem. Owner M explained that ‘we retain them more by training, but having trained them, two thirds go onto hospitals, for much higher wages.’ Recruitment is informal, ‘by word of mouth recommendation’. Owner F commented, ‘we rarely advertise, when we do there is no response’. Informal
recruitment was seen as providing staff who were more likely to be retained, as they 'fit in better'. Friends and family were encouraged, there being two sets of mother and daughter employed at the home at the time of the visit.

Competition from hospitals was seen as a problem. Owner M commented that, 'as the NHS is so short staffed, they are on the lookout for trained staff. It is a constant threat, losing staff that we’ve paid to train up'. Thus far, however, they had lost only one member of staff, trained to NVQ2, to the NHS. The recent pay award in the NHS was said to 'make our staff very unsettled, or as they say, undervalued, and as we are now doing NVQs with all staff, the floodgates are open'.

Flexibility, with regard to cover, was handled informally, 'I had a girl today who had to go to the doctors. I clocked her in early', reported the Care Manager. Cover was dealt with informally by existing staff, such that they never, unlike Care5A, had recourse to agency staff, which they wanted to avoid, owing to the higher cost. ‘People are flexible when we need cover’, the Care Manager commented, 'that’s why I don’t want them to do too many hours. It’s better to have a big staff with fewer hours'.

Family responsibilities

There had been two people who had taken maternity leave in the previous three years. Both took their statutory leave and returned to work. Cover had been arranged with the help of existing employees. Parental leave had not been an issue, nor was the occasional need to cover for absence to deal with dependents, as this was generally covered by existing staff.

Discipline, redundancies, and trade union recognition

‘We have procedures for everything’, reported the Care Manager. The researcher was given a folder of documents which included, a Policy on Confidentiality; a Staff Complaint Procedure; a comprehensive job description; a record of training in care; and Company Rules. The latter included a variety of policies from H&S to smoking, and included a section on gross misconduct. There was a separate disciplinary procedure, which had been employed once in recent years in a case of poor performance. It was, ‘taken right through….in the end the girl left’. The time and effort involved here did not seem to have been an issue. It was seen as part and parcel of managing in a demanding, and sometimes stressful job. One employee ‘walked out in a huff and was told, if you go, you go for good’. She did. ‘Sometimes you get the feeling that they are not right for the job’, said the Care Manager.

Information on and costs of legislation, cumulative effects, and overall perceptions

The main source of advice had historically been from the family solicitor, but more recently the firm had subscribed to a professional advice service, purchasing the relevant guides at about £200, and then subscribing to an
updating service at around £150 per year for each one. At the time of the visit they subscribed to two.

At Care6, the £265 fee paid to share a double room was subject to a supplement. In most instances, families helped with the supplement. This will also be the case for the new wing, where the fee is to be £320 a week. The payroll was contracted out to an accountant for a fee of £40 - £45 a month.

The Care Manager estimated that she spent 20 per cent of her time on paper work, but as above, she also spent, in addition, her own time at home on administration. One aspect of the care regulations is the requirements regarding the levels of training of care staff. One effect of this was on costs. The Care Manager claimed that this was a considerable expense, costing £300 to £350 in fees to get a carer to NVQ2, and up to £600 for level 3. For each level there were also three paid days of leave.

With respect to the burden of the new care regulations, perceptions were mixed. The Care Manager observed that ‘there are 38 new standards, but when you look at them closely, there’s not that many new issues’. Here also, in contrast to Care1, and to some extent to Care 5, The Social Services Inspection Unit was not seen as a major issue. Basically, she argued, ‘if you run a tight ship, you have no problems’.

*Employment legislation and business practice*

Communication was by way of formal staff meetings which were held at two-three monthly intervals. Staff reported that they did not see these as very useful. Pay was the major issue, and they did not see that the meetings had any influence on it. Appraisals were conducted each year, or six monthly for trainees.

*Commentary*

As at Care5, the geographical location and physical nature of the home affected its response to regulations. There was less competition for clients than in some of the other homes studied, and the development of a new wing would strengthen the home’s market position. Consistent with other homes, the big issue for the business was in the level of funding in relation to labour costs. The NMW was seen to have had a major adverse effect on this, with an estimated increase in labour costs of £16,000. Funding was the big issue: ‘A lot of smaller homes, I feel, will go under’, Owner F reflected. With it size and location, Care6 was in a relatively strong position. Its managers had also succeeded in developing a more formalised system of record-keeping than was the case at the other homes, with its ‘tight ship’ being an important feature of its approach. An example of where rhetoric expresses a general belief rather than the specific experience is seen here where Owner M refers to losing two thirds of the trained carers to nursing, whereas to date, only one had been lost in this way.
Data

Two visits were made. Six interviews were conducted. Various procedural documents were consulted. One follow-up telephone interview was made.