WILL THE STRATEGIES ADOPTED BY UNITED KINGDOM TRADE UNIONS, AND THE STRUCTURE THEY HAVE DEVELOPED SINCE 1979, PROVE EFFECTIVE IN THE 21st CENTURY?

By

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Submitted for the degree of Doctor of Philosophy

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TO
BARBARA and ALICE
The two Ladies in my Life
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APPENDICES:
Declaration to the University of Surrey

Submitted by......RAY EDWARDS...........................................

to the University of Surrey as a research paper in completion of the requirements for the
degree of Doctor of Philosophy in the Faculty of Social Sciences, Department of
Economics.

I certify that all the material in this paper which is not my own work has been identified
and acknowledged and that no material is included for which a degree has been
previously conferred upon me.

Signed........................................

Dated........................................
PREFACE

I have been a trade unionist throughout my working life, as a trawlerman (decky-learner) and various other occupations, finally as a bus driver and Chairman of the 2000 membership 10/15 Branch of the TGWU in Hull, before being awarded a two year TUC Scholarship to Ruskin College Oxford. In 1965, I was appointed as the London and Home Counties Organiser for the Clerical and Administrative Workers Union. In 1969 I was appointed the CAWU (APEX from 1971) Deputy General Secretary with industrial responsibility for the Engineering, Automotive and Shipbuilding Industry membership. I retired due to suffering a heart attack and undergoing quadruple bypass surgery in 1979.

Having recovered my health, in late 1980 I was appointed General Secretary designate of the National Association of Licences House Managers (NALHM). In 1981 I joined the Industrial Society (1981 to 1984) as its Director of Industrial Relation. During this period I was appointed by HM Government as Chairman of the Gibraltar Industrial Relations Commission, over-sighting the closure of the Naval Dockyard and construction and development of a civilian electricity generating station.

From 1984 to 1985 I was appointed General Secretary Designate of the GLC Staff Association. An Appointment in which I commenced the process of transfer of undertakings with the GMB due to the GLC Staff Association having lost considerable membership due to the ‘winding up’ of the Greater London Council, and most of its membership having transferred employment to various London Borough Authorities.

From 1985 to 1989 I was Director HR Consulting with William Mercer, and from 1989 to 1994 Director of HR Consulting with Wyatt UK Limited. With both these organisations my role was international, working in Europe, North America, Australia and New Zealand. In January 1994 I underwent further quadruple bypass surgery and spent some time recovering my health. In October 1994 I established a consulting firm with a Japanese Lawyer Tadashi Yamada as a partner, the company Edwards Yamada Associates Limited, specialised in industrial relations and employment law services to inward investing companies, attaining a prestigious blue chip client portfolio of Japanese and United States Companies. The business was wound up and liquidated in 2001 on my retirement. Since 1983 I have held a number of appointments through ACAS: Independent Expert (Equal Pay); Chairman NHS Grading Appeals Committee; member of Employment Tribunals (Reading, Brighton and Southampton). From 1996 to 2001 I
was industrial relations and Remuneration Policy Adviser to the UK Police Federation and General Advisor to the Royal Ulster Constabulary Police Federation.

Ray Edwards
August 2005
ABSTRACT
The thesis undertakes an analysis of the decline of trade unions, during the period 1979 to 2002. It disagrees with those who argue that it was changes in law that were the main cause of decline in union fortunes, arguing that it was fundamental contextual changes, particularly those of an industrial nature, which generated the decline of trade unions. It commences with a brief historic overview of trade union development, and provides evidence of how some unions, struggling for recognition, utilised statutory provisions never intended for the purpose, to gain recognition.

The divergent experience of TUC affiliated and Non-TUC unions is analysed, illustrating the reasons as to why many non-TUC unions have increased their membership during a period whilst the majority of TUC unions have lost membership. The thesis exposes that whilst unions have responded to the various crises facing them over the past 25 years, they have failed to effectively exploit the Employment Relations Act 1999. Whilst the Act is apparently producing some advances in union recognition, the developments are not producing increased union membership and density.

The trend towards conglomerate unionism as the model upon which to build a future for trade unionism is challenged. The thesis illustrates that whilst trade union preoccupation with mergers has helped to ensure short-term 'survival', the strategy for both individual union and aggregate growth is proving to be a longer-term failure, producing financial weakness. A number of examples of this failure of merger to produce improvements in either membership or finance are used in the analysis.

The thesis illustrates how the loss of the employers subsidy and union membership agreements have had a serious effect upon union membership and finances, concluding that because these 'supports' will never be restored, union membership and density can never again achieve its pre 1979 density levels.

A 'live' example of the value of Partnership Agreements is utilised, which illustrates that unions can 'market' themselves as vehicles through which employers can accommodate statutory and regulative changes in the management of their employees. The thesis

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1 Willman (2005)
2 The case of BIFU amalgamation with the Barclays Group Staff Union and the NatWest Staff Association to form Unifi, is one example of this.
argues that the Partnership approach may be the way forward within the changed industrial and political context of the UK.
1. METHODOLOGY

Question Structure - Hypothesis and The Initial Research

1.1. The question embraces a number of closely related aspects of change affecting trade unions over the period since 1979. The data and analysis contained in the thesis covers the period up to December 2002. However, given that its subject is a ‘live’ field of research the thesis does have regard for other research, which whilst not published, was being developed whilst the thesis research was underway. Such research will be referenced within the text as appropriate.

1.2. The initial research identified three trends, which have had a strong influence upon the process of change and development affecting the United Kingdom (UK) trade union movement. Each of these trends has been subject to the research and analysis of others, the published results of which are discussed within the literature review, and as appropriate within the body of the thesis. However, much of this earlier research and analysis has been of an aggregate nature and has tended to view UK trade unions as a ‘homogeneous grouping’. The consequence of this approach is that some significant aspects of trade union experience, over the past 25 years may not have been adequately recorded.

1.3. The body of the thesis comprises four chapters. Chapter One ‘The Changing Environment of Trade Unionism’ has been written to incorporate the ‘Introduction’ to the thesis. It undertakes a brief historic review of trade union development, analysing and discussing the process of change, which affected trade unions throughout the period prior to and from 1979. The remaining three chapters:,

i) Changing Composition of Employment, Demographics and The Changes Impacting upon Organising Strategies;

ii) Financial Management;

iii) Survival Strategies, Organisational Change and Union Mergers;

cover the three ‘limbs’ of the thesis. Chapter Two, analyses and explains the data, which disclose the divergent experience of trade unions over the period of the past 25 years. Unions are disaggregated into their two broad groups of TUC affiliated and non-TUC affiliated unions. The analysis illustrates the divergent experience of these two groups, and the consequent affects of these changes upon the environment in which trade unions operated post 1979. The research undertakes a disaggregated review of each of the two union groups, analysing the development/decline of discrete unions and industrial groupings of unions. The analysis identifies the reasons for the difference in the
experience of these two groups, illustrating that many of the same reasons for this ‘difference’ extended into the differing experience between public and private sector unionism within TUC ranks.

1.4. Chapter Two analyses the way in which trade unions have attempted to cope with the loss of a great deal of their core membership primarily because of industrial restructuring, and develop and pursue recruitment strategies which addressed their changing market. Instead the analysis shows how in many instances, unions have managed to cope, in the short-term, with the multiplicity of change through merger into conglomerate unions. However, the thesis argues that this strategy has not always produced all of the hoped for benefits. Most mergers actually contributed to the reduction in aggregate union membership of the merging partners and consequently aggregate union density, also the depletion of union finances.

1.5. Chapter Three focuses upon union finance, an aspect of trade union organisation less visited by previous research. The analysis explores the critical issue of the developments which have taken place affecting union finance, including the importance of the employer subsidy and the role of the closed shop in bolstering union finances during the period prior to the early 1980’s. In addition, whether trade union finance is robust enough to support the reshaping and development of the trade union movements mission for the future.

1.6. Chapter Four analyses how unions, particularly the smaller ones, found it increasingly difficult to cope with the twin problems of diminishing income and increasing costs. In many cases they had little option other than to seek partnership through merger or transfer. Therefore, whilst the propensity of trade unions to merge may not have added to aggregate union membership it may have helped retain influence in some industries and businesses which would have been lost due to individual union failure. Whilst the process did little to add to aggregate membership it can be said that it did help the trade union movement in general to avoid worse membership loss than actually occurred. The thesis reviews the membership decline of a number of unions in

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3 During the period whilst this Thesis, research was being undertaken on the subject of trade union finance. Professor Paul Willman as a facet of the research programme being undertaken by the London School of Economics, on The Future of Trade Unions, sponsored by The Leverhulme Trust, was in the process of completing his research on the subject. Professor Willman’s latest research was not published at the time this Thesis was being written up, therefore it cannot have a detailed regard for its arguments or findings. However, that part of his research, which has been produced in draft form pending publication, has been taken into account within the appropriate analysis and arguments of the thesis. Doubtless, when the full results are published, Professor Willman’s latest research will build upon his extensive earlier research into union finance, to which detailed consideration has been given in this Thesis.
the years prior to transfer of engagements or amalgamation and illustrates the likely accelerating rate of decline that would not simply have destroyed an individual union, but also union organisation within various industries.

1.7. The hypothesis is that, analysis of the three issues discussed in Chapters Two, Three and Four, may give a better insight to the future of trade unions than a preoccupation with the more heavily researched macro causes and affects of change. However, whilst there is a strong interrelationship between these developments, they do not lend themselves to a singular paradigm or methodological approach. Each has a unique contribution to the overall hypotheses structure. Therefore, the research approach that has been adopted, whilst it uses aggregate data and analysis as appropriate, disaggregated data sets are used by which to effect a more detailed analytical result.

1.8. In the opinion of the author, the broad subject matter of the thesis has become ‘over subscribed’ with research which, attempts to apply mathematical precision. The thesis research takes an empirical and qualitative approach in its methodology. The thesis presents data in a graphic format as appropriate throughout the data analysis. Two presentations have been utilised within the body of the thesis to illustrate in the most practical manner possible the topics under discussion and analysis. The first concerns the use made of the Terms and Conditions of Employment Act 1959 by white-collar unions in their struggle for recognition. The second is the introduction of a practical example of the value of Partnership Agreements, illustrating how in a particularly extreme, probably unique, case given the nature of the company concerned (CSC) both employer and union can develop mutual gain from the use of this type of agreement. This practical example, in all its detail, has been undertaken because it is an excellent method of illustrating how the principles enunciated within the TUC model for partnership agreements can be achieved.

Initial data capture and research results
1.9. Initial research and data capture was undertaken to test the hypothesis that unions were continuing to loss membership, financial resources and influence, and that just as strategies in earlier years of the review period had failed to produce a turn-around current strategies (post1997) appeared to be achieving little result. The results of this initial research led to the determination of the question and the skeletal structure for the overall research programme. It also disclosed that, whilst aggregate trade union membership and density had declined throughout the period since 1979, non-TUC union’s had for much of the period actually increased in membership. However, by undertaking a comparative
study of TUC and non-TUC unions the research exposes that there were reasons for this
disparity in performance.

1.10. An important aspect of the research was the review of the available literature. The
initial review of the literature and data indicated that the ‘divergence’ between TUC and
non-TUC union experience in membership retention, occurred primarily because of the
predominantly public and service sector membership of the non-TUC unions. Additionally, the unions within the non-TUC grouping organised the professions, which
had benefited greatly in terms of employment growth during the period when other
traditional areas of employment, organised by TUC unions, had suffered serious decline.
However, the ‘phenomenon’ continued to be of interest in that it tended to contradict
much of the literature on the subject of union decline. Consequently, it was decided that
this limb of the research held some very important features, which required research and
analysis.

1.11. The thesis seeks to explain why there has been a sustained divergence between
TUC and non-TUC union experience during the period since 1979. It approaches this by
developing aggregated data sets for TUC and non-TUC union membership derived from
the Certification Officer Annual Reports and data archives. The data is disaggregated
and analysed to identify and examine the principal characteristics of the non-TUC unions
in terms of their membership level, sectoral, gender and industrial distributions. These
have then classified into two groupings identified within the data of, “public-sector
professional associations” or “private-sector staff associations”, in order to provide a
structure for comparison with TUC unions.

1.12. The data for TUC unions has similarly been disaggregated into private and public
sectors of employment. However, because the range of employment categories is broader
than is the case for non-TUC unions the data is then disaggregated into employment
categories e.g.: clerical, administrative, professional and managerial. Data for each group
of unions is then divided into: membership level, sectoral, gender and industrial
distribution, to as far as possible provide ‘mirrored’ data sub sets. The two data sub-sets
were then analysed to expose the respective variance of TUC and non-TUC unions in
membership development and retention.

1.13. By this approach, the thesis seeks to ascertain what factors caused most non-TUC
unions to perform better than TUC unions, in terms of retention and recruitment during
the period since 1979. Analysis is also undertaken to show the way in which some TUC
unions attempted to replace membership losses sustained since 1979, through the process
of transfers of engagements and amalgamations. This aspect of the thesis updates earlier
research undertaken by others referenced within the body of the thesis. It illustrates that
the preoccupation with this process, whilst helping some unions to maintain their
operation, it may nonetheless have contributed less than was hoped for. The analysis of
pre and post amalgamation membership levels, illustrates that ‘acquired growth’ may not
have helped improve membership levels of some unions. Also the structure of the trade
union movement, certainly so far as removing wasteful competition is concerned, has not
improved.

1.14. The initial research into the third limb of the thesis question exposed the continuing
decline in the financial strength of trade unions generally. This research showed a large
proportion of the financial decline could be attributed to the affects of changes in law
upon traditional union organising policies, industrial restructuring, and consequent
membership losses. However, the initial research showed there were aspects of these
exogenous changes that had far reaching consequences for union membership and
financial strength. Particularly in respect of the loss of the closed shop and employer
subsidies, these factors had tended for unions in some industries, over many years, to
‘underpin’ the finances of unions at local level. The ‘overarching’ data and analysis
initially developed, covering the thesis topic, showed some very disturbing developments
in the financial resources of some of the largest unions. The analysis showed that whilst
the largest unions have the overwhelming number of members. They may be the
weakest in terms of financial resources, in aggregate and per capita terms. Aggregate
data, taken from the Certification Office is used to undertake a general analysis of the
overall disparities in financial performance for TUC and non-TUC unions. Analysis is
also undertaken across the union groups with 100,000 plus members (the ‘100k+ club’) and
those unions with less than this figure. The research illustrates that apart from a
period in the mid to late 1980’s, when because of the perverse effects of ‘economies of
scale’ emanating from membership losses, per capita income and wealth actually
increased, the pace of financial decline over the whole period has increased disturbingly

1.15. The initial research also showed that the propensity to amalgamate appeared to
have been driven primarily by ‘survival’ rather than growth. The process of
amalgamation because it was not centrally orchestrated, and lacked any overall strategy,
and showed it to have led to the possibility of more rather than less inter-union
competition, which led to the opinion that at best, amalgamations and transfers have
been of a ‘consolidatory’ nature, in that they were about the ‘redistribution of the
existing aggregate stock of membership of the trade union movement, TUC and non-
TUC. Consequently, the process added nothing to union density. It also appeared that
the process was driven by financial imperatives and motives of a defensive nature.
However, a significant positive affect had been that it gave some unions ‘respite’, and
ameliorated some of the worse aspects of membership loss and decline. Furthermore, it
probably reduced aggregate membership loss below what it would have been without
this process of consolidation.

1.16. A perverse factor emerged from the initial research, which an extensive literature
search indicated it had been subjected to less previous research. This was that, the
process of amalgamation and transfers had actually, based upon available statistical
evidence, taken from union records and the Certification officers records, been directly
responsible for reductions in the density of trade union membership. Disaggregated data
sets were developed covering a sample of unions, which when analysed, illustrated that
the membership loss in the process of amalgamation and transfer was in some cases quite
substantial. Overall, the evidence pointed to the developments and consequent changes
involved in the process of amalgamation, making trade unions generally weaker not
stronger. Therefore, data has been developed in order to carry the analysis in this limb of
the thesis further. Whilst the analysis is not extensive in that it focuses upon only a few
unions, the unions selected for analysis are amongst those more frequently engaged in
amalgamations and transfers, and represent a substantial proportion of aggregate union
membership.

1.17. The analysis of this phenomenon was undertaken as follows. Membership data for
each of the merging unions, as at the year-end preceding a merger and as at the year-end
immediately after a merger, is compared to illustrate the net loss of membership which
occurs at the time of two unions coming together. The analysis whilst it has regard for
the inaccuracies which are endemic in trade union membership accounting, concludes
that much of the loss of membership must be for reasons other than the historic
‘overstating’ of membership figures.

Data sources and methods of collection

1.18. The initial research indicated that there were a number of authoritative and readily
available research resources. Therefore, a considerable amount of the research activity
has been in the exploitation of these available resources, from which aggregate and
disaggregated data sets have been developed. The data resources used were:

a) The Certification Officer for Trade Union and Employers Associations Annual
Reports. Also the data archives of Annual Returns made by trade unions to the
Certification Office;

b) Data taken from the Labour Force Survey series Reports was utilised in the
development of the research in Chapters One and Two, particularly in respect of the
union membership industrial category densities, also the age and gender profile of trade
union membership.

c) Data taken from the Research and Membership Department of the Trades Union
Congress, proved to be invaluable as a means of obtaining a more detailed insight to the
industrial structure and membership industrial and gender make up of individual and
groups of unions;

d) Data taken from the Research and Membership Departments of various individual
unions, also information taken from the Annual Reports and Accounts of various
individual unions, was invaluable as an insight to the individual unions problems and
how policies were being developed to deal with the period of the 1980’s and 1990”s;

e) The data and information held in the WERS\(^4\) was utilised as one of the primary
sources of information, particularly in respect of membership density, recognition, union
activity and management employee relations policies.

f) Data produced by the administration of a survey questionnaire which produced
responses from 46 unions with aggregate membership in excess of 6.5 million. The
survey provided, in particular a means of obtaining up to date data which could be used
as a comparator with earlier research undertaken, particularly in the areas of finance
administration, by for example; Latta (1972), Willman and Morris (1988) and Willman
Morris and Aston (1993).

Archive, University of Sussex, website –http://www.dataarchive.ac.uk.
1.19. The Certification Officer Annual Reports, and data archives, have been used as the primary sources of general data and information about trade union membership and finance because of its authoritative standing and general reliability of the data. The statutory requirement for all listed unions to annually complete Form AR21 (Annual Return Form 21 obtained from the Certification officer) and submit various supporting documents (financial records, benefit rules, etc) ensures a range of quality data, suitable to the needs of this research. Furthermore, the Certification Office data archives are the only aggregated and disaggregated data resource readily available at one location, covering the membership and financial data of TUC and non-TUC unions.

1.20. However, when considering matters of union aggregate density it is possible that the data provided by the Labour Force Survey series is a more accurate reflection of the true membership density of UK trade unions. This is because, trade union density is calculated as the percentage of employees in the workforce who are union members. Whilst the Certification Office does require each union annual return to show the number of ‘non-contributing members’ these are not deducted from the aggregate membership figures shown in each annual report. Frequently, however not in all Annual Reports, there are references to the percentage of ‘non-contributing members’. There are however, no references to the number of members who are self-employed or permanently employed outside the UK, and therefore they should not be calculated as a part of the UK labour force.

1.21. The Labour Force Survey series on the other hand asks a simple question as to who in employment is a member of a trade union. However, the survey is based upon a sample. Therefore when assessing the total number of ‘persons’ who are in membership of a union, after allowing for those ‘persons’ who are not ‘contributing members’ the Certification Office data is the better aggregate data. In addition, the only authoritative source for disaggregated data about individual union membership. However, to gain knowledge of the number of ‘employees’ who are in membership of unions perhaps the Labour Force Survey series data is a better source.

1.22. Data taken from the Trades Union Congress has been mainly historic primarily in the areas of TUC affiliated union membership. Data taken from individual unions has been extensively used in the disaggregated research. Such data has been obtained from individual union annual reports and accounts, and through the provision, of membership record information, financial and accounting records and associated data. This approach
was used to supplement data in the same or similar areas taken from the Certification Office archives. The process gave an opportunity for questions and clarification to be sought from responsible staff and officials of each responding union.

1.23. In addition to the foregoing, data was obtained from a sample of 46 TUC unions and 31 non-TUC unions within the private and public sector, using a structured questionnaire. The sample ranged in membership size, for TUC unions from circa 5,000 members upwards, and for non-TUC unions from 1,000 members upwards. In aggregate, the return of questionnaires covered some 6.5 million trade union members, it is therefore a very representative and robust sample. The structure of the sample can be seen at Appendix B.

1.24. The questionnaire was not used as the base for structured interviews with officials or research staff of responding unions. The sole reason for this was the fact that the whole of the thesis programme has been self-financed by its author Consequently there was a constraint on the amount of financial resources available to fund the extensive travel necessary to undertake such a process. The questions in respect of finance within the questionnaire were written using a similar approach to that used by Willman et al (1993)\(^5\) as a ‘template’. However, questions were introduced to ascertain the nature of changes, which had been made in investment portfolios in order to ascertain the degree of market exposure of union funds. The structured questionnaire was designed using PinPoint Software\(^6\) and was administered mainly by email. The questionnaire was not ‘piloted’ primarily for two reasons:

a) the process was much more cost and time efficient, saving on stationary, postage and manual data entry on receipt of responses; and,

b) at the time of the questionnaire being available for distribution the UK postal services were in the midst of a series of industrial disputes causing serious delays in postal turnaround.

1.25. A copy of the questionnaire and explanation of the software system are contained at Appendix A and B1. The data collected by this process was in respect of various aspects of union industrial involvement, financial policies, check off, recruitment

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\(^5\) Willman et al (1993) pp228-236  
\(^6\) PinPoint 3 for Windows; Longman Logotron. Peter Cole, Logotron Limited 1995
policies and general administration. The use of an electronic method of data collection was chosen for two reasons:
a) the obvious difficulties, particularly in respect of elapsed time, associated with fixing interview dates, times etc;
b) the costs and time taken in travelling to a large number of locations
c) to undertake the interview process.
Responding unions did have the alternative of requesting a hard copy of the questionnaire for completion, and 16 responding unions actually completed the questionnaire manually and returned it by post.

1.26. In some respects, with the benefit of hindsight, some sections of the questionnaire were over-ambitious, in that a number of questions were consistently not answered because the respondent union did not have the data requested. There were also a number of questions where the information provided was inadequate as a response to the question, or information was withheld because of its confidentiality. Consequently, where the information provided or the number of unions completing a question was inadequate and unrepresentative as a sample, these questions have been omitted from the data and analysis. The questions affected by this decision are marked on the specimen questionnaire at Appendix B1. Because the returns of completed questionnaires covered unions representing over 6.5 million members (86 per cent of total union membership) it was felt that it was sufficiently representative in all major respects, for the purposes of the research. It has therefore been incorporation as appropriate within the analysis.

1.27. Finally, data has been taken from earlier published authoritative research. Some of this data covers the earliest period since 1979. However, it is valuable data and worthy of updating, and where necessary this has been done and it is incorporated within the data sets, and has been used in the analysis as appropriate. In all cases such data is referenced as to its source and the process by which the data has been updated.

Analytical models
1.28. As discussed earlier, the three developments, which for ease of reference have been called 'limbs', are closely interrelated, and the change process that has taken place within each, has had endogenous affects. Each limb of the question contains discrete issues, which require a discrete analytical approach. Consequently, the approach that will apply in respect of each limb of the question is explained in brief within the following paragraphs.
1.29. To undertake analysis of membership recruitment and retention a paradigm has been chosen that focuses upon the processes of ‘achieved growth’ and ‘received growth’. The chosen model is similar to that constructed by Bain and Price (1980)\textsuperscript{7} to illustrate growth and decline in union membership, which they explained involved two processes, which they called, the ‘virtuous cycle’ and the ‘vicious cycle’. The model explains growth, first developing because of ‘initiated organising (recruiting) activity’ by a union. Secondly by ‘received growth’, that is growth which occurs or results from developments consequent upon ‘initiated organising activity’ that is, growth that develops because of recognition being agreed and facilities for union activities being agreed by the employer. Such as, the right and reasons for joining a trade union forming a part of the employee induction process, check off, paid release for representatives, accommodation, administrative support etc, also agreement to operate a post entry/pre-entry close shop.

1.30. The analysis in this limb is of an ‘overarching’ nature in that it interrelates with union finance and the analysis that is undertaken in the second limb. To explain this fact a model is constructed which is derived from an approach first devised by Berkowitz (1954)\textsuperscript{8} and reproduced in Willman \textit{et al} (1993)\textsuperscript{9}. It illustrates theoretically the cost structure of recruitment in a ‘green-field’ situation as it might have applied pre 1979. Illustrating the manner in which the employer subsidy and ultimately the closed shop developed and made a significant contribution to financing trade union growth and stability. The model used in the thesis whilst based upon the Berkowitz paradigm utilises a different approach to illustrate the analysis and argument. The thesis model uses micro economic theory to illustrate the manner in which a union builds membership and revenue, and how with the intervention of the employer subsidy net revenue surplus increases.

1.31. Disaggregated data sets produced by the research undertaken of individual trade union annual reports and accounts and data taken from the Certification Office archives, is used to explain the manner in which selected unions have performed financially. A comparative analysis of the data is undertaken, to show the way in which TUC affiliated unions were more seriously affected by some aspects of the changes in law than was the

\textsuperscript{7} Bain, G. S. and Price, R., (1980) \textit{Profiles of Union Growth} , Oxford, Blackwell
case for non-TUC unions. In particular, analysis will be undertaken of the affects of the legislation of 1980-1982-1990 outlawing the closed shop, which appears to have had a disproportionate affect upon TUC unions. The data illustrates, that after allowing for the membership loss that was taking place because of industrial restructuring, the changes in law may have contributed to a series of step reductions in density, and financial decline, particularly for TUC unions.

1.32 The thesis does not give discrete conclusions for each chapter. Instead, an overarching conclusion is utilised at the end of the document, which summarises the analysis, argument and conclusions to be drawn from each discrete chapter of the thesis.
2. LITERATURE REVIEW

2.1 The thesis overarches a number of areas of the broad literature. Therefore, the literature review is divided into ‘sections’, which relate to each limb of the question, as follows:

a) the historic operating environment of trade unions which helped shape the movements structure at a micro and macro level;
b) the changes in law and industrial restructuring and the decline in collectivism/pluralism;
c) the changes in industrial composition, manufacturing decline and services growth and the changing demographics generated by these compositional changes;
d) the affect of exogenous change and consequential endogenous change upon membership and the financial decline of unions.
e) the policies adopted by unions as a response to their changed operating environment and the propensity for unions to merge;

2.2 The thesis seeks to avoid a detailed involvement in the polemic about political change and its affect upon trade unions. Nor does the thesis become involved in a detailed analysis of statute and common law relating to trade unions and their activities over the past 25 years. Nonetheless, given the history and nature of its subject it is important to display an understanding of these issues and their role in the overall process of change since 1979, and their contextual affect upon trade unions. Therefore, appropriate literature in the aforementioned areas of the thesis topic is incorporated within the literature review, and the various chapters of the thesis as appropriate

2.3 With the exception of the chapter covering trade union finance, authoritative literature in the general area covered by the thesis was large. Consequently, it was necessary to apply further selectivity to the available authoritative literature, limiting it to:

a) First, the literature which explains the historical context to the thesis topic and hypotheses.
b) Secondly, literature which is ‘focused’ upon the subject matter of one or other of the three interrelated limbs of the thesis;
c) Third, to literature, which contains results of research, covering aspects of the ‘process of change’ upon one or other of the thesis limbs; and,

d) Finally, literature which whilst of a tertiary nature, assists understanding of the overall hypotheses, research and analysis.

The thesis question focuses upon the period 1979 to 2002. Whilst most of the literature referenced within the thesis was published prior to 2002, an amount of research and literature is referenced which, whilst it was not published prior to this date, has relevance to this research.

The historical context of union growth and decline - Changes in politics, public policy and law

2.4 The entry point to the subject of the thesis was a review of some of the more important historic research and literature on the subject, in particular:
Buchanan (1974), (1981); Clegg, (1972), (1985), (1994); Flanders and Clegg (1963); Flanders. (1970); Fox (1966), (1964), (1969), and (1985); Goldstein (1952); Hayek (1960), (1973), (1980); Hughes (1964); Latta (1972); McCarthy (1962); Roberts (1956); Undy et al (1981); Voos (1984); Waddington (1988); Wedderburn (1987); Willman and Morris (1988); Wrigley (1987). The Donovan Commission on Trade Unions and Employers Associations 1968, (Donovan), together with the twelve research papers produced by Bain, Hughes, McCarthy, Marsh, McKersie, Munns, Parker, Seear, Staples, Steiber, and Whybrew. Donovan encapsulates the state of industrial relations at a point in time when the trade union movement within the UK was moving towards its zenith. The work was commissioned by the Labour Government. The primary tool used by Donovan was a questionnaire seeking responses from trade unions and employers organisations to 330 questions under 5 broad heads. In addition input to the commissions enquiries was sought from a wide range of Government Departments, Parliament and individuals. Donovan was the largest ‘single’ survey of Industrial Relations ever undertaken. It takes an historic overview and develops a detailed analysis of its material leading to proposals and recommendations, which helped, shape industrial relations throughout most of the succeeding two decades. There is wide-ranging support within the literature for the view that from the mid 1950’s and throughout the 1960s and 1970s there was a growing confidence amongst trade unionists against a background of favourable labour market conditions. However, shortly after the election of the Tory

10 A complete listing of these Research Papers is given in the Bibliography under the reference to The Royal Commission on Trade Unions and Employers Associations
11 Donovan (1968) pp 3-4
Government of 1979, Pollard (1984)\textsuperscript{12} starting from the view that trade unions used to be necessary and a force for good, claimed that all that now lay in the past. Pollard appears to have been heavily influenced in his writing by the political philosophy of Hayek, referred to later. However, whilst Pollard's is not an opinion supported by this research, it indicates the background to the legislative programme embarked upon by successive Tory governments. Furthermore, when considered in depth, what Pollard says confirms the degree of complacency of trade unions and their leadership about some of the more obvious abuses of power that were taking place during the 1960's and 1970's.

2.5 However, Taylor (1994) argues diametrically opposite to Pollard, albeit within a book funded by the TUC. He is critical of union policies particularly in the methods chosen to combat the changing political environment and the consequences of industrial restructuring, also the TUC's inability to give greater clarity of direction in important areas of organising and union structure. Nonetheless, he saw continuing relevance and a re-growth of unions into the 21\textsuperscript{st} Century. However, Pollard was writing in 1994, since which date union membership and density has declined very significantly, as is shown within the body of the thesis. Salamon (2000) argues that the:

"power and authority of the TUC lies in the fact that it has a near monopoly of representation, and has been able to prevent the major rifts developing between sections of the union movement that are characteristic of other countries"

Salamon (2000) overlooks the fact that whilst the TUC has retained its position as the single central representational body for its affiliated unions, it has had little success throughout its history at preventing inter union problems, for example in Rothwell v APEX mentioned later.

2.6 However, much of the literature argues it would be wrong to exaggerate the social political and economic dominance of unions. For example England and Weekes (1985) whilst accepting the growth in the strength and influence of trade unions, say:

"it would be a mistake to ignore the more than compensatory growth in the power of the state and of multi-national firms".

Also pointing out that, the central levers of economic power were not in the hands of trade unionists, saying:

"Trade unions do not control exchange rates or interest rates or the levels of taxation; they do not decide marketing strategies or when and where investment will take place; they do not determine the price of oil or the supply of housing". Going on to say: "Trade union strength remained therefore, even at the best of times, defensive and opportunistic".

As part of a wider examination of the factors leading to Britain's poor economic performance, Williams et al (1985) looked at the blame placed upon organised workers. Surveying the available evidence, and the arguments of their contemporaries within the literature, at best they found the case not proven. Furthermore, the authors argued, similar to England and Weckes (1985) that the causes of Britain's poor performance can be said to have been more credibly located in practices well removed from the shop floor. Writers such as the aforementioned also Coates.(1994) and Lewis and Simpson (1982), and many others referenced within the thesis, argued that trade unions existed to control and limit the excesses of the imbalance of power between employers and workers. However, the relative weakness of trade unions has been demonstrated on more than one occasion. The impact of industrial, political and economic change over the past 25 years upon trade unions is proof enough of this fact, without delving too far into the literature on trade union and labour history.

2.7 Hayek (1960) (1973) (1980), offers a politically polarised argument, and is often credited as being one of the principal architects of the philosophy underlying the succession of post 1979 Tory Governments on economic and trade union reform. It is evident, when his political background is understood, and his writing is analysed, that Hayek had a profound influence upon the leadership of the Tory Government Deakin and Morris (2001)\textsuperscript{13}. The continuum of legislation that lead to the regulation and control of trade unions certainly bears the 'hallmark' of Hayek's philosophy. The basic argument of Hayek was that;

"unions distort the operation of markets, oppress the individual and create beliefs in social justice which cannot be fulfilled".

His 'cure' was to limit union power and create a situation in which the free play of market forces could apply which, in turn would undermine the collectivist/pluralist underpinning of trade unions. Hayek portrays the institutions of collective regulation as anathema to the policies of deregulation, which the Tory Government wished to develop. He advocated the removal of all forms of protection for trade unions and their activities

\textsuperscript{13} Deakin and Morris (2001) pp 34-35
and a return to the free play of common law, the employment contract and tort as prerequisites for Tory policies to succeed.

2.8 Hayek identified unions as the only effective countervailing power that may resist the deregulation and fundamental restructuring of the UK economy. He believed such change to be essential if the UK was to reap any benefits from the developing changes in the global economy. That the developments he advocated would create serious distortions in the balance of power as between employers and workers appears never to have been in Hayek's mind. Alternatively, if they were, it is not apparent in his writing or pronouncements. Whatever the contribution of trade unions to Britain's relative economic decline, the extent or limit of their affect is not exactly quantifiable, any conclusions must be coloured by the wider political views of observers. However, Hughes (1986) gives a stark account, and accurate prediction of the maturing crisis of the British economy and the economic context in which Conservative policies were formed and trade union difficulties may emerge.

2.9 Two further examples of the influence of political perspectives on industrial relations can be found in the writings of Fox (1969) and Hyman (1975). Each comes from entirely differing polarities of political philosophy to Hayek, indeed have differing political philosophy between themselves. In the former, a social democratic view of politics sustains a pluralist analysis; while Hyman's 'Marxism' results in very different conclusions. In academic circles, the pluralist model of industrial relations tended to be dominant throughout the 1960s and 1970s, however, it always faced sharp opposition from Marxist perspectives. Perhaps the leading authority and most successful of writers from this standpoint is indeed Hyman. Who, whilst demonstrating the complexity of industrial relations basically argued that pluralism represented little more than an accommodation for the capitalist system of political economy.

2.10 Despite the fact that Fox's article is over thirty years old, its clarity and quality of argument still rewards study and justifies inclusion within this work. There was a time when many observers and, perhaps, industrial relations practitioners, would have regarded as 'won' the argument put by Fox for a pluralist frame of reference. However, as Fox points out, the unitary perspective of management and the Courts, certainly in respect of the employment contract, is deeply rooted. In addition, while it may appear with different emphases in different periods, it is still very much with us today! A fact, which is briefly explored within the body of the thesis, in terms of its relevance to the changed culture of individualised employment contract, terms instead of collectively
agreed terms and conditions of employment. Considered against what Hayek expressed, and what is now known to have been the consequences of such philosophies having been applied. The arguments and opinions of writers such as Coates, Lewis, Simpson, Fox and Hyman, and many of their contemporaries, were well founded. These are arguments, certainly in terms of the impact of the changes in law upon trade unions, the validity of which the approach of this thesis seeks to test.

2.11 Brown (1992); Brown et al (1997); Deakin and Morris (2001); Dickens and Hall (2003); Dunn and Metcalfe (1996); Freeman and Pelletier (1990); Painter et al (1998); Painter et al (2000); Lord Wedderburn (1995); Lord McCarthy (1992); Wrigley (1997); Wrigley (2002) and many other researchers have produced strong arguments about the impact of statute and case law throughout the reference period. Their arguments are primarily that trade unions were placed in a position where the law in its changed, and developing form, inhibited their ability to protect their organisation within industries and companies when change was taking place. However, Gospel and Willman (2003) offer an interesting opinion:

"unions and employers missed a number of opportunities to build a system of employee representation based on interlocking collective bargaining and joint consultation. In the case of the unions, in the early 1970s, they missed the opportunity to secure positive legal rights when they were strong. When, from the late 1970s onwards, the legal framework for the voluntaristic system eroded, the coverage of collective bargaining quickly shrank".

which encapsulates much of the truth of the mistake trade unions made during a period when they had greater power to influence their destiny. The paradox of the collectivist/pluralist system was that it relied heavily upon public policy support for a framework of legal immunities which, placed no ceiling on union aspirations, when politics and public policy was favourable. However, it equally did not provide much support in less favourable times. Dickens and Hall (2003)\textsuperscript{14} refer to the increased juridification of industrial relations and the fact that voluntarism has ceased to be the keystone of British industrial relations. They point out that the incoming Labour administration in 1997 not only continued many of the prevailing laws, but added significantly to the manner in which law was to enforce employment standards, both procedural and substantive.

2.12 Thus, once public policy was changed to put in place limitations on union aspirations, the fragility of their power was quickly exposed. Gospel and Willman (2003) illustrate that the succession of change that has taken place, in the process of consultation, by UK and EU legislative initiatives have left a somewhat moribund collective bargaining structure, predominantly within the public sector, struggling for survival. However, what has taken its place is complicated and not universal in application. They believe that unions have been “led by events” rather than involved in the shaping of the new processes and procedures, a view shared by Willman (2005) who says:

“Exogenous factors such as sectoral shifts in employment and changes in government policy have rightly been accorded causal primacy in the explanation of union decline. I argue that the response to these exogenous shocks has in practice rendered the causes of continued decline endogenous”.

2.13 Such developments were of course as Hayek had ‘willed’ it, and the legacy of much of his philosophy has transferred across the political divide, to continue almost extant under a Labour Government since 1997. However, it is with the endogenous consequences of the quantum of change, not simply changes in law and legal immunities, upon trade unions at a disaggregated level, rather than their aggregated effects that the thesis is focused. The foregoing items of the literature present in brief, a series of conflicting interpretations of the significance of the pattern of industrial relations, the role of trade unions and other factors, for Britain’s poor industrial performance. Also, the impact which a changed political philosophy had upon the context within which, a pluralist collectivist industrial relations culture had been set for some fifty years.

**Marginalising the unions, ‘new’ approaches to ‘managing’ Industrial Relations.**

2.14 Deakin and Morris (2001) say that:

“Trade unions were characterised as legally over-privileged bodies which by their very nature obstructed the operation of market forces and threatened individual freedoms.” It was precisely this type of opinion that had led to the Donovan Report of 1968 and the succession of industrial relations laws, which developed under both Labour and Tory Governments up to 1979. Whilst many would argue that during this period the law was intrusive and tended to disturb relationships between the two sides of industry, nonetheless, the law tended to be ‘supportive’ of the ‘collectivist model’. However, from
1979 to 1997 the carefully measured legislative steps\textsuperscript{15} taken by Tory governments inexorably led to the attainment of their primary objective of a free market in labour, Dunn and Metcalfe (1996). An implicit feature of which was to be the removal of collective bargaining as the dominant method of determining contract terms, and the primary service of trade unions to their membership. With this 'service provision' generally undermined and, certainly within the private sector largely destroyed, trade union power and their countervailing role could be more easily swept aside. As Deakin and Morris say:

"Collective bargaining was seen as an undesirable constraint upon a market which required the individualisation of the employment relationship in order to function properly"  

Deakin and Morris (2001) also Kessler and Baylis (1992). Entering a lengthy and detailed polemic as to the political reasoning behind the decisions of the government, is not a route the thesis will take. However, trade unions were seen by the Tory governments throughout the material period as a probable effective countervailing influence to their economic policies and particularly deregulation, and therefore must be "neutered" Coates (1994), and effectively they were. Metcalfe (1998) views this development as one of the instruments of turning round the economy

2.15 Human Resource Management has served to reinforce many of the industrial cultural changes that have caused the decline of trade unions. It has helped develop a culture, which together with other management strategies has supplanted the collectivist/pluralist model. For example, its link with the development of individualised contract terms as an alternative to collective agreements, also its tendency to exploit the partnership philosophy as a 'tool' for subverting effective trade-unionism, are important developments, which must not be overlooked.

2.16 The philosophy and techniques of HRM have been around for many years. The primary problem with many of its techniques was that they were 'too technical' requiring the commitment of a great deal of resources if they were to be fully implemented and managed properly, in a 'paper culture'. However, with the advent of increasingly powerful and accessible computer hardware. Also the development of consultancy 'off the shelf' software systems designed to support HRM techniques, or 'bespoke' software systems designed to the needs of particular employers. HRM and its 'process and

\textsuperscript{15} For example, The Employment Act 1982 reversed the liability of unions in tort to where it had been pre 1906
procedurally unitarist culture’, has moved dramatically into every facet of employee relations management. The result has been a significant contribution to the collapse of the pluralist-collectivist model, certainly within the private sector, so dominant prior to 1979.

2.17 There is a great deal of data and literature which is supportive of the argument that Human Resource Management (HRM) techniques, which started to develop during the mid 1980’s. Co-incidental with the major changes in labour law was exploited as devices to further the marginalisation of collectivism, and collective bargaining. Guest (2001) however, argues that HRM has a very ‘chequered’ history in terms of both usage and effectiveness. Its growth was mistakenly identified as a derivative of pluralism by some trade union leaders and (like Turkeys voting for Christmas), actually supported. Amongst these leaders was the TUC General Secretary John Monks (1994)\textsuperscript{16} who said:

"the more anti-union the employer, the less likely it is that HRM techniques will be used”.

This view of HRM may apply in circumstances where employers have so little regard for their employees, that even an organised approach to employee relations through internal administration is regarded as costly and unnecessary.

2.18 Guest (2001) and Millward (2000) appears to provide some grounds for arguing that what John Monks believed to be the case is misconceived. However, John Monks after some four years appears to have changed his opinion saying:

"In the wrong hands HRM becomes both a sharp weapon to prise workers apart from their union and a blunt instrument to bully workers”

Purcell (2001) gives strong support to Monks initial opinion of HRM, arguing that its approach is not too far away from the mission statement of ACAS itself! Storey (1992) however, takes the view that HRM in the 1990’s was being used as a means of making collective bargaining almost irrelevant. However, Storey is hardly antipathetic towards HRM, as he gives clear support to the approach in Storey (2001)\textsuperscript{17}. However, over the period since the early 1980’s HRM has effectively replaced the ‘industrial relations-personnel management’ style developed to manage the collectivist-pluralist approaches within much of UK industry and commerce. The most rapid growth in the use of HRM

was within the inward investing, foreign owned companies, particularly American and Japanese\textsuperscript{18}. Foreign owned employers have tended to be amongst those who most rigorously resisted recognition and collective bargaining, and have tended to be amongst those employers who have been most innovative in introducing ‘new approaches’, such as ‘individualised contracts’. Introducing what has become known as ‘risk pay’, that is income subject to the attainment of targeted performance levels of individuals and company, profit related and profit linked pay, share schemes etc Lewis (1990).

2.19 All of these innovations providing employees with ‘flexible’ remuneration and benefit packages, as part of the ‘individualised performance (HRM) culture’. A methodology which has progressively made collective bargaining a virtual impossibility, within much of the private sector, and the privatised previously public sector. These approaches were exploited by many employers as one of the instruments by which to bypass collectivism and ‘wean’ employees away from it, rather than produce worthwhile performance results. These are developments which trade unions have found great difficulty in combating.

2.20 It was Guest (1987) in the early years of HRM’s development, who is most often attributed as having produced the most definitive opinions on the subject in terms of UK experience. He argued that HRM was:

“\textit{a particular approach to labour management}”;

saying it comprised:

“\textit{a set of policies designed to maximise organisational integration, employee commitment, flexibility and quality of work}”.

However, perhaps a clearer impression of the intent of HRM is recorded by Cully \textit{et al} (1999) they refer to a statement made by the editor of Human Resource Management Journal who said that HRM’s aim was to:

“\textit{gain employee commitment}” — and — “\textit{shift the focus away from management-trade union relations to management-employee relations}”.

Interestingly, Guest (2001) appears to have developed a more critical view of how some management’s have utilised HRM. He takes the view that where organisations have failed to exploit correctly the benefits for both management and employees of HRM, there is a very clear role for trade unions saying:

\textsuperscript{17} Storey (2001) p 9.

\textsuperscript{18} The Japanese approach of ‘Sunrise Agreements’ based on single union recognition and binding pendulum arbitration (no strikes) is one example of such innovations. See: Lewis, R. \textit{Strike Free Deals and Pendulum Arbitration}’ British Journal of Industrial Relations, 1990, Vol.28:1.
"Management in too many organisations has failed to use its control to introduce the kind of human resource management that might be of benefit to both workers and the organisation. They need pushing. There is still a strong case for some good, traditional but very necessary industrial relations."

Implying that unions have been left in such circumstances only with the role of 'wielding a big stick' to beat management into applying a philosophy that ultimately may not serve their (the union) best interests.

2.21 Based upon the “unitarist” “pluralist” definitions of Fox (1966) this was a clear expression of HRM being used as a tool to undermine pluralism and the collectivist model. Burchill (1997), Kessler and Baylis (1995) disagree with such argument. They saw HRM as based upon aiding the interrelationship of the employer and employee through the medium of a ‘individualised’ employment contract, free of the intervention of supervening ‘third party’ interests in the form of unions and collective agreements. That was an approach, which within a free market economy, they argue, would produce the greatest benefits to all. However, such arguments exposed a view of HRM that was intensely myopic, and showed its origins to have been in an economic culture, the USA, that provided few statutory protections of a collectivist nature. The supervening nature of statutory provisions, by incorporation to the employment contract, originating from UK government initiatives also, increasingly as a result of European Union (EU) statutory provisions, have shown the ‘individualised’ employment contract be what it in fact always was, a figment.

2.22 The expansion of human resource management as a ‘management process’ used to bypass weakening unions and avoid or evade union recognition is strongly argued by Storey (1992). He argues that rather than the improvement of employee relations and performance being its primary objective as claimed by its advocates. HRM tended to flourish in many companies where trade unions were either emasculated or no longer existed or had never been recognised. A perception diametrically opposite to the views expressed by John Monks, mentioned earlier.

2.23 There is of course considerable literature that supports the use of HRM. Purcell (2000) takes a supportive view of the role of HRM. He concludes that HRM where it is operated well can benefit employers and employees and cites Cully et al (1999)(WERS) research as supporting this argument. However, Cully et al (1999)(WERS) must be viewed within its correct context, the views expressed within this sequence of
publications appear to be dominated by data supporting the opinions and experiences of management. The data and narrative however cannot be regarded as representative of 'employee views', much less the views of 'active trade unionists'. Therefore, whilst they are an indispensable source of data (and have been utilised extensively as a source of data and as a 'directional' aid to the research of this thesis) in the area of change in employee management. They must be regarded as less authoritative in terms of the trade union-employee opinion. However, Purcell's arguments about the 'supportive nature' of HRM have 'devotees' in, Ackers et al (1996); and McLoughlin and Gourlay (1994). Purcell however, does not develop any strong argument to deny that even in the circumstances he defines HRM cannot also be used to undermine the 'pluralist' 'collectivist' approach, he quite simply 'dodges the issue'. Nor does Armstrong (1995), another strong advocate of HRM who whilst arguing HRM is not a "unitarist" tool, when outlining the management approach in developing strategic HRM policies, deny HRM's use as an 'anti collectivism tool'. In fact he barely mentions the interests or involvement of the workers! Armstrong (1995) concludes that the 'value' of HRM; "depends on the extent to which it is believed that people create added value and should therefore be treated as a strategic resource."

2.24 Guest and Hoque (1996) have on the other hand argued that HRM is most likely to be found operating most effectively in unionised settings. Going on to say that 'collectivism' and 'individualism' were not opposites but separate dimensions to the employment relationship. If by such an assertion Guest sought to imply that self-interest and the individual employees contractual relationship with an employer, was bound up within the 'collectivism, then there is little disagreement. However, it is clear that Guest did not mean this at all. What Guest was arguing was that 'individualism' within the framework of an HRM culture may produce results equivalent to 'collectivism'. He exposes his naivety about the unitarist nature of HRM when he, Guest (1989), expresses the view that HRM is "unitarist" however only;

"to the extent that they assume no underlying and inevitable differences of interest between management and workers".

He takes the view that HRM quite often gives management a high expectation of improving corporate performance without actually delivering the goods! Perhaps those trade unionists that embraced HRM had listened too attentively to the arguments of Guest and authors of similar persuasion! The thesis supports that section of the literature, which argues that HRM, has been instrumental in the decline of 'pluralism'. In addition, that it reinforced any tendency towards 'unitarism' as a foil to trade union
recognition and the ‘pluralist approach’, and has fundamental tenets that are the absolute antithesis of ‘collectivism’. The opinion and argument is based not solely upon research undertaken for this thesis. It draws upon empirical evidence derived from very long, in depth experience of the techniques development and deployment. Also in the design and implementation of many of its facets in practical application across a wide range of UK, USA and Japanese companies within the UK and internationally.

**The contractual relationship: dejà vu or back to the future?**

2.25 The historic battle between organised labour and employers, going back to times when laissez fair was the norm, has always been to decide ‘how’ and ‘who’ would determine the terms of the contract of employment. As recent as the 1970’s, in the very period of the trade union movements zenith, white-collar unions were fighting these battles every day. Therefore, where trade unions ‘are now’, is in large measure where they ‘have been before’ in the more recent past. Even the changes in the law that have taken place over the period from 1979 cannot be said to be ‘the’ determining difference that makes it more difficult to organise and hold on to membership. True, the growth period of the 1950’s to 1970’s had the protective benefit for trade unions through the system of legal immunities. It is also true that they were at greater liberty to defend their rights, without the threats of tort or civil action and sequestration of funds and assets, than they have been since 1979. However, in respect of the rights of employers to fix the terms of the employment contract, effectively little has changed during the history of the trade union movement, except insofaras statutory procedural and substantive rights are concerned.

2.26 Adam Smith (1776) recognised the imbalance between the parties to, as Khan-Freund (1976) termed it;

“that indispensable figment of the legal mind known as the contract of employment”

Fox (1974) argued some years before the current individualised contract vogue developed that individualised terms and conditions of employment rarely establish a sound employment relationship. They are not the products of ‘mutuality’, and in given circumstances can, because of the imbalance of power between the parties to the contract “undermine trust”. The use of individual employment contracts as a means of linking pay to performance, and meeting the flexibility needs of the business forms an integral part of the HRM mission. During the 1980’s and 1990’s, HRM was utilised in designing strategies by which to, not only remove employees from the ambit of collective bargaining. The consequent affect was to undermine union membership, and deny large
sectors of employees statutory protections through the use of ‘flexible contracts’. The growth of part-time and fixed term contract employee numbers during the period bears witness to these facts. The Labour government sponsored a major piece of research into this whole area of the changing employment relationship. The research undertaken by Brown et al (1999) in respect of matters such as collective bargaining, employee representation, union recognition etc, showed that the development of an ‘individualised approach’ to employment terms had done a great deal of damage to union recognition, membership and density. Brown (1999) also said, that HRM had in fact done little to achieve greater diversification of the substantive terms of employment contracts. He concluded that HRM had therefore been more about “procedural” rather than “substantive” matters for such employers, going on to say:

“These employers have been withdrawing from collective bargaining”;
and it was for this reason they had utilised HRM, rather than any other approach, an opinion with which this research has a great deal of empathy.

2.27 Deakin (1999) argues that the tendency has been for individualised contracts to be used, “as instruments of unilateral managerial control”. Further he argues that the increasing prevalence of individualised contracts as a device for replacing collectively agreed terms and conditions, has placed employers at greater rather than lesser risk of intervention by legislation and the courts. A review of the quite dramatic increase in the numbers of cases coming before Employment Tribunals gives an indication of the veracity of what Deakin says:

“Similarly, the sequence of legislative action which has been necessary in order to regulate areas of the employment relationship such as, part-time and fixed-term contracts, working hours, holidays, equal pay, discrimination etc adds weight to his argument”.

2.28 Deakin is supported in his argument by the fact that many authorities within the literature, in the mid 1980’s, produced arguments for a change in the employer-employee relationship19. They argued that the ‘contract of service’ should be replaced by a broader definition of an ‘employment relationship’. The influence of this literature has been that the law on employment has progressively moved towards a more comprehensive definition of who is and is not an ‘employee’. This has resulted in the removal of limitations upon statutory protections for employers simply because of the nature of the

19 The law has now been considerably strengthened to prevent the abuses of part-time employment as a device by which to avoid statutory rights, which had developed throughout the period of the 1980’s and 1990’s.
‘employment relationship’. These developments, together with the rights created by the Employment Relations Act 1999, should have placed many more employed persons within the ambit of trade union recruitment. Making trade unions and their ‘services’ more attractive, however as yet, unions are to fully exploit the opportunities. Guest and Conway (1999) say that even where unions are not ‘empty shells’ not untypically employees working in a HRM environment tend not to identify a union as authoritative, placing greater reliance upon management as the ‘trusted’ communications source. Auerbach (1993), Deery and Mitchell eds (1999), Lord Wedderburn (1995) and others have produced a great deal of literature on the subject of personal contract terms.

2.29 The cases of 20 *Associated Newspapers Ltd -v- Wilson* and 21 *Associated British Ports -v- Palmer* are authoritative cases in the matter of personal contract terms. However, the decisions have implications far beyond the limited scope of employment contract issues. These cases involved the transference of employees from having, the terms and conditions of their contract determined by collective agreement and instead accepting ‘individualised’ terms and conditions of employment. The intent in both cases was believed by trade unions to ‘wean’ employees away from collectively agreed contract terms and to induce employees to relinquish trade union membership. Both cases produced a great deal of academic and legal research and opinion to be written. The law was amended through provisions within the Employment Relations Act 1999, Kidner (2001) which according to Deakin and Morris and others has not effectively protected employees:

“against detriment or dismissal employees who refuse to enter into contracts which include terms that differ from those of a collective agreement.”

However, according to Ewing (2003) there is, in order to give effect to the decisions within the European Court of Human Rights (ECHR), now a requirement for the UK government to make appropriate changes to the law as contained within the Employment Rights Act 1999. The far reaching implications of the decisions of the ECHR touch upon the whole range of an employees rights to:

1. be and remain a member of a union;
2. avail themselves of union representation if required;

Ewing goes on to say that membership rights, representation rights and recognition rights are all implicitly covered by the decision of the ECHR. Also that the decision should

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make it much more difficult for employers to evade trade union rights to represent their members in the future.

2.30 Millward et al (2000) tend to view the development of HRM as not being of great importance in the overall changes in industrial relations which were taking place at companies. They noted, however, that HRM was not present, to any significant extent, within the Public Sector at the time of the WERS. The available data Brook (2002) shows that unlike the private sector collectivism and trade union organisation within the Public Sector is almost as intact as it had been pre 1979. Millward et al (2000) noted that whilst union membership and collective bargaining had declined elsewhere. Within the public sector, it was “ubiquitous”. However, whilst decline has been most marked in the private sector, in 1980 well over half of all private sector employees were union members, by 1998 this had fallen to a quarter, and by 2000 the Labour Force Survey series estimated it to be as low as 19 percent. In the public sector (what remains after privatisation) the fall has been from 84 percent to around 60 percent between 1980 and 1999, a reduction of over 33%. Illustrating that whilst the decline in the public sector was not as great as for the private sector, membership and density nonetheless declined significantly. However, whilst trade unions and the collectivist, pluralist system, particularly within the private sector, did not flourish throughout the 1980’s and 90’s, it ‘lived on’ within the Public Sector and in many private sector companies and industries. As Painter et al (1998) suggested because many employers saw in collectivism: “a disciplined framework within which corporate management could work”.

The conclusions which are drawn is that HRM and the strategies deployed, particularly individualised contract terms, using this technique as a vehicle have been instrumental in undermining the ‘pluralist-collectivist’ approach the majority of UK industry prior to 1979. Bacon and Storey (2000) by their overall argument tend to agree with this view. Given HRM’s primary tenets, as enunciated by its earliest designers and promulgators, when used to support the development of remuneration systems that do not allow for any participation in design or administration, through consultation or collective bargaining. It cannot co-exist with trade union recognition. The result of HRM used in this way is inevitably the supplanting of a ‘unitary’ approach, in areas where a recognised trade union would claim to have both ‘rights and interests’ on behalf of its members.

Membership loss, declining density and influence and the trade union response.

2.31 Trade unions internationally have faced dramatic decline in membership and power throughout the period since the 1980’s. There has been a great deal of similarity in the manner in which this decline has taken place within the UK, Australia and New Zealand.
In each case, the decline has a mix of political change, economic and industrial change and change in law governing industrial relations. In each country unions have faced closely similar acute uncertainties and difficulties to those experienced by U.K. unions, Cooper (2003), Ebbinghaus (2002). The extent of the problems of decline, have perhaps at times been overstated, through arguments about crisis and sclerosis of trade unions, Bronfenbrenner et al (1998) and Pocock (1998). The TUC in the early years of this period, adopted a totally antipathetic stance as can be seen in the literature produced at this time, TUC (1981) TUC (1982). However, the TUC leadership having accepted the reality of the situation they faced have, over a period, developed a stance of ‘new realism’ (TUC 1989 and 1990). During the early years of the 1990s, a trend emerged for the development of improved membership services as discussed in Heery and Kelly (1994).

2.32 The TUC began developing its policies to focus upon representation, TUC (1991) TUC (1995), and particularly upon organising TUC (1996). It was during this period of the late 1990’s that the philosophy of ‘social partnership’ began to gain currency, the TUC ‘kite-marking’ the approach as ‘new unionism’ TUC (1999). However, the successive novations of policy did not produce the trend back to ‘acceptability’ which the TUC was seeking to engender. The consequence of these failures in the efforts made to stem union decline and move forward led to the re-launch of the TUC. It was at this time that the move away from representation as the way forward and the emergence of the ‘organising academy’, Heery (1998) Heery (1999) suggested that a process of internationalisation was in process. Heery appears to have meant an improved spirit of international co-operation in the exchange of information and ideas aimed at mutual defence and assistance in facing closely analogous problems. He summarises what was developing as:

"the emergence of international networks which can provide for the diffusion of strategy, techniques and organisational forms”.

Nonetheless, even after the passage of 25 years and, having gone through these phases of policy change, designed to meet the challenges set by political, economic, sociological and legal changes. UK unions continue to question how they might cope with the consequential contextual change.

2.33 The new laws on trade union recognition, and employee rights, brought in by the Labour government in 1999, should have given unions new opportunities to move forward, grow and increase in power and influence. However, UK unions have yet to
show that they are reaping the benefits of these laws, Wood et al (2002) doubt that they are the panacea hoped for by the unions. Membership has fallen from over 13 million in 1979 and a density of 55 percent, to just over 7 million and a density of 29 per cent, at the end of 2002. A decline that has continued, however, since the mid 1990’s the rate of decline has slowed, nonetheless as Brook (2002) shows over the ten year period from 1991 unions lost 1.3 million members a fall of 15 percent. Fairbrother (1996), Gallie et al (1996) and Waddington, (1992) argue that the collapse of membership was due to a decline in heavy industry. Where trade union density had been traditionally high, and because of the growth of private services, where membership was correspondingly low. Cully et al (1999)(WERS) illustrates the extent to which UK unions lost large numbers of core membership. The loss of income and funds, which this caused, made the development of new organisation and membership within new industries and services very difficult. These latter factors have been a significant contributor to the unions inability to rebuild their membership and density levels. The fact that the Employment Rights Act 1999 has not produced what was hoped for by the unions has led to relations becoming strained with the Labour Government, a fact recorded by Waddington (2003). Which, whilst it has not been the direct cause of the increasing number of days lost due to strikes, it has been a contributory factor. In support of this fact the extent to which such strikes have been within the public sector, an area of employment for which government has some direct culpability, can be cited.

2.34 However, data published by the CAC\textsuperscript{22} and ACAS\textsuperscript{23} indicates that some unions have continued to pursue recognition with employers engaged in industries where they had traditionally organised employees. Notwithstanding that, it was these very same industries, which have declined and contributed to membership losses. Which is a development post 1999 that tends to confirm the view of a number of authors, that unions have become preoccupied with ‘infill recruitment’. That is, unions focus recruitment in industries and groups of companies where they already have membership and recognition, but where there is scope to extend organisation. Rather than seek to organise industries, which historically have been poorly organised, and which, are growth industries or services. Colling (2003)\textsuperscript{24} tends to agree with this analysis

2.35 The fact that the alternative ‘soft options’ of:

\textsuperscript{22} Central Arbitration Commission Annual Reports (CAC) 2002-2003
\textsuperscript{23} Advisory Conciliation and Arbitration Service Annual Reports 2002-2003
\textsuperscript{24} Colling (2003) p 387
a) Focusing recruitment efforts in traditional core industries and in-fill recruitment;
and,
b) Settling recognition claims in conciliation with less than full collective bargaining 
rights.

are understandable given the apparent poor results of using the lengthy and detailed CAC
procedures under the ER Act 1999 have become prevalent is confirmed in a recent TUC
publication by Heery and Simms (2003). Commenting upon the results of a survey
carried out, of employer responses to organising activities by unions they say:
"The pattern suggests that organising holds few terrors for employers once they are used
to dealing with unions."

Whilst Heery and Simms (2003) make no comment in support of the opinion. It is also
equally reasonable to argue that unions too, have "few terrors of employers" with whom
they already have relations. Consequently, they may have felt more inclined to invest
time in organising in circumstances where, in most cases, there is a less antipathetic
management attitude.

2.36 The literature covering this period of change in UK union policies presents no
preponderant opinion as to the direction that unions might take in the future. There is no
focused or structured process of change that has developed over the period, the general
scenario is littered with short-term responses indicating confusion. Much of the literature
produced from within the trade union movement, and particularly the TUC, overflows
with 'truisms'. Some of it to the point of being myopic and veiling the true state of trade
unions. Some of it more representative of 'wish lists' associated with the repeated
pronouncements that the 'renaissance is just around the corner'. An example is
contained in Gospel and Wood eds (2003) in their conclusions where they say:
"Knowledge of the benefits of unions is limited, and is a major factor behind relatively
low membership amongst young workers", and go on to say that: "Nonetheless, it is
unlikely that the decline of unions in the UK will be reversed in any significant way in
the near future, short of unions organising beyond their existing territories and new
groups of workers"

Based upon the evidence in Heery and Simms (2003), itself a TUC publication, this is
exactly what is evidently not happening. Not for the first time has advice been
commissioned by the trade union movement, only for it to be ignored. However,
Blanden and Machin (2003) put forward an argument that is based upon 'cultural'
identity. They say that:
"young people are much more likely to join unions where their parents have been or are trade union members themselves".

2.37 Not surprisingly, such uncertainty gives rise to different possibilities and choices, of which there are many. At its starkest, the choice in the late 1990’s was between a form of unionism that focused on centralised and national level organising and bargaining, as is debated in McIlroy, J. (1997), Undy et al (1996), Waddington, (1999), Willman et al (1993). Also, that unions would fight to protect independent, workplace-based unionism, Bronfenbrenner et al (1998), Fairbrother (2000). However, there is no consensus therefore, where the balance may be in the wide range of competing opinion, remains an issue. Willman (2005) takes a very uncompromising view of the membership loss dilemma facing trade unions and how he believes the ‘propensity to merge’ is an erroneous route to reversing their decline, when he says:

"The consequence is that, whilst doubtless trade unions will argue it is not so they have, because of the confusion surrounding policy and strategy, been driven down various routes non of which are showing signs of reversing the decline of the past 25 years. Exogenous factors such as sectoral shifts in employment and changes in government policy have rightly been accorded causal primacy in the explanation of union decline. I argue that the response to these exogenous shocks has in practice rendered the causes of continued decline endogenous”.

Partnership, a 21st Century replacement for the collectivist/pluralist model

2.38 Partnership is an example of a ‘change processes’ that appears to have absorbed a great deal of energy and resources and produced little by way of return, calculated in aggregate membership terms. The partnership philosophy predated the election of the Labour Government in 1997. Bryson (2000) reviewed the development of Partnership coming to the opinion that, where it was used by management as a means of deflecting unions away from their historic primary role of collective bargaining and representing their membership, it may not succeed because of the suspicion of employees that the union was neuter and partnership was a ‘sham’. Munroe and Rainbird (2000) conclude that partnership because it emanates from a ‘collectivist’ base i.e. it is usually the result of an agreement between one or more unions and an employer, provides the:

"basis for the development of workplace trade union activism rather than being indicative of its decline”.

This is a view with which Oxenbridge et al (2002) appear to concur. They conclude that whilst partnership is invariably not the vehicle by which to facilitate the re-emergence of collective bargaining, it has provided a base for unions to gain organisation through
agreements and procedures by embracing the partnership philosophy. The partnership approach was given a significant boost by the Prime Minister and the Secretary of State for Trade and Industry personal endorsements in May 1999 at a TUC conference, when they announced the creation of a Partnership at Work Fund. With up to £2.5 million to spend on projects to improve partnership at work. In addition the government has made provision for public funding as a means of ‘modernising Britain’s unions’, all of which must raise the question of what ‘strings’ are attached to this public money, how freely is it available and in what ways can unions spend it? In 2001 the TUC launched its own ‘Partnership Institute’ providing consultancy and advisory services to unions and employers. The elements of ‘partnership’ are identified. In Partners for Progress: New Unionism at the Workplace, TUC (1999). The TUC sets out six elements:

a) First, there should be a shared commitment to the business goals of the organisation;

b) Second, there should be a clear recognition that there might be quite legitimate differences of interest and priorities between the parties, differences that need to be listened to, respected and represented;

c) Third, measures to ensure flexibility of employment must not be at the expense of employees’ security, which should be protected by taking such steps as ensuring the transferability of skills and qualifications;

d) Fourth, partnership arrangements must improve opportunities for the personal development of employees;

e) Fifth, they must be based upon open and well-informed consultation, involving genuine dialogue;

f) Sixth, effective partnerships should seek to ‘add value’ by raising the level of employee motivation.

These are elements which Fox would have found little difficulty in embracing as embodying aspects of his ‘pluralist’ philosophy. However, there is little within them, save for element two and three, which indicates that the ‘new’ approach is designed to develop into a return to ‘collectivism’, on matters affecting the employment contract. Partnership, has embraced what, prior to 1980, would have been termed collective consultation and communication, which is an opinion certainly held by authors such as those mentioned in the succeeding paragraphs.

2.39 Since the emergence of the ‘partnership philosophy’ a strong body of opinion, has developed, led by writers such as Guest and Riccardo (2001), Haynes and Allen (2001),

\[\text{25 It is these six elements which are referred to later within the body of the thesis, in the discussion of the development of the Computer Science Corporation (CSC) Partnership Agreement with MSF.}\]
Kelly (1996) and Terry (2003), and many others. These researchers argue that partnership, is wrongly seen by many trade unionists as the new way by which to build the pluralist/collectivist renaissance. They argue that when allied to HRM, partnership moves the balance of advantage and power even further towards the employer. Heery et al (2003) illustrates that considering the length of time ‘partnership’ has been around it has made only modest progress, saying:

“the 1990s saw unions negotiating a large number of ‘partnership agreements’; there now exist at least 50 and possibly as many as 80 such agreements, depending on the definition adopted”.

Guest adopts an opposite argument to those who identify themselves with HRM and partnership as the way forward, pointing out that HRM is not the “only game in town”. Reilly (2001) takes a cynical view of partnership regarding many such arrangements as having grown out of crisis, as he says many employers and unions take the view that:

“Our backs are against the wall so we must do something” Likening the development of partnership agreements to employers “badging their employee relations as based on partnership”. However, Reilly (2001) accepts that the alternatives of ‘adversarial representation’ and ‘antagonism’, a re-tracing of the road from the pre 1979 era, are unacceptable. Arguing for a “mixed model” which is so often the case in practice. His findings and opinion as to how partnership operates in practice and what its value may be, is similar to that of Gall and McKay (2000) and Gall (2002). Heery (2002) identifies the policy dilemma of trade unions and particularly the TUC as one of having resisted for so long and failed to stem moves away from collectivism, organising, ‘the American way’, was seen to be the new way forward. At almost the same time the ‘cooperatist’ philosophy was borne and partnership was seen as an alternative way forward. However, as Colling (2003) discloses, within the literature there is strong dissent from the idea that there is widespread commitment to HRM practice, and furthermore where it existed it was concentrated in union rather than non-union workplaces.

2.40 However, insidious some authorities may view the Social Partnership philosophy which ‘overlays’ the trend towards ‘partnership agreements’, many unions have, at the very least, benefitted in terms of retaining, if not increasing, membership at companies where they have such agreements. For example, the Union of Shop Distributive and Allied Workers (USDAW) has acquired the distinction of having the largest group of

members employed by one private sector employer within the UK largely attributable to its partnership agreement and recognition by TESCO. This means not only that USDAW has the distinction, it also has some 25 per cent of its total membership employed by one undertaking. Possibly as much a weakness as a strength if things begin to go wrong! At another level of the partnership philosophy, Ebbinghaus (2002) takes the view that unions have become so ‘enmeshed’ with the state and ‘Social Policies’ that they increasingly act as ‘agents’ in the process of social policy. The consequence of which may not be helpful to the process of revitalisation and a trade union renaissance. His argument is basically that trade unions are in danger of developing too far along the road of becoming solely pressure groups, acting upon governments to achieve wholesale change in ‘social policies’ affecting industries and workers. The benefits achieved by such activities are ‘universal’, or ‘public goods’. However, they are of little utility in terms of the efforts of trade unions to recruit non-union employees who benefit from these ‘goods’. In consequence, minimum standards are improved for all, at a cost to unions in terms of resources, with little or no return in increased membership or density. This is of course a situation very much akin to the ‘free-loader’ who takes all the benefits of trade union activity without becoming a member and contributing to the cost of obtaining the benefits.

**The Impact of change on Union membership and density.**

2.41 The issues of recognition and de-recognition as contributing factors in union membership growth and decline, are discussed extensively in Bain (1983) Historically, the most effective single device by which to compel an employer to grant recognition has been to strike, or take some other form of action short of a strike. Within the UK there has never been a ‘statutory right’ to strike. The right to strike and to use ‘secondary’ strike action and picketing in furtherance of a trade dispute have been protected from tort through the operation of a system of legal immunities, known as the ‘golden formula’. It was this system of immunities that Hayek advocated must be removed, in order to limit the countervailing power of trade unions, Wright (1996). Since 1997 and the advent of a Labour government there has been an anticipation of a ‘renaissance’ of union recognition and with it growth in union membership. Many researchers, amongst them Novitz and Skidmore (2001), have concluded that the anticipation was premature and the ‘renaissance’, if that is to be judged by increased membership density alone, may never arrive, certainly in terms of pre 1979. A conclusion expressed by Willman (2005) and Metcalfe (2004) but based upon evidence and for reasons different to those of Novitz and Skidmore.
2.42 Boeri et al. (2001) together with many of their contemporaries argue that trade union growth and decline has been primarily the product of the trade cycle and in turn the level of employment-unemployment. Yet there is much research to show that this is not necessarily the case. Bain (1967) illustrates that over a period as far back as the 1940’s trade union membership density increased by very little\(^{27}\). Primarily because it failed to match, increases in the level of employment over any given period (see Appendix C and C1). Only in the early 1970’s did density start to increase, and even then not by an equivalence of the increase in the level of employment. Freeman and Pelletier (1990), having considered other developments, industrial structure change, inward investment etc, as the reasons for the decline in trade unionism, formed the opinion that it was non of the traditional economic developments singularly or collectively that had caused trade union decline. In consequence, they had, “looked for something else as the cause”.

This led them to develop a ‘legislation index’ that sought to ‘measure’ the favourable or unfavourable impact of various strands of the changes in law upon unions in each year. They held changes in law to be “responsible for the entire decline” in density levels. They concluded that the primary cause was the intervention of the raft of legislation antipathetic to trade unions and collectivism. They took as an inappropriate comparator for their analysis, and in support of their argument, trade unions in Ireland. However, Ireland cannot be regarded as an adequate comparator in terms of economic, industrial or sociological benchmarks. Furthermore, Ireland at the time they were writing had not been subjected to the same degree of inward investment and industrial restructuring. Guniggle et al (2001); and Roche (1997); produced research showing that union decline had begun to develop within Ireland in the early 1990’s, about the time Freeman and Pelletiers research. They illustrated that the heavy reliance upon argument by Freeman and Pelletier, that it was changes in law that caused the decline of unions in the UK was ill founded. Their research points to the demise of pluralism emanating from the development of new industry, primarily from inward investment and with it the importation of ‘new’ management techniques such as Human Resource Management (HRM). A picture of developments somewhat similar to the experience within the UK from the early 1980’s.

2.43 Whilst membership levels continued to increase throughout the 1990’s, union density levels in Ireland were beginning to decline at the very time Freeman and Pelletier

were completing their research. Since 1999 both membership and density began to decline, and have continued to do so, however, the affect of declining traditional industries was not as significant a cause of decline, as was the case in the UK. Gunnigle et al (2001) and Roche (1997) showed that in Ireland it was primarily membership growth failing to match employment growth, causing trade unions to lose aggregate density. Roche and Geary (1999) recorded there was a pronounced decline in trade union membership density during the 1990’s. However, noting that membership levels began to increase as the economy entered a period of growth in the 1990s, reaching a peak of 561,800 in 1999.

2.44 Carruth and Disney (1988) and others have argued that: “the downturn in membership was a cyclical phenomenon”, which was more the consequence of the performance of the UK economy than for any other substantial reason. However the argument is unsustainable because, if the performance of macroeconomic variables is accepted as the sole cause of membership fluctuations, then the almost continuous decline in unemployment over the period since 1993, also the fact that real wage growth has been relatively low throughout this period, should have helped produce an increase in union membership. On the evidence, it did not. Equally, whilst changes in the industry mix were a primary contributory reason for union decline, they were not the sole reason. The trend away from manufacturing, and large workplace male-intensive employment, towards private service small workplace employment, was already taking shape in the 1970s, Bain and Price (1980, which was a period when union membership rose by nearly 3 million. Therefore, if it was not changes in law, nor was it macroeconomic change or industry structural change that caused union decline was decline more to do with management attitudes and union derecognition? Gall and McKay (1999) and Towers (1997) research shows that there is no substantial basis for such an argument.

2.45 It is with the views of authors such as Bain (1983), Boeri (2001) and Metcalfe (2001) and others that the thesis argument finds a great deal of commonality on the matter of the affects of law. For, given that the law was not ‘selective’ in its application, in that it affected not simply those unions that declined in membership, which were TUC affiliated, but also those TUC unions, which also grew. Furthermore, that the law also affected the large number of non-TUC unions which grew throughout the 1970’s and 1980’s. One must ask the question, why then did the law not have the same impact upon
all trade unions? Machin (2002) attempts to shed light upon the reasons for as he calls it “convergence” or “divergence”. Machin says:

“What is less well understood is the precise nature of union decline. For example, we do not know a great deal about how union decline has varied for different demographic groups; or for different kinds of employers”.

He does however, go on to recognise the likelihood of divergent experience between employee groups, almost getting to the divergence, as between TUC and non-TUC unions, addressed in this thesis, saying:

“This paper attempts to give more detail on how union decline has differed across different characteristics of workers and their jobs” — “it asks whether union decline has been neutral across different groups, or whether one can identify convergence or divergence in union status for different sets of workers and jobs”.

However, he does not refer subsequently to the divergence, experienced by non-TUC unions in respect of membership decline.

Trade union financial resources – long-term decline and its recent acceleration.

2.46 It was said at the start of this literature review that whilst the literature on the overall subject of trade union decline and change in industrial relations was large. However, literature on the subject of union finances is less so. However, at the time of this research being concluded and written up, research funded by the Leverhulme Foundation being undertaken by the London School of Economics into “The Future of Trade Unions”, is in the process of producing its research results on trade union finance. Latta (1972), Roberts (1956), Willman and Morris (1988), Willman et al (1993), are the most substantial pieces of research undertaken into trade union finance. However, at the time of undertaking the writing up of the thesis, Professor Willman was in the process of completing a programme of research a feature of which was the financial situation of UK unions, the results of this research undertaken by Willman (2005), forms a chapter within Fernie and Metcalf (2005)28. There is other literature, which discloses research into financial issues, however, as secondary to the main thrust of such research. Nonetheless, some of this ‘secondary’ literature is of value to the thesis as it ‘overarches’ union finance and material covered by other limbs of this thesis. Such as the propensity to amalgamate.

2.47 A review of the historic development of trade union financial problems discloses that there has never been any shortage of advice to unions, about the importance of sound financial strength. Berkowitz (1954) was quite clear in the advice he proffered. On the matter of the adequacy or otherwise of membership contributions, Donovan (1967) reported, that as early as 1938 union members were paying contributions on average more than twice what they were paying in the in the late 1960’s. However, that the decline in contribution levels appeared to have been offset by the rise in membership over the period. Union membership had indeed been growing Bain (1966), from 1938 to 1968, from 6 million to 10 million, and continued to do so through to 1979. It is also a matter of record within much of the literature that throughout the period many individual unions made efforts to improve the level of membership contributions. Hughes (1964) noted that unions appeared to have been making progress in obtaining:

“sizeable and in some cases successive increases in contribution rates”, and concluded, “the breakthrough in union finance is being made”.

Nonetheless, whilst aggregate contribution income increased because of membership growth, because it failed to keep pace with membership income growth and inflation and costs, its per capita value diminished. The TUC, as recorded by Donovan (1968) and McCarthy (1962) had attempted over many years to gain co-operation between groups of competing unions to agree a policy by which to increase contributions in a non-competitive manner. Whilst there is available data that shows efforts were made by many individual unions to increase the level of member contributions and improve their finances during the period of the 1960’s and 1970’s. There is no evidence to show an orchestrated campaign across trade unions. In fact the TUC General Council Reports over the period dealing with ‘inter union disputes’, show the highly competitive nature of trade union recruitment Buchanan (1974). Consequently the environment throughout this period was anything but conducive to co-operation in matters which may affect individual union ability to compete in recruitment. Metcalf (2001) puts forward a strong view that trade unions would benefit from a concerted ‘infill’ recruitment campaign, targeted at bringing into membership the ‘free-riders’ who are enjoying the benefits of union activities within companies where recognition exists. His argument rests strongly upon the idea that having pre-existing organisation will greatly assist the process of recruitment, at a much lower cost than greenfield recruitment. The short-term financial benefits in the form of strengthened liquidity can then be utilised in campaigns to extend membership into the unorganised areas of industry and services.
2.48 Contribution rates in 2002 were on average £2.19 per week\textsuperscript{29}, or some 0.38 percent of average earnings, when compared with contribution rates at 0.5 percent of average earnings achieved in 1950 Willman \textit{et al} (1993). Illustrate the rate of decline over fifty years. Alternatively, the 1.02 percent of male average earnings contribution recorded for 1938 by Donovan, discloses a much larger historic decline in per capita contribution income over a period of sixty-five years. The consequence is that, whilst membership grew during most of the period from the 1950's up to 1979, per capita income and wealth started to fall, in real terms. Since 1979 the decline has continued at a more significant rate. During most of the period since the 1950’s inflation and increases in average earnings were at historically high levels, Willman and Morris (1988). It should therefore, have been a period when membership was more receptive to contribution increases, which were proportional to the movement in earnings and costs. Particularly so when, given the high levels of organisation and the operation of the closed shop, the elasticity of demand for trade union membership in this period was high.

2.49 Latta (1972), Roberts (1956), Willman \textit{et al} (1993) and Willman and Morris (1988), showed in their research and literature that unions had become increasingly reliant upon sources of income other than from contributions, and as Willman (2005) illustrates, the problem has become considerably more serious within the past 10 years or so. This development occurs primarily because of the effects of inflation and the morbidity of the deficit between contribution income and expenditure. Investment income and liquidation of investments had historically been the resource with which to bridge the gap between contribution income and total expenditure. However, Willman (1988) warned of the emerging reliance upon ‘other income’, and his subsequent research, Willman (2005), confirmed his predictions pointing out the changing nature of its source, which was increasingly coming from the liquidation of assets. His argument was basically that depleting contribution income, and the lack of operating surplus, would progressively reduced the surplus income from which investment in capital resources was made, and from which future development investment may be generated. In other words, the consumption of ‘other income’ emanating from asset liquidation, was akin to ‘selling the family silver’.

2.50 Whilst the major cause of the haemorrhage of financial resources has come from membership loss and trade union inability to control expenditure, there have been other causes that have added to the problem. One of these causes was the loss of the
employers subsidy as Willman et al (1993) called it. This was a ‘benefit’ that was the product of high level membership, frequently in closed shop situations, where unions had negotiated facilities for shop stewards such as, check-off and the use of phones, stationery, printing etc, etc. With inflation at historically high levels during much of the 1980’s-90’s left many unions with no alternative other than to dip into reserves and consume assets as they were liquidated.

2.51 Coincidental with the date at which Willman published his research, new legislation had a very disruptive affect upon one of the ‘pillars’ of the employers subsidy, check off. The Trade Union Reform and Employment Rights Act 1993 s 15 (TURER 1993) introduced a requirement that trade union members paying contributions through the operation of check off must complete new authorisation forms, every three years, for check off to continue. Some employers took this development as an opportunity to discontinue long existing arrangements on check off. For example, British Rail withdrew its check off arrangements for all unions. Some unions were successful in retaining continuity of contributions through alternative means of payment, for most of their membership. However, with the historic processes of contribution collection long since abandoned there was delay in establishing the alternatives to check off, resulting in serious membership and financial losses for all unions. The requirement under TURER 1993 was repealed in 1997.

The Contribution of the Union Shop/Closed Shop to union financial strength

2.52 Within the literature the question is often posed, as to why unions pursued the closed shop and fought for its maintenance. Most research has preferred to focus upon the ‘monopoly power’ gained in collective bargaining, Voos (1984). Alternatively, that unions and their finances must be understood in terms of union oligarchic structure and bureaucracy, Crouch (1982). However, whilst it is not the complete answer to the question, the major, and more obvious benefit of the closed shop was ‘high elasticity of contribution income’. In some industries, principally manufacturing, transport (road and rail) printing and mining, unions achieved a very high degree of contribution elasticity and revenue yield. These were also as illustrated by Dunn and Gennard (1984) and Wright (1996) the main industries where the union shop/closed shop operated. In addition, as a direct consequence of the strength of membership, the employers subsidy also had widespread application in these industries.

29 TUC Press Release 2002
2.53 Bain and Price (1983) developed an hypothesis of the process by which trade unions recruit and lose membership, calling it the "virtuous circle" and the "vicious circle". Their basic argument centred on the normal process of developing membership from a green-field situation, this they termed "acquired growth". They explained the process of recruiting membership and developing initial density levels to the point that would justify recognition. They then showed the process of consolidating initial membership, to the point where an employer may become involved in aiding the recruitment process, terming this "received growth". However, within this "virtuous circle" Bain and Price illustrated that there was in operation a continuum "vicious circle" that worked against the gains made by "acquire growth" and "received Growth". What Bain and Price did not do within their analysis of this process, was explain the closely interrelated process of developing union density to the point where, the closed shop became the means of 'closing off' the membership and financial haemorrhage of the "vicious circle". Nor did they sufficiently integrate within their analysis the significance of the closely related benefits of the 'employers subsidy'.

2.54 Seeking to justify the operation of the closed shop by using arguments analogous to the citizens responsibility within the state, Lowe (1996) refers to Klosko's (1992) interesting and somewhat compelling argument on the matter of, as Klosko terms it, "presumptive benefits". Klosko argues that a person obtains a presumptive benefit when they cannot be excluded from whatever that benefit is. He takes as his analogy the provision of national defence, protection from hostile environment, or a benefit that fulfils bodily needs. He applies a two-part test to the question of when such presumptive benefit applies:

a) some person benefits from the co-operative efforts of others without contributing to those efforts; and,

b) the advantages of not co-operating cannot be extended to all.

These two tests certainly 'fit' the criteria that trade unionists set as reasons for compulsory union membership during the period when the closed shop was at its zenith.

2.55 Whilst the first two aspects of Klosko's criteria, national defence and hostile environment are irrelevant, the third certainly is not. Interestingly, with the tendency for unions particularly through the TUC to become increasingly involved in the Social Policies of government, both campaigning and in a participative role. The presumptive benefits achieved by workers generally in the form of:
a) Minimum terms and conditions;
b) Health and Safety;
c) Family friendly benefits;
d) Employment Security;
e) Gender Discrimination;
f) Racial Discrimination;
and many more, increasingly place the trade union movement in a position where it is in danger of a strong argument being adduced that the state is sponsoring an alternative form of trade unionism. In support of such a development, one can cite the provision of public funds for the development and promulgation of 'government sponsored' alternative systems of recognition such as partnership agreements. On the other hand, there is the possibly stronger argument that state provision of presumptive benefits, whether with trade union campaigning and participation and co-operation or not, are benefits contributed to by all members of society by normal taxation. However, the fact that the paradigm used by Klosko is easily defeated does not defeat the overall strength of the argument he makes that:

"being indispensable, the benefit must be provided, and if so, fairness demands that everyone share in the burden of its production" (citation in Lowe (1996)(pp 55)).

The employer subsidy or ‘invisible income’

2.56 Willman et al (1993), illustrates that one of the few financial benefits of the relative strength of unions in the period prior to 1980 was, as mentioned earlier, the subsidy provided by employers. Unfortunately, the increasing ‘contribution’ made to union financial stability by this ‘invisible income’, may have masked their financial malaise. This ‘invisible income’ attributable to the financial benefits provided by employers, primarily applied in the industries where unions held their core membership, and most effective organisation. As membership grew, and with it organisational strength, unions were able to gain from employers considerable ‘added value’ from they’re recognition agreements. A significant contribution to this ‘invisible income’ was the role played by shop stewards, in recruitment of new members, and general maintenance and organisation at the workplace level.

2.57 Cully et al (WERS) (1999) in their research identified that:

"almost three in five workplaces had no worker representatives of any kind, and this was the case for nine out of every 10 workplaces where there were no union members".

Whereas Donovan (1968) recorded that the number of shop stewards was 175,000. On the importance of shop-stewards Donovan says:
"Without shop-stewards, trade unions would lack for members, for money, and for means of keeping in touch with their members".

Undy et al (1981) were clear in their views about the importance of the ‘subsidy’ nature of the ‘unpaid’ efforts of shop stewards and how this ‘benefit’ might be exploited saying: “Instead of the union paying for more but less efficient full-time officials, the employer could pay for more efficient and cheaper shop stewards”.

Terry (2003) concludes that, it is not only the decline of UK unions generally that has contributed to the decline of the shop steward, but also the changing legislative context, particularly the changes wrought by EU law and employee relations ‘models’. The competing representation rights, including individual and non union rights to information and consultation and the use by management’s of these rights in a ‘structured format’ have all contributed to the demise of the shop steward and with it the decline of local union organisation. However, the industries that provided the greatest proportion of ‘new’ membership during the period from 1950 to 1979, were also the industries that suffered the greatest decline in local organisation throughout the period of the 1980’s and 1990’s. Consequently, the decline of this core membership and the agreements with employers that sustained the shop steward and the attendant ‘subsidies’ and provided valuable ‘invisible income’ did not simply affect membership contribution income. The trade unions can only regain this loss through effective membership organisation and, recognition by employers, and by rebuilding local organisation. These are the very developments, which have proved most difficult for trade unions to achieve, particularly in the newer industries and the services sector. There is of course the question of whether, given the experience of the past 20 or so years, unions should again become dependent upon such subsidies? Or whether the safer way forward is to greater self-sufficiency in finance and the provision of services from external resources?

**The propensity to merge, what drove it, and what were its benefits?**

2.58 Based upon research undertaken before 1979 Buchanan (1974) Buchanan (1981) identified, that a manifestation of the growing financial crisis was the propensity for unions to transfer engagements and amalgamate. In many cases the process, added no membership, and imported disproportionate costs for acquiring unions. At best, amalgamations may have provided respite for failing unions and routes to further amalgamation as the data shows. Parodi (1997) as does Waddington (1995) support the opinion that the TUC’s policy on mergers has, to a large degree, worked as it was

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intended. In his research Metcalfe (2004) take a considerably different view arguing that mergers have failed basically agreeing with the opinion of Willman (2005) on the subject of mergers. Therefore, judged against the hoped for benefits, the process of amalgamations and transfers has produced non of the benefits of:

a) a more rational union structure;

b) reduction in inter union competition;

c) more focused and improved membership recruitment;

d) economies of scale and improvement in financial performance;

Indeed the arguments put forward by many smaller unions against the philosophy of ‘big is best’ and ‘conglomerate unions will succeed because they are strongest’ have so far been shown to be well founded. Smaller unions within the TUC argued that:

"they are very effective. They have very high levels of membership, extremely clear target memberships, and provide tailored services – often with a high professional content" TUC (1999). The smaller, mainly non-TUC unions have been more successful at developing membership and organisation during the most difficult period in union history, particularly amongst women as the data and analysis within the body of the thesis shows. Willman (1996) focuses on the issue of, as he puts it: “the relationship between merger propensity and merger success”. His basic conclusions are that mergers and transfers take place only after lengthy and often tortuous discussion and negotiation. They may be the product of a genuine desire to consolidate and strengthen mutual areas of recruitment and representation. They may be to salvage a financially demising union, here he talks in terms of defensive marriages between the “rich” and the “poor”. Pointing out that 32 of the 50 transfers in the period 1986 – 1995 were of this kind involving only two unions, the General Municipal and Boilermakers (GMB) and the Electrical Electronic Technical and Plumbing Union (EETPU). However, the majority reasons given for seeking merger over the period is seen to be, declining financial reserves, rapidly growing expenditure and income not rising. From his analysis, argument and conclusion, it can be seen that there is little by way of ‘rationalisation of union structure’ proffered as a reason for merging. The facts are that there has been little ‘rationalisation’ if by that it is meant that wasteful competition and overlapping areas of interest were being removed by the propensity to merge and form larger general and conglomerate unions. The four largest unions have very few ‘non-competing’ areas of interest, as can be quickly observed by reference to Appendix D. Willman (2005) revises his views on union mergers and concludes that they have not served the best interests of trade unionism generally and have produced a structure that may be instrumental in further decline.
2.60 The propensity for trade unions to merge has gathered pace, throughout the past 25 years. Waddington (1995), examined merger ‘waves’ as he termed them over the periods 1918 – 1924 and 1966 – 1987 and argued that both periods could be analysed using the approach of the Kondratieff cycles as a key explanatory variable. Whilst Waddington does review individual union amalgamations and carry out a degree of disaggregated analysis. He appears not to recognise the importance the changes in law that had taken place in 1964 to facilitate transfers of engagements, which became much less onerous to achieve. He also does not have sufficient regard for the fact that a great deal of the mergers that took place since 1966 have been with relatively small unions. Which were predominantly non-TUC-affiliated, and in the main the larger unions within the TUC. Undy (1997) and Undy (1996) disagreed with Waddington’s reliance upon the Kondratieff cycles. It is with Waddington and Undy’s “so-called second wave” that this thesis is preoccupied, however, bringing the reference period up to the present time, circa 2003. Therefore, what Undy says about the relevance of Waddington’s approach, so far as the second ‘wave’ of mergers is concerned is helpful. Undy says that: “the continued stress on merger waves is much more open to criticism when related to the so-called ‘second wave’”. Consequently, this relieves the necessity for the literature review to spend too much space explaining Waddington’s use of Kondratieff cycles. Nonetheless, Waddingtons work is of value, most certainly from the historical perspective of his analysis of the periods covered, particularly the earlier period of 1918 – 1924. However, Undy et al (1996) takes a much more disaggregated approach to his analysis and develops his research in a broader focus incorporating in a detailed manner the significance of finance as primary reasons for unions seeking to merge. Undy takes the view that amalgamations and transfers were “damage limitation policies” adopted in the teeth of the unexpected hostile environment post 1979. An opinion with which, this research finds a great deal of common ground. Chapters 2,3 and 4 of his work, also the Technical Appendix, were found particularly helpful in giving direction in this research. Undy’s chronicling of the trade union merger and transfer continuum of the reference period, was one of ‘the’ best sources of data found in this research of the literature.

2.61 To understand Undy’s view of why mergers that have taken place during the period from the mid 1960’s are significantly different to preceding periods when the propensity for unions to merge has increased, it is important to have reviewed the work of other researchers such as Buchanan (1974) and (1981) and Willman (1996) who give a more historic purview of the nature of transfers of engagements and mergers, during a period when trade unions could afford the luxury of contemplating the strategic benefits of
transferring engagements or merging, or continuing to develop as independent unions. Rather than be compelled, as many unions were, to seek amalgamation or merger in order to evade dissolution.

2.62 Some 20 years after Donovan, Willman and Morris (1988) were very clear about the serious financial circumstances facing many unions saying:

"For the future, the ability of many to remain financially healthy depends on the relationship between expenditure and non-subscription income." Going on to say:

"It may be that several unions depleted their income yielding assets in overcoming financial difficulties in 1979-91, thus reducing the scope for investment income growth", and finally: "their capacity to overcome similar crises in the future requires that this depletion does not continue".

Many trade union leaders would agree with Willman and Morris (1988) that: "most unions are not in existence to optimise their financial performance". Unions, over many years, have failed to raise the level of member contributions to more than match their operating costs, as predicted by Latta (1972); Willman and Morris (1988). Willman, and Morris (1988), commented on the poor growth of investments apparent in the periods covered by their analysis, and the fact that this was a depleting source of ‘subsidy’. The facts are that what Willman and Morris (1988) were fearful of, has continued throughout the period since their research. In 2002 this trend continued with the amount of investment income attributable to many of the sixteen largest unions falling significantly.

2.63 Willman and Morris (1988) noted that "higher membership levels do not necessarily improve solvency", and in later research Willman et al (1993) says: "There is an extremely strong negative correlation between union membership and union real net worth". Noting that, whilst more membership increases the contribution income flow, there is also an additional cost in servicing the new members. Willman and Morris (1988) also noted that the ratio of total income to total expenditure was moving close to ‘unitary’, and that this was likely to create serious problems in the near future if not addressed. Willman and Morris (1988) also noted the disturbing development of consuming income from liquidating assets. Latta (1972) referred to a number of unions as being "asset rich" and able to operate over prolonged periods of membership and contribution income decline by "living of the proceeds of their assets". Perhaps, it is for this reason that the level of investment and asset holdings within the smaller unions (many of them older unions) group is much healthier than that for ‘the club’. Davies. J. (2001), records that the number of disputes reduced from 12.9 million days lost p.a. on
average in the 1970’s to 7.2 million p.a. in the 1980’s and down to 660,000 p.a. average in the 1990’s. The fact that considerably less resources were being expended on disputes should have meant a lesser drain on union funds, however, as he notes these continued to deteriorate.

2.64 Unions appear to have increasingly viewed greenfield recruitment, particularly where employers are antipathetic towards recognition as a very expensive approach to developing their membership in order to retain ‘size’. A fact illustrated earlier in respect of the early results from cases about recognition taken before the CAC. However, membership development by acquisition whilst ‘consolidatory’ and a more aggregated method of adding to a unions size, does not add proportionately to trade union density. Also, membership acquired by such means is more often than not already covered by recognition, consequently it is not ‘expansionist’, as it adds nothing to the organised strength of the trade union movement. Consequently, it can be argued that growth by acquisition has been a diversionary activity, engaged in by unions to protect size, influence and finances, but at the cost of morbidity in union membership and density. It has also brought with it a range of problems that have created weakness rather than strength. The literature generally portrays that the majority of acquired unions were under 5,000 members, had declining membership, declining resources and low levels of assets per capita, which doubtless imported economic problems to the acquiring union. Morris et al (2001)) provide a good historic background to the amalgamation of the unions within the financial services sector (Banking Insurance and Finance Union (BIFU), Barclays Group Staff Union and NatWest Staff Union). Unfortunately, the research was primarily undertaken in the pre-amalgamation period, and was not followed through with research post amalgamation. The thesis corrects this situation by utilising up to date data to analyse the development of this amalgamation up to the end of 2002. In his subsequent research, referred to earlier, Willman (2005) concurs with the conclusions of the thesis on the failure of union mergers as a strategy by which to strengthen the movement.

2.65 The area in which the thesis research was being conducted is a very active one, consequently the publication of new research and literature is a continuum. It is extremely difficult, if not impossible, at the margin to determine when a ‘guillotine’ must be applied to newly published and emerging literature. However, at the time when the thesis was being written up a considerable amount of research, in its general area, had recently been published, or was ongoing which could not be ignored. Consequently,
some of this research and literature has been incorporated within the research for the thesis. However, subject to the exceptions, which can be identified by their publication date within the body of the thesis and the References, the thesis has not had regard for published work after December 2002.
CHAPTER ONE

Introduction

The Changing Environment of Trade Unions

3. A Brief Historic Review

3.1 Throughout the history of the trade union movement statute and case law has intervened in the progress of recognition and collective bargaining, and has increasingly played a part in the regulation and control of trade unions, Fox (1985)33, Hyman (2003)34, Deakin and Morris (2001)35. The ‘swings’ between progressive and regressive statutory and judicial action, were largely consequent upon industrial and political perceptions of growth in the strength, power and effectiveness of trade unions. History shows that trade unions have tended to prosper more during periods when they were left free of intrusive law, with a minimum of underpinning law, leaving them free to countervail the employers power, than at times when the law actually attempted to be overtly supportive. Freeman and Pelletier (1990) argue that the intrusion of law since 1980, more than any other consideration led to unions losing membership and their general decline. Changes in law did play a significant part in union decline however, regard must be had for the contextual changes that have progressively taken place over the period since the 1950’s. The pressure upon Governments and businesses of global market changes, and the socio-economic changes and the industry structural change, taking place World-wide were also major contributors to the trend of union decline. The increasing development of low-union and non-union presence workplaces, identified in Millward et al (1992) and Cully et al (1999) (WERS) gave opportunities to management to develop alternative approaches to managing employees Kessler and Purcell (2003)36. The technique of Human Resource Management was rapidly developed to take advantage of the changing industrial and legal context affecting unions, to provide alternative systems and processes of employee management, supplanting collectivism and underinuing union strength, Guest (2001) and Millward (2000). This whole process of change developed from the 1950’s, through to the late 1970’s, when the process accelerated and set the context against which much of the most significant change for

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35 Deakin and Morris (2001) give a succinct and detailed account of the development of UK law relating to collective organisations Section 7.4. pp 685-696.
trade unions took place. The (WERS)\textsuperscript{37} records the process of these changes upon the organisational strength and operation of unions across industries within the UK throughout the period from 1980. Such changes have engendered the ‘individualistic’ culture that whilst it is not the cause of trade union decline is apparently an almost intractable hurdle to any reversal of the downward trend. Colling (2003)\textsuperscript{38} terms these developments “A Secular Trend”, Waddington (2003)\textsuperscript{39} cites Phelps Brown (1990) as agreeing with Colling’s opinion about the “secular ascendency of individualism”.

3.2. A brief historic review of industrial relations within the United Kingdom will show the ‘pendulum’ of trade union rights making some distinct ‘swings’, such as:

a) ‘abstentionist’ philosophy of the early years up the Trades Disputes Act 1906;

b) ‘collectivism’ and state support for collective bargaining and, the development of trade union power from 1906 to the Trade Disputes Act 1946;

c) the post 1945 rapid growth in trade union membership and power, considerably aided by the nationalisation programme and extension of wage regulation machinery;

d) the Terms and Conditions of Employment Act 1959 and Fair Wages Resolution of the House of Commons and their ‘underpinning’ effect;

e) the strengthened role of the Ministry of Labour Conciliation Department;

f) the move from national to local collective bargaining in the late 1960’s, trade union power identified as being beyond industrial or political control in the period of the mid to late 1960’s;

g) the Royal Commission on Trade Unions and Employers Associations 1965-68\textsuperscript{40};

h) the Labour Governments response, ‘In place of Strife’;

i) the Industrial Relations Act 1971, the role of the National Industrial Relations Court;

j) the Employment Protection Act 1975, Schedule 11, the role of ACAS, the Grunwick\textsuperscript{41} dispute;

k) 1979 - 1997, the policies of ‘deregulation’, removal of trade unions as a

\textsuperscript{37} Workplace Industrial Relations Survey (WIRS), a series of four surveys beginning in 1980, (since 1998 re-titled The Workplace Employee Relations Survey (WERS)) see References.


\textsuperscript{39} Waddington, J. (2003) p 214

\textsuperscript{40} The Tories anticipated the publication of the Donovan Report with their ‘antithesis’ ‘Fair Deal at Work’ which contained proposals for strike ballots, a 60 day cooling off period for strikes, removal of immunities in respect of industrial action about closed shops, legally binding agreements. Much of its content mirrored the views of ‘Shonfield’ in his ‘minority report’ in Donovan

\textsuperscript{41} Grunwick Processing Laboratories --v-- ACAS [1978] ICR 231,[1978] 1 AL ER 338, HL.
countervailing force and, a plethora of trade union and employment laws

1) increasing foreign investment, the 'importation' of an aggressive opposition to the UK 'collectivist model', the development of alternatives;
m) changing product markets and industrial restructuring and the destruction of the trade union 'heartland';
n) the underpinning of trade union rights by European and International law and Covenants;
o) the Employment Relations Act 1999, Schedule A1, the amendment (TULR(CA)1992;

Abstentionism and the Emergence of the 'Collectivist Model'

3.3. Protection for trade union activities including the right to strike, emanated from the immunities within the 'golden formula', developed over the past hundred years or so and, in this regard, the law (in broad concept) stands little changed today Deakin and Morris (2001) Ewing (1986), Painter et al (1996). Where the law was used in the early years, it was invariably used by employers to restrain and defeat many of the activities of trade unions. Only at times of serious legal challenges, political or economic emergency, particularly the first and second world wars, did the government take a really active role in shaping the way in which relations between employers and trade unions should be managed. Then it was more because of the need to control rather than aid trade unions.

42 See: Appendix D which, lists the primary legislation affecting unions during this period.
43 Acts 'in contemplation or furtherance of a trade dispute' the principal formula for the tests of immunity in trade disputes developed as a result of the Trades Dispute Act 1906.
44 The Trade Union Act, 1871 gave to trade unions legal status and introduced immunities and protection to unions. However, the Criminal Law Amendment Act 1871 introduced severe penalties for those trade unionists who may seek to use industrial action.
45 Deakin and Morris (2001) Chapter 11
46 Ewing (1986) p143
48 The Taff Vale Railway Company v Amalgamated Society of Railway Servants, 1901 HL, Judgment, leading to the appointment of a Commission in 1903 to enquire into the state of the law, the rejection of its report and the introduction of the Trades Disputes Act 1906, which extended the provisions of the Conspiracy and Protection of Property Act, 1875 up to this date one of the primary laws giving immunities to certain trade union activities
49 The General Strike resulted in the passing of the Trade Disputes and Trade Union Act 1927 (repealed by the Trade Disputes and Trade Union Act, 1946 which restored the position to what it had been pre 1927) the provisions of which showed clearly the fears and anti trade union backlash which the General Strike had created. The use of trade union funds in strikes, contracting in, not out, of political funds, the prohibition of civil servants joining a trade union with political funds, the outlawing of the closed shop in local authorities or businesses contracting services to local authorities
50 The Ministry of Labour was developed after the 1914-18 war designed to support the Governments policy of encouraging voluntary methods of industrial relations and settling disputes. It was shortly after the 1914-18 war that the Industrial Courts Act, 1919 came into operation. Together with the Conciliation Act 1896, the 1919 Act represented much of the underpinning of industrial relations within the UK through to the early 1960s.
3.4. Until 1971, trade unions had no statutory right to recognition. Prior to this the consensus had been that free collective bargaining was the way to solve industrial relations problems. However, whilst Governments tended to encourage ‘collectivism’, ‘abstentionism’ was the position they took on the question of the ‘right’ to recognition and collective bargaining. Collectivism did not, however, even at its zenith in the 1970’s, cover the majority of the workforce, there remained large sectors of the workforce not represented by trade unions.

3.5. In these early years, unions were relatively free of regulation and legal controls and could seek the support of other trade-unionists to take secondary action against recalcitrant employers and to persuade their employers not to deal with companies that did not employ union labour, or who would not recognise trade unions. Because there has never been a positive ‘right to strike’, or engage in (as the law terms it) a ‘trade dispute’\(^5\)\(^1\). Such actions have been the most vexatious issues of industrial relations and employment law, frequently exacerbated by inappropriate judgments by the courts, and legislation, which it appears owed more to political need than the development of good law.

3.6. The ‘golden formula’, has frequently been under legal challenge. In the 1960’s it was established that it in fact only protected breaches associated with employment contracts, commercial contracts\(^5\)\(^2\) were not covered by the immunity. Painter et al (1996). However, from 1979 the law relating to ‘trade disputes’ began to change significantly, with the consequent narrowing of the protection conferred by the ‘golden formula’. The removal from the protection of the ‘golden formula’ of trade disputes involving issues of trade union recognition, also increased control on the use of the strike weapon, was to prove to be a decisive development of law. These developments were a very significant change in government policy away from collectivism, which more than any other change in law, began the debilitation of the trade union movement. The law changed such that, trade unions applying sanctions against employers because they refused recognition or that they did not employ union labour, became unlawful acts which, could result in a union (and individuals) losing their immunities. Deakin and Morris (2001) illustrate the affects of these changes on trade unions over the period from 1980\(^5\)\(^3\) to 1993\(^5\)\(^4\), saying: of the Conservative Government “They began by dismantling major supports to collective

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\(^5\)\(^1\) TULR (C) Act 1992 S.219 (1) to (4)
\(^5\)\(^2\) J T Stratford & Sons Ltd v Lindley [1965] AC 269
\(^5\)\(^3\) Employment Act 1980
\(^5\)\(^4\) Trade Union Reform and Employment Rights Act 1993
bargaining...." A remaining 'underpinning' of state support for collectivism was removed in 1982 by rescinding the Fair Wages Resolution, because as Deakin and Morris say: "it was perceived as a damaging anachronism which impeded competitiveness". These draconian interventions of law, began to seriously impact upon the 'collectivist model'.

The Early Years - Trade Unions as Conspiracies -The period of ‘abstentionism’.

State Support for ‘Collective Bargaining’- A brief Overview

3.7. Painter et al (1996) say:

"In terms of international law, collective bargaining is the key element in the general freedom of association underpinned by four key legal sources, namely the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, art.11; the International Labour Organisation Convention 1949 (No.98); the European Social Charter 1961; and the EC's Community Social Charter 1998 (which includes as one of the 'fundamental social rights of workers, the 'right to conclude collective agreements'). The Convention is incorporated in UK law by the Human Rights Act 1998."

In 1961 the Council of Europe agreed a Social Charter which, in Articles 5 and 6, promoted collective bargaining and guaranteed the right to strike. In 1966 the United Nations adopted the International Covenant on Economic, Social and Cultural Rights which in article 8 guaranteed the same rights. The United Kingdom ratified each of these articles and their sub-clauses. One might therefore have expected an approach to emerge about trade union rights more consistent with these provisions. However, Painter et al (1996) make the point that whilst collective bargaining may have been accepted by some employers as early as the eighteenth century, the existence of trade unions and their right to organise and pursue their objectives was far from 'recognised'. Even today, almost 180 years on from the repeal of The Combination Acts55, there are still many within industry, politics and the judiciary who would prefer at best an abstentionist approach to the whole question of trade unions and collective bargaining, and many who continue to embrace anti 'collectivism' as the only way.

3.8. There has never been any automatic right to recognition56, nor has there been any legal right to strike. The right to strike was based upon legal immunities derived from statutory provisions but primarily developed by common law rather than any positive

55 Combination Laws Repeal Act 1824 and Combinations Laws Repeal Act Amendment Act 1825.
56 With the possible exception of the Nationalised Industries where there was a statutory responsibility on the employer to establish appropriate 'joint machinery for the settlement of terms and conditions of employment and for joint consultation on matters of common interest'.

protections for those who may take part in a trade dispute. However, the ‘right to strike’ is critical as an ‘instrument of last resort’ in the furtherance of trade union objectives, including the right to recognition and, the right to bargain collectively\textsuperscript{57}. Ultimately it is ‘the’ countervailing power which can be exercised against the clearly greater power of the employer in the work relationship Wrigley (1997) and (2002).

3.9. There have been a number of attempts by governments to provide machinery to remove the need to resort to striking. During the period of the Second World War steps were taken to prohibit strikes through the introduction of compulsory arbitration. Defence Regulation 58AA (Statutory Rules and Orders 1940 No 1217)\textsuperscript{58} empowered the Minister of Labour to make an order for prohibiting a strike or lock-out in connection with any trade dispute.\textsuperscript{59} Trade disputes could be referred, by the Minister, for settlement under the Industrial Courts Act 1919. The provisions of these wartime regulations and orders were used as background to frame the Industrial Disputes Order 1951, however, this Order did not contain any prohibition of a strike or other form of industrial action. Also the new Order extended its coverage by referring to ‘issues’ instead of, as was the case with Order 1305, the somewhat more limited provision of “the observance of terms and conditions of employment (or terms not less favourable)”.

3.10. As long ago as 1942, prior to the repeal of the Trade Disputes and Trade Union Act 1927\textsuperscript{60}, Lord Wright, in the case of \textit{Crofter Hand Woven Harris Tweed v Veitch}\textsuperscript{61} said: “Where the rights of labour are concerned, the rights of the employer are conditioned by the rights of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining”

This was a view, which held throughout the period of the 1950s/60s. Much of what Donovan (1968)\textsuperscript{62} had to say on this matter supported the principle of the workers right to withhold their labour\textsuperscript{63}. However, Donovan rebutted the idea that the right to strike could be improved legally. Donovan was also supportive of Lord Denning's opinion

\textsuperscript{57} The right to bargain collectively increasingly become an important issue for trade unions in that employment law has relied upon this concept as its base definition for the purposes of determining whether a trade union had various statutory rights eg disclosure of information, collective redundancies, health and safety, etc.

\textsuperscript{58} The order made under the Defence Regulation was entitled: Conditions of Employment and National Arbitration Order, 1940 (Statutory Rules and Orders, 1940, No 1305).


\textsuperscript{60} Replaced by the Trade Disputes and Trade Unions Act 1946.

\textsuperscript{61} \textit{Crofter Hand Woven Harris Tweed v Veitch} (1942) HL

\textsuperscript{62} \textit{Royal Commission on Trade Unions and Employers Associations} 1965-68, Cmd 3623, HMSO, London

\textsuperscript{63} \textit{Royal Commission on Trade Unions and Employers Associations} 1965-68, Cmd 3623, HMSO, London, paras 928-935
(mentioned below) referring to the right to strike as "now well recognised". However, on the specific matter of giving a discrete legal definition to strikes about recognition, Donovan was sceptical as to the need for such provisions. In 1968 in the case of *Morgan v Fry*, at the very time of Donovan, Lord Denning was also clear that the argument that an employee taking strike action was a breach of the contract of employment was unsustainable.

3.11. The changes in law wrought by Conservative Governments from 1979 did much to reverse this position, certainly in the areas of strikes about recognition, union labour contracts, secondary strikes etc. The right to picket was also subject to restrictive regulation and non-compliance with the law (including the Code) could lead to the loss of immunities, a situation, which in large measure remains so today. The ‘golden formula’ of immunities underwent fundamental change. These changes were throughout the period of the 1980’s revisited, and built upon by statute and case law in the most draconian manner, the costs in every respect for trade unions has been high.

3.12. The ability to use the strike weapon in issues of recognition and collective bargaining is as fundamental as its use in any other trade dispute. Recognition, which does not include the right to bargain collectively, has invariably been viewed by trade unionists as ineffective recognition. Unfortunately, Donovan did not see that there was a need to give discrete legal definition and specific protection under UK statute law, and the immunities, of the right to strike in furtherance of a claim for recognition. Whilst it is likely that much of what took place by way of legislative change during the period of the 1980-90’s that affected recognition, may nonetheless have taken place, the passage of such legal reversals may have been more difficult to accomplish. Given that (historically) neither the automatic right to recognition nor the right to strike had any

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64 *Royal Commission on Trade Unions and Employers Associations 1965-68*, Cmd 3623, HMSO, London, para 935

65 *Morgan v Fry*, (1968) CA. Per Lord Denning: "It is difficult to see the logical flaw in that argument. But there must be something wrong with it: for if that argument were correct, it would do away with the right to strike in this country. It has been held for over 60 years that workmen have a right to strike ... provided that they give sufficient notice beforehand: and a notice is sufficient if it is at least as long as the notice required to terminate the contract."


67 Code of Practice on Picketing 1980 - Revised in 1992

68 *Donovan Royal Commission on Trade Unions and Employers Associations 1965-68*, Cmd 3623, HMSO, London, at para 212 said: “properly conducted, collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society.”

69 An attitude on the part of trade-unionists which has changed quite markedly over the period of the 1980-90s as is argued later.
express provisions within UK Law\textsuperscript{70}, how then have trade unions overcome (in many instances without resorting to strike action) the reluctance of employers to agree recognition and collective bargaining?

3.13. The Ministry of Labour Industrial Relations Handbook\textsuperscript{71} succinctly defines collective bargaining. This was at a time when the majority of collective agreements were ‘industry-wide’, usually entered into between a union/unions and an employers association to cover designated grades of employees. The structure of industry and the manner in which industrial relations, tended to be ‘centrally organised’, aided a ‘collectivist’ approach to regulation. To some extent it was the breakdown of this system of ‘centralised’ industrial relations that gave impetus to the progressive incursion of law and the decline of ‘collectivism’, as the ‘dominant model’.

3.14. During the 1950-60’s, laws were developed which ‘underpinned’ the principles of collective bargaining and indirectly gave support to recognition. In 1957, the government decided to abolish the Industrial Disputes Order 1951 and introduced the Terms and Conditions of Employment Act 1959, Section 8\textsuperscript{72} of which removed the word ‘issue’ and introduced the term ‘claim’. Claims could be reported to the Minister of Labour for adjudication by the Industrial Court (IC)\textsuperscript{73}. The IC also became responsible for dealing with claims arising under the Fair Wages Resolution of the House of Commons.

3.15 Whilst it was never the stated intention of the 1959 Act to enforce recognition, it did in some cases prove to be a useful device in gaining recognition. Employers tended to take the view that there was no alternative other than at least to observe the minimum terms and conditions negotiated within their industry or district. In many cases, the ultimate value of the 1959 Act was not that it gained for many employees the application of industry wide ‘minimum standards’ but, that it helped trade unions gain the right to negotiate terms and conditions which, were commensurate with the ability of an employer to pay and which, at the very least, reflected the ‘general standards’ within the particular industry.

\textsuperscript{70} TULR(C)A S.180 provided that it is possible to incorporate into individual contracts the terms of a collective agreement not to strike. Rookes v Barnard 1964 AC 1129 has often been cited as authority for this in the past, in future this argument will only be relevant where a collective agreement does not come under the scope of TULR(C)A s. 180(1).


\textsuperscript{72} Terms and Conditions of Employment Act 1959 S 8 (1) (a)(b)(c)
3.16. Not until we see the emergence of a more ready acceptance of recognition and collective bargaining as being the ‘model’ (underpinned by collectivism in the public sector and statutory underpinning) do we find the start of a period of significant trade union growth and increase in power and influence. However, it is at this time, with the extension of trade union organisation into white collar employment, that the right to recognition and collective bargaining emerges again as a major issue.

**Trade Union Power, Increasing Recognition and Collective Bargaining**

**Support for the ‘Collectivist Model’ - The Growth of Staff Unions**

3.17. Flanders (1970) argues that over the two decades of the 1960’s and 1970’s trade union growth had “stagnated” in terms of union membership density, a fact which is born out by the research of Bain and Price (1980) and Marsh (1979) and Wrigley (1997 and 2002). Much of the trade union growth that did take place in the 1960-70’s was in ‘white collar’ or ‘staff’ employment, particularly within the manufacturing industries. However, during the period 1959 to 1977 unions generally in Mining, Railways, Iron and Steel, Building and Construction Textiles and Agriculture lost 900,000 members Marsh (1979). White-collar unions, particularly within private industry, were the fastest growing unions Bain (1970). Marsh (1979) illustrates the growth of four major white-collar private sector unions (ASTMS, APEX, TASS and NUBE) from an aggregate membership of 279,000 to 890,000 over a period of 1966 to 1977. Growth within the banking, insurance and finance industries over this same period, was spread over a larger number of competing unions, many of which were ‘house unions’.

3.18. With the development of modern production systems and, the need for integration of production and administration to match the increasing scale of company’s there developed a tendency for manual workers (with trade union membership tradition and many with active backgrounds in trade union representation as shop stewards etc) to be transferred into ‘new staff jobs’. It was these developments, (new technology affecting job content and status) that led some manual unions to establish their own ‘white collar’

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73 The terms under which such claims were reported to the IC can be seen in the preamble to each of the Industrial Court cases at Appendix IC.1 and IC.2
74 Table 1.4 Union Membership and Density by Sector in Great Britain, 1948-1979, in Industrial Relations in Britain, Bain G.S., illustrates this rapid growth in white collar unionism, particularly within the manufacturing industries. See also: Carter, B.(1985) *The Theory of Middle Class Trade Unionism, Capital, Class Conflict and the New Middle Class*, Routledge, 1985, Table 5.1 pp 153: Marsh. A. (1979) *Trade Union Handbook*, Gower Press, 1979, Table 4 page 15.
75 Marsh (1979) Table 2, p 13.
76 Marsh (1979) Table 4, p 15.
77 Unions or staff associations set up to cater solely for the employees within a particular bank or finance company. Some of these ‘house unions’ were not TUC affiliated and in some cases were established and registered as independent unions during the period of the Industrial Relations Act 1971 as an attempt to prevent TUC unions gaining recognition.
sections. Occasionally this could lead to serious inter union recruitment problems Simpson (1993)\textsuperscript{78}. White-collar workers, working in close proximity with the shop floor presented the ideal platform from which to organise. However, Carter (1985) has little regard for such developments. In the practical experience of the author, it was most frequently such developments which created the environment for membership to develop, and such employees who were the first contacts that provided the ‘catalyst’ when organising activities commenced at a company.

3.19. Notwithstanding the help given by manual workers, staff unions met very strong opposition from many employers. In the late 1970’s, whilst most employers accepted trade unionism in blue-collar occupations they were not in favour of organisation amongst their staff, Marsh (1982). Recognition was often only won after long and hard fought disputes. Donovan\textsuperscript{79} reported on this discriminatory phenomenon and its implications for “public policy” (see para 224).\textsuperscript{80} Many employers saw staff employees as ‘the last bastion’ of their ‘prerogative’ and resisted recognition and collective bargaining not simply because they were ‘anti collectivist’ (which in most cases was probably a fact) so much as they were fearful of staff employees adopting similar attitudes to change as was the case with manual workers unions. Issues such as \textit{status quo ante}\textsuperscript{81} were as much a problem for management in the staff area, as it often was with the shop-floor unions, when matters of changed working practices were at issue. This was true of manufacturing and particularly the Engineering Industry where there was a long experience of the type of restrictions which could be placed upon the change process by the use of the \textit{status quo ante}.

\textbf{The Fair Wages Resolution and Terms and Conditions of Employment Act 1959}

3.20. The Terms and Conditions of Employment Act 1959 was frequently used, to ‘pressurise’ employers into applying the minimum terms agreed within an ‘industry’.\textsuperscript{82}

\textsuperscript{78} Cheall v APEX [1983] 2 AC 180; See: Simpson, S. (1993) \textit{Individualism vs Collectivism: an Evaluation of s14 of the TURERA 1993}, Industrial Law Journal, 1993, Vol. 22, No 3, pp181. The author was the official of APEX responsible for recruiting Cheall, and some 300 of his fellow workers and ultimately dealing with the TUC Dispute Committee Hearings and Cheall and others expulsion from APEX to give effect to the award of the TUC. The author was also witness in chief for APEX in the High Court proceedings.

\textsuperscript{79} Royal Commission on Trade Unions and Employers Associations 1965-68. Cmnd 3623, HMSO, London, paras 219-224

\textsuperscript{80} However, Donovan as mentioned above, failed to see the value of the Terms and Conditions of Employment Act 1959 in the very grades of employment to which the report was referring.

\textsuperscript{81} This was a provision within many agreements between employers and manual unions whereby changes to work practices which may have an implication upon terms and conditions could not be given effect by the employer until the whole of an agreed procedure had been exhausted. The staff unions party to the national recognition agreement with the Engineering Employers Federation had a similar ‘status quo ante’ provision.

\textsuperscript{82} It was this fact of the IC being able to impose specific contractual terms upon a respondent employer as provided within a national collective agreement which added ‘weight’ to employers preferring to recognise a trade union.
The Fair Wages Resolution of the House of Commons 83 (many local authorities also adopted similar ‘resolutions’ relating to their contracting policies) was, over many years, prior to the 1959 Act, also a useful device for furthering collective bargaining and recognition, see Flanders and Clegg (1963)84. The Engineering Industry85 was a prime example of the way this legislation could ‘underpin’ the development of recognition and collective bargaining, particularly in respect of ‘staff unions’86 within the industry. Unions such as the Clerical and Administrative Workers Union (CAWU)87, the National Association of Clerical and Supervisory Staff (NACSS) which was the staff section of the Transport and General Workers Union, the Association of Scientific Workers88 and, the Association of Engineering and Shipbuilding Draughtsmen89, the Managerial Administrative and Technical Staff Association (MATSA) which was the staff section of the General and Municipal Workers Union, now the GMB.

3.21. Within the Engineering Industry ‘staff unions’ (with the exception of ASSET which became MSF) negotiated at national level with the Engineering Employers Federation (EEF), on minimum terms and conditions of employment for their members within federated companies. However, not all companies were members of the EEF. In 1964 the EEF had approximately 4000 member companies employing some 1,900,000 manual and staff workers90, less than fifty percent91 of those employed within the industry at that time. After a round of national negotiations with the EEF each union would pursue local negotiations with non-federated companies at which they were recognised (where local agreements were not negotiated, which gave the same as or better than the national agreement) to seek the application of the newly agreed terms for their members. Recognised unions rarely had any problem in gaining the application of a pay increase and/or the new minimum terms for the industry. The achievement of a

83 There were three Fair Wages Resolutions of the House of Commons; 1891, 1909 and 1946. The Fair Wages Resolution in law did not exist, and yet it had a considerable affect upon the recognition of collective agreements and in turn they did, on occasion, have an impact upon employers agreeing to trade union recognition and collective bargaining.


85 However, a review of the cases heard by the Industrial Court under the Terms and Conditions of Employment Act 1959 will show many trade unions and their members benefited in a wide range of industries and services.

86 Donovan referred to such unions as ‘white collar unions’

87 CAWU changed its name to Association of Professional Executive Clerical and Computer Staff (APEX) in the mid 1970s and has now been absorbed by the GMB.

88 The Association of Scientific Workers amalgamated with ASSET to form the Association of Scientific Technical and Managerial Staff (ASTMS).

89 Which became the Draughtsmen and Allied Technicians Association (DATA) now amalgamated within the AEEU


91 Most ‘non-federated’ employers were small to medium size and difficult to organise into trade unions.
new national agreement was also used by the staff unions as a recruitment opportunity, at companies where there was no membership, particularly where it was known that salaries or other terms and conditions were below (or not significantly better than) the agreed national minimum. Recruitment campaigns were organised around applications to employers under the 1959 Act, s.8, to give effect to the new salary increases and/or agreed minimum terms and conditions for the industry, with the threat that the Act would be used to enforce compliance if necessary.\(^9\)

3.22. It is unfortunate that Donovan\(^9\) appeared to have little regard for the value of the Terms and Conditions of Employment Act 1959, in some cases\(^9\), only the existence of this Act, and to a lesser extent the Fair Wages Resolution of the House of Commons helped retain union membership, particularly amongst employees at companies where no recognition had been achieved. The fact that a union was able to apply the pressure of these statutory provisions maintained the ‘loyalty’ of membership whilst the campaign to recruit more members, and the battle for recognition with the employer continued, sometimes over many years.

3.23. Many employers used individual review methods of increasing employees pay, particularly for staff employees, frequently producing rates of increase in salaries far below those increases agreed nationally\(^9\). In many cases it was because these ‘review methods’ gave rise to seriously anomalous treatment, that employees turned to trade union organisation as the only means of redressing the way in which they were falling behind in pay and benefits.\(^9\)

3.24. A serious limitation of the 1959 Acts value was that its provisions could only be used in cases where industry agreements were negotiated, however, its effectiveness has been given little credit as a device in gaining recognition. Whilst one must agree it was not, a fully effective means of extending the scope of collective bargaining, it did have

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\(^9\) Based upon the experience of the author whilst employed as a National Official throughout the 1960s, for the CAWU, having responsibility for some 60,000 engineering industry members

\(^9\) See Appendix IC.2, para 14, supports what is said about ‘individual reviews of pay’. Paras 18-22. *Centrax* (Appendix IC.2) like *Black Clawson* (Appendix IC.1) sought to deny the ‘general applicability’ of Section 8 of the 1959 Act where it refers to ‘terms and conditions’ see para 25 of Appendix IC.2.

\(^9\) There is some evidence to support this contention in the Industrial Court cases generally and as referred to later (Black Clawson International Ltd (Appendix IC.1) and Centrax Limited (Appendix IC.2))
considerable value when used as a strategy in a campaign\textsuperscript{97} for recognition and collective bargaining. Furthermore, in a limited way, particularly where recognition and collective bargaining were gained, the Act did assist in raising low pay.

3.25. Unfortunately the records available of cases taken before the IC under the 1959 Act appear to be incomplete\textsuperscript{98}. However, the records held at the Public Records Office, Kew, (incomplete though they may be) do not support the contention of Deakin and Morris\textsuperscript{(1998) and (2001)}\textsuperscript{99} that the 1959 Act was "used only infrequently", the records show conclusively a better 'usage'. However, Deakin and Morris (1998) and (2001) recognise the significance of the 1959 Act in enforcing agreed terms and conditions and persuading many recalcitrant employers of the futility of seeking to evade union recognition. Rubery and Edwards\textsuperscript{(2003)}\textsuperscript{100} argue that unions had failed in their 'industrial mission' in respect of the low paid, and with the abolition of wage regulatory machinery had failed to organise the low paid and bring them within the collective bargaining process. However, in their analysis they cite three ways in which law has been used in the UK to enforce collective agreements on employers not parties to them\textsuperscript{101}: first through the Fair Wages Resolution (1891) and 1946; second through Schedule 11 of the Employment Protection Act 1975; and, third was by union action. However, their analysis and argument is seriously remiss in that it fails to make any mention of the Terms and Conditions of Employment Act 1959. However, one must accept that, given its success in the cases in which it was used, had it been used more generally it could have proven to be an even greater aid to gaining recognition. During the Acts final three years IC cases ranged over a wide variety of trades and industries: plastics, basket weaving, transport, pottery, football pools, steel production, engineering, etc, involving various grades of employees both white collar and manual. There is of course another quite plausible reason as to why Deakin and Morris may have arrived at their conclusion that the 1959 Act was little used and that is, the threat of its use more

\textsuperscript{97} See Appendix IC.2 para 4 - illustrates the culmination of a campaign using the 1959 Act over a number of years.

\textsuperscript{98} Research at the Public Records Office, Kew has produced records for the period 1966-68 (Archive ref: EW 8/731 Industrial Court and other Arbitration Awards 1966-68). However, during this brief period there are records of some 48 cases taken before the Industrial Court under the provisions of the Terms and Conditions of Employment Act 1959.


often than not produced a desired result, thus obviating the need to go to the IC. A fact
to which the author can personally testify.

3.26. Two not untypical examples of the value of the 1959 Act are, Black Clawson
International Ltd and CAWU (Appendix IC.1) and Centrax Limited and CAWU
(Appendix IC.2), two of many cases that the author pursued through the Industrial
Court (IC) under the provisions of Section 8 of the 1959 Act.

Black Clawson International Ltd (Industrial Court Case 3160, 1968)

3.27. Black Clawson International Ltd recognised shop-floor unions and had
comprehensive collective agreements and good working relationships. However,
resistance to trade unions organising their staff and the proposition that it should adopt a
‘collectivist’ approach to employee relations was uncompromising. The Company
agreed an ‘Individual Representation Procedure’ with the CAWU and ASSET, however,
refused to allow any form of collective representation or collective bargaining. The
Company, sought to defend its refusal to apply the 1967 Engineering Industry
Agreement on salary increases claiming, it had applied a job evaluation scheme which
gave increases to staff and that all staff had been advised that National Agreements on
salary increases would in future no longer be applied by the Company. It also sought
to deny the whole thrust of the Act, arguing that Section 8 meant ‘all terms and
conditions’ not just a ‘single aspect of the contract’ which may affected by an
Agreement. In its award the IC accepted the arguments of the CAWU. Unfortunately, the award was very limited in its application (only a few employees benefited), however, the fact that the employer had been compelled to apply the National Agreement for the engineering industry bolstered the morale and significantly improved the membership position of the CAWU and ASSET.

3.28. The action taken by the CAWU against the Company, resulted in the company, in
1969, recognising the CAWU and ASSET. The struggle for recognition had involved the
ASSET, who organised a number of shop-floor supervisors and technicians. However,
because it was not a party to the National Agreement ASSET could not be joined in the
IC claim. However, both unions had reported the dispute about recognition to the

102 whilst employed as Assistant General Secretary by the then CAWU
103 The Industrial Court, Terms and Conditions of Employment Act 1959, Black Clawson International Ltd
and Clerical and Administrative Workers Union, award dated 29th January 1968, case 3160, lodged at the
104 Industrial Court Award 3160, paras 7 and 25 (Appendix IC.1)
105 See Appendix IC.1, para 22-23.
106 See Appendix IC.1, para 37(1) to (6).
Ministry of Labour Industrial Relations Department, seeking the assistance of the Conciliation Service. Whilst the efforts of the Conciliation Service proved to be fruitless in the early stages (prior to the claim by the CAWU to the IC) of the joint unions claim for recognition by the Company, subsequent to the CAWU action in the IC, the Conciliation Service was instrumental in gaining recognition and collective bargaining.

**Centrax Limited (Industrial Court Case 3150, 1967)**

3.29. A further example of the value of the 1959 Act is the case of Centrax Limited and CAWU\(^{107}\). The CAWU had sought recognition for a number of years and had invariably experienced some difficulty in persuading the company to apply the terms of the National Agreement negotiated with the Engineering Employers Federation (EEF), however, the company had always after delay and argument applied the agreement. In 1966 Centrax Limited recognised the CAWU for collective bargaining, however, in 1967 an issue arose regarding the non application of the 1965 National Agreement negotiated between the CAWU and the EEF. In this case the IC awarded in favour of the CAWU, however, giving effect to its award without retrospection.

3.30. Whilst it was not a ‘perfect instrument’, through which to gain recognition, this Act was invaluable as a means to that end, Deakin and Morris (2001)\(^{108}\). Many of those same unions which had been so successful in using the 1959 Act were some years later to be just as affective in utilising the provisions of the Employment Protection Act 1975, Schedule 11 O’Hara (1996)\(^{109}\), on occasions in conjunction with, but often as a separate device from, the provisions of Section 11 of the same Act.

**The Changing Politics of Collectivism - The Emergence of Increasing Statutory Intervention**

3.31. Their growth in strength frequently brought the trade union movement into conflict, not simply with employers, but also governments. Trade unions were increasingly portrayed as the primary reason for the malaise of British industry and its uncompetitiveness, Blanchflower and Freeman (1994), Hayek (1985), Williams et al

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\(^{109}\) Employment Protection Act 1975, Schedule 11, Part 1, (1), (2) (a) and (b). Schedule 11 was used in a different manner to earlier similar laws (the 1959 Act) indeed a deal of wage inflation could be attributed to the manner in which it was used particularly within the relatively well paid industries, where it was used almost solely as means of bridging differentials which created ‘circuitous claims’ to restore eroded differentials; see also O’Hara Community Law and British Industrial Relations, Worker Participation and Collective Bargaining in Britain: the Influence of European Law, The Institute of Employment Rights, London 1996. pp23.
in World markets. There emerged, in the mid 1960’s, increasing impatience in Westminster with the ‘interference’ of trade unions in the political process (particularly economic management) and resistance to government policies Bain (1993)\textsuperscript{111}. It was this shift in the ‘political power’ Coates (1994) of trade unions that persuaded the government to take steps to develop a new order for industrial relations by setting up the Donovan Commission, Brown (1992)\textsuperscript{112}. The trade unions co-operated with the work of Donovan and in most major respects welcomed its report. However, it was to have only transient affects upon the development of industrial relations in the mid to late 1970’s. The publication of the Tory response ‘Fair Deal at Work’ and subsequently the Labour Governments ‘In Place of Strife’, had significant political results which were to usher in a whole new era for trade unions during the 1970’s. It was these developments which proved to be the withdrawal from the historic ‘abstentionist’ policies of governments and the move to statutory interventionist, regulatory policies. Also at this period the industrial relations structure by which trade unions had tended to draw strength and develop membership, power and influence, was itself beginning to change. Industry structure was itself beginning to change. Collective bargaining (outside the public sector) had been moving away from national industry wide agreements to company based (in some cases nation-wide across a company group) agreements.

3.32 It is frequently argued within the literature that industry-wide bargaining is more attractive to unions than individual plant bargaining Brown et al (2003)\textsuperscript{113}. The reasoning behind this argument is that such agreements encompass whole product markets on a regional or nation-wide basis. For unions there were ‘economies of scale’ in being able to set base pay structures and terms and conditions nationally. For employers there is an argument that there were economic advantages in being able to “take wages out of competition” Brown et al (2003)\textsuperscript{114}. However, bargaining for a whole industry meant that non-members also benefited from any improvements gained. Within many industries (particularly engineering) plant or company wide bargaining covered much of the industry and union members, both ‘federated’ and ‘non-federated’ companies. During the 1970’s white-collar unions relinquished national bargaining

\textsuperscript{111} Roy Lewis, Collective Labour Law, pp368. Chpt 15
within the engineering industry. The white-collar unions felt that there would be greater returns in terms of membership recruitment, concentrating upon using plant agreements and ‘infill’ organising activities as a means to gain union shop agreements. However, it was not until 1990 that the National Agreement between the EEF and the Confederation of Shipbuilding and Engineering Unions finally ended Cully et al (WERS) (1999)115.

3.33 With the advent of the legislative and contextual changes of the 1980’s and 1990’s, what was thought to be an advantage during the 1970’s tended to provide a platform for widespread restructuring of collective bargaining and the move to individualisation of contract terms. The decline in collective bargaining is illustrated by Brown and Walsh (1991)116, Brown et al (2003)117 and Cully et al (1999)(WERS)118 Milward et al (2000)(WERS)119. However, Cully provides evidence and data across employers with no or little union organisation, showing the scope of negotiation and consultation with ‘employee representatives’ has continued, albeit more about organisational change and procedural than substantive terms.

Post Donovan Commission, the Industrial Relations Act 1971

3.34. The Industrial Relations Act 1971 (IRA 1971) (which had more regard for the recommendations of the ‘Shonfield Note of Reservation’120 and ‘Fair Deal at Work’ than those of the Donovan Report itself) brought in a whole new approach to industrial relations. The IRA 1971 introduced a completely new approach to trade union rights and immunities Heaton’s121 being a particular cause celeb’re Lewis (1983)122. From a consensus which was that litigation was not the route to resolving industrial conflict, the UK was launched upon a path along which trade unions and employers (initially both reluctantly) have increasingly been propelled, involved with law, rather than the development of effective processes for negotiation, conciliation and arbitration. However, as Deakin and Morris say123, the IRA 1971 cannot be compared with later Conservative legislation because, whatever its failings, it was still grounded in ‘collectivism’.

120 Royal Commission on Trade Unions and Employers Associations 1965-68, Cmd 3623, HMSO, London pp288-302
3.35. The Act required the Registration of Trade Unions which meant that only 'independent' registered trade unions would have the advantages and protections provided by the Act. A new National Industrial Relations Commission (NIRC) was brought into operation to oversee the implementation of the Acts provisions on:

a) The right to become a member of a trade union;
b) The right to recognition;
c) Sole bargaining rights;

At this time an Industrial Relations Code of Practice was introduced. This Code was to prove to be the first of many 'codes' covering specific areas of industrial relations and discrete aspects of legislation (discipline, picketing, strike ballots, equal pay, sex discrimination etc). The Code of Practice was viewed by some trade unionists as a helpful development. In many of its recommendations such as, collective bargaining and recognition of trade unions, it gave 'direction', if not overt support, as to what was expected which in itself gave continued underpinning to collectivism.

3.36. A significant development under the new laws was the introduction of a new legal definition of recognition and a procedure whereby issues involving recognition could be resolved. A process to the same ends was continued under the provisions introduced by the Employment Protection Act 1975, however, discontinued when the procedure was abolished by the Employment Act 1980.

**The TUC and Employers Boycott of the IRA 1971**

3.37. With the exception of a small minority (principally in banking, food manufacturing and maritime) unions affiliated to the TUC universally condemned and boycotted the IRA 1971 and refused to become registered under its provisions. It was not solely trade unions which opposed the IRA 1971, many substantial employers also had little regard for its provisions, particularly the legal enforcement of collective agreements.
which was deemed to apply, unless express terms were included within agreements to
the contrary. This incursion into the collective bargaining arrangements was regarded
(by each side for their respective reasons) as unnecessary interference, and contrary to
the view expressed by Donovan and the Courts\textsuperscript{131}. There was a shared concern,
employers believing the main disadvantage to be the removal of ‘flexibility’ in the way
in which collective agreements (and consequently employment contracts) could be
managed around changing production and company structural needs. Whilst trade
unions saw legal enforceability as an encumbrance to their needs in being able to
respond in a countervailing manner (normally industrial action of some form) to the
change in production methods and structural changes in companies employing their
members.

3.38. A clear indication of the degree of mutuality (between the employers and unions)
was the rejection of the IRA 1971 provisions for legally enforceable collective
agreements\textsuperscript{132}. Trade union and employers (including the EEF) rejection of legally
enforceable agreements, TINALEA (This Is Not A Legally Enforceable Agreement)
became an automatic ‘requirement’ in all negotiations under the provisions of
agreements across industry and commerce. Within the Engineering Industry the
incorporation of this clause was a pre-requisite before negotiations at national level, or at
all stages of the procedure agreement. These attitudes were symptomatic of the mutual
desire to ‘avoid’ the rigors of the IRA 1971,Deakin and Morris (1998)\textsuperscript{133}, to such an
extent that the Act, had very little effect in most companies and, as a consequence, trade
union development, Bain and Price (1983)\textsuperscript{134} was little affected by the IRA 1971, or its
successor laws of the mid 1970’s.

Development of ‘Alternative Trade Unions’.

3.39. During the era of the IRA 1971 there emerged a ‘raft’ of staff associations and non
TUC unions, some of which continue to operate today. Many were sponsored by
employers, claiming ‘independence’ and seeking registration under the Act in order to
enter ‘sole bargaining rights’ agreements with employers, who wished to provide an
‘alternative’ means for conducting industrial relations to that of recognising a TUC

\textsuperscript{131} Ford Motor Co Ltd \textit{v} AUEW [1969] 2 All ER 482.

\textsuperscript{132} TULR(C)A Schedule A1 revisit this whole subject both in respect of collective agreements covering terms
and conditions and ‘no strike agreements’. Whilst trade unions have not been enthusiastic about this,
employers have not shown their antipathy. However, legal enforceability must be by agreement not by
‘omission’ as was so under the IRA 1971.


\textsuperscript{134} Union growth over the period from the publication of Donovan (1968) to the election of the Tories
(1979) shows increases across the economy in white collar and manual workers, see: Bain G.S. (1983)
affiliated union. What became known, as 'sweetheart deals' became the vogue in an
effort to evade the rigors of recognition claims under the Act of 'bona fide' trade unions.
Many such unions comprised a significant part of the non-TUC unions to which the
thesis makes reference elsewhere. Given the TUC policy on registration such employers
had in fact little to fear. This development was, however, one of the fears that unions
such as the National Union of Bank Employees (NUBE) had and resulted in them
deciding not to follow the TUC boycott of the IRA 1971 and registered, and as a result
were expelled from the TUC. NUBE had been facing the growing strength of staff
associations, Cole (1955) over many years within each of the clearing banks. After
many years of battling with recalcitrant employers over the whole question of
recognition and collective bargaining NUBE saw the threat that its agreements with
employers, membership and future development, would be seriously compromised if it
did not register. However, contrary to these fears about staff associations posing a
threat to 'bona fide' trade unionism and collective bargaining, they in fact in some areas
of the financial services industry, actually aided its growth, through transfers of
engagements with various staff unions. ASTMS was successful in merging with a
number of staff associations particularly within the insurance and finance sectors.
However, this activity did lead to a number of inter union disputes, under the Bridlington
Principles, about whether a merger (transfer) with a staff association was in fact
'commencing organising activities' by the TUC affiliate, the leading case is Rothwell v
APEX and the TUC.

The Employment Protection Act 1975 (some comparisons with the ERA 1999)

3.40. The repeal of the IRA 1971 and the introduction of the EPA 1975 hopes were
raised that the 'collectivist model' would be consolidated. However, this was to prove to
be illusory. 1975 to 1979 proved to be a moribund experience in the attempts by
Government to gain progress in the application of law in a number of areas of industrial
relations and employee involvement. Bullock was vigorously opposed by the CBI.

Industrial Relations in Britain, Bain and Price 'Union Growth: Dimensions, Determinants, and Destiny,
Basil Blackwell, Oxford, 1983, Part 1, Chpt 1, Table 1.4, pp11.
135 The possibility that something similar is again occurring under the ERA 1999 is discussed later.
136 NUBE changed its name to BIFU and subsequently through merger with a number of independent
individual bank unions became UNIFI. At the time of the thesis being written up UNIFI was in discussions
with Amicus with a view to merging to form a significant white collar section together with MSF which had
earlier amalgamated with the AEU to form Amicus.
pp271
138 Barclays, NatWest, Lloyds, and Midland, Banks.
139 Trade Union (Amalgamation etc) Act 1964
140 Rothwell v APEX and the TUC [1975] 375 CA
141 Bullock 1977, Committee of Inquiry on Industrial Democracy, Report, Cmnd 6706. London. HMSO.
142 O'Hara (1996) Community Law and British Industrial Relations, Worker Participation and Collective
and received little support from the TUC which effectively (at that time) brought to an end the whole debate about ‘employee involvement’, the effective re-opening of which would have to await European intervention Deakin and Morris(1998)) and O’Hara (1996)143 to see it again on the political ‘agenda’, albeit in the form of ‘Works Councils144 not ‘Board Representation’.

3.41. The post ERA 1975 period saw some notable cause celebre’s, Grunwick 145 being an example of a most lengthy and bitterly fought, dispute about the right to recognition and collective bargaining, about which, the new laws could contribute little by way of a resolution. The damage done by Grunwick was much more than that done to the strikers, APEX and ACAS, it went to the core of the cultural support (public policy) for trade union rights. However, whilst many aspects of the law were neutered, primarily because of Grunwick146. The 1975 Acts strengthening of Codes147 to underpin collectivism and, particularly the role of ACAS, it was more of a success than it is given credit for. ACAS illustrate in Towers and Brown (2000)148, the extent of the success of the conciliation process in assisting trade unions to gain recognition rather than the tortuous (somewhat discredited) process of the law. Whilst conciliation was the more successful route, there can be no doubt that the reasons for it were, as with other legislative developments on ‘recognition’, the employer preferring an arrangement over which they have a degree of control rather than one where ultimately recognition might be enforced and with it terms and conditions of employment149.

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144 A debate which has continued over the years and is now in the process of being brought to fruition through the adoption of the European Social Chapter and its various Directives, particularly the European Works Council Directive (No94/45) and Article 118(2) (Article 2(2) SPA); see - IDS Employment Law Supplement 81, The European Social Chapter, Incomes Data Services Ltd, London, September 1997. 81.3 - 81.4.5 ppl0-35.
147 Code of Practice No1 Disciplinary practice and procedures in employment; Code of Practice No2 Disclosure of information to trade unions for collective bargaining purposes; Code of Practice No3 Time off for trade union duties and activities.
149 A recurring ‘theme’, under the 1959 Act repeated pre and post ERA 1999.
3.42. There are a number of similarities between where the UK now finds itself on the matter of recognition and collective bargaining\textsuperscript{150} and where it was during the ill-fated era of the Employment Protection Act 1975. The CAC however, appears to have greater powers and has been more successful in exercising control under the 1999 Act than was ACAS under the 1975 Act. However, Lord McCarthy\textsuperscript{151} certainly appears to have lingering doubts as to whether the ERA 1999 has covered the ground adequately, particularly on the question of an employer bargaining in good faith. should the CAC award recognition to a trade union. Pyrrhic results may quickly undermine any confidence, which the trade unions may have in the new laws. More importantly a disgruntled employer and a new ‘Grunwick’\textsuperscript{152} may do for the role of the CAC what it in effect did for ACAS under the EPA 1975, a fact which ACAS has recognised.\textsuperscript{153} However, the political balance over the period since 1999 has been much more in favour of the Government than was the case in the period from 1975 to 1979.

3.43. The CAC’s greater powers under the 1999 Act than those of ACAS under the 1975 Act, also given the chastening (salutary) experiences of the period from 1979, trade unions appear to have different expectations of the new laws. Trade unions are also operating within a very different industrial, and political culture to that of some twenty-five years ago. Also TULR(C)A\textsuperscript{154} defines the basis of recognition for collective bargaining purposes in considerably more flexible terms than trade unions may have demanded during the 1975 era. The impact of the last statutory provisions for collective bargaining in the period 1975-1980\textsuperscript{155} appear to have been relatively small in terms of support to union membership growth. During that period it is calculated by ACAS\textsuperscript{156} that the statutory provisions on recognition brought 64,000 new workers under recognition agreements through 518 new agreements. In the same period 77,000 new workers were brought under some form of union recognition by the voluntary route

\textsuperscript{150} Part I of Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), as inserted by Section 1 of the Employment Relations Act 1999
\textsuperscript{152} see - People Management 25\textsuperscript{th} January 2001 pp 6, report of dispute between Statex Press and the CAC about its decision to award recognition without going through the balloting procedure. Also see - People Management, re attitude of Synseal Windows 7\textsuperscript{th} December 2000 p 14. Also see People Management \textit{Union Recognition}, Gregor Gall and Eila Rana re Bentler Automotive, 23\textsuperscript{rd} November 2000 pp7. Also see re Bentler Automotive, IDS Brief Employment Law and Practice 677 pp 4 -5. See also re Bentler Automotive, IRS Employment Review Number 713, pp 16.
\textsuperscript{153} Towers and Brown, (2000) p134.
\textsuperscript{154} TULR(C)A Section 181(as amended by the ERA 1999). However, the provisions of the Trade Union Recognition (Method of Collective Bargaining) Order 2000 are more prescriptive of what is required in the event of a CAC award being necessary. Even so the Award can by, mutual agreement, be varied.
\textsuperscript{155} Employment Protection Act 1975, Section 11
\textsuperscript{156} ACAS Annual Report, 1981
using ACAS in its conciliation role. Marsh (1982)\textsuperscript{157} gives figures that tend to confirm the muted extent to which the Employment Protection Act 1975 SI 11 was used in claims for recognition. If the accent on voluntarism continues as the current trend on ‘partnership agreements’ suggests, then the ERA 1999 provisions and the role of ACAS and threat of the CAC may work in a similarly indirect manner to those of the EPA 1975. In terms of membership growth the experience of the EPA 1975 appears to be repeating itself, judged by the fact that membership has not grown as a result of the operation of the ERA 1999, to the contrary, as Waddington (2003)\textsuperscript{158} argues they continue to plummet.

3.44. However, the removal of the ACAS duty of:

“Promoting the improvement of industrial relations and, in particular of encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery\textsuperscript{159a}, given effect by Conservative legislation in 1993 is not restored by the ERA 1999, which instead gives ACAS the duty merely ‘to promote industrial relations\textsuperscript{160}’. The reason for the refusal to restore the old objective is said to be that ACAS should not be ‘seen to be biased by statute in favour of promoting collective bargaining’. However, the reasoning behind the distinction is opaque, whilst the two requirements appear to be very similar they are in fact dichotomous. A fundamental feature of industrial relations remains, in the minds of most trade unionists, collective bargaining. If the role of ACAS is to act in furthering industrial relations, of which ‘collectivism’ is fundamental, one must ask how can it be disassociated from having a role to support collective bargaining? Even in its much ‘diluted’ form, as an objective collective bargaining is nonetheless ‘there’, and if not a stated requirement upon ACAS, it is a fundamental provision within the ERA 1999 TULR(C)A, and has not by some ‘political pronouncement’ been removed from the minds of trade unionists. Therefore if ACAS is to have a meaningful role (as it did under the ERA1975 Section11) it must be one that unequivocally supports the stated objectives of the law.

\textsuperscript{157} Marsh A (1982) \textit{Employee Relations Policy and Decision Making}, 1982, Gower Publishing Company Ltd. pp 23 figure 2.9


\textsuperscript{159a} S. 1(2) Employment Protection Act 1975

\textsuperscript{160} Trade Union and Labour Relations (Consolidation) Act 1992 S. 209
The Withdrawal from ‘Collectivism’ the Impact of Law, Industrial and Cultural Change.

3.45. The period 1980 to 1999 was predominately a time when trade unions lost membership, industrial power and influence. The government over this period took carefully measured legislative steps to control and effectively undermine trade union power. Trade unions were seen as an effective countervailing influence to the deregulation and economic policies of the government, therefore must be ‘neutered’ Coates (1994), and effectively they were, Metcalfe (1989) appears to view this development as one of the instruments of turning round the economy. The outlawing of the closed shop and of union labour only contract compliance, also the removal of Fair Wages Resolution which as Deakin and Morris note “was the first step towards encouraging union membership in the private sector”. The ultimate aim stated by the Government to be the outlawing of discrimination against employers who did not employ trade union labour as identified by Evans and Lewis (1988) and Lewis and Simpson (1982). In truth, they were all aimed at the single objective of removing legislative underpinning for trade union activities. Reinforcing these anti collectivist developments was the removal of immunities when taking industrial action to enforce or protect against de-recognition. Generally, the greater legal control on the use of the strike weapon, and picketing, effectively removed the ability of trade unions to protect themselves or their members. Each legislative step being taken in a continuum to that objective (see Appendix H).

3.46. The law as it became framed created a labyrinthine threatening legal culture for trade unions, to the extent that the most serious inhibitions were created for trade unions and employees using the ultimate sanction available to them. A situation which despite

161 The Employment Act 1982 reversed the liability of unions in tort to where it had been pre 1906
164 TULR(C) A 1992 S.220, also Department of Trade and Industry Code of Practice on Picketing, Supported by cases such as Young, James and Webster v UK [1981] IRLR 408, ECHR.
165 Employment Act 1982 S.12(1) which became Section 144 -145 of the Trade Union and Labour Relations (Consolidation) Act 1992. The Local Government Act 1988 S. 17 was also introduced to ‘bolster’ these employment laws.
the ERA 1999, remains largely unchanged today. The affect of the governments legislative programme during the 1980’s, Brown (1992) on the whole concept of freedom of association and the right to bargain collectively and particularly by its actions in the GCHQ dispute ‘underwrites’ the anti trade union nature of this period in UK industrial relations history.

3.47. However, the ‘collectivist model’, if it did not thrive, lived on mainly because many employers continued to see in it, as Painter et al (1998) say:

“a disciplined framework within which corporate management could work”.

Government antipathy towards trade unions, and the restructuring of much of UK industry, appear to be two developments which contributed much to reverse the fortunes of the trade union movement. However, Basset and Cave (1993) defined the problem of trade union decline during the 1980’s as:

“Quite simply a collapse in the demand for the core product that unions offered to their twin markets (employees and employers) - collectivism enshrined most obviously in collective bargaining”.

Such a view of the malaise facing trade unions and their decline is I believe far too simplistic, to be accepted. Whilst trade unions were unable to hold on to their members, many were able to hold on to recognition (though collective bargaining did decline) during this period of industrial change Cully et al (1999) (WERS). Perhaps this fact is an indication of some truth in what Basset and Cave say. Certainly their view of the demise of trade unions was not the first time it had been expressed. Flanders (1970) cites Galbraith as saying that:

“unions in the future would have a drastically reduced function in the industrial system, and will retreat more or less permanently into the shadows”.

3.48. However, if the decline of collectivism was not due to antipathetic laws, it was most certainly not predominately because unions were ‘past their sell by. Perhaps more credibly, industrial structural change and a range of other macro economic factors have

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170 see - London Transport & others v Rail Maritime and Transport Union [2001] All Eng QB, a case involving failure by the RMT to correctly advise the employer of appropriate details of those of its members involved in a strike as required by, TULR(C)A 12992, S 234A, and the DFEE Code of Practice on Strike Ballots (currently in consultation for a revised version to have regard for the ERA 1999).


172 The government banned trade unions at GCHQ in contravention of not only international conventions but the provisions of its own laws. Note: see Deakin and Morris (2001) p 682


generated union decline, not the least of which is the advance of technology, and changing global markets Hughes (1986) Gospel (1992). Location has increasingly become less of a consideration for communications and information therefore, companies have increasingly relocated their operations and service functions to developing economies, usually low wage/low cost centres. Underpinning these changes has been the progressive relaxation of exchange controls and these developments affects upon the need to be efficient and competitive to operate in global markets. The practices of the past, when governments provided protections and subsidies to industries that were large employers progressively ceased. In many instances compelling them to become leaner, more flexible in their ability to respond to market changes more efficient and profitable or cease operation, Dex and McCulloch (1997).

3.49. Added to these changes were the restructuring of core industries that had been centres of union strength for generations, the challenges of union law, and new approaches to employee relations and human resource management. Manufacturing diminished in size as a part of the overall economy and, the numbers employed at establishments significantly reduced. Public sector industries such as coal, gas and electricity were de-nationalised, deregulated, broken up and sold. Each of these industrial sectors had been the bedrock of trade union membership in both manual and staff occupations. The new owners of these industries and the new structures that emerged for the new businesses, proved not to be either sympathetic or conducive to trade union organisation. However, Willman (2005) takes a position which tends to take the debate about the future of trade unions beyond the arguments of both Galbraith and Basset and Cave, and many of their contemporaries, saying:

"the state of the union sector in the UK itself inhibits its recovery. The pattern of births and deaths, the predominant structural form adopted by the principal incumbents, and the role of unions in influencing behaviour in establishments are linked into a pattern of retrenchment which implies that revitalisation – which I operationalise here to mean substantially improved membership performance – is

highly unlikely. Exogenous factors such as sectoral shifts in employment and changes in government policy have rightly been accorded causal primacy in the explanation of union decline. I argue that the response to these exogenous shocks has in practice rendered the causes of continued decline endogenous”.

He goes on to say:

"the current organisational form of UK trade unionism at sector, union and establishment level is inimical to union revitalisation and thus that the current state of the union movement in the UK has itself become problematic. Put another way, unions in decline have made endogenous some of the motors for further decline and this may in part explain their inability to take advantage of ostensibly more advantageous conditions for union growth which emerged in the late 1990's.”

**Industrial Restructuring, Deregulation and Membership Decline**

3.50. The restructuring of the nationalised industries, the use of 'outsourcing' of public sector services and 'hiving off' of functions, the development of new management structures (Executive Agencies), also the introduction of internal markets, the introduction of compulsory competitive tendering all quickly depleted trade union strength. This restructuring also caused hundreds of thousands of redundancies, many trade unionists, who found employment in notoriously difficult to organise service industries and the emerging technology industries, servicing the new product markets, were lost as members Waddington (2003)178. Added to these developments was that the emerging ‘new industries’ in micro electronics and computers and services, began to create a generation of ‘new’ highly skilled jobs, requiring employees in scarce supply with highly sought after ‘portable skills’. Many were employed in difficult to organise, small closely managed groups. A different world to that envisaged by leading trade-unionists in the 1950s and 1960s, who believed that the future of the movement was assured by the transference of trade union development into these types of industries and new technology and skills.

3.51. However, Millward et al (2000)179 in their analysis of the Cully et al (WERS) (1998) illustrate that during the early part of the 1980’s180 the presence of trade unions generally “at workplace level remained stable”. They go on to illustrate that such

180 Prior to the Employment Act 1982 and the Employment Act 1988 taking effect on items such as union membership agreements.
stability rapidly deteriorated during the period from 1984 to 1998\textsuperscript{181}, no doubt accelerated by the attack on the closed shop and the loss of representation through depleting shop steward and workplace representatives Cully \textit{et al} (WERS) (1998). Millward also says that, the aggregate fall in union presence during 1990 to 1998 arose wholly because of the lesser penetration of workplaces that joined the population when compared with those that left it, stating that there was a union presence in 59\% per cent of workplaces that left the population in this period whilst a presence was achieved of only 42\% per cent, in those joining the population. The fall in trade union presence over the whole period from 1980 to 1998 for all workplaces was from 65\% per cent to 36\% per cent Millward \textit{et al} (2000)\textsuperscript{182}, (table 4.2). Certainly it would appear that one of the significant problems for trade union organisation has been the increasing number of ‘start up’ and small businesses coming into the economy most of which have been relatively small in terms of the numbers employed. Again utilising the research and data of the WERS (1998), Millward \textit{et al} (2000) illustrate (table 4.2), that the fall in trade union presence in companies employing 25-49 was an annual average of 3.7\% per cent1984 to 1990 and 4.0\% per cent1990 to 1998. In the corresponding periods for workplaces employing 500 or more the figures were 2.9\% per cent. The overall fall showed in the smaller workplaces during the whole period 1980 to 1998 it was from a 47\% per cent presence to 23\% per cent and for the larger workplaces from 78\% per cent to 48\% per cent.

3.52. The decline in trade union presence, measured in terms of the number of members is clearly a significant factor in the whole problem of the decline of collectivism. However, Millward \textit{et al} (2000)\textsuperscript{183} says that there was, in their research, no significant indication that de-recognition was a major cause of this decline, an opinion with which Kelly (1990)\textsuperscript{184} and Wrigley (1997 and 2002) agree. Their research showed de-recognition occurred across most industries, however, they found few cases in banking, finance and business services sector and hardly any in energy, water supply or transport and communications. Also they found no cases of complete de-recognition amongst newly privatised companies within their survey, and that de-recognition appeared not to be associated with change of ownership.

\textsuperscript{183} Millward, Bryson, \& Forth., (2000), pp 105.
3.53. Three reasons for de-recognition were, however, given by managers surveyed by Cully et al 1998 (WERS), these were:

a) changes in management policies which accounted for half the responses of managers;

b) decline in trade union membership which, accounted for a third of managers responses; and finally,

c) the lack of trade union activity.

Millward et al (2000) go on to say that:

"their results, on balance, were split roughly equally between those managers who saw de-recognition as arising from decline in employees interest in union representation and those who saw it as the outcome of a change in management policy".

It would appear therefore that there is some further authoritative support for the view expressed by Basset and Cave mentioned earlier. Or is it more likely that trade union inability to defend its infrastructure giving rise to ‘weakness’ that was more likely the real cause of most decline. Much of what Millward argues about the impact of de-recognition is at variance with what the Trade Union Congress have to say on the matter over the same period of time. The TUC in the April 1998 Survey said there was:

"a marked fall in the number of de-recogntions, from their high point in the late 1980’s and early 1990’s".

The survey also illustrates that over the period from the first half of 1996 to the first half of 1998 the number of de-recognition’s which were being reported had fallen to only 8per cent of TUC affiliates (representing some 90per cent of all TUC membership) surveyed. Certainly de-recognition, if it was not the primary cause of trade union decline, throughout the period from 1979, it was a significant contributory factor. Also as Painter et al (1998) say, the prerequisites for maintaining the ‘collectivist model’ were either lacking or had been removed. Each of the foregoing factors underline the opinions put forward by Galbraith (1970) and Willman (2005).

3.54. The TUC took a more optimistic view of developments post 1999, which as history has shown was unfounded in its Survey of February 1999 the TUC said:

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187 Trade Union Congress, Focus on Recognition, April 1998, pp 2.
188 Trade Union Congress, Focus on Recognition, April 1998, pp 10.
"The single most likely influence on getting recognition is Employment Relations legislation\textsuperscript{191}, according to two thirds of those responding. Many employers see the new legislation as inevitable and some want to reach agreement before it is enacted\textsuperscript{192}, and goes on to say: "New recognition deals cover over 63,500\textsuperscript{193} workers. Almost a third of unions (29 per cent) reported achieving recognition deals in the time period. Eight in ten of these new deals are for full recognition". The data and commentary contained in these TUC Surveys projected a 'buoyant' note about trade union membership development and recognition. However, when measured against the losses of membership (circa 4.5 Million members) and lost recognition sustained throughout the period of the 1980’s into 1990’s it represented very small progress, particularly when one considers that the TUC when it referred to figures of those covered by the new recognition is talking in terms of "workers covered" not 'members recruited'.

The Impact of Human Resource Management - Unitarism -v- Pluralism

3.55. There can be little doubt that the human resource management style that emerged during the 1980’s and 1990’s\textsuperscript{194}, and the increasing use of individual contracts and a move away from collectivism by many substantial employers did have an affect upon the employees perception of trade unions and their ability to 'protect' their interest. The era of human resource management whilst not born out of the opportunities which the political, legal, industrial and economic change process produced, certainly gave an opportunity to employers to exploit its development Brown et al (1997)\textsuperscript{195} also Dickens and Hall (1995)\textsuperscript{196}, Ezzamel et al (1996). Where it was used as a feature of company policies designed to either resist or diminish trade union influence, it was without doubt effective. Armstrong (1995)\textsuperscript{197} says: "There are two basic views expressed about the basis of the relationship between management and trade unions in particular or employees in general".

\textsuperscript{191} Evidence that shows, that underpinning law and its affect upon the industrial culture is 'the' determinant of whether the 'collectivist model' flourishes or withs.

\textsuperscript{192} Trade Union Congress. Focus on Recognition. February 1999, pp 2.

\textsuperscript{193} A figure of 21,366 workers is reported in the TUC Survey of January 2000 and a figure of 70,000 in the TUC Survey of April 1998.


\textsuperscript{195} Brown et al (1997) pp 69-83


Note: Armstrong, M. A., is cited primarily because he is one of the principal advisers to the Chartered Institute of Personnel Development (CIPD) on the design and development of Human Resource Management. Consequently, his research and publications have been instrumental in shaping the policies of one of the most influential management bodies engaged in employee relations within the UK.
Armstrong goes on to define these two views as, "the unitary view" and "the pluralist view". Of the former he says: "This unitary view, which is essentially autocratic and authoritarian, has sometimes been expressed in agreements as 'management's right to manage'. The philosophy of HRM with its emphasis on commitment and mutuality is essentially based on the unitary perspective."

3.56. Of the pluralism view Armstrong cites Cave (1994)\textsuperscript{198}, Clegg (1976)\textsuperscript{199}, Drucker (1951)\textsuperscript{200}, and Fox (1966)\textsuperscript{201}, to illustrate that this view of an industrial organisation and relations between its management, trade unions, and employees is one in which, the operation its management and control, is achieved by multi-faceted relationships, not solely the perceived rights of one grouping. Clegg's view is cited as: "an opposition that does not seek to govern" and Cave's view as: "a balance of power between two organised interests and a sufficient degree of trust within the relationship (usually) for each to respect the other's legitimate and on occasions separate interests, and for both sides to refrain from pushing their interests separately to the point where it becomes impossible to keep the show on the road".

3.57. The 'unitary view' of industrial organisation has been unacceptable to trade unions throughout their history, and when analysed in detail from a historical perspective it must be viewed as the absolute antithesis of collectivism. Armstrong's argument that some unions have accepted, "management's right to manage", in collective agreements (usually recognition agreements) such acceptance, at its strongest, was only a 'tacit' acknowledgement that someone has to undertake the day to day business decisions, however, beyond that the 'pluralist view' had effect.

3.58. One must also have regard for the fact that recognition is little more than the fact that enables a union to effectively exercise its role on behalf of its members. The act of entering a recognition agreement does not, unless facets of the agreement make it so, make a trade union a hostage of management, by for example entering into 'no strike deals'. However, as Cave implies, pluralism is only likely to hold where the show stays on the road. It is a fact that relations all too frequently have 'gone off the road', and it is the business consequences that have driven many employers to seek a process of

\textsuperscript{200} Drucker P. (1951) \textit{The New Society}, Heineman, 1951, London
management which might give them the 'managerial prerogative' implicit within the 'unitary view' and yet retain some semblance of 'pluralism', and the retention of a representative mechanism for statutory compliance purposes. Human resource management appears to have been adopted as 'the process' by which to achieve these ends. Armstrong appears to agree with this analysis.\(^{202}\)

3.59. Armstrong sets out the 'prescriptive model' for the HRM philosophy.\(^{203}\) However, referring to HRM practices as an alternative to collective bargaining,\(^{204}\) he goes on to argue that it is much more likely that those employers who have made the greatest use of HRM practices are those which recognise trade unions and cites Millward (2000)\(^{205}\) as a source for support for this view. Armstrong also says (p716) that:

"Briefing groups, the method of communication which showed the fastest increase over the period 1984 to 1990 were much more common in the union sector but were hardly used at all in the non-union sector", and goes on to say (p717) that:

"The conclusion from the Millward survey is that there is no correlation between human resource management and anti-unionism"

However, Gennard and Kelly (1995) produce evidence about management opinion on the value of HRM, which in some significant respects is at variance with what Millward et al have to say on the subject. Ackers et al (1996)\(^{207}\) are relatively uncompromising in their view of what HRM is all about, saying:

"At best the new management thinking simply ignores the role of unions in its search for other ways of winning their consent."

3.60. John Monks\(^{208}\) is cited as authority for the view of HRM which tends to give it a 'clean bill of health' when he said: "the more anti-union the employer, the less likely it is that HRM techniques will be used". However, given that the most pronounced growth in the use of HRM has been within foreign owned companies, particularly American and

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\(^{202}\) Armstrong's statement regarding derecognition in favour of HRM appears to be at variance with the results of the WERS (1998). It should be noted that Armstrong is writing in 1995 about 'the current emphasis about Partnership' some two years prior to the ERA 1999.


Japanese Guest (1991)\textsuperscript{209}, Millward and Gennard and Kelly, provide some grounds for arguing that what John Monks believed to be the case is misconceived\textsuperscript{210}. However, Purcell (2000)\textsuperscript{211} gives strong support for the system arguing that HRM is not too far away from the mission statement of ACAS itself. Storey\textsuperscript{212}, however, takes the view that HRM in the 1990's was being used as a means of making collective bargaining almost irrelevant. A view which is contrary to the findings of the WERS(1999)\textsuperscript{213}. However, Storey (2001)\textsuperscript{214} appears less sanguine about the extent of the use of HRM based upon his subsequent research. Foreign owned employers have tended to be amongst those who most rigorously resisted recognition and collective bargaining, and have tended to be amongst those employers who have been most innovative in introducing 'new approaches'\textsuperscript{215}. Also 'personal contracts' introducing what has become known as 'risk pay', income subject to the attainment of targeted performance levels of individuals and company, profit related and profit linked pay, share schemes etc. All of these innovations providing employees with 'flexible' remuneration and benefit packages, as part of the 'performance (HRM) culture', approaches to terms and conditions of employment which makes collective bargaining a virtual impossibility. The preponderant tendency has been for the philosophy (in the authors experience) to be used by employers as one of the instruments by which to bypass collectivism and, 'wean' employees away from it, rather than produce worthwhile performance results, which it clearly could, if it resulted in more effective management. Colling (2003)\textsuperscript{216} tends to agree with this view in his analysis of how employers are managing without unions. However, Nolan and O'Donnel (2003)\textsuperscript{217} in their conclusions about HRM's usage and value are sceptical as to its future role. Perhaps to put HRM within its correct context it is best regarded as a convenient label for a variable process, for managing employees that can be designed and developed in an employer specific format. Colling

\textsuperscript{213}Cully et al (1999) (WERS) p 295
\textsuperscript{214}Storey (2001) p 364
(2003)\textsuperscript{218} provides corroborative evidence for this view, particularly when HRM is
utilised to further the development of ‘individualism’ and commitment to company
objectives.


3.61. As discussed earlier the TULR(C)A Schedule A1 now provides an opportunity for
trade unions to secure recognition through two new statutory means, the automatic\textsuperscript{219} and
balloting\textsuperscript{220} routes. There is of course the ‘voluntary route’, preferred by the TUC and
CBI\textsuperscript{221}. The Right to recognition is the ‘positive limb’ of Schedule A1, its provisions on
de-recognition\textsuperscript{222} is the ‘negative limb’. Just as the process for gaining recognition is
complex\textsuperscript{223} equally so is the process\textsuperscript{224} for de-recognition. The right of an employer to
seek de-recognition is subject to two conditions:

a) there needs to have been an average of fewer than 21 workers\textsuperscript{225} for a period of at
least 13 weeks; and,

b) the 13 week period must not have ended before the relevant date\textsuperscript{226},
the Act sets out the main procedures\textsuperscript{227} by which, an employer may bring statutory
recognition to an end. There is within Schedule A1 provision for employees to bring
statutory recognition to an end\textsuperscript{228}. There is, as yet, little case law by which to judge how
effective the laws on recognition and de-recognition will be in the longer term.
However, the fact that the law provides complex procedures by which to gain and end
recognition, and allows for employers to contest recognition claims, as well as allowing
a trade union to contest applications by employers and employees for de-recognition
provides a scenario in which, the operation of these facets of law could yet prove very
tortuous.

\textsuperscript{218} Colling, T. (2003) Managing without unions: the sources and limitations of individualism Chapter 14 in

\textsuperscript{219} Trade Union and Labour Relations (Consolidation) Act 1992 Schedule A1 para 22(2), however, para
22(3) requires the CAC to hold a ballot even if there is majority trade union membership. See IDS

\textsuperscript{220} Trade Union and Labour Relations (Consolidation) Act 1992 Schedule A, para 22(3). see IDS

\textsuperscript{221} Statutory trade union recognition Joint statement by TUC and CBI, paragraph 3. “Resolving disputes
through conciliation”

\textsuperscript{222} TULR(C)A 1992 Schedule A1, Part IV paras 99-103, establish the right of an employer to bring an award
of statutory recognition to an end.

\textsuperscript{223} IDS Trade Unions Employment Law Handbook, Incomes Data Services, December 2000, London pp179,
Figure 1.

\textsuperscript{224} IDS Trade Unions Employment Law Handbook, Incomes Data Services, December 2000, London pp182,
Figure 4.

\textsuperscript{225} Schedule A1 S.7(1)(a)(b) require 21 workers to be employed for an application for recognition to be
‘valid’, the TUC is complains that this level of worker excludes more than 5 million workers form the right
to claim recognition for their unions, see - People Management, Gregor Gall, TUC censures firms that use
recognition loophole, 8th February 2001, pp.7.

\textsuperscript{226} Relevant date is ‘the date of expiry of three years from the date of a CAC award of recognition’.

\textsuperscript{227} TULR(C)A 1992 Schedule A1, Part IV paras 104-111 and 117-121

\textsuperscript{228} TULR(C)A 1992 Schedule A1, Part IV paras 112-121
1971 and 1999 'alternative unionism' re-visited.

3.62. There have been some early signs those problems, which beset the CIR and the NIRC under the IRA 1971 are re-emerging. Staff associations, encouraged and supported by employers as a preferred alternative to recognising established unions, are showing signs of emerging as they did post-1971. What became known as 'sweetheart deals', recognising unions prepared to enter 'no strike agreements' and generally representing a 'soft option' when it comes to change management etc, caused serious problems for TUC unions. Where such sweetheart deals do not satisfy employees, if recognition is statutory, they can at least now use the de-recognition procedures of Schedule A1.

3.63. Trade unions making claims for recognition under Schedule A1 have encountered rejection of their claims because some other union (registered but of doubtful independence and non-TUC affiliated) has previously been accorded recognition by an employer. A formal challenge has not arisen from an employer about CAC awards of recognition, but it certainly appears that there is a growing resistance, certainly to the granting of automatic recognition. The emergence of these types of cases will need the most careful handling by the CAC if the process for achieving recognition is not to be seen as suspect by TUC unions, or if the CAC was to err consistently towards TUC unions, be seen as prejudiced by employers and staff associations. The matter of 'independence' is as Deakin and Morris say: "a crucial one in terms of in the context of freedom of association". They go on to support this contention by citing the provisions of ILO Convention No 98 (Article 2). The TULR(C)A, S 5(1) states there are two tests of 'independence':

a) Not under the domination or control of an employer, and

b) not liable to interference by an employer (arising out of the provisions of financial or material support or by any other means) tending towards such control.

3.64. Whereas one of the tests applied by the CAC under TULR(C)A continues to be registration, one other is also that a trade union should be independent for the purposes of being awarded recognition by the CAC, as provided by TULR(C)A Schedule A1 para 229 TULR(C)A 1992 S.180(1), See IDS Employment Law Handbook, Series 2 No 12 Trade Unions, Incomes Data Services, pp 245-246
232 The Certification Officer (CO) has the responsibility for determining whether a trade union may be entered on the register as independent. In arriving at a decision a number of criteria are applied to establish compliance with TULR(C)A S5(1). These criteria are contained in the pamphlet published by the CO 'Guidance for Trade Unions Wishing to apply for a Certificate of Independence'.

35(1) and 35(4). In a recent case, Bach and Winchester (2003) the CAC was satisfied that the Securicor Custodial Services Staff Association (SCSSA) (a registered trade union) with a pre-existing agreement with the employer involved in the case satisfied the requirements of para 35(1) and 35(4).

3.65. It appears, however, that there was substantial evidence for the contention by the Prison Officers Association (POA) that the SCSSA is not ‘independent’, but was in fact an initiative by employees actively supported by the employer in opposition to the POA attempts to organise the employers staff and gain recognition. Given that the POA had been campaigning for recognition by the employer for some time, and that the Staff Association had only been recognised by the employer as of the 14th June 2000 (some eight days after the appropriate recognition provisions of the new laws came into effect), the scenario is to say the least ‘dubious’. Furthermore, as reported in People Management, the SCSSA appears to have had less support amongst the employees, given the membership level of the POA, the SCSSA appears to have less than 50% membership. The facts, at the time would therefore appear to support the contention of the POA. Notwithstanding that both the employer and SCSSA appear to have been able to convince the CAC that collective bargaining had been conducted continuously for the preceding three years, there appears substantial grounds for scepticism about this case.

3.66. There can be little doubt that a TUC union would not hesitate to defend pre-existing recognition, albeit based upon a minority of membership, if a threat to its status occurred as a result of a staff association being formed to claim recognition from the employer based upon it having a larger membership than the TUC union. Perhaps therefore, certainly for the longer term development of these aspects of the recognition laws, the approach taken by the CAC may be ‘politically’ sound. The problem for ‘bona fide’ trade unions is that there was no really effective means of challenging the Certification Officers (CO) decisions about registration and therefore the independence


234 A leading case on the issue of whether a union is dominated by the employer is that of Blue Circle Staff Association v Certification Officer 1977 ICR 224 in which the EAT held that the Certification Officer was right to look beyond the form of the unions constitution and consider the reality of the situation. On the issue of interference Squibb UK Staff Association v Certification Officer 1997 ICR 235, is the leading case - see IDS Employment Law Handbook, Series 2 No 12 Trade Unions, Incomes Data Services Ltd, April 1997, London, p12. See also: Smith and Thomas, (2000) Industrial Law, Sixth Edition Butterworths, London, 1996. pp 42-43

235 People Management, Legal Analysis, CIPD, 26th October 2000

236 I define the term ‘bona fide’ as trade unions which, are not solely registered but also affiliated to the TUC and, can demonstrate independence through having their own premises and full-time officials paid for by the membership and, not directly financially supported by the employer.
or otherwise of a union which may be ‘blocking’ what they may consider is a more legitimate claim for recognition by an employer. Rival unions could make representations to the CO, however, there is no legal process by which the CO’s decision could be overturned. A trade union could of course ask the CO to reconsider the whole matter of the registration of a trade union at some later date and request that the Certificate of Independence be withdrawn. Perhaps ACAS will develop a more pragmatic approach to the consideration of independence than has been evidenced so far. Given the de-recognition procedures of TULR(C)A, it is not beyond the wit of trade union members to contest the ‘bona fide’s’ of a ‘sweetheart’ deal.

**Partnership Agreements the ‘new’ Recognition and Collectivism.**

3.67. Partnership Agreements have mushroomed notwithstanding they were never seen as a part of the recognition process under the Schedule A. They appear to owe more to the policy and initiatives of the TUC than any provision in the ERA 1999. Based upon personal experience, gained from advising a number of employers and trade unions in the development of partnership agreements, in the period of 1996 to 2000, employers have been anxious to reach voluntary agreements many under the ‘partnership’ banner rather than face claims for recognition under the TULR(C)A. Many of the agreements are seen as answers to long outstanding claims for recognition and in consequence, because some do not include collective bargaining, they may yet prove not to be the answer which unions wanted, however, they at the very least assure a trade union presence with representation and consultation rights, whereas the alternative is to have no rights unless they can be gained through statutory process. Gall and Rana (2000) also Gall (2002) say that of the 748 recognition deals on their database only some 150 describe themselves as ‘Partnership Agreements’. However, they say that whilst few of the partnership agreements comply with the TUC model, most deals are effectively standard recognition agreements covering rights of information, consultation, representation and negotiation.

3.68. Partnership Agreements as a basis of achieving, in some cases ‘sustaining’ trade union membership and recognition, (Toray and Zurich also Sainsbury and Computer

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237 See - General and Municipal Workers Union v Certification Officer and anor 1977, ICR 183, EAT.
238 They are not a recent phenomenon however, in 1992 Toray Textiles Ltd, a Japanese textile company which took over part of Courtaulds and in 1994 Zurich Insurance Company plc took over IMI both concluded ‘partnership agreements’ with MSF under the guidance of the author in both cases in circumstances where collectivism was demising, and union recognition was collapsing.
239 Monks, J. (1999) Partners for Progress New Unionism in the Workplace, TUC
240 ERA 1999 s. 30(1)(2) gives the Secretary of State powers to make available funds to support partnership initiatives
Science Corporation (CSC) are examples) are serving a valuable purpose. On the one hand they are seen by both employers and trade unions as the means of establishing a working relationship (tentative in some cases) for developing stronger arrangements in the future. Also employers, given the requirements of the law on the provision of information and consultation with representatives of employees\textsuperscript{242} wrought by the decisions of the European Court of Justice and, in particular the requirements of the ERA 1999\textsuperscript{243}, appear increasingly to have been prepared to accept there may be a ‘role’ for ‘collectivism’. Partnership Agreements may be the convenient foundation upon which to construct arrangements that satisfy the need to cover statutory exposure and evade the rigors of collective bargaining. There are also ‘partnership agreements’ where there is not only no provision for collective bargaining or at best only to a limited extent, but also where trade union representatives may have to share their role with representatives of non-trade unionists. Gall and Rana have identified such ‘partnership agreements’ within their database of 748 ‘deals’. The Computer Science Company (CSC)\textsuperscript{244} Partnership Agreement is very close to this type of ‘deal’, and is similar to a number in which the author has been personally involved in advising on the design and general negotiating strategy to both employers and trade unions. However, the CSC Partnership Agreement is very detailed and may be regarded as one of that small number of agreements which as Sisson and Marginson (2003)\textsuperscript{245} say “reflect partnership in any exact sense”.

**Partnership at Computer Science Company (CSC)**

3.69. An interesting case of partnership serving the interests of the employer whilst helping the survival of a union within a company is that of Computer Science Company Ltd (CSC) and MSF. This partnership agreement was concluded in September 2000 (Appendix E) and represents a ‘rebirth’ of opportunity for MSF\textsuperscript{246} within a major employer in a market sector where few unions have succeeded. For CSC there is a significant ‘marketing’ advantage over its competitors. CSC can show to prospective clients, wishing to out-source computer services, its capability to manage employees who come from a trade union culture. CSC is an example of those ‘new companies’ within the business services sector which, “joined the population” Millward (2000) (p 87 table 4.2) in which trade unions have had little success in penetrating. The aggregate union membership for this sector, shown by Millward, dropped from 36per cent to 15per

\textsuperscript{242} Commission of the European Communities v United Kingdom 1994, ICR 664 - TULR(C) Act 1992, S 188 - Health and Safety at Work Act 1974
\textsuperscript{243} Employee Relations Act 1999 Section 10, 2(a)
\textsuperscript{244} see Appendix E
cent over the period of 1980 to 1998. Much of CSC’s growth as a company, over this same period, has been primarily through the acquisition of out-sourced services from ex-public sector undertakings, for example British Aerospace, British Airways, British Telecom, Hospital Trusts and many more. An analysis of CSC shows that its growth has emanated from the structural and technology which have taken place within the British economy, the very events which have contributed to the demise of trade union organisation, Ackers et al (1995). From a position where in the 1960s and 1970’s staff trade unionism and power had grown rapidly, within the British Aircraft Corporation, Hawker Siddley, and other companies which, came together to form British Aerospace, during the 1980’s and 1990’s that trade union organisation had dwindled dramatically, leaving only MSF with any significant membership in the sectors of these companies acquired by CSC. The data contained in the Agreement, illustrates how low MSF membership levels, within the IT functions of the companies concerned, transferred to CSC, had declined.

3.70. Given this level of membership, CSC would certainly have argued that any claim for statutory recognition must regard the bargaining unit, (‘compatible with effective management’) as the appropriate grades of employee across CSC UK, it was unlikely that MSF could claim statutory recognition in the short term. Without this new agreement MSF’s membership and influence within CSC would have continued to decline, possibly to a point where the union would have been de-recognised for collective bargaining in the few local operations where it had managed to hang on to membership.

3.71. Why then did CSC take the initiative? The facts are that, CSC changed its business operations and re-structured to become a general service provider to the client companies it acquired, instead of continuing to provide a dedicated service to specific client companies. It wished to maximise the degree of flexibility of employees across its operation by setting up service groups that would provide a specific service input (payroll, management accounting, software systems design, etc) to any acquired company function, instead of providing general services on a dedicated individual acquired company basis. Therefore, CSC effectively destroyed the ‘bargaining unit’

246 An excellent example of a trade union ‘packaging’ its services as a ‘good’ which, provides benefits to its membership, and potential members and the employer in its market place.
247 See Appendix E1 to the CSC Partnership Agreement ‘Framework for Representation’
basis by which local management, of acquired business functions, could continue to manage industrial relations. This inevitably meant ending all forms of local recognition, and collective agreements, which had come across to CSC through its various business transfers under TUPE 1981. CSC realised that MSF was the only union, which may claim recognition under the provisions of Schedule A1. Consequently, wishing to avoid a future battle with MSF, and the affect this would have upon client confidence, also wanting to end the acquired collective bargaining rights operating at various locations CSC decided to put in place a new 'national framework' for industrial relations policies, which would help the company in future business acquisitions. Because most of its growth is by acquisition of out-sourced business, involving TUPE, CSC saw the clear advantages of having representative structures in place, which facilitated the statutory consultation and communication needs of such situations.

3.72. In return for a 'new order' CSC offered MSF a 'new deal' in the form of a Partnership Agreement which:

a) gave MSF sole recognition rights;
b) extended contribution deduction at source for all MSF membership on a national basis; 
c) removed existing local level recognition and collective bargaining; and,
d) put in place a national representation agreement and structure of union representatives; 
e) provided for a National Forum to be established which gave rights to information and consultation at national level; 
f) placed MSF in a strong position to be the 'employee' lead in the development of Works Council Machinery.

The CSC agreement contain provisions that illustrate the changes that have taken place in UK industrial relations observed by the 1998 WERS over its series of researches, outsourcing of ex public sector services, decaying union membership and structures, management moving to new methods of communicating and managing its employees. At CSC the catalyst which assisted the union to develop a new relationship was the need for management to address its needs. CSC, was in the business of acquiring new business through Transfers of Undertakings, primarily from the public sector, which being still heavily unionised in many areas was sensitive to the need to manage issues under TUPE 1981 correctly and without offending relations with their recognised unions. To be

249 Appendix E 2 CSC Partnership Agreement, Section 4 sets out the basis of recognition.
250 Appendix E: Para 5 - 5.1; SOLE RECOGNITION STATUS (asterixed footnote)
attractive to transferee organisations CSC needed to have in place a sound industrial relations structure which could be used in the Transfer consultative process of TUPE 1981\(^{251}\), and through which it could manage and control the absorption of transferred union membership and substantive terms of employment enshrined within collective agreements. The significance of this Partnership Agreement is not simply that it 'rescued' MSF from terminal decline within CSC, but that it enshrined each of the principles of the TUC criteria on such agreements. Furthermore, it recognises the right of MSF to be actively involved in the integration of new employee acquisitions and recruit new members. Fundamentally, the agreement recognises and formalises the role of union representatives. Finally, the agreement provides a process for MSF participation in the introduction of a Works Council modelled along EU Regulation requirements.

**Recognition Driven by the Need to be 'compliant'**

3.73. Whilst the need to be 'statutorily compliant' was certainly not the sole reason for CSC agreeing to a Partnership Agreement, there is in the underlying reasons of both employers some support for the opinion expressed by Gall and Rana\(^{252}\) when they say that the growth in Partnership Agreements and new recognition deals:

"is more than just the product of the ERA. The Labour Government has helped to engender a climate in which many employers are less inclined to behave unilaterally, and this has legitimised a union role in organisations\(^{253}\)"

3.74. ACAS certainly takes the view that the climate engendered by the ERA 1999 is one in which it will be much more productive for trade unions to take a very proactive posture in seeking recognition agreements through voluntary routes rather than legal compulsion. At the TUC Congress on 11 September 2000, Speaking at a 'fringe meeting', entitled "The end of industrial relations as we knew it?", Derek Evans, Chief Conciliator at ACAS, said:

"Growing ACAS involvement in these cases reflects the desire among unions and employers to see recognition issues resolved amicably and on a voluntary basis. Our extensive experience in resolving disputes, together with our expertise in building harmonious relationships in the workplace, means we can play a vital role in helping

\(^{251}\) Transfer of Undertakings Protection of Employment Regulations 1981


\(^{253}\) However, the perceived need for 'compliance' is not just with the ERA and Schedule A it is about compliance with the whole infrastructure of responsibilities to inform and consult etc, much of which is derived from EU laws, put in place during an era when many employers were set on a completely different course to recognising unions.
bring about voluntary agreements. Our assistance helps build firm foundations for fruitful and co-operative relationships."

3.75. As is discussed earlier, there was over the period 1997-99, prior to the ERA 1999 coming into effect, the tendency for employers who were faced with the imminence of a claim under the emerging legislation to concede recognition rather than be pressured into the ‘maws’ of the new recognition procedures. The table at Appendix F taken from an article by Gall and McKay\textsuperscript{254} illustrates this trend. The data tends to underline what Gall and Rana say about “engendering a climate”, certainly the run up to the ERA 1999 seems to have persuaded some employers to ‘jump before they were pushed’\textsuperscript{255}.

3.76. The data produced by the CAC\textsuperscript{256} of cases brought under the recognition procedures during 2000 were few. In the first year of the Acts operation there appeared to be only 11 cases under the provisions of, Part1of Schedule A1 TULR(C)A. However, over the period to January 2001 there was a three fold increase in the number of applications which at this date stood at 36\textsuperscript{257}. However, this was still a relatively low level of applications which, would appear to give added credibility to the arguments of Gall and Rana and support their data showing a high level of recognition/partnership type agreements being concluded ‘privately’ in preference to pursuing the statutory route.

3.77. However, as is argued earlier, employers and trade unions may become disillusioned with Partnership Agreements as the ‘benefits’ which they hoped for become illusory and such agreements, which were hurriedly put together, may yet find their way into the formal recognition process of the CAC, as claims for statutory recognition. Even in such cases the advantage may be, for the union certainly, that a ‘Partnership Agreement’ may have helped to raise its profile and membership and thus place it in a better position to succeed should the ‘voluntary agreement’ fail resulting in


\textsuperscript{255} This appears to be confirmed by the experience of ACAS over this period when they state in a press release (ACAS Web-Site December 2000) “The prospect of a statutory right to trade union recognition has led to a leap in voluntary recognition cases being handled by ACAS, according to the latest figures. In the year to August 2000, ACAS was asked to assist in 260 recognition disputes, double the number on average during the 1990s”. The press release gives a table of recognition disputes dealt with by ACAS as September 1997 - August 1998 = 156 September 1998 - August 1999 = 185 September 1999 - August 2000 = 263

\textsuperscript{256} Data extracted from CAC web site as at October 2000.

a claim for statutory recognition. Partnership may at the very least become one of the processes in the prelude to a ‘new collectivism’.

3.78. The UK has never had laws giving the ‘automatic right’ to recognition for either individual representation or collective bargaining. Ewing says the ERA 1999 s10 (1)(2)(3) is not likely to be “used as a surrogate collective bargaining device”. Given it is unlikely to be seen as a means of effecting collective representation this opinion may be correct. In fact, there appears to be some initial doubt as to whether the ‘representation’ provisions of the ERA could be evaded if an employer had no appropriate procedures. This opinion loses sight of the provisions of the ERA 1996, also the provisions of the ACAS Code. Even under the ‘old’ Code of Practice, whilst it was not legally binding Tribunals would have regard for its provisions when deciding whether an employer acted reasonably in dismissing an employee, or whether an employee had been given a proper hearing, part of which may be effective representation. Based upon case law, all employees have an implied term in their contracts that the employer must deal reasonably with grievances. Furthermore the ‘new’ law assists a union in demonstrating its value to potential members, without the immediate provision of collective rights. The ERA 1999 s10 (1)(2)(3), whilst it may not be a ‘surrogate for collective bargaining’ it may yet prove to be a form of ‘surrogate recognition’ which aids unions to persuade employers of the need for agreed procedures, leading ultimately to collective bargaining. If its value is this ‘underpinning’ of ‘collectivism’ most trade unions will welcome its contribution. Whilst it may never be a ‘surrogate’ for collective bargaining, this provision of the ERA is valuable because it is another clear indication of ‘public policy’ and the direction which the law intends recognition should proceed.

3.79. As employers moved towards Human Resource Management as ‘tools’ by which to improve employee control and management, the trend to ‘individual contract terms’

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258 Except in the circumstances as now provided by Part I of Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), as inserted by Section 1 of the Employment Relations Act 1999.
259 Individual representation can now be given effect by the provisions of the ERA 1999 s10 (1) to (6) which give the right to an employee to be accompanied by a ‘trade union official’ under ss (3) (a) and (b).
261 Employment Rights Act 1996 S.3, requires employers with 20 or more employees to identify procedures for dealing with disciplinary or grievance matters.
263 ACAS, Code of Practice No1 Disciplinary Practice and Procedures in Employment
264 Lock v Cardiff Railway Co Ltd [1998] IRLR 358
266 W A Goold (Pearmark) Ltd v McConnell and another [1995] IRLR 516
accelerated. This has been particularly so where trade unions and collective bargaining had decayed and/or where antipathy towards collectivism has taken hold as the ‘new culture’. The use of ‘personal contracts’ and flexible remuneration and benefit systems, has been seen to be an effective way of avoiding the rigors of collective agreements and, as discussed elsewhere, have been used to reduce the influence of trade unions and ultimately undermine their ability to organise and service their members. However, it can be argued Dex and McCulloch (1997) also Gospel (1992), that a more flexible labour market was necessary in order to give effect to the many organisational changes which were essential for the British economy to respond to its changed position in global markets. This was particularly so given the rapidly increasing ‘internationalisation’ of British industry and commerce, Millward et al (2000)²⁶⁷.

3.80. The “omission” anomaly which so attracted their Lordships in Wilson²⁶⁸ and Palmer²⁶⁹ was intended to be corrected by TURERA s13, which was introduced as an amendment to the Act by somewhat peculiar procedures²⁷⁰, so intent was the Government that the trend away from ‘collectivism’ would not be reversed. However, the provisions of TULR(C)A²⁷¹ were significantly ‘diluted’ by this amendment and in my opinion the law (post ERA 1999²⁷²) still tends to favour the employer because, it continues the possibility for discrimination against workers on trade union grounds, a view supported by Ewing (1999)²⁷³ and the Labour Research Department²⁷⁴, where the employer’s objective may be to undermine, or to destroy, collective bargaining²⁷⁵.

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²⁷¹ Trade Union and Labour Relations (Consolidation) Act 1992 s146 and 148
²⁷² Section 2 and Schedule 2 ERA attempt to correct Wilson and Palmer. In summary the words "action short of dismissal" are replaced by "subjected to any detriment as an individual by any act, or any deliberate failure to act.". This means that deliberate withholding of a pay increase from union members would qualify as a "detriment" leading to a right to complaint. There is now a complex relationship between the right to negotiate terms and conditions of employment, and the right of employers and individual employees to fix their own terms. This is affected by the Employment Relations Act 1999 s 17, which gives the Secretary of State power to make regulations to protect workers from unfair actions. However, payment of higher wages or other monetary benefits, will not be unfair to those not benefiting, provided that there is no inhibition "in the contract of employment" of the better paid worker which inhibits membership of a trade union, and the benefits "reasonably relate" to services provided by the worker under the contract.
Therefore, the supremacy of the contract of employment over any collective agreement generated by recognition (the absence of inderogability as Professor Lord Wedderburn calls it) is preserved so that the imposition of collective terms may be undermined by individual contractual variations which may be of a discriminatory nature.

**Is there a ‘new’ definition of recognition?**

3.81. Deakin S. and Morris G., about trade union recognition say:

“If an employer elects to ‘recognise’ an independent trade union, important legal consequences follow.”

They define trade union recognition as provided by the Trade Union and Labour Relations (Consolidation) Act 1992 and define collective bargaining as provided by TULRCA, s 178(1)(2). Deakin and Morris base their definition upon the law as it was at the time of their writing, and about which there was a considerable amount of case law which extended the definition of what is and is not recognition.
‘recognition’. TULR(C)A Schedule A1 now provides mechanisms by which trade unions may gain recognition, and collective bargaining, however, the legal consequences of recognising a union are basically the same. However, the recognition machinery eschews the familiar remedy of a collective arbitral award in favour of the legalistic measure of specific performance which, may be effective in enforcing no strike clauses but may be useless in enforcing a duty to bargain in good faith. However, the courts will doubtless determine the meaning of specific performance as it relates to collective bargaining under Schedule A1. Even where the CAC makes an award under Schedule A1 enforcing collective bargaining, such an award may be varied by the parties to it as we discuss elsewhere. What is apparent is that collective bargaining, under the regime of Schedule A1, is not more ‘precisely defined’ in terms of what may or may not feature as subject matter for negotiation under any agreed collective bargaining machinery. A situation which ‘fits’ well with the partnership philosophy and, will do little to disturb the industrial relations culture which has emerged from the past eighteen years. In effect it would appear, but for the question of ‘specific performance’, there is little difference between where we are now on the matter of what constitutes collective bargaining and therefore recognition, and what has developed by statute and case law. Given the changes which have taken place in the determination of the prime terms and conditions of employment and the presence (or lack of it) of collective bargaining on such items a flexible approach on the matter of just what constitutes collective bargaining is to be encouraged. The answer to the question “is there a ‘new’ definition of recognition?” is basically no.

3.82. Deakin and Morris make the point that recognition for ‘collective bargaining purposes’ is a relatively loose definition when they say:

“The phrase ‘to any extent’ in the definition of ‘recognition’ means that it is sufficient that the employer negotiates with a union on any one of these matters for the union to be recognised within the meaning of the statute.”


286 The bargaining method imposed by the CAC has effect as if it were a legally binding contract between the employer and the union(s). If one party believes the other is failing to respect the method, the first party may apply to the court for an order of specific performance, ordering the other party to comply with the method.


288 TULRCA, s 178(2).
Recognition ‘for collective bargaining purposes’ was until 1995 of great importance to a trade union to effectively represent the interests of its members. Up to that date the provision of employee rights to consultation in redundancy and transfer situations was confined to representatives of independent ‘recognised’ trade unions, as were many other Statutory Rights.

3.83. TULR(C)A Schedule A1 attempts to give contemporary definition to what is meant by recognition and collective bargaining. What is achieved, as we have just discussed in the preceding paragraph, is little different to the ‘historic’ definition of recognition (see Smith and Thomas) “partial recognition” will be sufficient to satisfy the term “to any extent” when claiming statutory rights, except disclosure of information. Collective bargaining therefore continues to be defined in a form, not requiring all of its elements to be agreed, in order that recognition is an established fact. This reflects the realities of current management policies and practice in determining terms and conditions of employment, the ERA in Schedule A1, para3 sub para (2) (3) and (4) set out this ‘limited’ form of collective bargaining. Sub-para (4) says:

(4) “If the parties agree matters as the subject of collective bargaining, references to collective bargaining are to negotiations relating to the agreed matters; and this is the case whether the agreement is made before or after the time when the CAC issues a declaration, or the parties agree, that the union is (or unions are) entitled to conduct collective bargaining on behalf of a unit.”

3.84. What the law now appears to say about recognition is that, it does not require the fact of collective bargaining on all of the primary terms and conditions of employment, in order that it is recognition for all purposes within the law. To the contrary, the ‘new

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289 The 1995 Amendment Regulations. After the case of European Communities v United Kingdom [1994] IRLR 392 and 412, the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 (SI 1995 No 2587) came into force in respect of transfers of undertakings (and collective redundancies) taking effect on or after 1 March 1996. They were designed to remove the anomaly in UK law, both in relation to TUPE and collective redundancies, that consultation need only be with representatives of independent recognised trade unions. The duty to inform and consult now arises regardless of whether the employer recognises a union. The handling of collective redundancies was governed by sections 99 - 107 of the EPA 1975, which was enacted to give effect to Council Directive 75/192/EEC. These provisions are still relevant to situations not covered by TUPE but are now incorporated into Chapter II, sections 188 - 198 of TULRCA 1992. As mentioned above collective redundancy situations no longer rely upon a trade union being recognised in order that an employer has the requirement to consult and provide information to representatives of employees.

definition’ given to recognition may mean, whatever the parties to the recognition agreement have agreed it should\textsuperscript{292}, and for all purposes within the law that will suffice\textsuperscript{293}. However, in practical terms, against the background of what Deakin and Morris say (see above) about TULRCA 178(2), there is little difference in the definition as it stood under the law prior to the ERA and Schedule A1. Even in circumstances where an employer may fail to come to an agreement about procedures through which to conduct collective bargaining, whilst the new laws provide\textsuperscript{294} for a means by which an award of the CAC that collective bargaining should be agreed, may be given effect. However, here again, given the only recent emergence of these ‘subtleties’ as to what is really meant by collective bargaining, the future of collectivism appears confirmed to be something quite different to its historic (non-statutory) meaning. The question which remains is how will the CAC and the courts view applications for disclosure on matters for which a union may not have collective bargaining rights?

The Growth of ‘New Recognition’

3.85. There is no doubt that the number of new recognition deals is growing. However, the rate at which this is likely to take place in future is unclear. There are no accurate statistics to illustrate how many campaigns for recognition are taking place under the new laws. In the short to medium the likelihood for recognition and membership to grow looks relatively poor. This may be particularly true of the level of trade union membership, as the new agreements appear to cover relatively low numbers of members as a percentage of total employees. If such agreements produce platforms for further recruitment, then membership growth and density may begin to develop.

3.86. What is not clear at this stage is whether the scale of the ‘rush’ to sign voluntary deals up to the end of 2000 will be matched by a similar number of employers wishing to sign voluntary deals if threatened with the new laws, in the future. Here there is an analogy with the rush (in the UK) to sign up to voluntary Works Council Agreements prior to 22\textsuperscript{nd} September1996\textsuperscript{295}, which quickly ‘ran out of steam’. Given the benefit of that analogy it may be reasonable to presume that some of the easiest deals have already


\textsuperscript{292} As is the case within many of the partnership agreements, where they provide for collective bargaining, discussed elsewhere.

\textsuperscript{293} SI 2000/1300, Trade Union Recognition (Method of Collective Bargaining) Order 2000

\textsuperscript{294} Under para 168(1) of Schedule A1 of TULR(C)A 1992 the Secretary of State, after consulting the ACAS, may by order specify for the purposes of paragraphs 31(3) and 63(2) of Schedule A1 a method by which collective bargaining might be conducted. With effect from 6\textsuperscript{th} June 2000, the Trade Union Recognition (Method of Collective Bargaining) Order 2000 came into operation.
been signed. Perhaps this development is what is driving the ‘infill’ membership drive and recognition claims being brought before the CAC under the ERA 1999. Employers yet to be faced with claims may not have previously been approached or, more likely are those employers who are known, by their track record, to be antipathetic towards any form of recognition, and whom trade unions recognise as ‘harder nuts to crack’. But some employers attitudes to union recognition may also depend on other issues, like whether collectivism has some benefit to them culturally or commercially\(^{296}\). However, as with all new approaches there is a ‘learning curve’, even for those who have the advantage of experience in previous industrial relations cultures. The first attempts at getting the best value from recognition may not be a completely satisfying experience for all parties.

**The Future for the ‘New Recognition’**

3.87. There are some signs that the early partnership agreements have inadequacies, or that one or both parties are not satisfied with having taken the approach in that it has not delivered all it promised\(^{297}\). Whilst there are many critics of the new approach to industrial relations brought about by the ERA and in particular the Partnership Agreement approach, there are many who see its provisions as a ‘positive’ development, some might say a ‘just in time’ development. Certainly without the new laws trade union membership and industrial relations may have continued its decline. John Edmonds, General Secretary of the GMB said that\(^{298}\):

"The industrial relations climate is now altogether more positive for trade unions than at any time in the last 20 years. There is no doubt that a real sense of partnership is beginning to emerge. Employers are increasingly recognising the value of establishing effective working relationships with trade unions."

John Edmonds is also credited with saying\(^{299}\):

"Since the election of a Labour Government the industrial pendulum is definitely starting to swing back [towards us]. ... During the Thatcher era we would have been lucky to sign more than two or three deals a year. In the last twelve months we’ve negotiated more than 100."

Whether what John Edmonds and his contemporaries said about the trend on recognition meant, there was generally a more favourable attitude from many employers, one can

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\(^{296}\) As in the case of the agreement between Computer Science Corporation and MSF, see discussion of the agreement earlier.

\(^{297}\) MSF and Legal and General undertook their first joint review of their Partnership Agreement signed in 1997, which had shown a tendency to be failing to deliver expectations of both parties in a number of areas - People Management 14th September 2000.

\(^{298}\) ‘Independent on Sunday’ 13th June 1999
only speculate. However, given what the Prime Minister had to say about employment law within the UK it is extremely doubtful that the government has any intention, or that the statutory mechanisms, have any serious possibility of returning trade union strength (political power and militancy) to its level of the 1970s. Millward et al\textsuperscript{300} believe it to be:

"inconceivable that the procedures, however widely and vigorously used, will lead to the restoration of collective bargaining to the extent that existed in 1980".

However, others (Gall et al) appear to believe that the key to the possibility of any large-scale increase in trade union power and influence over time is that, it is not likely to be through the direct impact of how many workers are brought under union recognition by CAC rulings, but through the demonstrative and punitive effect of CAC case law and through union threats to take recalcitrant employers through the statutory route leading to a continuation of the trend in voluntary deals. Presuming of course that sufficient employees join unions to enable claims to be made to employers. Also assuming that the ‘consensus’ in, industry, politics and the public continues to support the new laws.

3.88 Gall and McKay (2000)\textsuperscript{301} also believe that there are other forces which impacted upon employers attitudes towards recognition saying:

"Finally many non-union employers are reducing their opposition to recognition as a result of the growing juridification... (‘statutorily compliant’ as argued earlier) ... of employee relations, in part, through the implementation of European Union Directives into national law. This is because recognised unions are regarded as helpful in dealing with the more complex situation employers find themselves in."

Quoted earlier, the law has “legitimised a union role in organisations”. In each strand of thought the promotion of ‘partnership’ by trade unions has played some part in lessening their image as ‘being stuck in the class war rhetoric of the 1970s’, which in itself contributes to the ‘swinging back of the pendulum’ to greater acceptance of the legitimacy of the ‘collectivist model’ in a sound employee relations culture.

3.89. Turning to the intimately related issue of union membership, Baine and Price (1983)\textsuperscript{302} say increases in overall union membership may help also increase union recognition and vice versa:

\textsuperscript{299} GMB Press Release 13\textsuperscript{th} September 1999
\textsuperscript{301} Gall and McKay (2000) \textit{Trade Union Recognition in Britain the Dawn of a New Era?} Labour Research Department, 2000, London.
“the greater degree of union recognition the more likely workers are to join unions and remain in them. Union recognition and union growth are mutually dependent ... because the degree to which employers are prepared to recognise unions is at least partly dependent upon their membership strength. Hence union recognition and union growth combine together in a virtuous circle of cause and effect”.

These reinforcing effects are discussed in detail in subsequent chapters of the thesis.

3.90. The increases in overall union membership (for 1998 and 1999) and the predictions by the TUC\(^3\) of an addition of one million new members over the subsequent five year period provided some basis for believing that this virtuous circle can be created as depicted by Cully et al (1999)(WERS)\(^4\). The growth of new union recognition agreements from 1995 to the end of 2000 Painter et al (1998)\(^5\) may warrant a ‘revision’ to Bain and Price’s argument concerning the relationship between trade union recruitment, recognition and sustain membership growth

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\(^4\) The Guardian 14 September 1999. Note: As at end 2002 three years in to the five year period Monk’s used for his prediction of membership growth, aggregate union density had barely increased.


\(^5\) Bain G.S. (1967) p14, Table 9
CHAPTER TWO

4. Changing Composition of Employment, Demographics and The Changes Impacting upon Organising Strategies

4.1. Chapter Two analyses the changes in employment which have taken place over the past twenty plus years, and the manner in which they have impacted upon trade unions. It reviews the historic evidence, which shows that trade union industrial densities have been changing over a much longer period than since 1979, Bain (1967)\textsuperscript{306}. It analyses the way in which some unions, particularly non-TUC unions, and unions in the public sector have not declined at the same rate as TUC and primarily private sector unions. It undertakes an analysis of the changes that have developed in the age and gender composition of trade union membership, seeking to identify whether such changes are portents of a ‘step decline’ in membership brought about by ‘aged’ membership loss and the failure to recruit at lower age groups. On the other hand, whether much of the decline in young members may be the result of industrial change, and changes in the UK educational system. In addition, whether the gender profile of unions is primarily a feature of increased part-time working dominated by female employees. On the other hand, whether the growth is mainly due to the growth in the service industries and white-collar employment. Alternatively, whether recruitment amongst female employees is ‘localised’ to a few unions principally within the public sector and distributive trades. The analysis utilises data taken from the Labour Force Survey series 2002 and Certification Officer Annual Reports for the period 1979 to 2002, the WERS (WIRS) Survey 1999, also data taken from the TUC Organisation and Membership Department records.

4.2. The analysis of non-TUC unions during the period of the 1980-90’s in holding on to their membership and in many cases growing whilst most TUC unions were declining shows that this ‘success’ owes much to the nature of the employment in which many of the non-TUC unions were engaged. In particular, white-collar members in Banking and Finance (which eventually faced the same problems of decline as manufacturing), health services, which were mainly public sectors of employment. Also professional grades attracted to union membership as a form of ‘protectionism’ for profession qualifications, also the considerable professional benefits not easily sourced through ‘private providers’,
and which their unions ‘bulk purchase’ such as professional indemnity insurance in the medical professions.

4.3. The Chapter also develops evidence, to illustrate the manner in which, throughout the period from the 1950’s, unions increasingly became reliant upon compulsory membership and the employers subsidy as ‘props’ to their growth and development Cully et al (1999)(WERS)307. It also reviews the extent to which unions have been utilising the new recognition procedures of the Employment Relations Act 1999 is explored. The data published by both ACAS and the CAC (discussed later) indicates that a considerable amount of this activity has been focused upon ‘in-fill’ rather than ‘expansionist recruitment’, through claims for recognition within the traditional or ‘core’ membership areas, rather than the new industries and services sector.

4.4. The analysis of membership recruitment and retention utilises a paradigm that focuses upon the processes of ‘achieved growth’ and ‘received growth’. The chosen model is similar to that constructed by Bain and Price (1980) to illustrate growth and decline in union membership, which illustrates the two processes of, the ‘virtuous cycle’ and the ‘vicious cycle’. The model approaches its explanation initial in an historic context (pre 1980). It shows growth, first developing because of ‘initiated organising (recruiting) activity’ by a union. Secondly by ‘received growth’, that is growth which occurs or results from developments consequent upon ‘initiated organising activity’ that is, growth that develops because of recognition being agreed and facilities for union activities being agreed, leading to the conclusion of a ‘union membership agreement’.

4.5. The analysis in this chapter is ‘overarching’ with Chapters One, Three and Four and is particularly so with Chapter Three on union finance. The nature of this ‘interrelationship’ is defined through the model (see Figure 11 in Chapter Four) derived from an approach which appears to have been first devised by Berkowitz (1954) and reproduced in Willman et al (1993). This model develops a theoretic explanation, which adds to the model of union growth provided by the model mentioned at para 4 above. It illustrates theoretically the cost structure of recruitment in a ‘green-field’ situation as it might have applied pre 1979. Illustrating the manner in which the employer subsidy and ultimately the closed shop (union membership agreement)
developed and made a significant contribution to financing trade union growth and stability. The model used in the thesis is based upon the Berkowitz paradigm but utilises a different approach in illustrating the analysis and argument, which it is believed, represents a more thorough explanation.

4.6. A comparative analysis of the data is undertaken, to show the way in which TUC affiliated unions were more seriously affected by some aspects of the changes in industrial structure and law than was the case for non-TUC unions. In particular, analysis will be undertaken of the affects of the legislation of 1980-1982-1990, which was the sequence of legislation outlawing the closed shop, which appears to have had a disproportionate affect upon TUC unions. For example, the final outlawing of the closed shop and of union labour only contract compliance, also the removal of the Fair Wages Resolution which as Deakin and Morris (2001) note: “was the first step towards encouraging non-union membership in the private sector”. The significance of the laws banning the closed shop is illustrated later in this chapter when operation the ‘virtuous cycle’ and ‘vicious cycle’ in the process of union development and decline are explained. The ultimate aim often stated by the Government to be the outlawing of discrimination against employers who did not employ trade union labour as identified by Lewis and Simpson (1982) also Evans and Lewis (1988). These laws, as they became framed, created a labyrinthine threatening legal culture for trade unions, to the extent that serious inhibitions were created for trade unions and their members contemplating using the ultimate sanctions available to them. However, in many respects, despite the Employment Relations Act 1999 (ERA 1999) and the Trade Union and Labour Relations (Consolidation) Act 1992, (TULRCA 1992) as amended by Schedule A1, as will be discussed later, the situation remains largely unchanged today.

The ‘cocktail of change causing union decline.

4.7. The ‘collectivist model’, if it did not thrive, lived on particularly within the public sector, and larger businesses within the private sector, confirmed by much of what is said
in Cully et al (WERS) (1999) and Millward et al (1999) mainly because many employers continued to see in it, as Painter et al (1998) say:

"a disciplined framework within which corporate management could work".

Nonetheless, Tory Government antipathy towards the traditional role of trade unions, and collectivism, was put in to legislative effect. Government policy created and was assisted by the industrial restructuring, technological development, changes in product markets and employment structural changes. It was this ‘cocktail’ of developments which set a new contextual background for trade unions and contributed to the reversal of the trade union movement, and with it the decline of the collectivism. However, given that with the advent of the Labour government in 1997 public policy began to change radically in many of the areas which had been so damaging to trade unions, the question must be asked, why is it that there has been such a lethargic response in terms of trade union membership development, and why is it that membership density has yet to show any significant improvement from its lowest point?

4.8. Basset and Cave (1993) defined the problem of trade union decline during the 1980’s as:

“Quite simply a collapse in the demand for the core product that unions offered to their twin markets (employees and employers) - collectivism enshrined most obviously in collective bargaining”.

Such a view of the malaise facing trade union and their decline is far too simplistic, to be accepted as a material contribution to the debate. However, whilst clearly what Basset and Cave say is not the last word on the matter, in respect of the general ‘membership malaise’, given that some trade unions were able to hold on to recognition, within the private sector, even when membership declined significantly, Cully et al (WERS)(1999)\textsuperscript{311}. Nonetheless, collective bargaining did decline dramatically Brown (2003)\textsuperscript{312}, however, many of these same trade unions were able to hold onto a core membership, during this period of industrial change Cully et al (WERS) (1999)\textsuperscript{313}. However, they are now finding it very difficult to rebuild their membership.

4.9. During the 1980’s-1990’s, manufacturing diminished in aggregate as a part of the overall economy and, the numbers employed at individual establishments significantly reduced. Public sector industries such as coal, gas and electricity were de-nationalised,

\textsuperscript{311} Cully et al (WERS)(1999) pp 90 - 94
\textsuperscript{312} Brown et al (2003) pp 198 - 204
\textsuperscript{313} Cully et al (WERS)(1999) pp 86 - 93
deregulated, broken up and sold. Each of these industrial sectors had been the bedrock of trade union membership in both manual and staff occupations. As discussed at Chapter One, restructuring of the public sector was aimed at introducing competition through the creation of internal markets. The new owners (managers) and the new structures that emerged, for the new businesses, proved in many cases, not to be either sympathetic or conducive to trade union organisation. However, Freeman and Pelletier (1990) discount in large measure that these industry structural changes were major factors in the decline of trade union density and power, and use as a comparator, trade union experience within the Irish economy, saying:

"While the decreased share of employment in manufacturing undoubtedly hurt unions, we reject this compositional change as a major cause of the turnaround"\textsuperscript{314}.

They cite three grounds for their opinion.

First, is that: "density fell in most sectors of the economy;"

Second, is that: "changes within the industry mix of employment were no greater in the UK than in Ireland, where density did not fall";

Third: "the shift from manufacturing during the 1980's was only modestly larger than in the 1970's, when union density rose".

They go on to argue that just as compositional change was not a major cause of the fall in union density neither was changes in the gender or collar of worker major factors\textsuperscript{315}. Their argument extends to discount the changed public opinion of unions, and the impact of the business cycle, pointing to the fact that union density continued to fall during 1986 when the economy was rising. Arguments that are at considerable variance to those of much of orthodox opinion on what were some of the principal causes of union demise during the 20-year period to the turn of the century. Having discounted much of the orthodox theories for union membership decline Freeman and Pelletier look for, as they say, "something more" to explain the reasons for it occurring, which is they argue:

"the legal environment for industrial relations, as reflected in laws regulating union and management behaviour in the area of union recognition and membership."

4.10. Of course Freeman and Pelletier overlook the fact union membership had been declining within the UK for many years prior to 1979. Waddington (2003)\textsuperscript{316} takes an opposing view of union decline citing Brown and Wadhwani (1990)\textsuperscript{317} and Millward and

\textsuperscript{314} Freeman R. and Pelletier J (1990) p 143

\textsuperscript{315} Freeman R. and Pelletier J (1990) p145


\textsuperscript{317} Brown, W. and Wadhwani, S. (1990) pp 57-70
Stevens (1986)\textsuperscript{318} in support of his opposing views. The weight of evidence is such that it is difficult to disagree with Waddington's opinion of Freeman and Pelletier's hypothesis. One must, consequently, give changes to law their correct contextual importance as a development which assisted the implementation of much of the change process which, took place over the period of the 1980's-1990's.

4.11. Union experience over the period since 1979 has not commonly been one of decline. Furthermore the ER Act 1999 should have been a watershed and reversal of the decline, however, again for most unions particularly TUC affiliated, private sector, decline has tended to continue contrary to non-TUC and some public sector unions. It is not simply therefore why trade unions lost so much of their membership and power during this period, which needs explanation, but more importantly, why they continue to find it so difficult to regain that membership and power.

4.12. It was Hyman (1997) who developed the argument that trade unions had become so dominated by management, with so little independent representation, that their power and ability to influence the workplace had diminished dramatically. To some extent the WERS data and analysis supports this view of union demise in influence\textsuperscript{319}. The WERS was, until 1998 the WIRS its title was changed for reasons best explained by the authors of the survey who say:

"The Workplace Employee Relations Survey (WERS) series began in 1980. It was previously known as the Workplace Industrial Relations Survey, or WIRS - the name was changed in 1998 to better reflect the present content of the survey. The primary aim of the survey series is to provide statistically reliable, nationally representative data on the current state of workplace relations and employment practices in Britain."

Whilst little argument can be raised against the imputation of this statement, it is nonetheless salutary to have the authors of one of the leading surveys and data sources make a statement which encapsulates the fact of significant 'irreversible' changes, in the nature of the employment relationship and, the role of unions and collectivism within the 'new order'. Perhaps what Hyman says illustrates some truth in what Basset and Cave hypothesise. Employee perception that trade unions were neuter and little able to provide answers to their concerns and problems may have led to a disinclination to retain

\textsuperscript{318} Millward, N. and Stevens, M. (1986)
\textsuperscript{319} Cully et al (WERS) (1999) pp 107-111
membership of trade unions by some within the ‘older’ generations of employees, and for the newer generation of employees the perception that trade unions had little power or relevance must have appeared that what Basset and Cave observed was true.

The long-term process of membership and organisational decline

4.13. It is a matter of historic record (see Chapter One) that the ‘bedrock’ trade union membership had been changing over a number of years prior to the emergence of the Tory government in 1979. Bain (1967), Marsh (1979), Wrigley (1997), Wrigley (2002), identified that the demise of trade unions started some considerable time prior to the emergence of The Tories legislative intervention of the 1980’s. In his evidence to the Donovan Commission, Bain warned that UK trade unions, whilst having recruited significantly over the period from 1892 to 1964 when membership increased by 539 per cent, the number of employees only increased by 67 per cent, resulting in the overall density of trade union membership increasing by 11 per cent to 43 per cent of the employed labour force. When viewed over the short term Bain (1967) illustrates that from 1948 to 1964 there was in fact a reduction in membership density from 45.1 per cent to 42.6 per cent, however, over this same period potential union membership increased by some 14 per cent. Bain attributes this decline in trade union membership density to two major reasons:

a) the changing pattern of employment and particularly those industries with long traditions of trade union membership; and,

b) the highest density of membership - railways, coal mining, civil service cotton and manual employment in general;

4.14. Bain (1967)321 explaining the second factor causing trade union decline illustrates the affect of changing employment composition upon union membership density over this period of 1948 to 1964, showing that over the period membership density declined in eight of the fourteen expanding industries and says that this was because:

“unions are not recruiting members quickly enough among the expanding areas of employment, in particular among the white collar occupations to offset the decline in the traditional industries and among manual workers generally.” Bain (1967)322

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321 Bain (1967) p16 Table 10
322 Bain (1967) Para 25, pp 16
Bain goes on to say that whilst the absolute amount of white collar trade unionism has increased greatly:

"This has prompted many people to speak of a boom in white collar unionism. Such people are suffering from a growth illusion, which results from considering changes in union membership in isolation from changes in the labour force. In real terms this boom is non existent" Bain (1967)\textsuperscript{323}.

Bain prophesied almost precisely the malaise of the trade union movement when he said:

"If trade unions focus their attention on the manual labour force, they will be concentrating on the least dynamic group in modern society - a group which is constantly losing its younger and abler members to other sections of society. They will run the risk of becoming the increasingly outdated representatives of a declining industrial minority" Bain (1967)\textsuperscript{324}.

4.15. However, throughout this period there was, as Bain identifies, a steady expansion of employment in those areas which had a low density of trade union membership, professional and business services; insurance, banking and finance, distribution, chemicals, food drink and tobacco and white collar employment in all industries. It can be shown that had there not been a steady growth in union membership in these industries and occupational groups the reduction in membership in the 'core' industries and occupations would have produced aggregate decline and loss of density analogous to the losses during the 1980's and 1990's. Marsh (1979)\textsuperscript{325} shows that for six TUC industrial groupings, between 1959 and 1977 there was a membership loss of almost 900,000, Marsh (1979)\textsuperscript{326} says that white-collar membership grew by 2.3 million during much of this same period. However, during part of this period (1964 to 1970) white-collar membership increased by 33.8%, and because employment in these grades grew by only 4.1% during this period density increased significantly to the point where in 1979 white-collar union membership stood at 44% of such employees, Wrigley (1997)\textsuperscript{327}. However, much of the growth in white-collar membership was in industries, which were undergoing long-term decline, it was in fact a membership that ultimately, would be caught in the same malaise as the 'core' blue-collar membership. This assertion is in large measure born out by the fact that not one of the independent, predominantly private sector white-collar unions which, was engaged in the

\textsuperscript{323} Bain (1967), para 47 pp 29.
\textsuperscript{324} Bain (1967) para 48 pp 29.
\textsuperscript{325} Marsh (1979) p 13 Table 2
\textsuperscript{326} Marsh (1979) p 15 Table 5
\textsuperscript{327} Wrigley (1997) pp 30-31 Table 4
manufacturing industries, exists today (2002). Each has, because of membership loss and financial difficulties, discussed at Chapter Three, amalgamated with larger unions

4.16. Writing almost twenty years later Bain (1983), whilst identifying that the trade unions had to some extent identified the need for a refocusing of organising effort, and had indeed recruited and organised significantly within the white collar areas of employment, they had not succeeded to the extent necessary in other poorly organised areas of employment, particularly the private sector services, to ensure that density, given industrial structural and labour force changes would be maintained in the future. In this regard Bain (1983) makes an almost 'prophetic' analysis, given the facts of membership loss and poor recruitment as they occurred during the period he referred to, about the problems facing UK unions. Boeri (2001) illustrates that what Bain predicted may have been conservative when measured against the facts as we now know them to be. The UK trade union density declined over the period 1979 to 1997 for Commerce from 10 per cent to 7 per cent, for finance from 22 per cent to 18 per cent and for services from 59 per cent to 46 per cent. The consequence of this depletion in Trade union density is further illustrated by Boeri in table 2.3 showing density in the private sector to have declined from 45 per cent to 19 percent and even in the public sector where membership is deemed by some to be “ubiquitous” from 69 per cent to 60 per cent over the period 1980 to 1999. However, as Bach and Winchester (2003) show, employment within the public sector fell from 7.185 million in 1981 to 5.1 million in 2000, whereas employment in the private sector increased over the same period from 26 million to 29 million. Therefore, given the much larger falls in employment numbers within the public sector, the ability of unions to hold on to a high membership density within the sector is significantly divergent to union performance in the private sector.

**Industrial Restructuring, Deregulation and Membership Morbidity and Decline, the realisation of Bain's 'prophesies.**

4.17. Industry and employment in the 1980's and 1990's was a different world to that envisaged by leading trade-unionists in the 1950s and 1960s, who believed that the future of the movement was assured by the transference of trade union development into the new types of industries. This belief was based upon the presumption that the context in which unionism had grown and flourished in the 1960's and 1970's would continue. That changes would be about the nature of employment type, white-collar as opposed to

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328 Bain (1983) p 31
blue collar with greater technological skills requirements. Trade unions were simply not ready for the shock of the 1980's industrial restructuring, increasing employment in notoriously difficult to organise service industries and the developing technology industries which, were rapidly becoming dominant employment sectors of the economy, created a whole new contextual background for unions which, quickly accelerated the depletion of trade union density, just as Bain predicted. Added to these developments was the fact that the ‘new industries’ in micro electronics and computers and services, began to create a generation of ‘new’ high skilled jobs, requiring employees with highly sought after ‘portable skills’ McLoughlin and Gourlay (1994). New employment sectors, many spawned by the ‘enterprise culture’, and new skills in scarce supply, translated into the ideal medium for a free labour market and the development of individualising the employment relationship, presaged an employment culture which was to prove as destructive to the collectivist model upon which trade unions had been built as was draconian laws. The relatively high level of earnings and benefit packages offered by employers. The individual nature of contracts and the management culture controlling this ‘new’ generation of employees Fairbrother (1996) Geary (2003). The fact that many were employed in, small closely managed undertakings, which were difficult, and expensive to organise, also conspired against trade union efforts.

4.18. However, even though trade union density was being dramatically affected by these changes, Millward et al (2000) illustrate that during the early part of the 1980’s the presence of trade unions generally “at workplace level remained stable”. However, they go on to illustrate that such stability rapidly deteriorated during the period from 1984 to 1998, primarily, as they illustrate, attributable to the failure of trade unions to organise in the new establishments coming into industry, principally in services and the new technologies. Also accelerated by the Tory legislative attack on the closed shop and its dramatic decline over the period 1980-98. The significance of the fact that the vast majority of these closed shop agreements were in manual employment must not be overlooked in that this was also the ‘heartland’ of trade union membership density. However, Millward et al say that the aggregate fall in union presence during 1990 to

332 Prior to the Employment Act 1982 and the Employment Act 1988 taking effect on items such as union membership agreements.
1998 arose wholly because of the lesser penetration of workplaces that joined the population when compared with those that left it, stating that:

"there was a union presence in three fifths (59 per cent) of workplaces that left the population in this period whilst a presence was achieved of only two fifths (42 per cent) in those joining the population".

4.19. The fall in trade union presence over the whole period from 1980 to 1998 for all workplaces was from 65 per cent to 36 per cent (Millward et al (2000) table 4.2). Certainly it would appear that one of the significant problems for trade union organisation has been the increasing number of ‘start up’ and small businesses coming into the economy most of which have been relatively small in terms of the numbers employed. Millward et al illustrate (table 4.2), that the fall in trade union presence in companies employing 25-49 was an annual average of 3.7 per cent 1984 to 1990 and 4 per cent 1990 to 1998. In the corresponding periods for workplaces, employing 500 or more the figures were 2.9 per cent. The overall fall showed in the smaller workplaces during the whole period 1980 to 1998 it was from a 47 per-cent presence to 23 per cent and for the larger workplaces from 78 per-cent to 48 per cent.

4.20. The decline in trade union presence, measured in terms of the number of members is clearly a significant factor in the whole problem of the decline of collectivism. However, Millward et al (2000)\textsuperscript{334} says that there was, in their research, no significant indication that de-recognition\textsuperscript{335} was a major cause of this decline, Kelly (1990) agrees. Their research showed de-recognition occurred across most industries, however, they found no cases in banking, finance and business services sector and hardly any in energy, water supply or transport and communications. Also they found no cases of complete de-recognition amongst newly privatised companies within their survey, and that de-recognition appeared not to be associated with change of ownership.

4.21. Three reasons for de-recognition were, however, given by managers surveyed Cully et al (1999), these were:

a) changes in management policies which accounted for half the responses of managers;


b) decline in trade union membership which, accounted for a third of managers responses; and,
c) finally, the lack of trade union activity.

Akers *et al* (1996) say that:

"At best, the new management thinking simply ignores the role of unions in its search for other ways of winning employee consent; at worst it sets out to destroy or weaken them"

and, cites Guest (1987), also as Painter *et al* (1998) say, the prerequisites for maintaining the ‘collectivist model’ were either lacking or had been removed. However, Millward *et al* (2000) go on to say that:

"their results, on balance, were split roughly equally between those managers who saw de-recognition as arising from decline in employees interest in union representation and those who saw it as the outcome of a change in management policy”.

4.22. It would appear therefore that there is some authoritative support for the view expressed by Basset and Cave mentioned earlier. Or was it that trade union inability to defend its infrastructure, because of the twin attacks of legislative interference and employer withdrawal and indifference to trade unions, gave rise to ‘weakness’, that was more likely the real cause of most decline in the collectivist model of employee relations and with it the decline in trade union membership density and power!

4.23. One must nonetheless give due weight to employee sentiment on the matter of the value or otherwise of trade union representation. Here a number of considerations have affect, certainly in the period of the mid to late 1990’s. Millward *et al* say:

"A reduced appetite for union membership among employees appears to us the most likely explanation for the more recent period”.

Millward *et al* are clear in their view of the role of the Tories legislative impact saying:

"But in our view, the government’s programme had a more pervasive and deeper impact. This was to undermine the foundation of the system of collective representation and joint regulation.” A view very close to that of Freeman and Pelletier.

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335 In their analysis of derecognition, Cully *et al* (1999)(WERS) identify that they used ‘recognition for collective bargaining over pay and conditions’ as their definition to determine whether unions were or were not recognised see p 91.


4.24. However, much of what Millward et al. (2000) argue about the impact of de-recognition is at variance with what the (TUC) have to say on the matter over the same period of time. The TUC in its April 1998 Survey said there was:

"a marked fall in the number of de-recognition, from their high point in the late 1980's",

Deakin and Morris (1998) and early 1990's TUC (1998). The TUC survey also illustrates that over the period from the first half of 1996 to the first half of 1998 the number of de-recognition's which were being reported had fallen to only 8 per cent of TUC affiliates (representing some 90 per cent of all TUC membership) surveyed. No doubt this decline in the rate of derecognition reflecting the advent of a Labour government committed to a change in public policy on trade union recognition. Certainly de-recognition, if it was not the primary cause of trade union decline, throughout the period from 1979, it was a contributory factor.

4.25. The Advisory Conciliation and Arbitration Service (ACAS) involvement in industrial relations 'overarches' the period since 1974 and Towers and Brown (2000) gives some valuable background to developments, whilst Hutton (1996) and Coates (1994) provide general commentary on the political, economic and sociological background to the period. The decline in union membership and density over the period since 1979, and the impact of decline in manufacturing industries where trade unions had historically held much of their core membership. Also their inability to penetrate the emerging industries such as microelectronics and the service industries, became a 'preoccupation' for many researchers. Disney (1990), Disney et al. (1998), Machin (2000), Metcalfe (1991), Sneade (2001). Work produced by Gallie et al. (1996) gives a disaggregated 'geographic' accountant of the affects of industrial decline and changing employer attitudes upon union organisation in various towns and cities. However, decline in terms of density and core membership areas had attracted research and commentary over a lengthy period well prior to 1979, Bain (1966), McCarthy (1962). Bain through his statistical analysis showed how trade unions had never, until the mid 1970's raised their membership density above 50 percent. Whilst total membership tended to increase during periods of increased economic activity, and growing employment, membership density always lagged behind this growth Bain (1966).

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4.26. The research continuum of Millward et al (2000) has been maintained throughout the period since the early 1980's. There have been four publications in the series with companion work produced by Cully et al (WERS) (1999). The publications, their data and analysis are an ‘overarching’ account of developments during the past 20 years or so, and represent valuable material in the subject area. The available (but unpublished) research documentation, questionnaires, data sets etc are indispensable sources of information about changes taking place that affect trade unions, and the question of changes in the collectivist/pluralist model, and the employer employee relationship as developed towards the early part of the millennium.

The closed shop and its contribution to union membership density

4.27. Questions are frequently posed about why trade unions seek to attain 100% membership and extend their overall size? The most ready answer to the first question is that unionists do not like ‘freeloaders’. Any trade union which negotiates collective agreements is placing the benefit of those negotiations within the realm of ‘public goods’, e.g. benefits which are available for all employees to enjoy, whether trade union members or not Voos (1984). However, in economic terms that is not the real answer. The real answer is that 100% membership produces the most cost-effective basis of operation.

4.28. What is the optimum size for a trade union? The answer to this question derives from the answer to the previous question. Trade unions are not businesses, however, they do apply some criteria in their growth strategies similar to those applied by businesses. For the majority of unions the amount of finance raised by any ‘commercial activities is very small, and is derived from the sale of diaries and various union ephemera. Some unions, such as the RCN and BMA generate considerable income from professional publications, conferences, training courses etc, and have adopted administrative structures of a more commercial nature to deal with this side of their operation. However, for the majority of unions their primary income is the contributions it receives from its membership. Any surplus income when invested and income derived and the capital assets of the union are its only other sources of finance.

4.29. Historically part of the services provided to union members involved ‘friendly benefits’. Such benefits were invariably provided by blue-collar unions and to a lesser extent by white-collar unions, in the latter case Willman et al (1993) are wrong in their

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assertion about white-collar unions such as BIFU and APEX. Both unions did provide a range of such benefits over many years. The provision of such benefits derived from the early beginnings of these unions when they modelled themselves on their blue-collar ‘peers’. APEX for example, developed from the National Union of Clerks and the Association of Women Clerks. Benefits such as funeral, long-term sickness, long-term unemployment and job search were provided from the 1920’s into the late 1950’s and progressively removed through into the late 1960’s. The reason for ceasing such benefit provision was to allow more of the unions income to be diverted to recruitment and organising activities.

4.30. Unions invariably generate growth and financial strength from surplus income. The rate at which surpluses are likely to be generated depends upon:

a) the number of members;

b) the level of contribution;

c) the annual income per capita from any given rate of contribution;

d) membership ‘turnover’;

e) the costs of services provided to members;

f) the extent and value of the ‘employer subsidy’;

e) the level of inflation’s impact upon operating costs.

The fact that unions will tend to become involved in trade disputes adds an ‘imponderable’ element to their costs in the form of ‘dispute benefits’ and costs. However, given the fall in the level of trade disputes this cost factor is of lesser significance than historically.

4.31. Surpluses provide the margin from which to generate growth, by improving services, adding more full-time officials and staff through which to recruit and organise more members. This was certainly the strategy of white-collar unions, which where invariably heavily dependent upon full-time officials as recruitment agents, rather than shop stewards as in the case of blue-collar unions. As trade unions developed their
organisations prior to the 1980’s, union shop and closed shop situations became increasingly commonplace particularly in manufacturing and the public sector. An explanation of what is a closed shop or union shop is given above in the section on ‘Definitions’, for ease of reference both situations will subsequently be referred to as ‘closed shop’. The discussion within the Introduction provides a brief overview of the legislative developments and changes in public policy, which ended the operation of the closed shop. At the time when the law ended its operation according to Lewis (1983)

"an estimated half of all union members – a quarter of the working population – are employed in closed shops"

The growth of the closed shop can be ‘gauged’ by the fact that almost 20 years earlier, McCarthy (1964) put the number of union members covered by the closed shop at 3.75 million, or 2 out of every 5 union members were in a closed shop situation. McCarthy defined the closed shop as a situation:

“in which employees come to realise that a particular job is only to be obtained and retained if they become and remain members of one of a specified number of trade union”

A statement that reflects the relative ‘informality’ of closed shop arrangements some 40 years ago.

4.32. Since 1964 much has taken place on the matter of the closed shop, for example it increasingly became known as a Union Membership Agreement (UMA). The Trade Union and Labour Relations Act 1974 s 30, defined a UMA as an agreement which:

“has the effect of requiring the terms and conditions of every member of a specified class of employee to include a condition that the must be or become a member of the union(s) who are parties to the agreement.” TULRA 1974 s 30.

4.33. As to the implications of the closed shop Donovan (1968) was clear saying:

“In our view the closed shop as it operates at present is not always in the best interests either of workers or of the community as a whole”

However, arguing that:

“It is better to recognise that under proper safeguards a closed shop can serve a useful purpose and to devise alternative means of overcoming the disadvantages which accompany it”.

Within a further 20 years or so with political change the closed shop ended. The data illustrates that the demise of the closed shop had a significant impact upon union density.
4.34. **Table 19** Illustrates the step decline which took place in trade union membership over the period 1982 to 1990 the period during which the law on the closed shop was changing. It is not possible to isolate the membership losses solely attributable to the outlawing of the closed shop from the membership losses attributable to industrial restructuring. However, each legislative step taken in the outlawing of the closed shop appears to have had a significant effect upon union membership and density, however, more particularly in respect of TUC membership. This disproportionate effect upon TUC unions arises from the fact that, the prevalence of the closed shop was very much greater within manufacturing and public sector manual occupational groups, than white-collar and service sector jobs. It follows therefore that because the non-TUC unions had a greater presence within the latter employment groups, they would not be so greatly affected.

4.35. During the three-year period of 1980 to 1983 trade unions in aggregate lost membership density of 5%, however, TUC unions lost 6%, in membership during this period.

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<th>B (Thousands)</th>
<th>C (Thousands)</th>
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Source: Data for TUC union membership taken from TUC Organisation Department records. Aggregate union membership data taken from Certification Office Annual Reports 1979-1993
However, the TUC lost 18.5%. During the next 'step decline', the period from 1990 to 1992, the period when the closed shop finally ended, the TUC lost a further 16% membership. Which, represents within an aggregate period of 5 years, from 1980 to 1983 and 1990 to 1992, a loss of 2.7 million of the 5 million TUC members lost throughout the whole period from 1979 to 1992. Throughout the whole period (1979-1992) aggregate union membership, whilst it was declining was not doing so as fast as for the TUC, which lost just over 4.5 million members over the period. The reason for this being, the phenomenon explained in Chapter One of non-TUC membership growth over this period.

4.36. The majority of the literature identifies that there are two views of why trade unions saw the closed shop as an important issue first, that having all employees within the union would give it more 'authority'. Also it strengthened the collective bargaining power of the union. Secondly, was that all employees who benefited from collective bargaining should contribute to the union. There was however, for trade unions as organisations, a third and equally if not more important reason for achieving the closed shop. This third reason was the added financial benefits of 100% membership density. Berkowitz (1954) identified the significance of this third reason when he developed his model to illustrate how, from the granting of recognition a union builds its membership, by its own efforts to an 'optimum' level. At which point other opportunities for membership, consolidation and exploiting a unions membership strength may provide additional impetus to growth. (see Figure 11 Chapter Four) is a model developed to illustrate the manner in which this process of membership development took place prior to the outlawing of the closed shop. The model explains how the 'employers subsidy' played an increasingly important part in the membership level and economic strength of a trade union.

The link between the 'employer subsidy' and the closed shop

4.37. It is not possible to obtain precise data about the extent to which trade union organisation, as it developed during the period from 1946 to 1979, became increasingly dependent upon the 'subsidy' received from employers in the major industries where the greatest organisational density existed. The term 'subsidy' is used to describe the range of facilities which were extended to a recognised trade union and its lay representatives (shop stewards). In effect the 'employer subsidy' became a not insubstantial 'invisible income stream', which underpinned a great deal of trade union organisational activity within major industries and employers.
4.38. The growth in the shop steward ‘movement’ during the 1960’s and 1970’s and the
transference of negotiating responsibility from national bargaining, lead by full-time
trade union officials, to localised plant and company group bargaining lead by lay
representatives, added considerable power and influence to the role of lay shop stewards.
In many of the larger company groups within the manufacturing industries, full-time lay
representatives or Convenors became the norm. In some cases, groups of unions coming
together (particularly within the engineering industry through the Confederation of
Shipbuilding and Engineering Unions (CSEU)) to form ‘joint shop stewards
committees’, with a Convenor as its leader and principal negotiator.

4.39. The facilities provided by employers to this type of local organisation contributed a
significant subsidy to the ‘membership servicing costs’ of trade unions. The subsidy
extended through the provision of telephone and printing facilities to provision of office
space and in many cases to the acceptance of full-time paid trade union representatives.
Time off for training, attending union meetings etc was commonplace, many employers
actually meeting the travel and accommodation costs, where meetings were for joint
negotiating purposes. Many employers providing paid time off for elected delegates to
attend union policy making conferences and attending executive meetings. With the
increasing development of pre-entry and post entry closed shops, and latterly (for blue-
collar unions) within the late 1960’s and 1980’s the growth of the check off, improved
the per capita contribution income significantly, again contributing to the financial
strength of unions.

(1983), describes unions as having tended to become ‘dependent’ upon this ‘subsidy’.
There can be little doubt that with its loss, during the 1980’s and 1990’s coupled to
membership loss caused by industrial restructuring, many unions that had been major
beneficiaries of this ‘subsidy’, almost to the point of ‘dependency’, began to feel a
disproportionate effect of the change which swept through the collectivist culture.

4.41. The ‘employer subsidy’ was, in the experience of the author very important, and
where it was provided, possibly more important to white-collar unions given their
relatively ‘embryonic’ stage of development, and smaller financial resources, however,
nonetheless important to blue-collar unions also. White-collar unions found the
provision of any positive gesture on the part of an employer valuable, certainly anything
that ‘subsidised’ the cost of organising employees was a welcome contribution to defraying their disproportionate cost burden.

4.42. The loss of this ‘subsidy’ in a ‘normal situation’ would have been difficult to accommodate, however, its loss at the time general membership levels were falling was very serious Millward et al (2000) and Willman (2005). The difficulties faced could be compared to those faced by a union when commencing organisation at a company, however, in the ‘reverse order’:
   a) progressive loss of membership;
   b) progressive loss of revenue/revenue surplus;
   c) attrition of local organisational structure;
   d) loss of shop stewards;
   e) loss of membership servicing capacity;
   f) greater involvement of full-time officials;
   g) increasing membership per capita servicing costs.

**The recruitment process – the ‘virtuous cycle’ and the ‘vicious cycle’**

4.43. Bain and Price (1983) put forward a ‘model’ of trade union growth as a “virtuous circle” arguing that union growth is dependent upon union recognition and involvement in job regulation. However, there are ‘missing’ elements to their hypothesis about the “virtuous circle”. Manual unions tended to utilise their network of shop stewards to undertake recruitment and membership development. However, white-collar unions tended to place a great deal of reliance upon full-time officials as the recruitment and organising agents. For such unions it was also the surplus, which could be generated from growth that provided the future financial capacity to appoint more full-time officials and staff, to undertake more recruitment and produce more growth.

4.44. **Figure 12** is a model of the recruitment process as it applied pre 1980’s. The level of aggregate density at 53% (all unions)\(^3\) is that which applied as at the end of 1979. The model depicts the process of recruitment that took place in building membership from a green-field situation e.g. a situation where no level of recognition has been achieved, prior to recruitment taking place. It depicts the operation of the virtuous cycle, and the development of organisational structure, usually through the election/appointment of shop stewards or as in the case of many staff unions

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\(^3\) Willman (2005) in Fernie and Metcalfe (eds) awaiting publishing in mid 2005
\(^4\) Certification Officer Annual Report 1979-80.
"corresponding members". Development from Phase 1 to Phase 2 is critical as it represented the attainment of a density of membership that made a union more representative of the employees it would be seeking recognition for. Achieving a more substantial membership opened the possibility of stabilising the unions development. Through attaining recognition and the commencement of the "employer subsidy" in the form of check off. Phase 3 was the "development watershed"; it was at these levels of membership, having gained recognition, that a union was able to consolidate its membership. It achieved this by capitalising on its authority and developing a strong network of stewards and gaining facilities for them, that could be exploited in the final push for 100% membership. With all of the benefits of recognition in place and with the employer subsidy largely achieved, the final Phase 4 was where the union developed the process of 'mopping up' the 'freeloaders' and pressing the employer for a post or pre-entry 'union membership agreement' (UMA) or closed shop.

4.45. In Figure 13, the percentage levels of membership throughout the model are "notional" and the same considerations apply as for Figure 12. In the model the cycle is anti-clockwise commencing at Phase 4 which depicts the initial stage in the decline process, it is the origination of the demise of the closed shop. It is at Phase 4 when, given the changes that took place under the legislation from 1980 to 1990, employers and unions could no longer sustain a closed shop. Consequently, those "freeloaders" that
had been compelled to join a union through the operation of a closed shop would have resigned their membership.

4.46. At the margin, the process of decline would have been accelerated by other less committed members following the example of the ‘freeloaders’. Organisational Figure 13

infrastructure decline would develop as a result of membership loss and with it the ability of a union to operate efficiently. The available data shows that the ‘employer subsidy’ in the form of check off continued, as did recognition. However, as is discussed elsewhere the impact of the Trade Union Reform and Employment Rights Act 1993 s 15, had a significant disruptive affect upon the operation of check off, which contributed to membership and financial losses. Recognition in many cases for collective bargaining purposes ceased, with the demise of collective bargaining, and its effect upon the role of shop stewards and the decline in membership density caused by the demising ‘utility’ of trade union membership. Many employers withdrew from the provision of steward facilities, resulting in increasing servicing costs for unions at the same time as income would have been declining. In addition, explained elsewhere, trade unions increasingly found they were marginalised and bypassed with the advent of the new creed of ‘human resource management’, as this methodology for managing employee relations and
introducing individualised terms and conditions grew rapidly throughout the 1980's and 1990's.

4.47. The employer subsidy and the manner in which it operated, prior to the early 1980's, assisting unions develop the 'momentum' of the 'virtuous cycle' to build very strong local organisation has been lost. In addition, the ability of unions to develop and maintain closed shops has been outlawed. What then are the long-term consequences of these losses? One consequence, which has not been researched as a feature of this work is whether the 'churn factor' has increased as a result of these losses. It would be safe to assume that it has, however, no evidence is adduced within the thesis to show this to be a fact. A consequence that can be illustrated is that trade unions at employer, industry or national level can never again expect to attain the density levels that they achieved during the late 1970's. Figure 143 is a model, which illustrates this. It depicts:

a) the membership and organisation building 'virtuous cycle' post the outlawing of
   the closed shop, under the Employment Act 1990;

b) aggregate union membership density having fallen to 29% (2002) - (Yellow dotted outline arrow) is considerably lower than in the pre 1980's era of 53%;

c) likely levels of density necessary to develop organisation throughout the 'virtuous cycle' pre ER Act 1999;

d) (A) as the threshold at which initial rights are likely to be gained invariably the right to represent individual members in disciplinary/dismissals procedures;

e) (B) as the normal 'Range' of membership density required to justify a ballot under ER Act 1999, to gain collective recognition;

f) (C) membership development into this quadrant of the 'virtuous cycle' is impossible, closed-shop is illegal, ER Act 1999 did not reverse this fact;

the organisational development throughout the 'virtuous cycle' may still involve at various points the acquisition of 'rights' and 'facilities' e.g. check off, use of phones, shop stewards meetings in works time etc, all of which helps consolidate organisation and reduce operating costs - this is the continuation of a 'diluted' form of the 'employer subsidy'. These developments took place in tandem with membership development pre 1990 the year of the final ban of the closed shop. However, since that date less likely to be attained, even after a successful ballot under the provisions of the ER Act 1999 on recognition; The red dotted outline represents the incidence of the 'vicious cycle', operating at lower density levels than pre legislative intervention in union membership issues.
Its operation is a ‘continuum’ working against the operation of the ‘virtuous cycle’. Its affect is to inhibit membership density build throughout its process. Bain and Price’s model of the relationship between trade union recruitment and recognition, given the fact that the reinforcing effect of union membership agreements or the closed shop is no longer available to influence the ‘virtuous circle’, require a new approach.


For larger scale models of Figures 12, 13 and 14, see APPENDIX 1
CHAPTER THREE

5. Financial Management

Depleting financial resources - Historic background and Introduction

5.1. Unions have lost wealth over a considerable time, due in part to the low level of contributions charged to members and the increasing reliance upon investment income and liquidated assets as a means of bridging the gap between contribution income and total expenditure. The hypothesis of this Chapter is that UK trade union financial resources have depleted to the extent where future growth and development may have been compromised. It reviews the selected data to ascertain whether there are indications that trade unions will be able to reverse their financial decline, and develop a financial structure that will support their future needs in terms of growth and the provision of membership services. The analysis commences with a brief review of the historic research, illustrating that financial decline have been a longer-term problem for unions, made worse by the accelerated membership loss of the past 25 years or so. The analysis argues that some unions became over dependent upon support given to their activities by employers through what is termed the ‘employers subsidy’, and with the demise of many of these larger employing industries many unions lost more than just membership and contribution income. The Chapter analysis links with Chapter Four on trade union mergers, arguing that many unions have been compelled to seek mergers because of economic necessity rather than as a means of consolidating industrial organisation. Willman (2005) addressing the propensity to merge says, "Reduction in numbers has certainly not been associated with improvement in financial resources".

5.2. UK trade union financial weakness pre-dates the years of membership decline since 1979. Webb and Webb (1907) identified the finance problems facing unions, as did Roberts (1956). However, the issue of financial adequacy, has not attracted the same amount of attention in terms of recent research, as membership decline, and yet finance is probably just as serious a problem, recognised in Willman and Morris (1988) and (Undy et al (1996). A primary purpose of Chapter Three is the updating of the earlier research into trade union financial performance. The analysis uses material and data from the Certification Office Data Records, which includes data extracted from union annual reports and accounts (submitted with Certification Office Annual Returns, Forms AR21) over the period 1980 to 2002. The Certification Office Records are utilised

345 Willman and Morris (1988) Abstract also p 1
347 Certification Office Data Records – Annual Returns by Trade Unions (Forms AR21)
because of their consistent collection methodology and reasonably thorough supporting documentation, they are therefore the best aggregated and disaggregated data source Willman and Morris (1988)\textsuperscript{348}. This data is supplemented by data, which was obtained through the administration of a questionnaire to all TUC affiliated unions (68) and a sample of non-TUC unions with more than one thousand members (30). Details of the survey, which was designed using Pin-Point Software, are contained at Appendix A, B and B1. The structure of the questions used in the Pin-Point Survey was modelled on a number of the questions used by Willman et al (1993)\textsuperscript{349}.

5.3. Hughes (1964) noted that unions appeared to have been making progress in obtaining" sizeable and in some cases successive increases in contribution rates", and concluded, "the breakthrough in union finance is being made". However, shortly after Hughes’ research, Donovan reported, that in real terms as long ago as 1938 union members were paying much higher contributions than in the late 1960’s. However, that the decline in contribution levels appeared to have been offset by the rise in membership over the period. Union membership had indeed been growing\textsuperscript{350}, from 1938 to 1968, from 6 million to 10 million, and continued to do so through to 1979. Willman and Morris (1988)\textsuperscript{351} disclose that for many of the largest unions, (over 100,000) constant membership growth over this period had assisted in the maintenance of low-level increases in contributions. Furthermore, many unions appeared to have become more efficient at collecting contributions from their membership\textsuperscript{352} thus increasing per capita yield, the more up to date position of which is discussed later in this Chapter.

5.4. The TUC, as recorded by Donovan (1968) and McCarthy (1962) had attempted over many years to gain co-operation between groups of competing unions to agree a policy by which to increase contributions in a non-competitive manner. Whilst there is available data that shows efforts were made by many individual unions to increase the level of member contributions and improve their finances during the period of the 1960’s and 1970’s, there is little evidence to show multilateral co-operation across trade unions operating within similar industries and areas of recruitment. In fact TUC Congress General Council Reports over the period dealing with ‘inter union disputes’, show the

\textsuperscript{348} Willman and Morris (1988) p 2
\textsuperscript{349} Willman et al (1993) Appendices 3 to 5; pp 226-236
\textsuperscript{350} Membership data taken from: Trade Union Growth and Recognition, Research Paper No6, by G.S.Bain. The Royal Commission on Trade Unions and Employers Associations, (1967) also Ministry of Labour Gazette 1968.
\textsuperscript{351} Willman and Morris (1988) pp 53 - 60
\textsuperscript{352} Willman and Morris (1988) pp 55
highly competitive nature of trade union recruitment, Willman *et al* (1993)(353) say that subscriptions charged by other unions tended to be an "important consideration" when reviewing contribution levels, see also Buchanan (1974) and Lata (1972). Consequently the environment throughout this period was anything but conducive to co-operation in matters which may affect individual union ability to compete in recruitment.

5.5. Throughout the period 1979 to 2002(354) the contribution income of trade unions was an average 10 percent per annum less than total expenditure. Also, during this same period investment income was declining in real terms. During the period 1990 to 2002 however, the situation worsened, with investment income increased by only 6.8%. However, throughout the whole period from 1978 investment income, taken as a rolling five year average, decreased from 14.2% in 1982 to 5.9% in 2002, giving an overall average investment income for the period of 6.1%. However, an analysis of the available historic data shows that this deterioration had been taking place over a very much longer period than the past 25 years or so Willman *et al* (1993). Whilst membership grew during most of the period from the 1950’s, up to 1979(355), per capita income and wealth started to fall in real terms to the present time continuously Lata (1976); Willman and Morris (1988); Willman *et al* (1993). Donovan shows that the problem of declining income from contributions goes back much further than even the past 50 years. The Report shows(356) as a percentage of average weekly earnings union contributions declined from 1.02% to 0.39% from 1938 to 1966. Donovan also illustrates whilst this deterioration in contributions was taking place the increase in average earnings over the same period was 600%. Perhaps therefore, this was a period when membership would have been more receptive to contribution increases, proportional to the movement in earnings.

5.6. Given the failure of unions, over many years, to raise the level of member contributions to more than match their operating costs, as predicted by Willman and Morris (1988) unions have increasingly relied upon income from sources other than contributions. Consequently, asset and investment management and their performance should have taken a higher priority in the administration of resources than it evidently has. Latta (1972) and Willman and Morris (1988) commented on the poor growth of investments apparent in the periods covered by their analysis. What Willman and

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353 Willman *et al* (1993) p 57
354 Data taken from Certification Officer Annual Reports 1979-2002
355 Bain. G.S. and Price.R. (1983) (ed) Bain. G. S. p 5; Table 1.1
356 Donovan (1966) p 191
Morris (1988) identified as depletion of investment income and resources, and the deterioration in financial performance, has continued throughout the period since their research. In 2002 this trend continued with the amount of investment income attributable to many of the sixteen largest unions falling significantly\(^3\). In their later research Willman et al (1993)\(^3\) again identified that few unions covered expenditure through contribution income, unions instead continuing to fill the gap with investment income.

5.7. Some 20 years after Donovan, Willman and Morris (1988) were very clear about the serious financial circumstances facing many unions saying:

"For the future, the ability of many to remain financially healthy depends on the relationship between expenditure and non-subscription income." Going on to say: "It may be that several unions depleted their income yielding assets in overcoming financial difficulties in 1979-91, thus reducing the scope for investment income growth", also; "their capacity to overcome similar crises in the future requires that this depletion does not continue".

Willman and Morris (1988) go on to note that:

"higher membership levels do not necessarily improve solvency", and, in later research Willman et al (1993) says:

"There is an extremely strong negative correlation between union membership and union real net worth".

Which, confirms Willman and Morris (1988)\(^3\) argument that given new members bring no ‘accumulated wealth’ the per capita net wealth of a union falls, certainly in the short-term. The converse, ceteris paribus, also applies when a union losses membership, per capita net wealth increases, this was evidenced during the period of rapid membership decline in the mid 1980’s, when per capita wealth actually increased for some unions. Therefore, whilst more membership increases the contribution income flow, it also adds an additional cost in terms of servicing the new members.

5.8. Unions, throughout their history, have increasingly relied upon income from sources other than contributions Latta (1972), Roberts (1956) Willman et al (1993) and Willman and Morris (1988). An approach to financial management that could barely be sustained when unions tended to grow year on year, but has increasingly become unsustainable.

\(^{357}\) Annual Report of the Certification Officer 2002-2003 Appendix 4  
\(^{358}\) Willman et al (1993) p 75  
\(^{359}\) Willman and Morris (1988) figure 1(b) also p20
The degree of control, its location within union hierarchies and the manner in which control is exercised over financial management varies from union to union, Willman and Morris (1988) reported that they found that union rule books were not clear in the way they described financial management. In many cases, rules were over generalised, leaving specific definition for responsibility for day to day financial matters to the duties and responsibilities of designated officers. However, they identified that where major expenditure was required, or where general financial oversight was exercised, this was usually through the national executive committees, or a sub-committee established for that purpose. Undy et al (1996) discuss these problems of financial control citing the problems that were faced by the Transport and General Workers Union (TGWU) during the period of the late 1980’s and early 1990’s when the union had grappled with a long standing deficit in its accounts, which became a major issue in the General Secretary elections in that period. Finally resolving itself into a ‘battle’ for control of the unions financial policy, the result of which was the unions head office gaining central control.

Data taken from a survey of trade unions undertaken in 2002360 (referred to as ‘the pinpoint survey’) (Table 18) illustrates the manner in which financial control is currently exercised by unions representing some 5 million, predominantly TUC affiliated, members.

<table>
<thead>
<tr>
<th>Q11b. Q2. BUDGET RESPONSIBILITY. Who is primarily responsible for setting budgets?</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECT4No2budgresp</td>
</tr>
<tr>
<td>Other – specify.................</td>
</tr>
<tr>
<td>Treasurer</td>
</tr>
<tr>
<td>General Secretary</td>
</tr>
<tr>
<td>Finance Officer</td>
</tr>
<tr>
<td>Executive Council</td>
</tr>
</tbody>
</table>

The total number of respondents to this question, TUC and non-TUC was 42.

Source: the Pin-Point Survey 2002-2003 (Ray Edwards)

5.9. Table 18 shows that the overwhelming majority of unions exercise budgetary control through elected Executive Councils. Invariably, therefore, decisions about

360 The survey is written in PinPoint Software, Designed by Logotron and Published by Cambridge Publishers; and is referred to as ‘The Pinpoint Survey’ throughout the thesis, and a copy of the survey questionnaire, explanatory information and a list of the responding unions is contained within the thesis appendices.
budgetary control are taken at national level\textsuperscript{361}. Nonetheless, most unions maintain either a system of returning a proportion of contribution income to the regions and/or branches for meeting local expenditure, or have ‘impressed account’ arrangements which allows restricted drawings on central funds for these purposes. However, whilst overall budgetary control is exercised by national executive councils, the day to day budgetary authority tends to reside in the main with a unions General Secretary, as the data in Table 19 indicates.

| Table 19 |
|-----------------|----------|--------|
| Q1c. Q3. BUDGET CONTROL. Who is primarily responsible for controlling a budget once it is set? | Frequency | Percentage |
| Treasurer | 0 | 0.0 |
| Other – specify .................. | 1 | 2.4 |
| Executive Council | 2 | 4.8 |
| Finance Officer | 4 | 9.5 |
| General Secretary | 35 | 83.3 |

The total number of respondents to this question, TUC and non-TUC was 42.

Source: the Pin-Point Survey 2002-2003 (Ray Edwards)

5.10. It should be noted that the position of Treasurer in many of the unions that responded to the Pin-Point survey is a ‘lay officer’ post, the member elected serving as a member of the Executive Council and where specialist finance sub-committees are operated is also the leading member of such sub-committees. Consequently, he/she would normally only see financial data in its preparatory stages prior to reports being made to the Executive Council, however, the post would have overriding authority if matters of dispute arose as to how union finances were being administered. In some cases, the position of General Secretary and Treasurer is a ‘joint’ role as is the case with a major union such as the GMB. Consequently the ‘zero’ frequency for the position of Treasurer should not be identified as peculiar in respect of Pin-Point survey question Q11c. Q3. BUDGET CONTROL.

5.11. Whilst there are strong advantages in operating financial management from the centre, there are some disadvantages, not the least of which is the infrequency with which national Executive Councils tend to meet and consequently receive budgetary and general financial reports. Table. 20 shows that the majority of Executive Councils

\textsuperscript{361} Willman et al (1993) Chapter 5 discusses in detail the pattern of financial management, Figure 18 confirms that some ten years after his research the situation in respect of ‘centralised’ infrequent financial surveillance persisted.
actually see financial data on an infrequent basis. The Pin-Point Survey did not seek information as to whether there was any sub-committee of the Executive Council which over-sighted financial management. However, such sub-committees (Finance and General Purposes Committees – FGPC) are in evidence within most union rule books\textsuperscript{362}. They tend to meet between Executive Council meetings to receive reports on budgetary compliance, major financial decisions in expenditure, investment etc.

<table>
<thead>
<tr>
<th>Table 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q11e. Q5. BUDGETARY REPORTING. How often are reports made about expenditure, budgetary and financial matters?</td>
</tr>
<tr>
<td>SECT4No5budgereport</td>
</tr>
<tr>
<td>---------------------</td>
</tr>
<tr>
<td>Half yearly</td>
</tr>
<tr>
<td>Yearly</td>
</tr>
<tr>
<td>Some other frequency-specify.................</td>
</tr>
<tr>
<td>Monthly</td>
</tr>
<tr>
<td>Two monthly</td>
</tr>
<tr>
<td>Quarterly</td>
</tr>
</tbody>
</table>

The total number of respondents to this question, TUC and non-TUC was 42.

Source: the Pin-Point Survey 2002-2003 (Ray Edwards)

5.12. Whilst it is evident from the Pin-Point Survey data that there is a considerable amount of financial control exercised at the centre of most unions, such control has not produced what Undy \textit{et al} (1996) reported was the intent of trade unions in the administrative changes they made in the late 1980’s early 1990’s. Undy \textit{et al} (1996)\textsuperscript{363} says that:

"Drawing power back to the centre was seen as a means of exercising greater control over expenditure."

As is disclosed later in this chapter, the result for most unions, particularly those in ‘the club’, the process has produced anything but what was envisaged.

5.13. Having reviewed some of the most significant aspects of the administrative arrangements unions make for managing their finances, the Chapter now proceeds to undertake a detailed aggregate and disaggregated analysis of trade union financial performance:

\textsuperscript{362} Information about the role of Executive Council sub-committees such as FGPC’s was identified in the research undertaken of Forms AR21 and Union Annual Accounts and Reports lodged with the Certification Officer
a) first, a review is undertaken of the historic background to trade union finances;

b) second, the aggregate financial data for all trade unions is analysed to identify the manner in which trends in contribution income, the increasing reliance upon ‘other income’ and the consumption of liquidated assets has developed;

c) third a comparative analysis is undertaken of the financial performance of ‘the club’ and non-club unions;

d) fourth, the relative financial performance of TUC and non-TUC unions is undertaken;

e) fifth, the financial performance of a number of unions, selected because of their perceived importance to the future growth/stability of the trade union movement is analysed.

5.14. The analysis shows that over the past 25 years as membership decline has led to rationalisation, the trend in contribution income falling short of gross expenditure, has accelerated, and liquidated assets released by rationalisation have been quickly consumed. In aggregate unions have consumed over £2 billion (gross)\(^{364}\) of investment income, liquidated investments and assets in an effort to underpin seriously insufficient contribution income. In 2001/2002\(^{365}\) some of the largest unions produced their worst financial performance in 50 years, with six of the top 16 unions losing funds and net wealth. This latest decline in finance tends to confirm what the historic data produced by Latta (1972), Roberts (1956) Willman \textit{et al} (1993) and Willman and Morris (1988) exposed about the disturbing developments in the longer-term trends in the financial resources of Britain’s trade unions. Trends which do not augur well for the future of a trade union movement, which is:

a) struggling to replace an ageing membership;

b) faced by an apathetic market and employment culture;

c) required to make high levels of investment in recruitment, organisation and services if it intends to succeed in the future.

\(^{363}\) Undy \textit{et al} (1996) p 57
\(^{364}\) Figure calculated from data contained in the Certification Officer Annual Reports 1979 -2002
\(^{365}\) Certification Officer Annual Reports 2001-2002
5.15. The decline in union membership and union finance are closely linked issues. There are three issues, which have generated most of the financial problems that have faced trade unions:

a) their failure to maintain contributions at a level commensurate with the operating needs of the union;

b) their failure to increase the percentage yield of contributions obtained from each member over time;

c) their failure to control expenditure within limits commensurate with the level of contribution income.

The data shows that the average annual contribution income yield per capita, has persistently fallen short of its optimum level, being around 80 percent in aggregate for listed unions over the past 25 years. Willman et al (1993) illustrates how this factor affected the income stream for at least one major union, the AEU. The growth in check-off has taken it to become the majority method for the collection of union contributions, however, as Willman explains, the problem for the AEU and possibly many other unions, is that the shortfall is possibly attributable to the ‘churn factor’ and ‘ghost membership’.

5.16. Since the publication of earlier research undertaken by Latta (1972), Roberts (1956) Willman et al (1993) and Willman and Morris (1988), trade unions have become increasingly reliant upon other sources of income in order to bridge the widening gap between actual contribution income and total expenditure. The worrying aspect of the increasing reliance upon this ‘other income’ is the over dependence on investment income, and its increasing proportion of liquidated assets. The continuum of falling contribution income and shortfall in contribution yield and the impact upon income of periods of high cost inflation have progressively reduced operating surpluses. Marsh (1979) illustrates the historic nature of these problems. He shows (Table 12) how despite contribution and total income almost doubling, administration more than doubled from £3.26 to £6.60 per member over the period 1970 to 1975. Consequently, over prolonged periods these factors have reduced the surplus income from which investment in capital resources is made and from which future investment income and improvements to services may be generated. Table 21 shows that over the almost 20 year period 1982

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366 Figure calculated using published data, for aggregate contribution income and membership, in the Certification Officers Annual Reports for the period 1978-79 to 2002


369 Marsh (1979) pp 22-25
to 2001 the situation in respect of the gap between contribution income and total expenditure worsened considerably. Willman (2005)\textsuperscript{370} comments upon the developments that have taken place since his earlier research into union finance saying: 

"From 1990-2000 the nominal increase in union total funds was 32 per cent which is substantially lower than the increase in the FTSE 100 (approximately 190 per cent) across the same period. Given that a large proportion of union funds are held in equities

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
\textbf{Income} & \textbf{Total Expenditure} & \textbf{Percentage deficit} & \textbf{Deficit} \\
\hline
\textbf{Contrib '000,'s} & \textbf{Expenditure '000,'s} & \% average & \\
\hline
1982 & 292,223 & 298,561 & -2.13 & 5.36 \\
1987 & 398,073 & 446,568 & -10.86 & 9.18 \\
1992 & 514,125 & 575,983 & -10.74 & 7.33 \\
1997 & 548,704 & 651,086 & -15.73 & 15.04 \\
2001 & 659,430 & 811,672 & -23.08 & 18.84 \\
\hline
\end{tabular}
\caption{Contribution income and Total Expenditure over five year periods 1982 to 2001.}
\end{table}

\textbf{Table 21}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
\textbf{Contribution Income} & \textbf{Total Expenditure} & \textbf{Deficit} & \textbf{Membership} & \textbf{Deficit p.a. per Capita} \\
\hline
\textbf{\textsuperscript{0}000,'s} & \textbf{\textsuperscript{0}000,'s} & \textbf{\textsuperscript{0}000,'s} & \textbf{\textsuperscript{0}000,'s} & \textbf{\textsuperscript{0}000,'s} \\
\hline
1979 & 194,721 & 351,205 & 458,876 & 524,711 & 562,403 & 622,910 \\
1985 & 396,126 & 530,073 & 623,391 & 681,458 & 764,618 \\
1990 & 458,876 & 530,073 & 623,391 & 681,458 & 764,618 \\
1995 & 524,711 & 623,391 & 681,458 & 764,618 \\
2000 & 562,403 & 622,910 & 764,618 \\
2002 & 622,910 & & & & \\
\hline
\end{tabular}
\caption{Contribution Income -v- Total Expenditure – deficit 1979 to 2002}
\end{table}

\textbf{Table 22}

(Willman et al. 1993), the disparity in growth rates here raises the possibility that the observed very tight margins of income over expenditure are sustained by depleting the

\textsuperscript{370}Willman (2005) in Fernie and Metcalf (eds) awaiting publishing in mid 2005, Prof Paul Willman was in the process of completing research into trade union performance and in particular financial management at the time of this thesis being written up. Some of the results of his research will appear in a chapter of a book to be published in mid 2005, the chapter title is 'Circling the wagons; endogeneity in union decline'.
asset base. Subsequent falls in equity markets may be behind falls in reserves in 2001-2003”.

Willman’s latest research corresponds to the thesis research results, in respect of the impact that falling equity markets may have upon union finances since many unions changed their policies to hold a greater proportion of invested wealth in this medium. Also the final sentence of Willman’s comments sheds some additional light on the underlying reasons for the financial losses sustained by 6 of the largest unions discussed earlier within the thesis.

5.17. With the change in short-term liquidity needs, caused by the decline in benefit and dispute claims, union sentiment on the issue of investing in the equity markets has changed. Marsh (1979) noted the amount of ‘liquid reserves’, held by unions saying: “Most unions were prevented by rule or principle from profiting in the post war boom in equities and have not invested heavily elsewhere.” Marsh went on to say that: “The 28 largest organisations with over 80 per cent of total union membership have under £100 million invested and, in 1975 had investment income of just over £9 million.” Marsh goes on to say that in 1975 liquid reserves held by these same unions amounted to £190 million or £16 per capita. However, with the change in ‘liquidity demand’ investment policies have moved away from holding relatively secure investments, gilt’s

<table>
<thead>
<tr>
<th>Table. 23</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q10d. Question 10: What percentage of investments are held in the form of equities?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equities</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 10%</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>70% - 80%</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Over 80%</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>60 - 70%</td>
<td>1</td>
<td>2.4</td>
</tr>
<tr>
<td>10 - 20%</td>
<td>2</td>
<td>4.8</td>
</tr>
<tr>
<td>30 - 40%</td>
<td>3</td>
<td>7.1</td>
</tr>
<tr>
<td>40 - 50%</td>
<td>8</td>
<td>19.0</td>
</tr>
<tr>
<td>20 - 30%</td>
<td>14</td>
<td>33.3</td>
</tr>
<tr>
<td>50 - 60%</td>
<td>14</td>
<td>33.3</td>
</tr>
</tbody>
</table>

The total number of respondents to this question, TUC and non-TUC was 42.

Source: the Pin-Point Survey 2002 (Ray Edwards)

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371 Marsh (1979) p 25
and near liquid portfolios, towards higher risk (potentially higher return) equity portfolios. Data taken from the Pin-Point Survey of trade unions undertaken in 2002 (Table. 23) illustrates the level of equity holdings and the considerations, which influence investment decisions on the part of the unions that responded in the survey.

5.18. Table. 23 shows that of the respondent unions, representing over 5 million membership, over 52 percent had equity portfolios to the value of between 40 and 60 percent of total investments. Whilst more than 38 percent had equity holdings of less than 30 percent of their total invested funds, only one union responding to the survey indicated that it held more than 60 percent of its invested funds in equities. The amount of funds invested in equity markets remains relatively cautionary at circa 20 to 30 percent for a third of the trade unions covered by the Pin-Point Survey. Table 24 shows how poorly investment income has performed in recent years, the fall in financial

<table>
<thead>
<tr>
<th>Year</th>
<th>Investment Income</th>
<th>Percentage Growth per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>17,432,000</td>
<td>28.52</td>
</tr>
<tr>
<td>1979</td>
<td>22,404,000</td>
<td>15.53</td>
</tr>
<tr>
<td>1980</td>
<td>25,885,000</td>
<td>-8.73</td>
</tr>
<tr>
<td>1981</td>
<td>23,626,000</td>
<td>24.12</td>
</tr>
<tr>
<td>1982</td>
<td>29,325,000</td>
<td>4.01</td>
</tr>
<tr>
<td>1983</td>
<td>30,502,000</td>
<td>2.64</td>
</tr>
<tr>
<td>1984</td>
<td>31,309,000</td>
<td>16.39</td>
</tr>
<tr>
<td>1985</td>
<td>36,441,000</td>
<td>-4.94</td>
</tr>
<tr>
<td>1986</td>
<td>34,644,000</td>
<td>1.05</td>
</tr>
<tr>
<td>1987</td>
<td>35,011,000</td>
<td>10.36</td>
</tr>
<tr>
<td>1988</td>
<td>39,151,000</td>
<td>5.22</td>
</tr>
<tr>
<td>1989</td>
<td>39,938,000</td>
<td>-3.06</td>
</tr>
<tr>
<td>1990</td>
<td>41,198,000</td>
<td>3.32</td>
</tr>
<tr>
<td>1991</td>
<td>37,735,000</td>
<td>-8.56</td>
</tr>
<tr>
<td>1992</td>
<td>33,260,000</td>
<td>-12</td>
</tr>
<tr>
<td>1993</td>
<td>34,649,000</td>
<td>4.17</td>
</tr>
<tr>
<td>1994</td>
<td>35,305,000</td>
<td>1.89</td>
</tr>
<tr>
<td>1995</td>
<td>35,902,000</td>
<td>1.69</td>
</tr>
<tr>
<td>1996</td>
<td>41,679,000</td>
<td>16.09</td>
</tr>
<tr>
<td>1997</td>
<td>40,626,000</td>
<td>-2.53</td>
</tr>
<tr>
<td>2000</td>
<td>46,112,000</td>
<td>13.5</td>
</tr>
</tbody>
</table>

Average growth of investment income = 6.6%
Source: Certification Office Annual Reports 1979 - 2000
markets over recent years. Aggregate annual income growth in the ten years between 1978 and 1988 more than doubled, however, over the next twelve years it declined by 7 percent. This decline manifested itself in the form of modest growth in investment income of 6.6 percent average over the whole period from 1978, which, after allowing for inflation, is in fact negative growth.

5.19. However, whilst the performance for all unions has been poor, that for unions, which are members of ‘the club’, has been much worse over the past 25 years. As the data analysed in this Chapter shows, these largest unions have contributed disproportionately to the amount of investment income and liquidated assets that have been consumed during the past 25 years. Furthermore, they have in aggregate terms, performed financially far less well than their smaller contemporaries, as Table 25 shows

Table 25
Unions over 100k membership (‘the club’) investment levels compared against Unions with less than 100k membership

<table>
<thead>
<tr>
<th>Year</th>
<th>Unions 100k plus Investments £</th>
<th>Number Of Unions</th>
<th>Unions 100k plus Membership</th>
<th>Unions Under 100k Investments £</th>
<th>Number Of Unions</th>
<th>Unions Under 100k Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>132,195,000</td>
<td>25</td>
<td>10,267,084</td>
<td>39,205,000</td>
<td>364</td>
<td>2,357,369</td>
</tr>
<tr>
<td>1981</td>
<td>130,232,000</td>
<td>25</td>
<td>9,659,600</td>
<td>55,512,000</td>
<td>408</td>
<td>2,634,903</td>
</tr>
<tr>
<td>1982</td>
<td>149,623,000</td>
<td>23</td>
<td>9,227,149</td>
<td>54,065,000</td>
<td>386</td>
<td>2,489,597</td>
</tr>
<tr>
<td>1983</td>
<td>163,599,000</td>
<td>22</td>
<td>9,040,069</td>
<td>55,014,000</td>
<td>365</td>
<td>2,231,699</td>
</tr>
<tr>
<td>1984</td>
<td>141,011,000</td>
<td>21</td>
<td>8,451,195</td>
<td>71,630,000</td>
<td>343</td>
<td>2,302,798</td>
</tr>
<tr>
<td>1985</td>
<td>160,836,000</td>
<td>24</td>
<td>8,780,534</td>
<td>79,911,000</td>
<td>340</td>
<td>2,018,919</td>
</tr>
<tr>
<td>1986</td>
<td>171,593,000</td>
<td>24</td>
<td>8,518,316</td>
<td>82,635,000</td>
<td>324</td>
<td>2,063,896</td>
</tr>
<tr>
<td>1987</td>
<td>168,416,000</td>
<td>24</td>
<td>8,444,216</td>
<td>88,919,000</td>
<td>296</td>
<td>2,025,521</td>
</tr>
<tr>
<td>1988</td>
<td>173,887,000</td>
<td>23</td>
<td>8,342,064</td>
<td>93,563,000</td>
<td>281</td>
<td>2,037,439</td>
</tr>
<tr>
<td>1989</td>
<td>161,450,000</td>
<td>23</td>
<td>8,163,414</td>
<td>90,454,000</td>
<td>277</td>
<td>1,876,228</td>
</tr>
<tr>
<td>1990</td>
<td>158,972,000</td>
<td>23</td>
<td>8,001,574</td>
<td>91,881,000</td>
<td>264</td>
<td>1,806,404</td>
</tr>
<tr>
<td>1991</td>
<td>150,385,000</td>
<td>23</td>
<td>7,702,855</td>
<td>94,284,000</td>
<td>253</td>
<td>1,782,128</td>
</tr>
<tr>
<td>1992</td>
<td>172,359,000</td>
<td>20</td>
<td>7,159,233</td>
<td>100,334,000</td>
<td>269</td>
<td>1,764,981</td>
</tr>
<tr>
<td>1993</td>
<td>123,394,000</td>
<td>19</td>
<td>6,850,096</td>
<td>118,706,000</td>
<td>263</td>
<td>1,811,197</td>
</tr>
<tr>
<td>1994</td>
<td>106,734,000</td>
<td>17</td>
<td>6,517,464</td>
<td>134,122,000</td>
<td>243</td>
<td>1,708,122</td>
</tr>
<tr>
<td>1995</td>
<td>126,200,000</td>
<td>16</td>
<td>6,351,012</td>
<td>139,811,000</td>
<td>231</td>
<td>1,677,064</td>
</tr>
<tr>
<td>1996</td>
<td>174,813,000</td>
<td>16</td>
<td>6,481,482</td>
<td>110,917,000</td>
<td>224</td>
<td>1,452,307</td>
</tr>
<tr>
<td>1997</td>
<td>183,227,000</td>
<td>16</td>
<td>6,348,926</td>
<td>129,310,000</td>
<td>217</td>
<td>1,410,363</td>
</tr>
<tr>
<td>1998</td>
<td>201,253,000</td>
<td>16</td>
<td>6,399,507</td>
<td>138,631,000</td>
<td>204</td>
<td>1,407,910</td>
</tr>
<tr>
<td>1999</td>
<td>224,856,000</td>
<td>16</td>
<td>6,480,864</td>
<td>145,051,000</td>
<td>202</td>
<td>1,362,584</td>
</tr>
<tr>
<td>2000</td>
<td>224,856,000</td>
<td>16</td>
<td>6,480,864</td>
<td>145,051,000</td>
<td>202</td>
<td>1,362,584</td>
</tr>
<tr>
<td>2001</td>
<td>228,478,000</td>
<td>16</td>
<td>6,397,915</td>
<td>172,177,000</td>
<td>190</td>
<td>1,324,357</td>
</tr>
<tr>
<td>2002</td>
<td>248,429,000</td>
<td>16</td>
<td>6,400,225</td>
<td>161,218,000</td>
<td>180</td>
<td>1,339,443</td>
</tr>
</tbody>
</table>

Source: Certification Office Annual Reports 1980 to 2000
The Top Unions ('the club') Performance

5.20. Whilst the finances of trade unions generally are a cause for concern, of greater concern is the performance of the largest unions, given the increasing concentration of the overwhelming majority of membership in a few large ‘conglomerate’ unions. Whilst the trend has been for smaller unions to transfer to the larger unions, in aggregate the smaller unions are financially healthier, over the period since 1979. Table 25 illustrates the investment performance of unions with 100,000 membership+ ('the club') compared with all unions with a lesser number of members.

5.21. In 1980 ‘the club’ held £128.87 of investments per member, whilst the smaller unions held £166.33. By the end of 2002 the investments held per member for each union group were, £388.16 an increase of 200 percent and £1,203.62 an increase of 625 percent. Figure 25 shows how both union groups lost considerable membership and unions over the period. However, a major proportion of the loss of membership and unions from the smaller union group resulted from transfers to unions in ‘the club’. Undy et al (1996)\(^{372}\) indicates this cycle occurring over the period 1982 to 1989. A further fact worthy of note is that in 1996 the British Medical Association became a ‘member’ of ‘the club’. Thereby adding its investments of £34.5mln to the aggregate for that group, with the concomitant reduction for the smaller union group. Regard must also be had for the Royal College of Nursing which is within ‘the club’ however, shows no investment holdings within its accounts, which has a marginal negative effect upon the per capita investments of this group of unions. The position of each group in respect of ‘net wealth’ (funds) shows a similar trend of decline for ‘the club’ unions and, an increase for the smaller union group.

5.22. In 1977, 26 unions in ‘the club’, had 10,306,033 members representing 81 percent of total union membership, they also held 80 percent of total net wealth (funds). By the end of 2002 the 16 unions with over 100,000+ members had 6,400,255 members which represented 82 percent of total membership, and held 64 percent of the total net wealth (funds). Put another way, 18 percent of union members hold 36 percent of the movements net wealth. The situation is little better if one compares investment holdings. The top 26 unions in 1977 with 81 percent of total membership held £126 million whilst the remaining unions with 19 percent membership held £30.5 million in percentage terms, 80 percent and 20 percent respectively. By 2002 the percentage of investments held had changed to 60.6 percent and 39.4 percent respectively.
5.23. Comparisons between the total assets of these respective unions groups over the same period show the picture is similar. In 1977 'the club' unions held assets valued at £209.2 million, all other unions held assets valued at £53 million 80 percent and 20 percent respectively. At the end of 2002, assets held by 'the club' was £651.2 million and all other unions held £354 million 64.7 percent and 35.3 percent respectively. The comparative income of 'the club' unions over the period shows them to have performed little better. In 1977 the top 26 unions had an annual contribution income of nearly £118 million with total expenditure of £110 million, with investment and other income of £43 million, giving a net surplus of total income over total expenditure of nearly £50 million, and total expenditure of £110,565,000 and investment and 'other income' of £42,533,000, giving a net surplus of total income over total expenditure of £49,935,000. By the end of 2002, the number of unions in this group had reduced to 16 through amalgamation with other TUC unions. The contribution income of these 16 unions at the end of 2002 was £483 million and their total expenditure was £572 million, investment and 'other income' of £86 million, giving a net surplus of £13.2 million.

5.24. When making comparisons between 'the club' unions and the smaller unions it must be born in mind that some of these 'smaller unions' are effectively 'professional associations' organising relatively higher income groups of employees, and charge correspondingly higher contribution levels. However, these same unions provide high quality individualised membership services, and have historically relied less upon collective bargaining as a process of servicing membership, therefore their service delivery cost structure tends to be higher. Given the move away from collective bargaining confirmed in Cully et al (1999) (WERS), this is the type of cost structure with which trade unions in many situations will have to cope in the future. However, many of these smaller unions are also some of the 'oldest unions', which earlier in union history were themselves within 'the club', and whilst membership has declined investment portfolios and assets have not declined proportionately. In the main, it is within this 'smaller union' group that the researcher will find the type of union to which Latta (1972) referred as asset rich and able to operate over prolonged periods of membership and contribution income decline by "living of the proceeds of their assets". Perhaps, it is for this reason that the level of investment holding within this group and investment income is much healthier than that for 'the club' unions. Also, why these same unions

372 Undy et al (1996) Table 3.7 p47
373 In addition this same group of unions undertook the majority of the transfers of engagements with smaller unions during this period, amounting to some 540,000 members, many of these being non-TUC unions.
many of which have experienced prolonged membership decline Willman (1993), due to their industrial sector decline, have not so far found the need, to amalgamate for financial reasons. However, their relative wealth is starting to show the ravages of 25 or more years of declining membership, and ‘living off the family silver’. For the largest unions, coincidentally those same unions, which have been the most aggressive ‘merging unions’, the depletion of investments and assets has been greatest, and the likelihood that they will acquire wealth through their merger activities is remote, as was noted by Willman (2005).

**Overstated union membership affects density and financial data**

5.25. Contribution rates in the year 2001-2002 were on average £2.19 per week\(^{374}\), some 0.38 percent of average earnings, according to figures published by the TUC. However, if this figure of £2.19 per week is to be accepted as a reasonably accurate reflection of the average contribution level, it calls into question whether the ‘claimed’ membership for ‘listed unions’ is accurate at 7.6 million in 2002\(^{375}\). The aggregate contribution income, based upon this average contribution, should have been circa £854 million, instead it was £590\(^{376}\) million, 31 per cent lower. Allowing for the fact that in aggregate only 80 per cent\(^{377}\) of contributions are collected each year, this leaves an additional shortfall of 11 per cent of aggregate contributions. The inconsistencies in these figures may be accounted for in part by the fact that within their ‘claimed’ membership trade unions carry a high percentage of what can only be termed ‘ghost members’ (see Table 27). These members have joined the union at some time and have lapsed their membership but have not been removed from the unions records. Under their rules some unions have arrangements whereby such members are maintained ‘on the books’, in order to ensure their membership is continuous for benefit purposes, or is maintained extant for when they return to work.

5.26. Given that the density of trade union membership is measured as a percentage of the number of employees in employment within the UK, the aggregate figures for trade union membership used for the purpose of measuring density appear to be overstated. For example, the Certification Officers Annual Reports for the period1998 to 2001 show


\(^{375}\) Certification Officers Annual Report 2001-2002

\(^{376}\) Data taken from the Certification Officers Annual Report

\(^{377}\) Figure calculated using published data, for aggregate contribution income and membership, in the Certification Officers Annual Reports for the period 1978-79 to 2002
that the total number of contributing members was significantly less than total membership shown in the annual report data, (see Table 27).

Table 27

| ‘Ghost’ Membership 1999 – 2002 |  
| 1999-2000 | -6 percent  
| 2000-2001 | -10 percent  
| 2001-2002 | -10 percent  
| 2002-2003 | -11 percent  

Source: Annual Reports of the Certification Officer 1999-2000 to 2002-2003

These percentage differences in the total membership figure and the total for ‘contributing membership’ are made up of (according to the Certification Officer):

“retired, unemployed, long term sick, and members on maternity/paternity/child-care leave”.

Whilst those on long term sick, maternity/paternity/child-care leave may resume work, and therefore become ‘contributing members’ of their particular union, it is less probable in respect of the retired and unemployed categories. Consequently, the density for trade

Figure 17.

Ghost membership (selected unions) 2001-2002


Note: The Certification Officer Annual Reports show a variation between claimed membership and contributing membership continued, in 2002-2003 the difference was 11%, in 2003-2004 the difference was 12%.
union membership must be regarded as inaccurate, to the extent of almost certainly whatever is the aggregate number of retired and unemployed union members at the date of the Certification Officers data. Unfortunately the figure for these two non-contributing member categories is not available within the published data. However, if the figure was say, half of the aggregate of 11 percent for 2002, this would mean that union membership for the purposes of measuring density reduces to circa 7,324,685 a reduction in trade union density of 5.5%.

5.27. **Figure 17** which uses a sample of unions across the public and private sector and TUC and non-TUC unions illustrates the extent to which this problem of ‘ghost’ membership varies across union types. Unions such as EQUITY and the NUJ which tend to have a more fluid employment market than is the norm for most other unions have by far the largest percentage of their membership within the ‘ghost’ category at any given time. Second, are those unions within the medical profession, where the frequency of training and re-training of a medium to long-term nature is high. Third are the teaching unions, which, similar to the medical profession, have a high proportion of membership, involved in training. BALPA is unique with an employment market more structured towards short-term contract work and seasonal contract work due to the vagaries of the charter flight business. The fourth and final group are the conglomerate or general unions, which show a significantly lower level of ‘ghost’ membership. The average ‘ghost’ membership for the unions in **Figure 17** is 12.8 percent. The aggregate membership for these unions in 2001-2002 was 5,120,068 net of ‘ghost’ membership the figure declines to 4,464,993 a loss of 655,075 full fee paying members.

5.28. It is not possible to say with any precision what the net effect of ‘ghost’ membership is upon the finances of any individual trade union or trade unions in aggregate, because the precise data by which to make such calculations is not available. Furthermore, the contribution levels between individual unions vary greatly, and there is considerable variation in contribution rates within individual unions. However, it has been indicated earlier the ‘short-fall’ in per capita income, which, whilst not wholly attributable to ‘ghost’ membership, a considerable proportion must be. However, the problem of ‘ghost’ membership is a part of the overall problem of the ‘churn factor’, and whilst ‘temporarily’ non-fee paying members are nonetheless ‘members’ under union rules, the fact of the existence of this phenomena does little to inspire confidence that trade union membership figures are reliable, certainly when quoted as membership density. There is further evidence to support this scepticism in the analysis (elsewhere)
of ‘pre’ and ‘post’ membership figures as at the time of a trade union transfer or amalgamation. Perhaps therefore, there is a need to review the basis for calculating union membership density. A new approach should have regard for the fact that, whilst the “retired and unemployed” may be regarded as members by some unions under the terms of their rules (albeit in the main non-contributing) they are not appropriate to be regarded as ‘employees’ for the purposes of measuring union membership density.

**Fundamental Divergences between Income and Expenditure**

5.29. In 1977 UK unions generated a modest surplus of total contribution income over total expenditure\(^{379}\). Income from investments and all other sources (‘other income’) added a further surplus. However, within ten years the surplus of contribution income over gross expenditure became a substantial deficit. By 1992 the deficit had grown significantly and, by the end of 2002, the deficit represented 24 per cent of aggregate contribution income. **Table 28** illustrates these divergences in contribution income and expenditure over the past 25 years. Gross expenditure between 1992 and 2002 had accelerated significantly, to a point where it represented 98% of total income. It is this ‘runaway’ growth in gross expenditure that resulted in the significant deterioration in overall financial performance, resulting in many unions actually losing funds over this period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Surplus/deficit income £000</th>
<th>Investment plus other income £000</th>
<th>Total surpus/deficit £000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>4,700</td>
<td>25,300</td>
<td>30,000</td>
</tr>
<tr>
<td>1987</td>
<td>59,800-</td>
<td>90,600</td>
<td>30,800</td>
</tr>
<tr>
<td>1992</td>
<td>83,200-</td>
<td>105,200</td>
<td>21,900</td>
</tr>
<tr>
<td>2002</td>
<td>152,000-</td>
<td>154,700</td>
<td>2,400</td>
</tr>
</tbody>
</table>

**Table 28.**

Growing gap between contribution income and gross expenditure

In 2002, six of the top sixteen unions showed a net deficit of gross expenditure over gross income, thus actually reducing their net wealth, something which has not occurred during the past 50 years.

\(^{379}\) Financial data is taken from trade the Certification Officers Annual Reports, it includes financial data for the TUC which is a relatively small amount of resources and has very limited affect upon the aggregated figures.
5.30. Therefore during the past 25 years, whilst contribution income had increased by £507.7 million and investment income and ‘other income’ had increased by £137.8 million the net surplus had actually decreased by 51 percent to £2.3 million. Willman and Morris (1988) noted that the ratio of total income to total expenditure was moving close to ‘unitary’, by the end of 2002 it was almost there! The impact of all this upon the level of investments over the same period is that, whilst total investments have grown over the period (see Table 29), portfolio holdings have not kept pace with inflation.

**Table 29**

<table>
<thead>
<tr>
<th>Year</th>
<th>Investments [millions]</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>£157.3</td>
</tr>
<tr>
<td>1987</td>
<td>£216.4</td>
</tr>
<tr>
<td>1992</td>
<td>£271.2</td>
</tr>
<tr>
<td>1997</td>
<td>£434.5</td>
</tr>
<tr>
<td>2002</td>
<td>£443.1</td>
</tr>
</tbody>
</table>

*Source: Certification Officers Annual Reports 1977 – 2002*

Similarly, whilst investment income has grown, after allowing for inflation its growth has been modest. This is particularly so when the return on almost all forms of investment in markets generally during this period achieved record levels.

5.31. Therefore, allowing for market performance and inflation the investments held by unions, as a percentage of total wealth, were considerably lower in 2002 than in 1977. The consequential affect of the relative decline in investment portfolios has been a reduction by 50 percent in the income emanating from this source. Contribution income was also falling over this same period, by some 17 percent. The ‘gap’ created between income and expenditure has been filled by ‘other income’ primarily from the liquidation of assets. A process which has also contributed to the decline in the level of investments and, *ceteris paribus*, the income they generate, a development about which Willman and Morris (1988), mentioned earlier, also cautioned.

5.32. Undy *et al* (1996) shows that unions whilst losing membership were evidently gaining some economies of scale because of their ability to:

1. reduce full-time staff and officials;
2. reduce fixed asset costs (offices maintenance, etc);
3. generally, reduce operating overheads;
4. reduce or discontinue friendly benefits and,

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5. liquidate assets;

Accepting that almost all unions adopt accounting policies, which grossly understate the value of their fixed assets, usually, their various office premises, therefore their ‘liquidated’ net worth is likely to be considerably greater than that shown in their annual accounts. The fact is that the financial resources, which can be accessed, have diminished and continue to diminish at an accelerating rate Willman (2005). The availability of these additional liquidated resources has been ‘fortuitous’ however, it is a declining income stream and one not likely to be repeated. As well as economies of scale, unions have benefited from the reduced calls on resources to support industrial disputes, which, according to Davies (2001) reduced from 12.9 million days lost p.a. on average in the 1970’s to 7.2 million p.a. in the 1980’s and down to 660,000 p.a. in the 1990’s 382.

<table>
<thead>
<tr>
<th>Table 30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade union worth 1975 to 2002 — All UK trade unions</td>
</tr>
<tr>
<td>2002</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>1. Net worth</td>
</tr>
<tr>
<td>Per capita</td>
</tr>
<tr>
<td>2. Invest. Income</td>
</tr>
<tr>
<td>As % total income</td>
</tr>
<tr>
<td>3. Subs Income</td>
</tr>
<tr>
<td>As % total income</td>
</tr>
<tr>
<td>4. Other Income</td>
</tr>
<tr>
<td>As % total income</td>
</tr>
<tr>
<td>5. Solvency ratio</td>
</tr>
<tr>
<td>6. Operating Ratio</td>
</tr>
<tr>
<td>7. Administration</td>
</tr>
</tbody>
</table>

NOTES:
1. Net worth is the per capita value of investments and assets.
2. Solvency is the ratio of available funds (minus liabilities) to expenditure
3. Operating ratio is the ratio of available funds to expenditure

Source: Calculated using Raw Data taken from Certification Officers Reports 1975 to 2002; updating Willman et al (1988)

381 The Annual Reports of the Certification Officer no longer give separate data in respect of Membership Benefits, however, in the Certification Officers Report for 1975 the amount of total trade union expenditure on Benefits was £16,689,000 or 16.8 percent of contribution income.
Therefore, union deteriorating financial performance throughout the period, even allowing for membership decline, having regard for this further evidence should be a cause for concern on the part of trade union leaders.

5.33. Table 30 illustrates the way in which various aspects of trade union financial performance have been moving over the reference period. The table illustrates that the trend, which Willman et al (1993) showed to be emerging in 1988, has in fact continued. However, Willman and Morris (1988) whilst appearing to intimate there was a growing trend to depend upon income other than from members contributions, he could not have foreseen the shift to a large dependency upon other income flowing from liquidated assets. Willman et al (1993) explained the probability that the defining differences between the wealth of manual unions and white-collar unions being the fact that the former had built up large investment and asset reserves, they could likely withstand membership loss far better. However, he warned that liquidation could not continue to underwrite fundamental divergences between income and expenditure.

5.34. The decline in the investment income component of total income appears therefore to be a symptom of failing investment portfolios, both in terms of relative size and yield. The replacement of investment income with what is referred to as ‘other income’ is possibly of greater concern. The ‘non-core’ activities of unions do earn some additional income, however, not of the levels indicated by ‘other income’ within their accounts. In the main this ‘other income’, as we have said elswhere, emanates from liquidation of investments and assets released through the process of rationalisation caused by membership loss and reduced scale of operation, and the process of rationalisation that takes place subsequent to amalgamations and transfers.

5.35. Over the period since 1978 the £2Billion mentioned earlier which listed trade unions have consumed is made up of, over £1.3 billion of ‘other income’, together with £830 million of investment income. These two sources of income produced revenue equal to 21% of the income raised by contributions over the period. However, these sources of ‘subsidy’ have been depleting fast over the past 25 years. Therefore, if in the near future as it appears likely, unions can no longer rely upon non-contribution income streams as a means of subsidising artificially low contribution levels, the question arises,

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383 Prof Paul Willman in his later research Fernie, S and Metcalf, D. (2005) (eds) Trade Unions: Resurgence or Perdition? Routledge, to be published in mid 2005), does illustrate that the trend of financial decay had continued and, that the increasing tendency to consume investment income and the proceeds from liquidated assets as a significant contributor to trade unions managing to stay solvent.
will they be able to increase contribution levels by a sufficient amount to replace this lost 'subsidy'? Also, is it likely that if the reason for applying a 'subsidy' to contribution costs was for the primary purpose of keeping contributions low, will efforts to increase contributions to more realistic levels seriously inhibit union attempts to recruit and retain membership? A very serious question to be addressed by a trade union movement, which is hoping for a renaissance that is yet to arrive.

5.36. As we have shown earlier, the long-term reliance upon income from sources other than membership contributions is becoming increasingly tenuous, and its demise could be accelerated by any collapse of the financial markets similar to that experienced in recent years. The changes in investment policies that increased the tendency of trade unions to hold a higher proportion of equities, possibly because of the reduced need to hold high levels of near liquid investments, exposed them to market vagaries upon a significant portion of their asset wealth. The consequential effect has been that income from these sources has tended to decline Willman (2005). Given the possible decline in income from investments, and the depletion in portfolio values, the affect is likely to be serious particularly for those unions already facing financial problems, relying upon investments for a high percentage of total income. Such a development could trigger an unexpected, intensively aggressive, phase in the propensity to merge Undy et al (1996). Previously asset rich unions, who have ‘consumed the family silver’ may feel the need to look to amalgamation as the answer to the increasingly hostile financial environment.

What affect do mergers have upon financial strength?

5.37. Unions appear to have increasingly viewed green-field recruitment, particularly where employers are antipathetic towards recognition as a very expensive approach to developing their membership in order to retain ‘size’ Willman (2001), Willman (2005). However, membership development by acquisition whilst ‘consolidatory’ and a more aggregated method of adding to a unions size, does not add proportionately to trade union density. In addition, membership acquired by such means is more often than not already covered by recognition, consequently it is not ‘expansionist’, as it adds nothing to the organised strength of the trade union movement. Consequently, it can be argued that growth by acquisition has been a diversionary activity that unions have engaged in to protect size, influence and finances, but at the cost of morbidity in union membership.

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384 Willman et al (1993) p8 show how this process began to shape as long ago as 1950 with assets held in British Government Securities at 50%; Municipal Securities at 10.5%; and cash deposits at 23.9%.
and density. It has also brought with it a range of problems that have created weakness rather than strength. Aston (1990) noted that the majority of acquired unions were under 5,000 members, had declining membership, declining resources and low levels of assets per capita, which doubtless imported economic problems to the acquiring union.

**MSF – AEU – Amicus**

5.38. The failing financial performance of both the AEU over the period from the 1970’s into the 1990’s is discussed at length in Willman et al (1993). MSF’s financial failure has been a continuum throughout most of its history, certainly from the 1960’s, as ASSET and ASTMS. After its amalgamation with the Association of Scientific Workers, MSF owed much of its membership growth throughout the period since that time, to its policy of growth by acquisition and by diversifying its membership structure. ASSET through its various novations became in effect a very competitive, aggressively acquisitive, ‘conglomerate white-collar union’. Over the period from 1977, MSF membership grew from 441,000 to 653,000 ten years later, having merged with many smaller unions through transfers of engagements. Like most independent white-collar unions, MSF was never financially strong, however, throughout this same period notwithstanding its membership growth its financial strength moved in inverse ratio and latterly deteriorated dramatically.

5.39. Part of its financial difficulties may have emerged from its amalgamation with TASS which, through its amalgamations with other unions during the period 1983 – 85, experienced a dramatic decline in its overall financial position Willman et al (1993). MSF lost 49,000 members by 1990, two years after the TASS amalgamation. Willman et al (1993) identified the parlous condition of MSF’s finances in the early 1990’s, shortly after its amalgamation with TASS, caused by the fact that both unions were in serious financial difficulties at the time of their amalgamation. It is clear that MSF had made efforts over many years to get control of its deepening debt crisis. Much of it caused by the same reasons many other unions had encountered similar problems throughout the 1980’s and 1990’s, loss of membership contribution income, very little investment income and very weak reserves. MSF however, appears to have been a victim of its own success. Many of the smaller unions with which it transferred

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388 Annual Report of the Certification Officer 1978-88  
389 Annual Report of the Certification Officer 1990-91
engagements brought increased membership, in many cases lower levels of contribution income per capita and little by way of reserves. However, they brought added membership servicing costs. These factors plus an apparent failure to quickly rationalise its structure at each transfer and merger acquisition added disproportionately to MSF’s operating costs.

5.40. Throughout the period of 1990 to 1996 MSF lost 158,000 members, equivalent to 80 percent of the membership acquired in the amalgamation with TASS. The loss appears to have been a major contributory reason for MSF closing 10 of its offices around the country during 1995-96\textsuperscript{391}. This provided the opportunity to liquidate these assets in order to clear the major proportion of its long outstanding bank debt of some £15mln. The General Purposes and Finance Committee (GPFC) Report to the Annual Conference of 1996 said of the office closures:

"This was in order to assist the union’s debt reduction programme and move towards modern integrated regional centres".

By 1999 however, membership had collapsed to 404,741 only slightly higher than its pre-TASS amalgamation level. Consequently by 2000 MSF’s financial situation had deteriorated further, to the extent that the GPFC reported:

"the union is unable to extend and expand the range of services required for the future."

The financial and membership collapse of MSF must be viewed against the background that it was ‘the’ most successful union in achieving transfers and mergers. MSF’s success in the period up to the early 1990’s, in growing predominantly by acquisition, rather than organic development, appears to have given little advantage by way of long-term membership stability or financial strength, to the contrary. Part of the problems MSF experienced stems from the fact that it had a long-term problem of financial decline and most of the unions it acquired were in a similar situation. Unlike the situation described by Undy et al (1996) as “defensive on the one side and aggressive on the other”. In January 2002 MSF amalgamated with the AEU to form Amicus. Interestingly, in the year prior to its amalgamation with the AEU, MSF ‘shed’ some

\textsuperscript{390} MSF Annual Conference Agenda 1996, page 4 paragraph 37, also MSF Annual Conference Agenda 1997, page 5, paragraph 39.

\textsuperscript{391} At this time (1995) MSF had long outstanding debt to its bankers of some £15,000,000 (as can be seen in its accounts for the period) with very little by way of investments its primary capital resources were its fixed assets mainly offices.
54,000\textsuperscript{392} members, therefore at amalgamation to form Amicus, MSF had a membership of 350,974. Slightly less than the level of membership, it held in 1976.

<table>
<thead>
<tr>
<th>Table 31</th>
<th>MSF</th>
<th>AEU</th>
<th>Amicus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per capita contributions</td>
<td>£75.02</td>
<td>£52.5</td>
<td>£59.91</td>
</tr>
<tr>
<td>Additional income per capita</td>
<td>0.58</td>
<td>13.76</td>
<td>14.34</td>
</tr>
<tr>
<td>Total expenditure per capita</td>
<td>79</td>
<td>57.98</td>
<td>64.82</td>
</tr>
<tr>
<td>Surplus/deficit</td>
<td>-3.4</td>
<td>8.28</td>
<td>9.43</td>
</tr>
<tr>
<td>Funds per capita</td>
<td>40.56</td>
<td>90.28</td>
<td>74.11</td>
</tr>
<tr>
<td>Investment Portfolio</td>
<td>£2,296,000</td>
<td>£61,918,000</td>
<td>£64,214,000</td>
</tr>
<tr>
<td>Total Funds</td>
<td>£14,239,000</td>
<td>£65,748,000</td>
<td>£79,987,000</td>
</tr>
<tr>
<td>Total Assets</td>
<td>£19,815,000</td>
<td>£65,748,000</td>
<td>£85,563,000</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>£5,576,000</td>
<td>£12,123,000</td>
<td>£17,699,000</td>
</tr>
</tbody>
</table>

Source: Certification Officer Annual Report 2000-2001

Figure 31 constructs a picture of the consequences of bringing together MSF and the AEU illustrate the financial situation of the AEU and MSF at the year-end (2001) prior to amalgamation, and shows the primary features of the 'estimated' combined financial resources of Amicus, going forward into the amalgamation's first year.

**BIFU – BGSU – NATWEST – Unifi**

5.41. The BIFU during the period from the 1960’s was frequently in competition with MSF in its membership development and acquisition campaigning within the financial services sector. BIFU over the period since the 1960’s has like MSF been reasonably successful in achieving mergers with a number of the financial services sector unions. However, like MSF it too appears to have been a ‘victim of its success’. Like MSF, whilst many unions were declining it was growing, but only in membership terms not in terms of financial resources.

\textsuperscript{392}This decline in membership over the course of the year prior to the amalgamation with the AEU may well represent an ‘administrative correction in membership due to the audit of ‘voting members’ (those eligible to vote under the unions rules) for the purposes of the amalgamation ballot. Nonetheless, it is a phenomenon that can be identified at almost every amalgamation ballot.
5.42. The individual bank unions, which comprised the Clearing Bank Union, had been in competition with BIFU throughout much of its existence. Consequently, the amalgamation of BIFU, NatWest and Barclays staff unions to form Unifi was viewed as the ending of the divisive wrangling within the clearing banks and the development leading to 'the' major heavyweight union covering the bank and financial services sector Morris et al (2001). However, the merger of the three organisations appears to have involved a series of 'compromises' particularly in respect of the financial structure of the new union Morris et al (2001) say:

"the outcome was a compromise based on central control in principle but with substantial devolved autonomy over spending".

Morris likened the merger to a "reverse take-over". At the time of the merger, whilst BIFU was some three times larger than the either of the other two unions it was by far the financially weaker, and consequently not in a strong negotiating position to impose its financial administrative structure upon its merger partners. Nonetheless, whilst NatWest and the Barclays Staff Union were financially stronger, they both suffered from the same problems of an industry undergoing major restructuring and consequently declining membership, the scenario facing all of the parties to the merger was basically the same, requiring the same response of a 'defensive merger'. By adopting a 'flexible' structure, particularly in respect of the degree of autonomy over finance, it was hoped by all three unions that this would help in developing future mergers with the other staff unions within the financial services sector, Morris et al (2001).

5.43. Unfortunately, some two years in from the amalgamation the 'flexibility' does not appear to have been the success hoped for. Some of the problems of Unifi are associated with the continuing haemorrhaging of jobs and membership within the sector. However, it appears that the problems go deeper than this and resolve themselves to a large degree in terms of financial resources and the viability of the newly amalgamated union, and the need for further 'defensive mergers'.

5.44. BIFU, historically, suffered from the problem of all white-collar unions, a very high dependency upon contribution income with little additional income from investments. Also a high staff to membership ratio and consequently high administrative costs. Immediately prior its amalgamation to form Unifi, BIFU had at the end of 1998, 106,000 members, with a per capita contribution income of £62.00 and a total per capita income of £67.96. BIFU held only £791,000 in investments and had total assets of £3,663,000 (per capita £34.55) and total funds of £2,987,000 (per capita £28.17).
5.45. At the end of 1999, its first year as Unifi its membership was 171,249, however, its financial resources did not reflect such a large accretion in membership. Unifi’s per capita contribution income was £36.87 with a total per capita income of £40.81. The union’s investments improved to £3,731,000 and total assets increased to £8,412,000 (per capita £49.12) however, total funds reduced to £4,466,000 (per capita £26.07). In this first year Unifi had a deficit of total expenditure over total income of £3,177,000.

5.46. By the end of 2000 Unifi’s membership had declined to 160,267 and it is evident that at the time there were no short-term possibilities of further ‘defensive mergers’, with any of the other sector unions. The possibility of merging with MSF because of its ‘know’ financial problems was not seen as a viable prospect. Unifi’s financial position began to weaken, its per capita contribution income was £62.00 with a total income per capita of £70.20, whilst its total costs were per capita £75.00. The union’s investments had reduced to £2,489,000 (per capita £15.53) and total assets had declined to £7,803,000 (per capita £48.68). At the end of this its second year Unifi had a deficit of £766,000. Given that MSF has merged with the AEU to form Amicus, it comes as little surprise therefore that Unifi and Amicus have recently announced that negotiations are at an advance stage to establish a basis for amalgamation, a development which Morris et al (2001) appear to have gleaned as a possibility. Particularly so, given the increasing exploitation of technology facilitating the trend for many of financial services companies to outsource major employment sectors of their operations, and increasingly transfer high labour cost operations overseas to low earnings economies. All of which is having a serious affect upon unions organising within the financial sector.

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393 These figures are based upon only a part year (7 months) the amalgamation registration date was 11-5-99 therefore the figures for income of all forms should have regard for this fact. However, as the data shows, in the subsequent years membership declined and finances improved only slightly.
CHAPTER FOUR


6.1. This chapter explores the strategies many unions have developed in their efforts to replace ‘core membership’ losses sustained since 1979. Some unions, including public sector unions, have developed their organisations into new ‘structural formats’. In some cases these strategies have been developed to follow their traditional membership into new public sector organisations, and forms of employment in the private sector, when public undertakings have been privatised. To achieve this some unions have moved into new areas of employment through the process of transfers of engagements and mergers. Some have become general unions and the largest have become ‘conglomerates’. In many cases this has increased recruitment in ‘brown-field’ unionised areas or industries, which has tended to exacerbate the degree of organising overlap and inter-union competition.

6.2. The chapter analyses the preoccupation of some unions with these processes of change, and argues whilst helping some unions to maintain their operation, and ‘survive’, it has added little in terms of the strength of survivor unions and the movement as a whole Willman and Aston (1988) Willman et al (1993) Metcalfe (2004). Research addressing the value of union merger policies, until recently, generally saw the process as an uncoordinated attempt to consolidate membership, rationalise structures, and survive Parodi (1997), Undy (1996). However, more recent research tends to confirm many of the results of the thesis research, that the process has been failing, in many of these objectives, Willman (2005). Metcalfe (2004) is sanguine in his view saying:

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394 The ISTC is one such union. It developed a policy of ‘community unionism’ seeking to follow its membership into areas of employment within communities where large scale redundancies through steel plant closures had driven large numbers of ISTC members into other forms of employment within the community. Since completing the research for this thesis the ISTC amalgamated with NUKFAT in May 2004 to become a section of the ISTC -COMMUNITY union, NUKFAT had experienced problems of membership loss similar to the ISTC. It was a union specialising in a particular declining industry that historically had tended to be geographically localised and therefore the ‘Community Union’ organising approach appeared to fit its needs. As yet there are few examples of the benefits which may emerge from the ‘Community Organising’ approach. Other examples are unions, which had specialised in organising civil servants, that changed their organising policies to follow membership into services which were privatised.

398 Willman (2005)
"The bulk of mergers were aimed at raising market share – shuffling members around – rather than generating scale economies which would release extra resources for servicing and organising".

The analysis of pre and post-merger membership levels illustrates that ‘acquired growth’ may not have helped improve the membership levels of some unions, and has probably, for the trade union movement as a whole, contributed significantly to the ‘churn factor’ and aggregate density loss. The data also shows that the structure of the trade union movement, certainly so far as removing wasteful competition is concerned, has not been improved by this process of transfers and mergers, an argument with which Willman (2005) broadly agrees.

6.3. The analysis in this chapter is ‘overarching’, interrelating with Chapter One and particularly with Chapter Three on union finance. To explain this a model is constructed which is derived from an approach first devised by Berkowitz (1954) and reproduced in Willman et al (1993). The model used in the thesis is based upon the Berkowitz paradigm but utilises a different approach in illustrating the analysis and argument, which it is believed represents a more thorough explanation. The model also illustrates theoretically the cost structure of recruitment in a ‘green-field’ situation as it might have applied pre 1979. Illustrating the manner in which the employer subsidy and ultimately the closed shop developed and made a significant contribution to financing trade union growth and stability.

6.4. A disaggregated analysis is undertaken of the changing structure of union membership, in terms of occupation, gender and age, for all unions, comparing TUC unions and non-TUC unions. The analysis utilises data taken from the Labour Force Survey series 2002 and Certification Officer Annual Reports for the period, data taken from the TUC Organisation and Membership Department records. This aspect of the chapter illustrates that; the age and gender profile, which has developed over the past 25 years, is an issue, which if not successfully addressed will reinforce the long-term problems of membership decline. Part of the analysis of membership recruitment and retention utilises a paradigm that focuses upon the processes of ‘achieved growth’ and ‘received growth’. The chosen model is similar to that developed by Bain and Price (1980) to illustrate growth and decline in union membership, which illustrates the two processes of, the ‘virtuous cycle’ and, the ‘vicious cycle’. The model shows growth, first developing because of ‘initiated organising (recruiting) activity’ by a union. Secondly by ‘received growth’, that is growth which occurs or results from developments consequent
upon 'initiated organising activity' that is, growth that develops because of recognition being agreed and facilities for union activities being agreed by the employer, such as, the right and reasons for joining a trade union forming a part of the employee induction process, check off, paid release for representatives, office accommodation and facilities, administrative support etc, also agreement to operate a post entry/pre-entry close shop.

6.5. A comparative analysis of the data is undertaken to show the way in which TUC affiliated unions were more seriously affected by some aspects of the changes in law than was the case for non-TUC unions. In particular, analysis will be undertaken of the affects of the legislation of 1980-1982-1990, which was the sequence of legislation outlawing the closed shop. The data illustrates that after allowing for the membership loss that was taking place, because of industrial restructuring, changes in law outlawing the closed shop contributed to a series of step reductions in density. Using examples of individual unions, and aggregated data, the analysis shows that transfers and mergers have actually contributed to the process of decline in individual union membership and aggregate trade union density.

**Industrial restructuring, its affects upon unions.**

6.6. The diminishing size of manufacturing, and the restructuring of public sector industries such as coal, gas and electricity, which were de-nationalised, deregulated, broken up and sold, seriously affected the bedrock of employment and trade union membership in both manual and staff occupations. Nolan and Slater (2003)\(^{399}\) illustrate the developments that took place in labour markets over the period as a consequence of these changes. The new companies, owners and the new structures that emerged for the new businesses, proved in many cases, not to be either sympathetic because of management philosophy or conducive, because of relatively small size, to trade union organisation Cully et al (WERS)(1998)\(^{400}\). Millward et al (1999)\(^{401}\).

6.7. However, Freeman and Pelletier (1990) give three grounds for their opinion which was changes in law rather than contextual change caused by industrial restructuring that caused union decline, saying:

first, "density fell in most sectors of the economy"; second, that: "changes within the industry mix of employment were no greater in the UK than in Ireland, where density did


\(^{401}\) Cully et al (WERS)(1999) Chapter 11
not fall"; and, third: "the shift from manufacturing during the 1980's was only modestly larger than in the 1970's, when union density rose".

They go on to argue that just as compositional change was not a major cause of the fall in union density, neither was changes in the gender or 'collar' of worker major factors. Their argument extends to discount the changed public opinion of unions, and the impact of the business cycle, pointing to the fact that union density continued to fall during 1986 when the economy was rising. Arguments, which are at considerable variance to those of much of orthodox opinion on what were some of the principal causes of union decline. Having discounted much of the orthodox theories for union membership decline Freeman and Pelletier look for, as they say, "something more" to explain the reasons for it occurring, which is they argue:

"the legal environment for industrial relations, as reflected in laws regulating union and management behaviour in the area of union recognition and membership."

However, the overwhelming weight of evidence is such that Freeman and Pelletier's analysis must be placed within its correct context, as 'one of the many contributory reasons for union decline', however, it was not the major cause.

6.8. Chapter One showed that union experience over the period since 1979 has not commonly been one of decline, and yet the same laws applied to all unions. Furthermore, whilst all the Tory laws of the 1980's were not amended or repealed, the law has considerably changed to now favour a return to a 'pluralistic' form of employee relations. However, these changes in law and particularly the ER Act 1999, should have been a watershed and helped the reversal of the decline, but, for most unions, decline has tended to continue particularly within the private sector. Unions have taken many initiatives throughout the 1980's and to the present time, to improve their ability to manage the affects of the changing context in which they operated. Metcalfe (2001) also (2004) Waddington (2003) provide detailed analysis of the efforts made by the unions to cope with the affect of macro economic and social change.

Reducing the number of unions, the road towards 'oligopoly'

6.9. In 1989 a survey of all unions showed that 40% had been involved in merger discussions Willman (1996). Initially, the outcomes of these discussions produced far less mergers than one would have imagined, given the number of unions involved. In the

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404 Willman (1996) p 332
main mergers tended to involve larger unions acquiring much smaller 'minnows'\textsuperscript{405}. Willman (1996), however, over a period of four years the financial reasons for merger evidently became much more acute. Declining financial reserves together with an accelerating decline in income and rapid growth in expenditure became more serious issues. Data produced by Willman (1996)\textsuperscript{406} shows that over the period 1989-1993 unions responding to his research data questionnaire on reasons for merging said that, by 1993 financial reserves were less of a reason, however, rapidly increasing expenditure and declining income had both significantly increased as reasons for seeking merger. The PinPoint Survey undertaken as a feature of this thesis research (Table 13) show that the issues of declining income and increasing expenditure had not diminished by 2002. Of the 40 unions representing over 6 million union members responding to the PinPoint Survey questionnaire just under 25% were driven by expenditure exceeding income to seek merger, whilst over 25% felt that income could not fund development of the union. However, given the rate of consumption of capital reserves over the period this also had become a more important consideration, with just over 20% saying that falling capital reserves were a consideration. In almost all cases unions ranking one of these three sub questions (g,h,i) as a reason for merger also ranked high one or both of the other two issues. Allowing for the fact that each of the four largest unions representing 3.6 million members are included in the respondent unions, the responses to sub questions (g,h,i) indicate that 36 unions representing some 2.4 million members place greatest importance upon deteriorating financial resources as reasons for seeking merger.

6.10. In 1979 when aggregate union membership was at its highest the top five unions held 45% of aggregate union membership, and 49.6 of TUC membership. At the end of 2002 five TUC unions held 62.8% of TUC union membership, and 50.6% of aggregate union membership. One reason why the 'top five’ unions have not ‘consolidated’ their hold on aggregate membership to the same extent as they have on TUC union membership is because some non-TUC unions have been growing, whereas the majority of TUC unions have been declining. Considering the very large number of TUC and non-TUC unions transferred to these ‘top five’ TUC unions (see Appendix G),

\textsuperscript{405} The type of mergers illustrated at Appendix G show this to be a fact.  
\textsuperscript{406} Willman (1996) p 335; Table 2
Table 13

Please rank in order of importance as reasons for deciding to enter a merger/transfer the following considerations (a = most important to i = least important) __________________________________________ 

<table>
<thead>
<tr>
<th>Ranking of reasons for seeking merger</th>
<th>Popularity</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. other specify........................</td>
<td>0.6</td>
</tr>
<tr>
<td>b. weak competitive position</td>
<td>2.9</td>
</tr>
<tr>
<td>c. inability of union to increase subscriptions</td>
<td>5.6</td>
</tr>
<tr>
<td>d. decreasing membership</td>
<td>6.1</td>
</tr>
<tr>
<td>e. bargaining power declining</td>
<td>6.2</td>
</tr>
<tr>
<td>f. inability of union to provide adequate membership services</td>
<td>6.5</td>
</tr>
<tr>
<td>g. depleting capital reserves</td>
<td>8.1</td>
</tr>
<tr>
<td>h. income not rising fast enough to fund development</td>
<td>10.3</td>
</tr>
<tr>
<td>i. expenditure exceeding income</td>
<td>9.7</td>
</tr>
</tbody>
</table>

Data taken from the Ray Edwards PinPoint Survey 2002

Table 14

Table of the Negative Value of Transfer and Merger

<table>
<thead>
<tr>
<th>Year</th>
<th>Transferee Union</th>
<th>Membership at merger</th>
<th>Transferor Union</th>
<th>Membership Prior to merger</th>
<th>Aggregate Membership</th>
<th>New Union Membership</th>
<th>Membership Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>APEX</td>
<td>146,000</td>
<td>AA staff</td>
<td>6,700</td>
<td>152,700</td>
<td>152,000</td>
<td>700</td>
</tr>
<tr>
<td>1979</td>
<td>BIFU</td>
<td>126,000</td>
<td>Pheonix SA</td>
<td>9,800</td>
<td>135,800</td>
<td>131,000</td>
<td>4,800</td>
</tr>
<tr>
<td>1979</td>
<td>NGA</td>
<td>109,000</td>
<td>NUWDAT</td>
<td>11,400</td>
<td>120,400</td>
<td>111,000</td>
<td>9,400</td>
</tr>
<tr>
<td>1982</td>
<td>TGWU</td>
<td>1,700,000</td>
<td>NUAAW</td>
<td>66,800</td>
<td>1,766,800</td>
<td>**</td>
<td>**</td>
</tr>
<tr>
<td>1982</td>
<td>TGWU</td>
<td>1,700,000</td>
<td>NUDBTW</td>
<td>40,000</td>
<td>1,806,800</td>
<td>1,600,000</td>
<td>206,800</td>
</tr>
<tr>
<td>1982</td>
<td>NUGMW</td>
<td>866,000</td>
<td>SBSBSW</td>
<td>98,000</td>
<td>964,000</td>
<td>825,000</td>
<td>139,000</td>
</tr>
<tr>
<td>1982</td>
<td>NGA</td>
<td>114,000</td>
<td>SLADE</td>
<td>22,000</td>
<td>136,000</td>
<td>112,000</td>
<td>24,000</td>
</tr>
<tr>
<td>1983</td>
<td>SOGAT</td>
<td>185,000</td>
<td>NATSOPA</td>
<td>49,000</td>
<td>234,000</td>
<td>216,000</td>
<td>18,000</td>
</tr>
<tr>
<td>1984</td>
<td>GMB</td>
<td>846,000</td>
<td>&quot;</td>
<td>28,500</td>
<td>874,500</td>
<td>826,000</td>
<td>48,500</td>
</tr>
<tr>
<td>1987</td>
<td>SCPS</td>
<td>68,000</td>
<td>CSU</td>
<td>33,000</td>
<td>101,000</td>
<td>81,000</td>
<td>20,000</td>
</tr>
<tr>
<td>1989</td>
<td>GMB</td>
<td>789,500</td>
<td>APEX</td>
<td>87,500</td>
<td>877,000</td>
<td>823,000</td>
<td>54,000</td>
</tr>
<tr>
<td>1990</td>
<td>NUR</td>
<td>101,000</td>
<td>NUS</td>
<td>43,000</td>
<td>144,000</td>
<td>114,000</td>
<td>30,000</td>
</tr>
<tr>
<td>1991</td>
<td>SOGAT</td>
<td>168,700</td>
<td>NGA</td>
<td>129,500</td>
<td>298,200</td>
<td>269,800</td>
<td>28,400</td>
</tr>
<tr>
<td>1991</td>
<td>GMB</td>
<td>865,000</td>
<td>NUTGW</td>
<td>36,000</td>
<td>901,000</td>
<td>884,400</td>
<td>16,600</td>
</tr>
<tr>
<td>1992</td>
<td>NALGO</td>
<td>764,000</td>
<td>NUPE</td>
<td>527,400</td>
<td>1,291,400</td>
<td>***</td>
<td>***</td>
</tr>
<tr>
<td>1992</td>
<td>NALGO</td>
<td>764,000</td>
<td>COHSE</td>
<td>195,500</td>
<td>1,469,000</td>
<td>1,368,800</td>
<td>100,200</td>
</tr>
<tr>
<td>1996</td>
<td>NUCPS</td>
<td>102,800</td>
<td>IRSF</td>
<td>52,300</td>
<td>155,100</td>
<td>149,200</td>
<td>5,900</td>
</tr>
<tr>
<td>1998</td>
<td>PSTCU</td>
<td>154,300</td>
<td>CPSA</td>
<td>111,600</td>
<td>265,900</td>
<td>258,200</td>
<td>7,700</td>
</tr>
<tr>
<td>1999</td>
<td>BIFU</td>
<td>112,900</td>
<td>BGSU</td>
<td>63,000</td>
<td>175,900</td>
<td>171,200</td>
<td>33,600</td>
</tr>
<tr>
<td>1999</td>
<td>BIFU</td>
<td>112,900</td>
<td>NatWest SA</td>
<td>28,900</td>
<td>204,800</td>
<td>171,200</td>
<td>33,600</td>
</tr>
</tbody>
</table>

Source: Certification Officer Annual Reports and Archive data 1978-1999
1. Year of merger ballot
2 & 5. Membership at date of merger ballot as published by the Certification Officer
6. Aggregate membership of merging unions
7. Actual membership as recorded by the Certification Office Records in the first AR21 after the merger.
8. Is the difference between 6 & 7
9. Is the year in which the first AR21 return was made for the merged union.
* these are 10 independent textile unions some with less than 5,000 members, however, data was incorporated because of their aggregate size
** The membership figures for the mergers of NUAAW & NUDBTW have been aggregated in calculating the 1982 new union membership figure
*** The membership figures for the mergers of COHSE & NUPE have been aggregated in calculating the 1982 new union membership figure

It might have been expected that the data would have shown a higher density for these 'top five' unions. However, as Table 14 shows, the process of merger appears to have contributed to loss of membership and density.

Additionally, a number of public sector unions not in this TUC 'top five' group, were public sector unions which either lost membership at a slower rate or grew, whilst the TUC 'top five' declined.

6.11. The data used in Table 14 and throughout the analysis of union mergers is taken from the Certification Officer Reports 1979 to 2002, (unless otherwise specified) also in the sections and appendices dealing with trade union mergers and transfers of engagements. The membership of each separate amalgamating union, shown at Table 14, is the membership eligible to vote in the merger or transfer, immediately prior to the ballot, which gave a 'pre-merger' aggregate membership 'potential' for the two unions. The aggregate membership published for the newly amalgamated union, at the end of its first year, is then compared against its pre-merger 'aggregated potential'. The result is shown in the respective data in the Table 14.

6.12. Table 14 illustrates that the major mergers over the period 1979 to 1999 should have contributed a gain in aggregate membership for the new union, in the year of merger of 892,300. However, the data shows an outcome of a net loss of aggregate membership of 747,600. The loss (or difference between the pre and post membership figures) cannot be attributed to poor membership accounting records ‘ghost members’ etc, because the pre merger figures (columns 2 and 5) are taken from the Certification Officers data of those members eligible to vote in the ballot for merger. Therefore, the ‘pre-merger’ figures are ‘paid up’ members under the rules of each union.
The data is not shown in Table 14, however, if the pre-merger membership figures are taken from each union's year end returns to the Certification Officer, it can be seen that there is a larger reduction in membership after the merger. However, allowance must be made for the fact that these mergers were taking place during a time of general membership decline. Consequently, irrespective of how the pre and post merger membership data is taken, some of the loss in membership, which will vary from union to union, must be attributable to the general causes of membership decline operating throughout this period.

6.13. For example, in the case of the TGWU mergers with the NUAAW and NUDBTW almost 107,000 members were involved, the net result was that after the merging of these unions with the TGWU it showed a loss of over 206,000, therefore a net loss of almost 100,000 members. BIFU also, after amalgamating with the Barclays Group Staff Union and NatWest Staff Association showed a membership loss on the aggregate pre-merger membership of the unions involved of over 33,000. In both these examples, the average membership loss per annum over the four-year period preceding the merger had been running at lower levels than in the year of merger. For two unions the TGWU which is at the top end of the scale by size, it was an average of 160,000 and for BIFU a much smaller union, it was an average of 9,500. However, whilst an accurate figure cannot be calculated because of the nature of the variables which affect the direction in which membership may move over any given period of time, without the membership acquired through merger both the transferee and transferor unions would possibly have lost membership. Given that in many cases the smaller unions were seeking merger because of financial difficulties, they could possibly have failed completely. It is reasonable certain therefore that if no other value emanated from the propensity to merge, mergers did prevent the failure of smaller unions and, slowed down the rate of membership decline of the larger merging unions, and helped mitigate aggregate membership loss.

6.14. Waddington (1995)\textsuperscript{407}, examined merger ‘waves’ as he termed them over the periods 1918 – 1924 and 1966 – 1987 and argued that both periods could be analysed using the approach of Kondratieff cycles\textsuperscript{408} as a key explanatory variable. Whilst Waddington does review individual union mergers and carry out a degree of disaggregated analysis he appears not to recognise in sufficient importance the changes in law that had taken place in 1964 to facilitate transfers of engagements. These changes

\textsuperscript{407} Waddington. J. (1995)
in law, as Willman (1996) recognises, made union mergers much less onerous to achieve, and in fact accounted for the overwhelming majority of union mergers throughout the latter part of the years of Waddington’s analysis. He also does not have sufficient regard for the fact that a great deal of the mergers that took place since 1966 have been between small unions, which were predominantly non-TUC-affiliated, and in the main the larger unions within the TUC. Undy (1996) and Undy (1997) disagreed with Waddington’s reliance upon the Kondratieff cycles. It is with Waddington and Undy’s “so-called second wave” that this thesis is preoccupied, however, bringing the reference period up to the present time, circa 2003. Therefore, what Undy says about the relevance of Waddington’s approach, so far as the second ‘wave’ of mergers is concerned is helpful. Undy says that: “the continued stress on merger waves is much more open to criticism when related to the so-called ‘second wave’”.

6.15. Consequently this relieves the necessity to spend too much space disagreeing with Waddington’s analysis. Nonetheless, Waddington’s work is of value, most certainly from the historical perspective of his analysis of the periods covered, particularly the earlier period of 1918 – 1924. Undy et al (1996) takes a much more disaggregated approach to his analysis and develops his research in a broader focus incorporating in a detailed manner the significance of finance as a primary reason for unions seeking to merge. Chapters 2, 3 and 4 of Undy (1996) also the Technical Appendix, were found to be particularly helpful in giving direction in this research. His chronicling of the trade union merger and transfer continuum of the reference period proved to be an excellent source of data and analysis.

6.16. What a structure of a few ‘giant’ unions might mean for member communication, involvement and democratic control is not adequately explained by Undy R (1999). He appears to be confused in his examination of the ‘merger movement’, becoming preoccupied with the ‘politics’ of trade union mergers rather than the strategic issues and benefits. To understand Undy’s view of why mergers that have taken place during the period from the mid 1960’s are significantly different to preceding periods, when the propensity for unions to merge has increased, it is important to have reviewed the work

of other researchers such as Buchanan (1974) and (1981)\textsuperscript{413} and Willman (1996)\textsuperscript{414} Willman (2005). However, regard must be had for the opinions of researchers who do not necessarily agree that the process of merger and transfers has always benefited the trade union movement. Heery \textit{et al} (2003)\textsuperscript{415} is quite clear that mergers have not benefited trade unions as a means to growth, Willman (2005) takes a more uncompromising view of mergers as a policy benefiting unions. Black \textit{et al} (1997)\textsuperscript{416} also argue strongly that there is an overwhelming case, based upon trade union mergers up to 1997, that developing big unions does not often produce the hoped for benefits. Given that, as is illustrated at Table 13, most unions that have been involved in the transfer and merger process have immediately (within 12 months) lost membership and have continued to decline, the evidence of the thesis supports Black \textit{et al} (1997); Heery \textit{et al} (2003); and, Willman (2005).

The changing structure of TUC unions
6.17. The tables at 15 to 20 have been developed to illustrate the distribution of TUC membership across various union groupings. Because the TUC at its re-launch in 1994, and for a period prior to that, when it was restructuring its basis of representation within its General Council, discontinued its Trade Group structure, there is no pre-determined structure (internal to the union movement) which can be used to classify TUC unions. Therefore, for the purposes of this analysis unions have been grouped based on:

a) unions that are conglomerate, that is those unions which are general by every characteristic, industry, occupation, white-collar or manual etc;

b) unions which are general, that is those unions recruiting and organising all employees within a particular industry irrespective of occupation, white-collar, manual etc;

c) single industry/single occupation unions, that is unions which organise employees who are engaged in only one occupational classification within one industry;

d) Professional based unions;

e) Education Professional unions;

f) Single employer unions, that is unions organising all grades of employee of only one employer;

\textsuperscript{413} Buchanan (1981) pp 40-49.
\textsuperscript{414} Willman (1996)
Tables 15 and 16 show that the majority of TUC membership continues to be held by unions that have either maintained their ‘general status’ or have developed into the ‘newer generation’ of conglomerate unions. However, within the conglomerate unions listed in Table 15 are some ‘new players’. The ISTC which before the restructuring and decline of the Steel Industry was an ‘archetypal’ industry union, organising solely within its industry, has now become a ‘community union’, in effect a general union, particularly since its merger with NUKFAT, discussed at chapter One. Like many other unions the ISTC has changed its identity in an attempt to follow its membership into the new industries in which they have become employed as a result of the decline of the steel industry. TSSA previously the white-collar rail union has moved out of its declining industry to organise employees within the wider travel industry, hotel and catering industries, ports, waterways, bureau de change etc. Prospect and the PCS, previously ‘dedicated’ civil service unions, now organise generally across both white-collar and manual occupations having extended into private sector information technology and other service companies.

Table 16 shows the general unions. NUDAGO which is one of the non-TUC unions which affiliated during the 1990’s, and would prior to that have been regarded as a ‘staff association’, dedicated to representing employees within the Imperial Group of Companies (steel and steel products) based primarily within Sheffield, has now developed into a general union, seeking to recruit and develop as a ‘community union’ similar to the ISTC.

<table>
<thead>
<tr>
<th>General (Conglomerate) Unions (2002)</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amicus</td>
<td>955,429</td>
<td>176,782</td>
<td>1,132,211</td>
</tr>
<tr>
<td>GMB</td>
<td>428,878</td>
<td>263,269</td>
<td>692,147</td>
</tr>
<tr>
<td>ISTC</td>
<td>44,940</td>
<td>5,160</td>
<td>50,100</td>
</tr>
<tr>
<td>Prospect</td>
<td>87,332</td>
<td>16,610</td>
<td>103,942</td>
</tr>
<tr>
<td>PCS</td>
<td>106,748</td>
<td>160,896</td>
<td>267,644</td>
</tr>
<tr>
<td>T &amp; G</td>
<td>678,921</td>
<td>179,883</td>
<td>858,804</td>
</tr>
<tr>
<td>TSSA</td>
<td>22,038</td>
<td>9,456</td>
<td>31,494</td>
</tr>
<tr>
<td>UNISON</td>
<td>356,292</td>
<td>916,178</td>
<td>1,272,470</td>
</tr>
<tr>
<td>Total</td>
<td>2,680,578</td>
<td>1,728,234</td>
<td>4,408,812</td>
</tr>
</tbody>
</table>

% of total TUC membership 65.69%
Female = 39%

Source: TUC Organisation and Membership Department Records 2002
### Table 16

<table>
<thead>
<tr>
<th>General Industry Unions (2002)</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>BECTU</td>
<td>16,863</td>
<td>8,936</td>
<td>25,799</td>
</tr>
<tr>
<td>CATU</td>
<td>9,204</td>
<td>6,192</td>
<td>15,396</td>
</tr>
<tr>
<td>PCS</td>
<td>224,963</td>
<td>59,459</td>
<td>284,422</td>
</tr>
<tr>
<td>GPMU</td>
<td>166,118</td>
<td>34,558</td>
<td>200,676</td>
</tr>
<tr>
<td>NUDAGO</td>
<td>1,656</td>
<td>448</td>
<td>2,104</td>
</tr>
<tr>
<td>KFAT</td>
<td>10,129</td>
<td>10,521</td>
<td>20,650</td>
</tr>
<tr>
<td>UNIFI</td>
<td>n/a</td>
<td>n/a</td>
<td>153,000</td>
</tr>
<tr>
<td>UCATT</td>
<td>121,893</td>
<td>1,107</td>
<td>123,000</td>
</tr>
<tr>
<td>USDAW</td>
<td>123,173</td>
<td>187,049</td>
<td>310,222</td>
</tr>
<tr>
<td></td>
<td>673,999</td>
<td>308,270</td>
<td>1,135,269</td>
</tr>
<tr>
<td>% of total TUC membership</td>
<td>16.91%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female = 27%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Source:** TUC Organisation and Membership Department Records 2002

Changes that have taken place within the structure of trade unions affiliated to the TUC, particularly in respect of their organising ambitions, have developed as a response to the industrial change processes since the 1970’s. As traditional areas of membership have declined or have changed due to restructuring, unions have looked to new, frequently ‘brown-field’ areas from which to replace declining membership. This has resulted in:

1. single industry unions becoming general unions;
2. public sector (Civil Service) unions becoming general industrial unions, following their membership within public sector employment, as it has become ‘privatised’; and,
3. general unions developing into ‘conglomerate unions’, taking into membership and seeking to organise and represent any employed person irrespective of industry or occupation.

### Table 17

<table>
<thead>
<tr>
<th>Single Industry Unions</th>
<th>Professional Based Unions</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASLEF</td>
<td></td>
</tr>
<tr>
<td>Male 15,379</td>
<td>Male n/a</td>
</tr>
<tr>
<td>Female 411</td>
<td>Female n/a</td>
</tr>
<tr>
<td>Total 15,790</td>
<td>Total n/a</td>
</tr>
<tr>
<td>BFAWU</td>
<td>AEP</td>
</tr>
<tr>
<td>Male 15,196</td>
<td>Male 774</td>
</tr>
<tr>
<td>Female 14,293</td>
<td>Female 1,728</td>
</tr>
<tr>
<td>Total 29,489</td>
<td>Total 2,502</td>
</tr>
<tr>
<td>CSMTS</td>
<td>BALPA</td>
</tr>
<tr>
<td>Male n/a</td>
<td>Male 7,335</td>
</tr>
<tr>
<td>Female n/a</td>
<td>Female 239</td>
</tr>
<tr>
<td>Total 88</td>
<td>Total 7,574</td>
</tr>
<tr>
<td>EFTU</td>
<td>BACM-TEAM</td>
</tr>
<tr>
<td>Male n/a</td>
<td>Male 3,868</td>
</tr>
<tr>
<td>Female n/a</td>
<td>Female 263</td>
</tr>
<tr>
<td>Total 230</td>
<td>Total 4,131</td>
</tr>
<tr>
<td>FBU</td>
<td>BDA</td>
</tr>
<tr>
<td>Male n/a</td>
<td>Male 135</td>
</tr>
<tr>
<td>Female n/a</td>
<td>Female 4,363</td>
</tr>
<tr>
<td>Total 51,855</td>
<td>Total 4,498</td>
</tr>
<tr>
<td>GULO</td>
<td>BOS</td>
</tr>
<tr>
<td>Male n/a</td>
<td>Male 68</td>
</tr>
<tr>
<td>Female n/a</td>
<td>Female 1,328</td>
</tr>
<tr>
<td>Total 286</td>
<td>Total 1,396</td>
</tr>
<tr>
<td>NACOD</td>
<td>CSP</td>
</tr>
<tr>
<td>Male n/a</td>
<td>Male 3,351</td>
</tr>
<tr>
<td>Female n/a</td>
<td>Female 29,225</td>
</tr>
<tr>
<td>Total 800</td>
<td>Total 32,576</td>
</tr>
<tr>
<td>NULMW</td>
<td>CDNA</td>
</tr>
<tr>
<td>Male 2,018</td>
<td>Male 85</td>
</tr>
<tr>
<td>Female 2,094</td>
<td>Female 4,127</td>
</tr>
<tr>
<td>Total 4,112</td>
<td>Total 4,212</td>
</tr>
<tr>
<td>NUM</td>
<td>Connect</td>
</tr>
<tr>
<td>Male n/a</td>
<td>Male 14,677</td>
</tr>
<tr>
<td>Female n/a</td>
<td>Female 2,939</td>
</tr>
<tr>
<td>Total 5,001</td>
<td>Total 17,616</td>
</tr>
<tr>
<td>RMT</td>
<td>EIS</td>
</tr>
<tr>
<td>Male 52,584</td>
<td>Male 13,587</td>
</tr>
<tr>
<td>Female 5,285</td>
<td>Female 37,867</td>
</tr>
<tr>
<td>Total 57,869</td>
<td>Total 51,454</td>
</tr>
<tr>
<td>POA</td>
<td>EQUITY</td>
</tr>
<tr>
<td>Male 24,371</td>
<td>Male 17,601</td>
</tr>
<tr>
<td>Female 5,981</td>
<td>Female 17,645</td>
</tr>
<tr>
<td>Total 30,352</td>
<td>Total 35,246</td>
</tr>
<tr>
<td>SWSWU</td>
<td>FDA</td>
</tr>
<tr>
<td>Male 12</td>
<td>Male 6,576</td>
</tr>
<tr>
<td>Female 3</td>
<td>Female 3,434</td>
</tr>
<tr>
<td>Total 15</td>
<td>Total 10,010</td>
</tr>
<tr>
<td>UTW</td>
<td>HCSA</td>
</tr>
<tr>
<td>Male 743</td>
<td>Male 1,970</td>
</tr>
<tr>
<td>Female 646</td>
<td>Female 255</td>
</tr>
<tr>
<td>Total 1,389</td>
<td>Total 2,225</td>
</tr>
<tr>
<td></td>
<td>MU</td>
</tr>
<tr>
<td>Male 110,303</td>
<td>Male 23,765</td>
</tr>
<tr>
<td>Female 28713</td>
<td>Female 7,426</td>
</tr>
<tr>
<td>Total 197,276</td>
<td>Total 31,191</td>
</tr>
</tbody>
</table>
The TUC membership within the two groups of unions at Table 15 and 16 shows an aggregate membership of 82.6 percent, slightly less than the figure for ‘the club’. The two unions missing being the RCN and BMA, both non-TUC unions.

6.20. Unfortunately, some of the unions in Tables 15 and 16 do not generally publish information about the precise number of membership held within any particular occupational grouping, therefore, it has not been possible to develop valid data in this regard. However, the majority of the membership within the unions listed in these tables is not employed within the public sector (undertakings or services under the control of local or central government). Those unions in Table 15 to 20 where it has been possible to ascertain that there is a higher proportion of non public sector membership are in ‘red’
text. **Tables 17 to 20** have an aggregate membership of only 17.4 percent, however, they comprise most of the TUC unions which have grown in membership over the past 25 years. The generally smaller unions within the non-TUC group have certainly held onto their membership better than the TUC union group. Many have continued to grow throughout the period, whilst TUC unions have declined in membership. The overwhelming majority of the non-TUC unions are single industry, single employer and/or single occupation organisations. They tend to have a highly focused approach, and specialised service provision to their membership. Furthermore, these smaller more specialised unions appear to have done a better job of organising female membership, however, regard must be had for the fact that many of these non-TUC unions organise within occupations which employ mainly female staff.

**The effects of changing ‘membership profiles’ and the ‘churn factor’**

6.21. Research devoted to the consequences of developments since 1979 upon the ability of trade unions to rebuild themselves, and provide an effective vehicle for employee representation in the future, has shown a number of factors conspired to prevent unions retaining their power. The most significant of these factors has been has been the depletion of organisational strength. The decision of the TUC to undertake its ‘re-launch’ in 1994 was to some extent a recognition of the distance that employees and employers had moved, away from the desire to re-embrace collectivism. Employees particularly the newer generations of workers have shown a disinclination to accept there is a role for trade unions within the new ‘flexible’ and ‘empowered’ work environment. Research undertaken throughout the past twenty years has shown an increasing disinclination on the part of the young to join unions. **Table 11** illustrates the changing age structure of union membership during the material period.

6.22. The decline at all age groups within the age density profile of trade union membership is attributable to many more reasons than a simple disinclination of people to join unions. Trade union membership is frequently argued in much of the literature to be an ‘experience good’. However, over the past 25 years there are a number of factors that have denied young people the opportunity to gain an early experience of trade unionism, for example:

| Table 11 |  |  |
Density percentage by age group (all unions)

<table>
<thead>
<tr>
<th>Age</th>
<th>1983</th>
<th>1998</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-29</td>
<td>44</td>
<td>18</td>
<td>16</td>
</tr>
<tr>
<td>30-39</td>
<td>51</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>40+</td>
<td>57</td>
<td>33</td>
<td>36</td>
</tr>
</tbody>
</table>

Source: Labour Force Survey series 2002

a) the decline in manufacturing affecting the intake of young people to apprenticeship training, and the general decline in this type of training;

b) the decline of labour intensive industries which employed higher numbers of unskilled workers;

c) the trend towards further education and entry to employment at a later age than was the case in the 1950’s to 1970’s;

d) the ‘mature’ age profile of unions which has tended to grow, due mainly to the fact that these are unions representing qualified senior employees, managers and professionals;

6.23. Young people entering manufacturing employment in the 1950’s to 1970’s would have immediately been exposed to trade union organisation and membership. Within the craft grades of employment, as apprentices, working with time served craftsmen, would have resulted in the requirement to become union members. Working in shopfloor areas within the labour intensive industries would have exposed young people to peer-group and older generation pressure to become union members. With the decline in these types of employment and with them the trade union infrastructure, the inducement or compulsion to become union members, particularly amongst the young, has diminished. The data produced in the LFS 2000 support this analysis, as does the research by Blandon and Machin (2003)417. One must therefore accept that because more young people now, than during the 1950’s and 1970’s, enter employment later, and then most

417 Blandon and Machin pp 395-396
not into the type of industries that are organised by trade unions, are fact. Consequently, the lack of opportunity to become involved in union membership, is a fact.

6.24. The result is that the ‘catchment’ for the 18 to 20+ age groups has diminished in part for reasons, which are industrial and in part sociological, and therefore the situation to a large extent is beyond the organising efforts of trade unions. The significant drop in density level to 5 percent (TUC)\textsuperscript{418} for union membership under age 20 is a strong indication of the veracity of these arguments. Perhaps it is for these somewhat self-evident reasons that there is a disproportionate decline in union membership within these younger age groups. Therefore, the question must be put, should trade unions be concerned about the density losses at these earlier age groups? Unfortunately, the density loss across the other older age groups, whilst not of the same proportions is nonetheless high. Blandon and Machin (2003) illustrated the consequences of membership loss amongst the older generation of union members. In their conclusion they said:

"Far fewer parents are union members than used to be and so, if there is a cross-generation correlation in union joining patterns, this seems to suggest that fewer young people will be likely to join trade unions in the future"

Therefore, perhaps this loss of younger generation membership is a manifestation of the general loss of trade union membership density, and not as appears to be the case, attributable to factors which have peculiar reasons. An indication of the future problems for trade unions in terms of membership density is not the issue of age group density, but its ‘twin’ characteristic of loss of union density by length of service. However, Waddington and Kerr (2002) are very clear about the importance of recruiting and retaining young workers they say:

"If trade unions are to reverse their membership decline sustained since 1979, more young workers must be recruited"\textsuperscript{419}.

6.25. The data in Figure 2 illustrates the nature of this characteristic, showing the very low level of density between 1 and 2 to 5 years service. Not until service length reaches 5 to 10 years does density start to reflect the aggregate union density for all employed persons. Members with 20 plus years of service are likely to be comprised mainly of a generation of employees that commenced their employed lives in the pre 1979 era. The problem is similar to that which is of concern with low density at lower age groups. As

the longer service generation, therefore older age group of trade unionists retires from where will the replacement for this lost density come? What appears to have been occurring, and is a factor that merits further in depth research, is the progressive exhaustion of the trade union movements ‘historic’ and ‘ageing’ core membership. Bryson and Gomez (2003) whilst adducing evidence and argument which much of the data and analysis in this Chapter agrees, put forward a basic argument: “that it is the reduced likelihood of ever becoming a member rather than the haemorrhaging of existing members which is behind the decline in overall union membership in Britain”; with which it finds less agreement. One of the fundamental arguments of this Chapter is that it is precisely these two trends of less ‘new’ membership and declining ‘older’ membership, working together, which are undermining much of the trade unions efforts to rebuild their organisations. When taken together with the very high levels of ‘wastage’ that has historically dogged the recruitment efforts of unions, colloquially termed the ‘churn factor’, it can be seen that any increase in membership loss has serious implications.

6.26. **Table 12** illustrates the impact of the ‘churn factor’ upon a number of large unions over the period from 1985 to 2000. Of course, part of the ‘churn factor’ is the membership losses taking place by the process of ageing membership population.

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Nonetheless, the numeric value of the ‘churn factor’ for the TGWU in 2000 of 140,000 new recruits in that year simply to stand still, illustrates the magnitude of the drain placed upon union resources. This level of ‘churn’ for only one of the top five unions, in size, represents the equivalence of a union that would qualify for inclusion in the top sixteen unions ‘the club’ by size. Based upon each unions year end membership for 1999 the above table shows an aggregate ‘churn factor’ for these unions in 1999-2000 of circa 750,000 members, circa 12% of total TUC union membership and 10% of total membership for all unions.

Table 12
Recruitment of new members as a percentage of stock of membership for each year

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TGWU</td>
<td>19.3</td>
<td>20.1</td>
<td>16.4</td>
<td>16.2</td>
</tr>
<tr>
<td>AEU*</td>
<td>13</td>
<td>18.6</td>
<td>14.7</td>
<td>14.4</td>
</tr>
<tr>
<td>GMB</td>
<td>15.3</td>
<td>14.8</td>
<td>12.6</td>
<td>12.8</td>
</tr>
<tr>
<td>MSF*</td>
<td>17.1</td>
<td>16.3</td>
<td>16</td>
<td>18.3</td>
</tr>
<tr>
<td>USDAW</td>
<td>28.4</td>
<td>27.8</td>
<td>28.8</td>
<td>28.7</td>
</tr>
<tr>
<td>NALGO</td>
<td>18.5</td>
<td>17.3</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>NUPE</td>
<td>16.4</td>
<td>18</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>COSHE</td>
<td>15</td>
<td>17.8</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>UNISON</td>
<td>N/a</td>
<td>n/a</td>
<td>14.8</td>
<td>18.6</td>
</tr>
</tbody>
</table>

Source: Calculated from data taken from – Certification Officer – Trade Union Annual Returns1985 – 2000, and individual union recruitment data

*Became Amicus as of end 2003

NOTE: Figures do not include membership acquired as a result of transfers of Engagements or amalgamations. There are no figures for UNISON for 1985-1990 because union did not exist. Figures for NALGO–NUPE AND COHSE are not available in 1995 – 2000 due to these unions having amalgamated to form UNISON

6.27. Whilst aggregate density has declined and lower age group density has suffered disproportionately, and the age profile of union density has moved to the retirement end of the scale, a dichotomous trend has occurred. Largely because of the increase in the female work force and the increased trend towards part time working, the density of female union membership has tended to move in the opposite direction. Figure 3 Illustrates the manner in which female union density has tended to compensate for some of the aggregate membership loss. However, not only is the growth in female density a
manifestation of the growth in female employment, it also reflects the changing composition of employment, towards a predominantly service based economy. Figure 4 shows the density of union membership by occupation (all unions). Given the much higher density of the white-collar occupational groups which historically female employees have tended to favour, there appears to be a related effect between the two developments indicated by Figure 3 and Figure 4.

![Figure 3](image_url)

6.28. The literature and research frequently illustrates the manner in which union membership has increased proportionately towards greater density within the professional and management grades. Figure 4 illustrates the relative position of the various occupational groups in aggregate. However, whilst it can be shown, as subsequent data illustrates, that these grades of employee have indeed tended to increase in numeric terms, the level of density is skewed because of the much higher percentage of public sector union membership, caused primarily by the decline in manufacturing and manual occupational groups, and to some extent the continuing growth of the public sector.

6.29. The implications of this trend towards the public sector membership taking over the ‘core membership’ role, from the traditional manual, skilled and semi-skilled
occupational groups, is discussed in detail by Crouch (2001). Crouch hypothesizes that the future facing trade unions in Europe, particularly within the UK, is far from assured, particularly considering the continuing trend of decline in the traditional core membership, and the likelihood that public sector employment will decline and thus union density with it. He says:

"Twentieth-Century trade unionism came to have two great reserves of strength within the labour-force: first, its historical base within the industrial manual working class; and its second, acquired during the second half of the Century, in public service employment at several levels."

6.30. Crouch argues that the further decline in union membership within the UK will take place because of the continuing attrition of ‘core membership’ (public and private sector), due to rationalisation but also globalisation and, the tendency of corporations to seek cheaper labour costs by ‘outsourcing’ services internationally. A trend which is likely to be followed, albeit with possibly greater difficulties, by public sector services. Companies designed to accommodate this growth in ‘outsourcing’ have mushroomed over the past ten
years or so, aided by the improvement in data management and communications technology. One such company is Computer Science Corporation (CSC) (discussed elsewhere within the thesis). To some extent, the data below support the argument of Crouch. Certainly, it can be shown, particularly for non-TUC unions, that the public sector has become the ‘growth area’ for membership. However, even after allowing for the fact that many TUC unions not wholly engaged in the public sector have significant membership within that sector, it has not as yet become ‘the’ dominant sector for TUC membership. However, as Marsh (1979)\textsuperscript{420} records, the public sector as long ago as 1974 was on the verge of becoming the majority unionised sector. He shows that in 1974, out of a total membership of almost 11 million, 5 million were public sector employees. Nonetheless, given the continuing trend of decline in aggregate traditional core membership and the trend in the aggregate growth of the public sector membership the ‘crossover’ point to the public sector becoming the majority may be relatively imminent. Consequently, what Crouch says about the increasing dependency upon public sector membership, and its future in terms of ‘globalisation’ to use his terminology, what has become a “ladder” in building union membership may quickly become the “snake” in its ultimate decline! Further, what Crouch says about the implications of globalisation, based upon developments since the turn of the century, has gained pace, and is beginning to cause concern amongst trade union leaders.

Organising females and young persons
6.31. Given what Cook et al (1992) say, UK trade unions have been reasonably successful in organising female workers particularly within the public sector and within smaller unions. However, as Salmon and Stewart (1994) say the growth in membership was not enough to replace the aggregate losses throughout the 1980’s-90’s. Tables 15 and 16 show the female membership at 36.7 percent, for the conglomerate and general unions, whereas the aggregate percentage for the smaller ‘specialised’ unions shown at Tables 17 to 20 is 64.4 percent. It may be argued that the density of female membership within these smaller unions is largely attributable to the nature of the employment that they organise. Certainly when compared with the ‘single industry unions’ in Table 17 this is true, and it is reflected in the very small percentage of female membership within

\textsuperscript{420} Marsh (1979) p 17 Table 7
the unions in Table 17. Another indication of the underlying reasons for the disparity between Table 17 and other union groupings is the fact that just under 50 percent of the unions in Table 17 do not publish separate figures for male and female membership, a factor that was referred to in Chapter One. However, the same justifications cannot be ascribed to the disparity in density between unions in Table 15 and 16 and the remaining membership tables. Many of the unions within these tables actively campaign to recruit female membership, in the case of USDAW by far the major proportion of employees within the principal industry it organises are female.

6.32. The Labour Force Survey series (LFS) 2001 showed little change on the previous year. According to the survey the number of employees who were union members stood at 7.25 million, a density of 29 per cent of all employees. However, for the whole workforce (i.e. including the self-employed many of whom are members of trade unions), membership was 7.55 million, a density of 27 per cent of all employees. Male union members now comprise just over half - 53 per cent or 3.86 million -of all union members, female members account for 47 per cent or 3.38 million. An analysis of the 7.25 million union members shows that, 6 million work full-time, which is 32 per cent of all full-time employees, and 1.3 million work part-time which is only 20 per cent of all part-time employees. The LFS Survey (2001) data shows the dramatic fall in male full-time employed union membership density from 44 to 31 per cent between 1990 and 1998, confirming the impact of membership losses in union core membership industries, particularly in manufacturing. Whilst this decline has slowed since 1998, it has nonetheless continued and currently male full-time employed density stands at 30 per cent. The lower unionised density among part-time employees, demonstrated by these figures, and the large numbers of females engaged in these jobs, 44 per cent compared to 8 per cent of male employees, illustrates one of the primary reasons for the lower unionisation rate among female employees at 28 per cent compared to males at 30 per cent. The part-time labour force has been growing disproportionately throughout the past 25 years, and now comprises a high proportion of female employees. It is evident that trade unions generally, but more particularly some TUC unions, have failed to recruit women, which is a contributory factor in aggregate union density decline. Hidden within the shifts that have been taking place in membership composition by industry, gender, part-time, full-time and age, there may be a factor that has had an impact upon the financial health of some unions. Unions which have benefited in numeric terms from recruitment amongst part-time employees, may have added disproportionately to their costs in terms of the revenue gained by this membership growth. All unions charge a
pro-rata lower fee to part-time members. Consequently, the aggregate income from any
given number of part-time members paying a pro-rata fee, will be less than for the
equivalent number of full-time members paying the full fee. However, unions cannot
discriminate in the range of basic services unions provide to part-time members,
therefore, ceteris paribus, the cost-revenue ratio will be higher. Therefore, given that in
2001, of the 7.25 million union members 1.3 million were part-time, the implications for
aggregate union finances could be significant.

6.33. However, when union densities for full time and part-time employment are
compared, the LFS (2001) data illustrates that female employees are more likely to be
unionised, 33 per cent of full-time female employees and 22 per cent of part-timer
female employees, compared to 31 per cent of male full-time employees and 12 per cent
of male part-time employees. A phenomenon of the past 25 years has been the manner in
which, despite the dramatic decline in aggregate density, trade union membership
density in managerial and professional occupations has increased which, in total now
accounts for 47 per cent of all union members. It is evident from the data that this results
from the high-density unionised levels among these occupational groups in the public
sector. However, whilst the public sector, in terms of white-collar employment within
local and national government, health and other service sectors has not suffered
privatisation, to the same extent as transport, electricity, gas, water, they have undergone
considerable restructuring over the past 25 years. As Millward et al (2000)\textsuperscript{421} say union
membership in the public sector has remained "ubiquitous", indeed, at 48 per cent, the
highest recorded union density figure is found among professional employees. Whereas,
at the other end of the scale within an industry that has become one of the primary
factors of economic activity within the UK, sales & customer services, the lowest union
density at 13 per cent can be found. It is evident from the LFS (2001) data that
employees with supervisory responsibilities are much more likely to be union members.
In these occupational grades union density was 37 per cent. Within this density level
female managers have one of the highest density levels, at 40 per cent, to some extent
explained by the higher incidence of union membership among female managers in the
public sector, particularly within health care generally. Taylor (1994)\textsuperscript{422} illustrates the
manner in which female membership within TUC unions was relatively low within some
of the largest unions. For example unions heavily involved in the private sector such as

\textsuperscript{421} Millward, N. Bryson, A. and Forth, J. (2000) \textit{All Change at Work, British Employment Relations
\textsuperscript{422} Taylor, R. (1994) p 58
the TGWU had 18%, the AEEU 7% and MSF 26% female membership, whilst unions in public services and the private service sector i.e. UNISON with 64%, NUT 75% and USDAW 60% had substantial female membership.

6.34. The LFS Survey (2001) confirms that aggregate union density is higher, and varies less, within the public sector than for the rest of the economy. The public sector aggregate ‘average’ unionisation level was 59 per cent, across all occupational groups, compared to a private sector figure of 19 per cent. An aspect of the LFS Survey (2001) data that supports the view that the union density of senior grades and particularly females is that 68 per cent of female union members were employed in the public sector. However, 61 per cent of male union members were employed in the private sector. The data also confirms the argument that much of the union density levels is owed to certain sectors of the overall public sector. For example, the services within the public sector with the highest density are Public Administration and Health & Education with an average density of 51 per cent. However, whilst union density has fared better within the public sector, and some senior grades of employee, over most of the period from 1979, Waddington (2003) illustrates that between 1991 and 1999 density had started to show significant decline in many employee groups within the public sector also groups such as Managers and Professionals

6.35. Of the 7.5 million employees that are members of trade unions, or put another way, 29 per cent of all those in employment, 96 per cent are employees, only 4 percent are what can be regarded as ‘self-employed’ persons. 1997 was the year when the lowest union membership recorded for the UK since its highest level in 1979. Since 1997, union membership has increased by 150,000. This has not however, produced an increase in the density levels of union membership. In fact, density declined almost yearly throughout the period from 1979 and since 1997. The reason for the decline in union density is the strong expansion of the labour market throughout most of these years, and is probably also a contributory reason for the increase in membership since 1997. The change of government and changes in public policies on the issue of union rights had helped in the process of a ‘marginal recovery’, however, union density has continued to decline in recent years, albeit at a much slower rate than in previous years. For example density was 30.4 per cent in 1997 and in 2001 stood at 29 per cent.

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6.36. Whilst it should not be a cause for complacency there has been relative stability in union membership since 1997, this has been evident among both men and women with their respective unionisation rates (30 and 28 percent) changing little since 1998. In the case of male employees this has marked a welcome halt to the rapid fall in density evident throughout most of the 1990s, density fell from 44 to 31 per cent between 1990 and 1998. The 'gender gap' in union density has rapidly diminished since the beginning of the 1990s when there was an 11 percent difference in density between men and women. A reason that is frequently argued as to why density continues to be lower amongst female employees is because large numbers of them are engaged in part-time work, 44 per cent compared to 8 per cent of men.
The Labour Force Survey series (see Figure 6) attributes this difference to the fact that "this form of employment is much less likely to be unionised, which of course is a fact, however, why is it much less likely to be unionised?

6.36. Unions stoically defend their claim not to base organisation upon 'business economics'. It is nonetheless evident that unions do find part-time employees, unless employed in large concentrations, much more expensive to organise than full-time employees (see Figure 6). This attitude arises for all sorts of reasons, not the least of which is the relatively high turn-over in employment amongst part-timers, which adds to the 'churn factor' and low per capita income generated by such membership. One need only refer to the membership turnover (churn factor) of USDAW, which is heavily involved in retail and wholesale distribution, to see these effects. However, if union membership is broken down by job type we get a very different picture. More women in full-time jobs, 33 per cent, are union members compared to male full-time employees, 31 per cent of whom are members. The "gender gap" in union density is even greater among part-time employees, with 22 per cent of women part-timers belonging to a union compared with only 12 per cent of male part-time employees. There are various reasons why union density is higher among women in both full-time and part-time jobs (see Figure 7). One of the reasons is that more females work in the public sector compared to male employees, and as was explained earlier, much of the literature ascribes this as the main reason for the disparity. Another factor, relating specifically to part-time employees, is that women are more likely to be in long-term stable part-time jobs compared to men, who are more likely to be using part-time employment as a 'stop- gap' whilst looking for an opportunity to return to their normal occupation. Consequently, female part-time employees are more likely to be in a union. However, this is an
argument more commonly used by trade unions, and avoids acceptance of the fact that this is only evidenced where there are high concentrations of female part-time employees.

6.38. However, notwithstanding the higher union density among women part-timers there appears to be a general acceptance that the actual number of non-unionised women part-timers is still much greater than the total number of non-unionised male part-timers simply because there are so many more women employed in these kinds of jobs. Unionisation increases rapidly with age. Although only 5 per cent of employees aged under 20 are members, just under a fifth (19 per cent) of those aged between 20 and 29 years and 30 per cent of those aged between 30 and 39 years belong to a trade union in non-unionised part-time jobs compared to around 1 million male part-timers (see Figure 8). The highest union density recorded for any age group is for employees aged between 40 and 49 years, at 38 per cent. Low rates of unionisation among young employees can be partly explained by the increasing tendency for students to work on a part-time and temporary basis in order to supplement their income. It is an unfortunate feature of the LFS that it classifies anyone working more than one hour as an employee. Therefore, the impact of student part-timers working very few hours tends to skew the union density figures for the working population aged under 20 and in their early twenties.
6.39. Older women employees are slightly less likely to be union members than male employees. Thirty six per cent of women employees aged 40-49 are union members (compared to 39 per cent of men) and 32 per cent of women employees over 50 are in a union (compared to 37 per cent of men). Union density rates among employees in their thirties are identical for both men and women, and there is also little difference among twenty-year-olds. However, among the youngest employees i.e. aged under 20, males are more likely to be union members (see Figure 9). The data on occupational classifications used within the LFS confirm that the most highly unionised employees are now those in professional jobs. However, it has to be stressed that these trends do not generally reflect the labour market as a whole and that they are skewed by the impact of public sector unionisation and the concentration of women employees in this sector.

Outlawing the closed shop and its effects on membership density

6.40. The majority of the literature identifies that there are two views of why trade unions saw the closed shop as an important issue:

a) One was that having all employees within the union would give it more 'authority' and strengthened the collective bargaining power of the union;

b) The second was that all employees who benefited from collective bargaining should contribute to the union.

There was however, for trade unions a third and equally if not more important reason for achieving the closed shop. This third reason was the added financial benefits of 100% membership density. Berkowitz (1954)\textsuperscript{424} identified the significance of this third reason when he developed his model to illustrate how, from the granting of recognition a union builds its membership, by its own efforts to an 'optimum' level, at which point other opportunities for membership consolidation and exploiting a unions membership strength may provide additional impetus to growth.

6.41. In Figure 11 The curve C-G represents the average cost of recruiting and servicing each new member, costs' decreasing on average as the curve declines towards point X. The marginal cost of recruiting and servicing each new member is represented by the curve A-B. R-F on the vertical axis represents the fixed costs of servicing the union organisation, without any employer subsidy. X is the optimum point of recruitment at which, if recognition is gained, and the employer subsidy starts to take effect,

recruitment and organisation costs tend to fall, represented by the decline in marginal and average costs \textbf{X-D}. However, if recognition is not achieved recruitment and retention of membership may become harder, with costs at the margin beginning to increase, reducing or possibly removing any revenue surplus. This development is depicted by the ‘upswing’ in marginal and average costs \textbf{X-G} and \textbf{X-B}. However, if recognition is gained and subsequently lay representatives facilities are agreed, and the ‘employer subsidy’ begins to develop, fixed costs drop on the vertical axis to \textbf{Y-D} ceteris paribus, aiding the production of larger surplus revenue. A feature of the ‘employer subsidy’ was almost always, where a union sought it, the agreement by an employer to operate check-off. Once membership had developed to the point where a minority of employees were non-members, pressure would be applied to achieve a post/pre-entry closed shop. With this final development in the recruitment and ‘employer subsidy’ cycle, union costs drop to near zero and revenue surplus increases as depicted by to \textbf{D-REVENUE} in \textbf{Figure 11}. Little benefit is gained by way of surplus revenue in initial recruitment until \textbf{X} is achieved.

\textbf{Figure 11}

![Graph of union costs of recruiting and servicing membership from 'Greenfield' situation.](source: Derived from Berkowitz (1954))

Beyond \textbf{X}, if recognition is not achieved, in the short-term a surplus may be achieved for so long as further recruitment is maintained, however, both average and marginal costs
B-G are likely to increasingly consume revenue. The fact that recognition is not achieved represented a considerable disincentive for employees to stay with the union, and as this process of membership attrition gained pace, density is lost.

6.44. The decentralised nature of UK trade union organisation and the high cost associated with providing full-time officials in sufficient numbers inevitably meant a great reliance upon the participation of lay leaders in the day to day servicing of union members. Terry (2003)\textsuperscript{425} says that such was the importance of the shop steward that they were perceived by union members as being 'the union'. The growth in the shop steward ‘movement’ during the 1960’s and 1970’s and the transference of negotiating responsibility from national bargaining, led by full-time trade union officials, to localised plant and company group bargaining led by lay representatives, added considerable power and influence to the role of lay shop stewards. In many of the larger company groups within the manufacturing industries, full-time lay representatives or Convenors became the norm. In some cases, groups of unions coming together (particularly within the engineering industry through the Confederation of Shipbuilding and Engineering Unions (CSEU)) to form ‘joint shop stewards committees’, with a Convenor as its leader and principal negotiator.

6.45. The facilities provided by employers to this type of local organisation contributed a significant subsidy to the ‘membership servicing costs’ of trade unions. The subsidy extended through the provision of telephone and printing facilities to provision of office space and in many cases to the acceptance of full-time paid trade union representatives. Time off for training, attending union meetings etc was commonplace, many employers actually meeting the travel and accommodation costs, where meetings were for joint negotiating purposes. Many employers provided paid time off for elected delegates to attend union policy making conferences and attending executive meetings. The increasing development of pre-entry and post entry closed shops, and within the late 1960’s to 1980’s the growth of the check off, improved the per capita contribution income significantly, again contributing to the financial strength of unions. Donovan\textsuperscript{426} said that 2 in 5 union members were covered by check-off mainly in the public sector, however, some 1,200 private companies provided the facility. Millward et al (2000)\textsuperscript{427}


\textsuperscript{426} Donovan (1966) pp 192-193

\textsuperscript{427} Millward et al (2000) pp151-152
say that by 1980 check-off had increased to 73 per cent of companies recognising unions and continued to grow to 86 per cent of such companies by 1990, however, then fell to 75 per cent by 1998. Some of this decline may have been consequent upon changes to the law relating to check-off, also the general decline in union membership and the number of employers recognising unions over this period. However, whilst facilities such as check-off and other aspects of the employers subsidy may have been readily accepted by many unions, some union leaders were not so keen on developing ‘cosy relationships with employers’, Willman et al (1993)\(^{428}\).

6.46. Some of the literature Willman et al (1993), Bain and Price (1983), describes unions as having tended to become ‘dependent’ upon this ‘subsidy’. There can be little doubt that with its loss during the 1980’s and 1990’s coupled to membership loss caused by industrial restructuring, many unions that had been major beneficiaries of this ‘subsidy’, almost to the point of ‘dependency’, began to feel a disproportionate effect of the change which swept through the collectivist culture.

6.47. The ‘employer subsidy’ was, in the experience of the author very important, and where it was provided, possibly more important to white-collar unions given their relatively ‘embryonic’ stage of development, and smaller financial resources, however, nonetheless important to blue-collar unions also. White-collar unions found the provision of any positive gesture on the part of an employer valuable, certainly anything that ‘subsidised’ the cost of organising employees and gave ‘surety’ of income, was a welcome contribution to defraying their disproportionate cost burden of relatively higher full-time official to membership ratios\(^{429}\).

6.48. The loss of this ‘subsidy’ in a ‘normal situation’ would have been difficult to accommodate, however, its loss at the time general membership levels were falling was very serious. The difficulties faced were similar to those ‘virtuous cycle’ problems faced by a union when commencing organisation at a company, however, in the ‘reverse order’ or as Bain termed it the ‘vicious cycle’:

a) progressive loss of membership;
b) progressive loss of revenue/revenue surplus;
c) attrition of local organisational structure;
d) loss of membership servicing capacity;


\(^{429}\) Willman and Aston (1988)
e) greater involvement of full-time officials;
f) increasing membership per capita servicing costs;

6.49. UK trade unions have sought to replace the organisational base, which has been lost over the period since 1979, using a number of approaches. Latterly unions having recognised the problem of low density within the newer industries and in growth areas, such as services, have tended to adopt two approaches in their efforts to develop into these new areas and increase membership. Waddington (2003)\textsuperscript{430} says that the intention of these new approaches is to “deepen and extend union organisation”, and cites Brofenbrenner \textit{et al} (1998). For example, in 1998, the TUC opened its Organising Academy, since opening has trained around 150 new union organisers, who in turn have been instrumental in organising over 30,000 new trade union members\textsuperscript{431}. This represents only 200 new members per ‘graduate’ over a period of four years (1998-2002). Waddington (2003)\textsuperscript{432} argues that the extent to which a union may be successful in recruiting, organising and servicing members depends upon the efforts of active members, and local full-time officials. This is nothing new, it is precisely these groups of members who have been the backbone of trade union organisation throughout the movements history. Brofenbrenner \textit{et al} (1998) organising and servicing model is in large measure a restatement of the approach which UK trade unions have adopted from their earliest beginnings, and was most certainly the model adopted by white-collar unions within the private sector throughout the 1960’s 1970’s\textsuperscript{433}. Basically what Brofenbrenner describes contributes little by way of ‘new’ thought in terms of how unions should set about rebuilding their organisations. However, some of these efforts, particularly those of the TUC Organising Academy, are so ‘unproductive’ that they are destined to fail, according to Metcalfe (2001).

6.50. The strategies adopted by the trade unions cannot be said to have succeeded in reversing the decline in the aggregate membership or density of the movement, they have nonetheless been instrumental in the survival of some unions which may have simply ceased to function. The merger process must be viewed as a success in that it has helped stave off financial decline and has helped in the process of restructuring some unions,

\textsuperscript{431} Information taken from the TUC website - www.tuc.org.uk/organisation
\textsuperscript{432} Waddington, J. (2003) p 241
\textsuperscript{433} Whilst this assertion carries no other authority than the empirical evidence of the author of the thesis, it is validated by work undertaken as an Area Organiser and Deputy General Secretary of the Clerical and Administrative Workers Union and latterly APEX over some 30 years.
both private and public sector, into formats which better facilitates their continuity. Merged unions have been better able to rationalise their cost structures and organise across their combined historic membership areas. Also, by developing a more ‘general’ approach to their organising activities, the new merged union has frequently been able to gain entry to new areas of organising opportunity. There is the downside that mergers, certainly initially, add nothing to aggregate membership, and as is discussed earlier in this Chapter may actually reduce the aggregate membership of the merging unions. The fact that merging unions continue to lose membership, as at the time of merging, can be seen from tracking the membership of merging unions through the year end membership data provided within the CO’s Annual Reports.

6.51. Conglomerate unions, during the reference period, have not performed well in terms of finance or membership retention, as is illustrated earlier in this Chapter. Willman (2005) and Waddington (2005) are critical of the propensity to merge, particularly in the creation of conglomerate unions. Willman’s paradigm is that the development of trade unions is at a stage similar to that of the economic theory model of ‘perfect competition’. His argument is basically that the trade union movement is consolidating around a small number of (shrinking in membership and resource terms) large organisations. Given that this small number of large organisations has shown no net aggregate growth, the question is can a small number of large organisations exploit their increasingly ‘oligopolistic’ control of the market, to extract sufficient income from their operation to ‘stay in business’, and reverse aggregate density decline as the trade union movement goes forward into the 21st Century.
7. Conclusions

7.1. From the 1940’s governments continued an abstentionist policy towards unions and industrial relations. Their policy was nonetheless supportive of ‘collectivism’, evidently because it was ‘convenient’ to have an ordered structure, see Fredman (1992)434. However, as trade unions increased in strength and influence and countervailed government policies, statutory intervention was increasingly used to restrict and control their activities. Not until the early 1970’s was ‘acceptance’ of the legitimacy of their role, and continuing the support of ‘public policy’ called into question. Millward et al (2000)435 appear far too simplistic when they say that there is some natural order about the manner in which the system of industrial relations based upon:

“shared values of the legitimacy of representation by independent trade unions and of joint regulation, crumbled....”

What happened during the eighteen years of the Conservative Governments was disastrous for the trade unions. It was not a case of “crumbling” so much as having the very foundations destroyed by a “monstrous attack” Hendy (1993)436, by the twin onslaught of a succession of antipathetic statutes and unhelpful case law, which had no regard for collectivism, social culture or international conventions and standards. The succession of some 16 Acts of Parliament and numerous Statutory Instruments and Consolidation Acts437 primarily aimed at ever greater regulation and control of trade unions and reversal of collectivism seriously debilitated the unions. Its affects were not simply the suppression of union activities so much as removing any effective means by which unions could resist the contextual changes with which they were to be faced. However, the preoccupation of trade unions with organising manual and white-collar workers in the manufacturing sector contributed significantly to the collapse of union density. As is illustrated by a range of research, but principally that undertaken by Bain, the trade union movements greatest strength, its high density membership in manufacturing, became its greatest weaknesses, leaving unions vulnerable to industrial restructuring when it gained pace.

7.2. The post Donovan period and the Industrial Relations Act 1971, whilst representing a period which many tend to regard as an aberration, contributing little of value but much

conflict, in fact developed the first attempts to enforce trade union recognition by means of law. The UK was unique amongst industrialised nations prior to that time (see Kahn-Freund in Flanders and Clegg (1962)). Whilst for the majority of trade unions recognition was not at that time something about which they had any great concern, for staff unions generally, and unions within notoriously difficult to organise industries such as Banking, Retail, Catering, etc, it was of major significance. The IRA 1971 was ‘supportive’ of the ‘collectivist model’, unlike the laws of the 1980/90’s. Unfortunately, at this point in history the intervention of law was, certainly by trade union leaders, seen as anathema, an attitude shared by many employers particularly where the law impinged upon the ‘legal status’ of collective agreements. However much the IRA 1971 may have been despised and, its passing into history with the election of the Labour Government was applauded, its demise did not result in a total reversal of the role of law in the regulation of industrial relations.

7.3. However, during the 1980’s and 1990’s unions and employee collective and individual rights received some respite from Tory antipathy through EU statutory developments which impacted upon UK law. Since 1997, there has been increasing support for collectivism through UK statutory provisions. Additionally, UK legislation and Regulation has introduced a considerable underpinning for the employment contract, through procedural protections, and minimum standards in terms and conditions. The provision of statutory support for minimum standards is obviously an important laudable feature of social policy. However, protecting the lowest income groups by statute puts such rights within the realm of ‘public goods’ and as a consequence tends to remove a significant part of the industrial mission of the trade union movement in terms of collective bargaining. Historically such issues were a feature of individual union policies and industrial campaigns. However, it was precisely such arguments that were adduced by unions when they campaigned for the removal of Wages Councils, Rubery and Edwards (2003). The ambivalence of unions about wage-fixing machinery, did not however, ‘convert’ into significant efforts to organise low paid workers into unions once it was dissolved. Instead, unions settled back into their preoccupation with their core membership groups, failing to increase their organisational base into many of the

437 See Appendix H
service areas, which were covered by Wages Councils, and which have been growth areas for employment.

7.4. Some unions did address the twin issues of low pay and non-unionism, through statutory provisions, which have been relatively overlooked, by the research into statutory regulation of pay and trade union recognition. The thesis adduces evidence and argument to show that the ‘underpinning’ of the Terms and Conditions of Employment act 1959 and Fair Wages Resolutions 1946 were under-valued and possibly under-exploited. Nonetheless, where they were used they proved to be effective devices, helping to not only raise the standards of terms and conditions but also extend collectivism, and consequently provide the basis for extending collective bargaining with employers. The 1959 Act served as an ‘instrument of persuasion’ upon employers to concede recognition and bargain collectively, as an alternative to its use, this being a reason why a minority of cases actually made it to the Industrial Court. The case examples cited, and material available at Kew put this argument beyond doubt. Perhaps those who advised Donovan and provided opinion about the value of the 1959 Act had little practical knowledge of its use and effectiveness. However, the 1959 Act relied for its relevance upon the existence of terms and conditions covering a trade or industry. With the demise of national bargaining and the move to company bargaining, its relevance, like that of the Fair Wages Resolution 1946, was in decline prior to its final repeal. What is often regarded as its replacement, the Employment Protection Act 1975(EPA 75) had some success as an instrument for improving general terms and conditions and furthering recognition. However, the EPA 75 was short-lived being repealed by the Tory government shortly after coming to power in 1979. The EPA 75 with its Schedule 11 recognition procedures and, the provision of terms and conditions equivalent to the ‘general level’ of pay for comparable workers, gave a ‘two pronged’ underpinning of the twin issues of recognition and collective bargaining. The former provisions proved incapable of effective operation because of general antipathy by employers, and unhelpful case law in respect of Schedule 11 claims, involving ACAS undermine its authority. Schedule 11 was not the progeny of the 1959 Act, but something quite different, it was used frequently in circumstances where unions already had recognition and collective bargaining rights solely to lift wage rates within a district.

440 Public Records Office, Kew, London
Whilst Schedule 11 did help in lifting the standards of terms and conditions for the lower paid and gaining recognition and collective bargaining rights, it was also an instrument of ‘competitive circuitous wage inflation’. However, notwithstanding that since 1999 the trade union movement has been able to use the law in campaigns for improvements in a range of procedural and substantive matters, the development has not produced a high use of the new laws, nor has the activity shown much ‘payback’ in the form of increased aggregate membership. Similarly, the statutory regulation of terms and conditions has produced little evidence of any effect upon union membership density. Perhaps the ambivalence of earlier generations of trade union leaders on the matter of statutory regulation of minimum terms had some foundation, in that the ‘returns’ produce by way of organisational density are poor.

7.5. But for ‘public policy’ Coates (1994) and the ‘cultural support’ for trade unions throughout the period from the early 1940’s, their growth (which relatively failed to exploit the growth in employment) would have been much less than it was in the period up to 1979, Bain and Price (1985). Consequently their decline would have been much greater than has proven to be the case since 1979. The ‘underpinnings’ of:

1. legal immunities (the golden formula);
2. the ‘pluralist’ approach to the management of employees;
3. the ‘collectivist model’ as the preponderant approach to determining the terms of
4. the employment contract;
5. statutory enforcement of various kinds throughout much of the period to 1979;

provided trade unions with the structural base and financial resources to carry them through the years of rapid decline from 1980 to 1997. The development of EU law, and its countervailing affect upon some of the extremes of UK law, helped trade unions to ameliorate some of the decline in collectivism. Also, the emergence of a new approach by the TUC from the mid 1990’s Heery (1998), and the swing back to a more supportive culture placed trade unions in a stronger position towards the end of the 1990’s, than might have been the case without these developments. However, UK unions

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442 Grunwick Processing Laboratories v Advisory Conciliation and Arbitration Service [1978] AC 655
443 Based upon the extensive personal involvement of the author in pursuing pay and conditions claims with employers throughout the regional centers of the engineering industry (Coventry, Birmingham, Wolverhampton, Sheffield, and many others)
continued to demise in a number of ways throughout the period from 1997, and continue to do so as at 2002, as the thesis has illustrated. However, whilst the growth in female membership has helped defray the losses in male membership, increases in the number of part-time members, whilst assisting the density figures are likely to be contributing less to the financial strength of unions particularly in terms of fee/costs ratios of servicing such members. The growth in part-time employment makes it impossible for unions to ignore this area of employment. Unions can and do ‘scale’ their benefit structures on a pro-rata to contribution basis. However, whilst this policy carries no risk in respect of accusations of discrimination in the provision of benefits when the status of members is homogeneous, such accusations could arise if part-time employees are offered a ‘lesser’ service or benefit simply because of their employment status. Nonetheless, the financial implications of a heavy involvement in organising part-time employees are serious matters requiring consideration. However, if the quantum of contribution income can be raised to cover costs, with a margin for investment in growth, the issue of differential contribution levels for part-time employees could become of little significance.

7.6. The reversal of public policy post 1979, and removal of the underpinnings of favourable law exposed the fundamental weaknesses of trade unionism. Without these two ‘supports’ it could not flourish, however, recognition did not follow the decline in union membership and collective bargaining as can be seen from the data and argument in WERS (1998). However, Willman (2005) puts forward some compelling arguments about the inevitability of further decline of trade union density, given recent past and current policies of unions. Willman’s arguments find a measure of support in the research and empirical knowledge that supports the thesis. However, the pendulum of ‘public policy’ appears to have taken a ‘swing’ back to cultural acceptance\(^{447}\). Perhaps the ‘swing’ since 1997 has been generated by the weight of employment law\(^{448}\) over recent years, and its complexity for individuals and, the vulnerability felt by many employees, in the modern industrial environment, as much as because of the political change that took place from that date. Also the risk of legal exposure perceived by many employers who have practiced little transparency in the manner in which they consult and communicate with their employees in the recent past and now need to amend their practices. Colling (2003)\(^{449}\) argues similar to Kelly (1998) that unions are failing to

\(^{447}\) The Human Rights Act 1998 by Article 11 and 14, give further support to the detail of recent statutes.

\(^{448}\) There were sixteen major statutes plus three consolidation Acts since 1971.

raise their profile in their market place in order that workers who have a need for
representation can readily find the union that can provide it. To achieve this end requires
more than the activities of a few ‘new organisers’ trained through the TUC. It requires
mass publicity, and a more active presence within local communities, but more
importantly a retracing of union history and the ‘re-discovery’ of the fundamentals which
helped the movement organise over 50% of the UK workforce. Supportive public policy
is in place, based upon the results of a large body of research the need for representation,
in many industries and workplaces, is as relevant today as it ever was. The opportunities
are there, however, it is extremely doubtful whether the resources are in place to exploit
them.

7.7. The ERA 1999 and its amendments to TULR(C)A 1992 needs more time to show
whether it is the catalyst to help reverse the decline of collectivism. As Antil (1998)\textsuperscript{450}
said \textit{"the devil is in the detail"} and it remains to be seen how the \textit{"detail"} will be
translated into law by the CAC and the courts in the longer term. If past experience is
repeated the courts are likely to come up with some perverse judgments, which will
possibly require amending legislation to correct them and put in place more precision.
What one can say is that there are some signs over the past six years of the new
legislation’s operation that the decline of trade union membership has slowed. However,
the decline is not yet halted, let alone reversed, nonetheless there are some signs that
membership decline has slowed and, as the thesis illustrates, collectivism in the form of
the new Partnership Agreements is undergoing an innovative ‘renaissance’.

7.8. The determination of pay and benefits by collective bargaining is much lower than
pre 1979 and, is undertaken by a minority of employers covering a small part of the total
workforce in the private sector. However, within the public sector, even after the Tory
attempts to deregulate its operations through introducing ‘market concepts’ Bach and
Winchester (2003)\textsuperscript{451}, collective bargaining is almost as ‘ubiquitous’ as trade union
membership. However, with the continuation of deregulation, albeit at a slower pace
than during the 1980’s and 1990’s. In addition, the decline in collective bargaining
particularly on pay, see Brown et al (2003)\textsuperscript{452} and moves towards the type of private
sector arrangements for pay and terms and conditions determination, the change process

\textsuperscript{451} Bach, S. and Winchester, D. (2003) \textit{Industrial Relations in the Public Sector} in Edwards, P.
is likely to continue in the public sector, see Bach and Winchester (2003). Certainly, if as appears to be the case, the experience in the private sector transfers to the public sector, particularly the use of HRM to bypass ‘collectivism’ and collective bargaining, particularly on pay, the ‘ubiquitous’ nature of union membership may demise.

7.9. Not only have unions lost power and influence, employers too have lost some of their ‘collective power Edwards (1993)’. As a result of the headlong rush to ‘de-regulate’ they have not developed any ‘new’ collective means of representing their interest industrially or at a macro level, save for the CBI, unlike their EU counterparts who still tend to maintain a ‘collectivist’ approach. Consequently, whilst collectivism is no longer the dominant model, however, the intervention of law, is leading employees, and some employers, to realise, the value in having a ‘collective’ process as an independent method of dealing with the laws requirements. Management’s are increasingly unsure about how far they can go in running a business without having some form of consensus to support them, and by which to comply with statutory requirements that increasingly require some form of ‘employee representation and consultation’. Many of the initiatives taken by some employers as an alternative to trade unions are themselves grounded in a ‘collectivist’ approach, Employee Forums, Employee Councils, Focus Groups etc are barely disguised attempts by management’s to construct a ‘bespoke collectivism’, one might say ‘redesigning the wheel’. Employers may increasingly realise that structured employee relations supported by appropriate mechanisms, bespoke and flexible in their design, Guest (1991) which are legally compliant is preferable to crisis management. Partnership Agreements as a concept, are possibly the geneses of the next millennium ‘collectivist model’. Perhaps as collectivism grounded in collective bargaining was the dominant model throughout the period we have reviewed Partnership (if not by name by ‘form’) will become its replacement. Certainly the issue of the legal right to recognition is in less doubt provided that the rigors of the current law can be met.

455 Part I of Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), as inserted by Section 1 of the Employment Relations Act 1999
7.10. The Partnership Agreement between CSC and MSF, has been used as a model because of its probably unique nature. The Partnership Agreement between CSC and MSF is atypical because CSC is one of a very few large companies which specialise in undertaking outsourced business of companies which transfer functions that have become too expensive to be conducted in house. Such activities as Computer Aided Design (CAD) and Computer Aided Management (CAM), Computer Software Systems Design, Payroll, Purchase Control, Inventory Control, are some of the ‘outsourced’ functions CSC undertakes for clients. CSC acquires not only the function but also the staff undertaking the work for the client company through a ‘business transfer’ under the Transfer of Undertakings Protection of Employment Regulations 1981 (TUPE 81). CSC is quintessentially a technological service company, and almost by definition amongst the most difficult of company’s to organise into a union and with which to gain recognition. CSC could on the evidence of its very poor membership levels have ignored MSF and allowed it to wither and die. However, because of compelling reasons associated with its desire to grow its business, particularly in the public sector where heavy unionisation existed, CSC wanted to portray a transparent image on industrial relations, to its market, showing good agreements and union relations to be part of its culture. Given the large number of Partnership Agreements found by Gall and McKay (2002), the circumstances of companies with needs similar to CSC are likely to be found more generally throughout industry. Not necessarily in terms of its type of business, but in terms of the need to have ‘stable’ employee relations, and a good image in markets for its goods and services and in the employment market. Where unions are possibly failing is in not having a detailed profile of the target company, its sensitivity to its market needs for ethical employee relations policies, no supply disruption, statutory compliance etc. Given the more aggressive and sophisticated market in which unions now operate they must develop a capacity for in depth research and a competence in company profiling, analogous to the profiling undertaken by predatory company’s looking for their next acquisition. Identifying, company markets, products, employee recruitment markets, human resource policies, problems, and general culture would assist a union, in matching its recruitment activities and approaches for recognition, to the profile of the target company.

456 See APPENDIX E 5
7.11. Apart from the underpinnings of minimum statutory rights in areas such as pay, holidays, working hours, Health and Safety, Employment Transfers, training etc there is unlikely to emerge legislation similar to the Terms and Conditions of Employment Act 1959, Fair Wages Resolutions or the ERA 1975 Schedule 11, that helped trade unions in the early years. This is so if for no other reason than the fact that, apart from the public sector, employers and unions no longer enter into national bargaining covering an industry, and in the Public Sector such bargaining is also demising. However, the impetus which such laws create for employers to ‘conform’, in matters of consultation and representation, have made them compelling instruments for progress in the maintenance/development of collectivism. If trade unions use the law tactically as well as in the defence of their members the ERA 1999 s 10 (1)(2)(3) could, as argued earlier, become an aid towards recognition and ultimately collective bargaining. The ERA 1999 and TULR(C)A Schedule A1, and the partnership philosophy do appear to have the ingredients for developing into the ‘next generation’ of underpinning for ‘collectivism’. Whilst there have been some ‘minor’ problems, whether there will be major challenges on the question of recognition arising under the provisions of Schedule A1, Antil (1999) 459, McCarthy Lord (1999) as at the end of 2002, remains to be seen.

7.12. The increasingly tenuous nature of trade union finance, particularly since 1979, is illustrated by the increasing pace and urgency of union mergers. The long standing debate and warnings about low contribution rates and the consequences of subsidising low contribution income, through the consumption of investment income, and liquidation of assets, has had little effect. Hughes, Latta, Willman et al, Undy et al, and others have each produced sound analysis and advice over many years about the seriousness of failing trade union finances. It is not feasible to single out only one development and ascribe to it the major role in the failing fortunes of unions. So many changes affected the operation of trade unions during the period since 1979. However, whilst it may not be ‘the’ single issue which caused union decline, financial inadequacy has contributed greatly to it, and tends to inhibit the ability of unions to regain membership density. The issues of inadequate UK trade union finances are of a long-standing nature. Unions, which had a long history of operation, primarily manual unions, have managed to come through the problems of membership loss since 1979. They have tended to have larger

458 Health and Safety at Work etc Act 1974; Safety Representatives and Safety Committee Regulations, s2(4) s2(6) 1977/500, also SI 1992
459 TULR(C) Schedule)A1 para 7 (1)(a)(b), The TUC appears to be raising concerns about small employers as was anticipated by, Antil, D, Collective and Individual Representation at Work, NLJ, Employment Law Supplement, Butterworths, 1999, pp1334.
capital resources, and have had the dubious benefit of being able to liquidate and convert to income fixed assets as membership and organisational requirements declined over the period. Unions with a short history and less membership and capital resources, primarily white-collar unions, have not managed to come through the period from 1979. As is discussed earlier, none of the white-collar unions that were predominantly involved in the private sector exists in 2002. MSF struggled into the millennium, only to be compelled, for financial reasons, to amalgamate with the AEU to form Amicus. BIFU managed to make it to the millennium in its new amalgamated form as UNIFI, to be faced with the reality of depleting financial resources and the inevitability of amalgamation with Amicus. Furthermore, it is evident that there are a number of other substantial unions actively considering mergers currently. The opportunities available from a reduced number of unions could be significant, in terms of economies of scale. However, it will require more innovation than has been demonstrated so far in the process of structural rationalisation. The TUC could develop as the centralised management services agency, extending the role it has attempted to play in orchestrating recruitment initiatives. What is required is rationalisation of union fees, and the attainment of economies of scale through co-operative purchase of services, (legal, insurance, mortgage etc) from external sources. Also centralised capital procurement such as motor vehicles acquired through a centralised car leasing company operated through the TUC. By spreading costs in some aspects of individual union management across all unions, residual resources could be concentrated upon the business of organising membership and delivering centrally sourced services.

7.13. Claims that ‘trade unions have been following a long-term policy of rationalisation of structure through amalgamations and transfers of engagements’, and this process has been of benefit in terms of the economic and organisational health of the trade union movement, simply do not hold up under analysis\(^\text{460}\). The process of rationalisation, which gathered pace after 1979 was one driven more by financial collapse on the part of many of the merging partners, rather than developments taking place through some

\(^{460}\) Prof Paul Willman in his research to be published mid 2005 says: “The merger process, which has generated this set of structures, has not eradicated inter-union competition. Nor has it generated the resource benefits following from economies of scale”. This is a view with which Metcalfe (2004) agrees when he says: “The bulk of mergers were aimed at raising market share - shuffling members around - rather than generating scale economies which would release extra resources for servicing and organising. Indeed many mergers are simply a reaction to the loss of members and income”.
centrally orchestrated move to a more rational union structure. Willman (2005) is clear in his views about the affects of mergers and the atrophy of the trade union movement caused by mergers and the financial predicament of trade unions going forward into the 21st Century saying:

"The substantial volume of net exit from the union sector and the merger activity of the 1990s is not associated with improvements in resource availability and indeed the union movement which is seeking to revitalise itself in the early part of the 21st century is financially weaker on these measures than it has been for at least 50 years”.

The exogenous issues of:
1. failing membership development policies;
2. inability to exploit statutory provisions on collective rights;
3. statutory provision of individual and collective rights free of union involvement;
4. increasing statutory regulation of terms and conditions;
5. increasing use of human resource management by employers;
   when taken together with the endogenous issues of:
6. depleting financial resources;
7. the gap between fee income and costs, increasing year on year;
8. the number of unions failing to cover cost with aggregate income increasing year by year; and,
9. mergers born out of defence rather than strategies for growth,

UK trade union density may continue to fall, and in aggregate these issues may ensure UK unions fail to achieve a watershed in rebuilding their organisations. The net result of all this being that much of the movement as it exists at the start of the 21st Century will fail to reach the 22nd Millennium. What would then be left would be a few conglomerate unions, with overlapping areas of membership by industry, and service, in many cases by individual employer, in both the public and private sectors. The exceptions to this scenario are likely to be specialised unions within the public sector, particularly in professional services such as education and health care. However, as Willman says:

"Since many mergers have resulted in conglomerate unions with overlapping job territories (Willman 1996, 2004) it is possible that the fall in the number of unions has reduced congestion without reducing competition; by this is meant that although the number of choices a prospective member has of unions to join (or employers of unions to recognise) has declined, choice, and therefore competition, persists within a shrinking resource base".
Inter-union competition for the majority of what remains of the movement, may become a more serious issue requiring regulation, which could continue to be accomplished by voluntary process through the TUC. However, if this approach fails, as it so often has in the past, statutory regulation may be introduced as a final resort to legally determine inter-union disputes, about bargaining units and union catering rights based on union membership and ‘tenure’. Something that could be achieved through the appropriate amendments to the prevailing powers of the CAC in respect of claims for union recognition. A considerable part of what is said in this final paragraph describes a situation that would be beyond the “twilight zone of perdition”, described by Willman (2005), and may be fertile ground for further research.

RAY EDWARDS

August 2005

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**ROYAL COMMISSION ON TRADE UNIONS AND EMPLOYERS ASSOCIATIONS 1965-68**


**RESEARCH PAPERS PUBLISHED BY THE ROYAL COMMISSION**


3. *Industrial Sociology and Industrial Relations*, by Alan Fox.

4. (Part 1) *Productivity Bargaining*; (Part 2) *Restrictive Labour Practices*. Written by the
Commission's secretariat.


TUC Fight Tebbit’s Law Campaign Pack (1982).


PinPoint Survey Questionnaire
Explanatory Information
Main Overview

Welcome to PinPoint, an information collection and analysis package designed to allow you to extract and present meaningful facts and conclusions about information.

In some ways, PinPoint may be described as a database - it allows you to store information and recall that information for inspection in the way that databases have done before. However, PinPoint goes beyond simple storage and retrieval of information. Simple storage and retrieval doesn't tell you much about the information you hold. Whilst possible, it is difficult to ascertain facts such as how many people in the database fall into certain age ranges, how many days were there more than 5 hours sunshine in each month of the year, this year as against last year, how popular are your products? PinPoint is designed to answer questions such as these, and far more complex ones, and to present the results in interesting ways.

PinPoint can be used on its own to design a questionnaire or data collection sheet, enter collected information and analyse the information. Or it can complement any existing database applications you possess. Information can be imported from another application, such as a fully relational database, and then analyses performed.

What does PinPoint do?

Within PinPoint the information you need can be quickly and precisely collected and compiled into a database. Your information can then be rapidly ordered and analysed in many different ways to indicate correlations, patterns and trends, and from these analyses hypotheses can be framed and quickly tested and statistics derived.

Results can be summarised in report form or graphically in graph, chart and table format, and your final analyses presented (making use of PinPoint's fully-fledged Windows WYSIWYG attributes) on screen or in print. In PinPoint you work in familiar settings, using easily understood terms and procedures written in plain English. There is no arcane language to learn, and no programming is required in order to obtain results which can be both useful and applicable to your business, profession or project.

Navigating through PinPoint

There are four main areas in which you will work on a PinPoint 'project'. These are

Form Design and Editing.
Form Filling.
Information Analysis.
Production and Presentation of Graphs, Charts and Tables.

Form Design and Editing

Every new PinPoint project begins with the design of its 'form', or data collection sheet. PinPoint makes form design easy. The questions to which you need answers are written in plain English on an electronic piece of paper. You have no need to be an 'expert' form designer, nor do you need to understand complex datafile structures to produce a well presented and workable form.
Once designed a form may be printed for use as a 'questionnaire' or for other data collection. There is a form at the core of every PinPoint project.

**Form Filling**

A completed or 'filled in' copy of a form is known in PinPoint as an 'answer sheet'. During answer sheet compilation a copy of the form is always displayed on screen. Answers can be entered directly onto the screen by your respondents, or else answer data can be 'copied in' from a collection of completed paper forms.

Because PinPoint's forms can contain many question 'formats' together with free-form text notes and built-in data entry checks, precise information can entered quickly and accurately.

**Information Analysis**

A completed set of answer sheets is known as a 'stack'. When a stack of answer sheets has been compiled the sheets are placed into a 'worksheet' for analysis.

PinPoint's worksheets provide the tools for displaying completed answer sheets in tabular form; sorting and selecting the sheets; performing statistical analyses; creating reports; and the production of graphs, charts and tables. You can add new answer sheets to a stack, and edit or 'update' a project's form and any existing answer sheet(s) at any time.

**Production and Presentation of Graphs, Charts and Tables**

Whilst many interesting patterns may emerge from the 'raw' information displayed in worksheet format, other interpretations may only become apparent when the data is further tabulated or presented graphically in some way.

PinPoint incorporates a powerful cross-tab generator and provides a wide choice of chart types and graphing options with which to present information for maximum clarity and impact. All the same WYSIWYG drawing tools and controls as are used in form design are available to you in the Presentation Editor.

**The Project**

PinPoint stores all project information - the form, the completed answer sheets, the worksheet and all its attributes and any associated graphical presentations - in a single ".ppf" project file.
APPENDIX B

PIN-POINT SURVEY - UNION SAMPLE

1. Abbey National Group Union – ANGU
2. Alliance and Leicester Group Union of Staff
3. Amicus
4. Anchor Group Staff Association
5. Association of Chiropodists and Podiatrists
6. Associated Society of Locomotive Engineers and Firemen
7. Association of Teachers and Lecturers
8. Association of University Teachers
9. Bakers Food and Allied Workers Union
10. Britannia Staff Union
11. British Air Line Pilots Association
12. British Association of Colliery Management
13. British Association of Dental Nurses
14. British Association of Occupational Therapists Limited
15. British Dental Association
16. British Dietetic Association
17. British Medical Association
18. British Orthoptic Society
20. Ceramic and Allied Trades Union
21. Chartered Society of Physiotherapy
22. CGNU Staff Association
23. Communication Workers Union
24. Community and District Nursing Association
25. Connect; The Union for Professionals in Communications
26. Equity (Incorporating the Variety Artistes’ Federation)
27. FDA
28. Friends Provident Line Managers Association
29. Fire Brigades Union
30. Fire Officers Association
31. General Dental Practitioners Association
32. GMB
33. Graphical Paper and Media Union
34. Guinness UDV Staff Association
35. Hospital Consultants and Specialists Association
36. Independent Union of Halifax Staff
37. Irish Bank Officials Association
38. Iron and Steel Trades Confederation
39. Leeds and Holbeck Building Society Staff Association
40. Lloyds TSB Group Union
41. Musicians Union
42. National Association of Educational Inspectors Advisers and Consultants
43. National Association of Head Teachers
44. National Association of Schoolmasters and Union of Women Teachers
45. National Association of Teachers in Further and Higher Education
46. National Union of Marine Aviation and Shipping Transport Officers
47. National Union of Rail Maritime and Transport Workers
48. National Union of Teachers
49. Nationwide Group Staff Union
50. Portman Staff Association
51. Prison Officers Association
52. Prison Service Union
53. Professional Footballers Association
54. Prospect
55. Public and Commercial Services Union
56. Royal College of Midwives
57. Royal College of Nursing
58. Society of Chiropodists and Podiatrists
59. Society of Radiographers
60. Transport and General Workers Union
61. Transport Salaried Staffs Association
62. UNIFI
63. Union of Construction Allied Trades and Technicians
64. Union of Shop Distributive and Allied Workers
65. UNISON – The Public Service Union
66. WISA – The Union for Woolwich Staff
67. Writers Guild of Great Britain
68. Yorkshire Independent Staff Association
TRADE UNION DATA QUESTIONNAIRE

Q4. First of all we would like to ask you some questions about your union's membership industrial structure

Section No 1

Q4c. Q1 How many of the following classes of membership does your union have? PLEASE TICK AS MANY BOXES AS APPROPRIATE

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Q4a. Q3 ELECTRICITY. Please indicate which percentage is the level of membership in this industry

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Q4b. Q6 CONSTRUCTION. Please indicate which percentage is the level of membership in this industry

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Q4e. Q4 WATER. Please indicate which percentage is the level of membership in this industry

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Q4d. Q7 WHOLESALE/RETAIL. Please indicate which percentage is the level of membership in this industry

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Q4f. Q2 MANUFACTURING. Please indicate which percentage is the level of membership in this industry

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Q4g. Q5 GAS. Please indicate which percentage is the level of membership in this industry

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Q4h. Q8 HOTEL/CATERING. Please indicate which percentage is the level of membership in this industry

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4. Q9 INSURANCE SERVICES. Please indicate which percentage is the level of membership in this industry.

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- □ 15-20%
- □ 20-30%
- □ 30-40%
- □ 40-50%
- □ 50-75%
- □ over 75%

6. Q10 BANKING SERVICES. Please indicate which percentage is the level of membership in this industry.

**PLEASE TICK ONE BOX**

- □ Less than 5%
- □ 5-10%
- □ 10-15%
- □ 15-20%
- □ 20-30%
- □ 30-40%
- □ 40-50%
- □ 50-75%
- □ over 75%

9. Q11 TRANSPORT AIR. Please indicate which percentage is the level of membership in this industry.

**PLEASE TICK ONE BOX**

- □ Less than 5%
- □ 5-10%
- □ 10-15%
- □ 15-20%
- □ 20-30%
- □ 30-40%
- □ 40-50%
- □ 50-75%
- □ over 75%

11. Q12 TRANSPORT ROAD PASSENGER. Please indicate which percentage is the level of membership in this industry.

**PLEASE TICK ONE BOX**

- □ Less than 5%
- □ 5-10%
- □ 10-15%
- □ 15-20%
- □ 20-30%
- □ 30-40%
- □ 40-50%
- □ 50-75%
- □ over 75%

12. Q13 TRANSPORT HAULAGE. Please indicate which percentage is the level of membership in this industry.

**PLEASE TICK ONE BOX**

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- □ 50-75%
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13. Q14. EDUCATION Please indicate which percentage is the level of membership in this industry.

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14. Q15. HEALTH PRIMARY Please indicate which percentage is the level of membership in this industry.

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15. Q16. HEALTH NON PRIMARY Please indicate which percentage is the level of membership in this industry.

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Q4s. Q17. LOCAL GOVT Please indicate which percentage is the level of membership in this industry. PLEASE TICK ONE BOX

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Q4q. Q18. NATIONAL GOVT Please indicate which percentage is the level of membership in this industry. PLEASE TICK ONE BOX

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Q4r. Q19 TRAVEL-LIESURE. Please indicate which percentage is the level of membership in this industry. PLEASE TICK ONE BOX

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Q4t. Q20.CIVIL AIR TRANSPORT Please indicate which percentage is the level of membership in this industry. PLEASE TICK ONE BOX

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Q5. Q21. COMMUNICATIONS: Please indicate which percentage is the level of membership in this industry. PLEASE TICK ONE BOX

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SECTION 2. ABOUT MEMBERSHIP
ADMINISTRATION AND SUBSCRIPTIONS

Q6. In this section we will be seeking information about the unions administration of its membership and subscriptions

Q6a. Q1. MEMBERSHIP RECORDS. How are membership records stored? PLEASE TICK BOX AS APPROPRIATE

1. Fully Computerised
2. Part hard copy
3. All hard copy

Q6b. Q2. MEMBERSHIP RECORDS. How up to date are membership records? PLEASE TICK BOX AS APPROPRIATE

1. Correct when return made to Certification Officer each year
2. Updated every month
3. Updated every two months
4. Updated every three months
5. Updated every six months
6. Some other period - specify

Q6c. Q3. SUBSCRIPTION RECORDS. How are subscription records maintained? PLEASE TICK BOX AS APPROPRIATE

1. Fully Computerised
2. Part hard copy
3. All hard copy

Q7. Q4. We wish to know the percentage of subscriptions your union collects from its membership each year: PLEASE TICK APPROPRIATE BOX FOR EACH OF THE YEARS LISTED

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Page 4
Q6d. Q5. MEMBERSHIP BENEFITS. What benefits does the union provide to its members in addition to negotiation and representation PLEASE TICK AS MANY BOXES AS ARE APPROPRIATE.

01 Discount trading
02 Insurance
03 Travel
04 Holidays
05 Convalescences facilities
06 Retirement counselling
07 Retirement planning
08 Pensions advice
09 Legal advice
10 Legal representation - work related
11 Legal representation - non work related
12 Unemployment
13 Job search
14 Professional advice/information
15 Other - specify .......................

Q8. Q6. SUBSCRIPTION COLLECTION. What percentage of subscriptions are collected by the following methods? PLEASE TICK BOXES AS APPROPRIATE AND ENTER % FIGURE.

Q8a. Check off Q8b. Standing order Q8c. Direct debit Q8d. Steward collection

1 Under 50% 1 Under 50% 1 Under 50% 1 Under 50%
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Q6e. Q7. HOW ARE SUBSCRIPTION LEVELS DECIDED? Please indicate which body within the union decides on increases in subscriptions. TICK APPROPRIATE BOX.

1 Executive Committee
2 Annual Conference
3 Special Rules revision conference

Q6f. Q8. FIXING SUBSCRIPTIONS. Please indicate how far ahead in time are subscription levels determined. What has been the average period of time between subscription changes during the past 20 years. PLEASE TICK APPROPRIATE BOX AND GIVE AVERAGE PERIOD AS REQUESTED.

1 One year
2 Two Years
3 Three years
4 Longer period - specify ............... 
5 Average period between subscription increases over past 20 years ..............
Q6g. Q9. REASONS FOR INCREASING SUBSCRIPTIONS. When planning to increase subscriptions what are the main influences? PLEASE RANK THE FOLLOWING FACTORS IN ORDER OF IMPORTANCE (1= most important and 13 = least important)

- Meeting administration costs
- Subscription levels charged by other unions
- The level of benefits provided to members
- The earnings levels of members
- Maintaining current levels of reserve funds
- Need to make new capital investment
- Need to improve membership services
- Declining membership
- Increasing membership
- The level membership is likely to accept
- Declining subscription income
- Declining investment income
- Other - specify

SECTION 3. ABOUT UNION INVESTMENTS AND POLICY

Q9. In this section we will be seeking information about the unions investments

Q9a. Q1. INVESTMENT POLICY. Does the union have any policy on investments? PLEASE TICK APPROPRIATE BOX.

1 □ Yes
2 □ No

Q9b. Q2. FORMS OF INVESTMENT. What types of investments can be made. PLEASE TICK APPROPRIATE BOXES

[ ] Property
[ ] Land
[ ] Interest bearing accounts
[ ] Equities
[ ] Gilts
[ ] Other specify

Q10. Q3. Please indicate what percentage of unions investments are held in the following form. PLEASE TICK BOXES AS APPROPRIATE

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<th>Q10c. Interest bearing accounts</th>
<th>Q10d. Equities</th>
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Q9c. Q5. DECISIONS ON INVESTMENTS. Who is responsible for deciding what investments can be made. PLEASE TICK APPROPRIATE BOXES

- General Secretary
- Treasurer
- Finance Officer
- Trustees
- Executive Council
- External Advisers
- Other-specify

Q9d. Q6. INVESTMENT OBJECTIVES. In terms of investment policy strategy please rank the following in order of importance. (1=most important; 5 least important)

- Maximise annual income
- Maximise capital growth
- Provide both income and growth
- Provide security for member funds
- Generate funds for new projects

SECTION 4 ABOUT EXPENDITURE AND CONTROLS.

Q11. In this next section we wish to review the way in which your union manages its expenditure. We are interested in the systems of control used and where expenditure can arise and who takes decisions about expenditure

Q11a. Q1. BUDGETARY SYSTEM. Does your union have a system of budgetary control over its expenditure? TICK APPROPRIATE BOX

- Yes
- No

Q11b. Q2. BUDGET RESPONSIBILITY. If the answer to the previous question was 'yes' who is primarily responsible for setting budgets? TICK APPROPRIATE BOX

- General Secretary
- Treasurer
- Finance Officer
- Executive Council
- Other - specify

Q11c. Q3. BUDGET CONTROL. Who is primarily responsible for controlling a budget once it is set? TICK APPROPRIATE BOX

- General Secretary
- Treasurer
- Finance Officer
- Executive Council
- Other - specify
Q11d. Q4. EXPENDITURE DECISIONS. Who would take decisions for major items of capital expenditure? TICK APPROPRIATE BOX

- General Secretary
- Treasurer
- Finance Officer
- Executive Council
- Other - specify

Q11e. Q5. BUDGETARY REPORTING. How often are reports made about expenditure, budgetary and financial matters? TICK APPROPRIATE BOX

- Monthly
- Two monthly
- Quarterly
- Half yearly
- Yearly
- Some other frequency - specify

Section No 5 Recruitment

Q12. In this section we wish to gain information about the unions approach to recruitment

Q12a. Q11. RECRUIMENT OFFICIALS: Does your union have full time officials solely responsible for recruitment? TICK APPROPRIATE BOX

- Yes
- No

Q12b. Q12. RECRUITMENT DRIVE. During the past 2 years has the union organised a specific campaign to recruit new members? TICK APPROPRIATE BOX

- Yes
- No

Q12c. Q13. RECRUITMENT COST/BENEFIT: If the answer to the last question was 'yes', was the cost and benefit of the campaign monitored and finally assessed? TICK APPROPRIATE BOXES

- Costed but not monitored
- Benefit not assessed against costs
- Costed and monitored
- Costs and final benefit assessed
- not costed

Q12d. Q14. RECRUITMENT BUDGET. Does the union maintain any 'separate funds' used specifically for recruitment and membership development? TICK APPROPRIATE BOX

- Yes
- No
Q12e. Q5. JOINT RECRUITMENT CAMPAIGNS. Has the union cooperated with other unions in joint recruitment campaigns? TICK APPROPRIATE BOX

☐ Yes
☐ No

Q12f. Q6. JOINT CAMPAIGNS EFFECTIVENESS. If the union has cooperated with other unions in joint recruitment campaigns, how successful are these judged to have been? TICK APPROPRIATE BOXES

☐ Very successful
☐ Successful but did not achieve sufficient benefit against cost
☐ Cost more than benefit achieved
☐ Of little success
☐ Would do it again
☐ Doubt would do it again
☐ Would never become involved again

Q12g. Q7. RECRUITMENT METHOD. Which method is most significant in recruiting new membership? PLEASE RANK IN ORDER OF SIGNIFICANCE, 1 = most significant 8 = least significant.

☐ Advertising and direct application
☐ Advertising on Union notice boards
☐ Induction process facilities
☐ Shop stewards
☐ Existing membership - word of mouth
☐ Campaigns in particular company's/company groups
☐ Campaigns in industrial estates, areas
☐ National campaigns focused on an industrial issue
☐ use TUC recruitment support

This section seeks information about your union's approach to the question of merging or transferring engagements with some other union/unions.

SECTION 6 ABOUT UNION MERGERS - TRANSFERS OF ENGAGEMENTS

Q13. Q1. MERGER POLICY. Does the union have any policy about its requirements/assurances etc should it be approached to merge with some other union/unions or should it decide to make such an approach to other unions? TICK APPROPRIATE BOX

☐ Yes
☐ No

Q14. Q2. MERGER REQUIREMENTS. What would the unions requirements be if it was considering a merger? PLEASE ENTER REQUIREMENTS IN TEXT SPACE PROVIDED BELOW.
Q15. Q3. MERGER APPROACH. Has the union been involved in merger/transfer discussions with other unions recently, if so what other union/union were involved? PLEASE ENTER RESPONSES IN TEXT SPACE PROVIDED BELOW


Q16. Q4. FINANCIAL CONSIDERATIONS A. How important was the financial position of your union in the decision to undertake discussions about a merger/transfer? TICK APPROPRIATE BOX

☐ Very important
☐ Important
☐ Neither important nor unimportant
☐ Unimportant
☐ Wholly irrelevant

Q17. Q5. FINANCIAL CONSIDERATIONS B. How important was the financial position of the other union in your union's decision to undertake discussions about a merger/transfer? TICK APPROPRIATE BOX

☐ Very important
☐ Important
☐ Neither important nor unimportant
☐ Unimportant
☐ Wholly irrelevant

Q18. Q6. GENERAL CONSIDERATIONS. Please rank in order of importance as reasons for deciding to enter a merger/transfer the following items? (1=most important 11=least important)

☐ decreasing membership
☐ expenditure exceeding income
☐ depleting capital reserves
☐ income not rising fast enough to fund development
☐ bargaining power declining
☐ inability of union to provide adequate membership services
☐ weak competitive position
☐ inability of union to increase subscriptions
☐ similar industrial involvement
☐ similar type of membership
☐ other specify......................
Q19. Q7. FEWER UNIONS. Is the reduction in the number of trade unions a cause for concern? TICK APPROPRIATE BOX

☐ Yes
☐ No

Q20. Q8. FEWER UNIONS. If you answered 'yes' to the previous question in what way do you believe that fewer unions is a cause for concern and would damage the trade union movement as a whole? PLEASE RANK THE FOLLOWING RESPONSES IN THE ORDER OF PRIORITY; 1 = MOST IMPORTANT AND 8 = LEAST IMPORTANT.

☐ Reduces choice
☐ Unions become more general - less focused on needs of membership
☐ Services insufficiently specialised
☐ Officials less likely to understand any particular industry
☐ Employees in some industries likely to be 'turned off' by a general union
☐ Specialist, professional, technical, management grades not likely to join a general union
☐ Fewer unions concentrates too much power.
☐ Fewer unions may lead to less democratic control

Q21. Q9. FEWER UNIONS. If you answered 'No' to the previous question in what way do you believe that fewer unions is not a cause for concern and would improve the trade union movement as a whole? PLEASE RANK THE FOLLOWING RESPONSES IN THE ORDER OF PRIORITY; 1 = MOST IMPORTANT AND 5 = LEAST IMPORTANT.

☐ Reduces inter union competition and disputes about rights
☐ Increases numeric strength of individual unions
☐ Less unions would be more representative of the workforce
☐ Fewer unions would be more financially sound
☐ Fewer unions may produce better finances which would improve membership services
☐ General unions have a broader perspective of employment problems

Q22. Q10. SPECIALIST UNIONS. In circumstances where there are fewer unions how important does your union believe it is to ensure that specialist unions are retained? PLEASE TICK THE APPROPRIATE BOX.

1 ☐ Very important
2 ☐ Fairly important
3 ☐ Neither important nor unimportant
4 ☐ Fairly unimportant
5 ☐ Not important at all
SECTION 7 ABOUT PARTNERSHIP

Section 7. this section asks questions about Partnership Agreements, your unions views on partnership as an approach, what the benefits have been for your union, whether your union has partnership agreements and what such agreements provide.

Q23. Q1. PARTNERSHIP AS A CONCEPT. Has partnership been embraced by your union as a means of building the unions membership and influence? PLEASE TICK APPROPRIATE BOX

☐ Yes
☐ No

Q24. Q2. PARTNERSHIP AS A CONCEPT. If you answered 'Yes' to the last question please indicate your unions views about, or experience of, Partnership? PLEASE INDICATE ORDER OF IMPORTANCE 1 = MOST IMPORTANT AND 6 = LEAST IMPORTANT.

☐ Helped gain recognition agreements
☐ Helped save recognition agreements
☐ Improved relationship with management
☐ Improved interest in union by employees
☐ Increased membership at companies with partnership agreements
☐ Helped avoid membership loss
☐ Other - specify..............

Q25. Q3. PARTNERSHIP AS A CONCEPT. If you answered 'No' to the last question please indicate your unions views about, or experience of, Partnership? PLEASE INDICATE ORDER OF IMPORTANCE 1 = MOST IMPORTANT AND 6 = LEAST IMPORTANT.

☐ Not relevant within the industries/companies covered by union
☐ A poor alternative to normal recognition and collective bargaining
☐ In approaches made so far management has refused to enter a partnership agreement
☐ Believe partnership identifies the union too closely with the management of the business
☐ Membership are concerned that union may be prevented from defending membership by close involvement in business operation.
☐ Union has a policy of not becoming involved in partnership agreements
☐ Other - specify............

Q26. Q4. HOW MANY PARTNERSHIP AGREEMENTS. ? Does your union have any partnership agreements? If yes, please state how many.

__________
Q27. Q5. PARTNERSHIP AGREEMENTS, WHAT COMPANIES? Please list as many companies as possible with which the union has partnership agreements. PLEASE ASSIGN A NUMBER TO EACH COMPANY LISTED.

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Q28. Q6. JOINT PARTNERSHIP AGREEMENTS? Please indicate from the list companies in the last question which of those partnership agreements are held jointly with other unions. PLEASE LIST OTHER UNIONS INVOLVED AND INDICATE BY ASSIGNING THE COMPANY NUMBER, given in response to the previous question, WHICH COMPANY IS INVOLVED.

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### SECTION 8 ABOUT STAFFING LEVELS AND PAYROLL COSTS

Q29. This question seeks information about the numbers of fulltime officials employed by the union.

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Q30. Please tick the appropriate box that relates nearest to the total number of admin staff employed by your union in each of the years listed below.

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Q31. We wish to know the total costs of employing fulltime officials and staff as at the end of each of the following years.

Q31a. 1979
Q31b. 1980
Q31c. 1985
Q31d. 1990
Q31e. 1995
Q31f. 1997
Q31g. 1998
Q31h. 1999
Q31i. 2000
Q31j. 2001
Q31k. 2002

THANK YOU FOR TAKING THE TIME TO ASSIST ME IN MY RESEARCH, YOUR HELP REALLY IS APPRECIATED
### APPENDIX C

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Data taken from Bain. G.S. Royal Commission on Trade Unions and Employers Associations 1968.
## All Trade Union and TUC Unions Density 1892-2001

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**Tabl1.1 Updated from 1981 by Ray Edwards utilising data taken from Certification Office Annual Reports, Trades Union Congress, DTI and Home Office**
Appendix IC.1

Industrial Court Award
Black Clawson International
THE INDUSTRIAL COURT

(3160) Observance of Recognised Terms and Conditions of Employment in respect of Clerical Workers employed by a firm in Newport, Monmouthshire, engaged in the Engineering Industry

Employers concerned:-
Black Clawson International Limited

Trade Union reporting the claim:-
Clerical and Administrative Workers' Union

1. The Minister of Labour on the 27th October 1967 referred to this Court for settlement, in accordance with the provisions of the Terms and Conditions of Employment Act 1959 (hereinafter referred to as "the Act"), the following claim which had been reported to him on the 20th September 1967 by the Clerical and Administrative Workers' Union under Section 8 of the Act:-

(a) That there are established in the engineering industry in respect of clerical workers terms or conditions of employment which have been settled by agreement on 6/7/67 between the Engineering Employers' Federation and the Clerical and Administrative Workers' Union.

(b) That the parties to these agreements are organisations of employers and of workers which represent, respectively, a substantial proportion of the employers and of the clerical workers to which the agreements relate.

(c) That as respects clerical workers Black Clawson International Ltd. of Newport, Mon., being engaged in the engineering industry, are not observing the terms or conditions of employment in the agreements mentioned in (a) above.

The Parties were heard in London on the 19th December 1967. They subsequently submitted further evidence in writing which was received on the 22nd and the 28th December 1967.

2. The claim of the Clerical and Administrative Workers' Union (hereinafter referred to as "the Union") concerns certain of the 91 clerical and administrative staff employed by Black Clawson International Limited (hereinafter referred to as "the Company") at Westgate Works, Newport, Monmouthshire. The staff concerned are those who were in the Company's employment at the effective date of the Agreement set out in paragraph 3 below, and whose salaries were below the limits prescribed therein. The Union are claiming that the Company should observe, in respect of the employees concerned, the terms and conditions established in the Engineering Industry by an agreement relating to general wage increases, reached on the 6th July 1967 and effective from the 25th July 1967 (hereinafter referred to as "the 1967 Agreement" or "the Agreement"), between the Engineering Employers' Federation (hereinafter referred to as "the Federation") and the Union, together with two other unions.

3. The provisions of the 1967 Agreement are in the following terms:-

"After formal and informal negotiations on 6th July, 1967, the Unions accepted the undemoted proposals as settlement of their outstanding claims for a general increase in salaries.

1. Employers will be required to ensure that, including any increases paid domestically on or after 20th July, 1966, which resulted from the settlement of a specific claim or which were paid to all or substantially all clerical workers, the following increases are applied:-"
Adult males - age 21 - 22, 15s. Od. per week
" 23 - 24, 16s. Od. "
" 25 and over 17s. 6d. "

Adult females - 15s. Od. per week

With pro rata increases for juniors in accordance with normal practice as follows:

<table>
<thead>
<tr>
<th>Age</th>
<th>15</th>
<th>16</th>
<th>17</th>
<th>18</th>
<th>19</th>
<th>20</th>
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<tbody>
<tr>
<td>Males</td>
<td>6s 3d</td>
<td>7s 6d</td>
<td>9s 3d</td>
<td>11s 9d</td>
<td>14s 9d</td>
<td>17s 6d</td>
</tr>
<tr>
<td>Females</td>
<td>6s 3d</td>
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<td>9s 3d</td>
<td>11s 9d</td>
<td>14s 6d</td>
<td>19s 6d</td>
</tr>
</tbody>
</table>
*Plus 15s. Od. in the London Area*

The salary limits which will apply in relation to those increases are as follows:

- Adult males - up to and including £950 per annum
- Adult females - up to and including £685 per annum

2. In determining whether the provisions of those proposals have been met, increases deferred in terms of Government Incomes Policy will be taken into account.

3. Acceptance of the Federation's proposals will satisfy all current general salary claims against federated employers affecting all or substantially all clerical workers either in the works or in the general office except insofar as anomalies may exist.

It was agreed between the parties that the above increases would come into effect on MONDAY 21st JULY 1967, the Unions accepting that it was necessary for the Federation to report the settlement under the voluntary early warning system.

It was also agreed that agreed points for guidance would be discussed between officials of the Federation and the Clerical and Administrative Workers' Union in relation to the interpretation of the Agreement.

The effect of the Agreement is to provide for new minimum salary scales as follows:

<table>
<thead>
<tr>
<th>Age</th>
<th>15</th>
<th>16</th>
<th>17</th>
<th>18</th>
<th>19</th>
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<td>Males</td>
<td>6s 3d</td>
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<td>Females</td>
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<td>14s 6d</td>
<td>19s 6d</td>
<td>22s 6d</td>
</tr>
</tbody>
</table>

*Plus 15s. Od. in the London Area*

4. In accordance with the provisions of that Agreement the Federation and the Union subsequently issued the following agreed points for guidance:

"1. Where, since 20th July, 1966, general increases in salaries have been paid prior to a settlement or a general review of salaries has taken place, yielding in either case increases of differing amounts to all or substantially all clerical workers covered by the National settlement, the parties agree that the lowest amount conceded to the appropriate age group and sex in question is the figure to be taken into account in determining what increase is due in the terms of the National settlement.

2. Increases conceded on the basis of individual merit which do not form part of a general settlement or review in terms of paragraph 1 above, should not be offset against the National increases."
Main submissions on behalf of the Union

5. It was stated that, since the Union first established a membership among the Company's clerical and administrative staff in 1962, there had been a number of agreements between the Union and the Federation, and the 1967 Agreement was the first which the Company, who were not members of the Federation, had refused to implement.

6. On the 40th July 1967 the Union had written to those engineering employers in South Wales who employed Union members, including the Company, informing them of the terms of the 1967 Agreement and asking them to confirm that they would implement those terms from the 24th July 1967. The Company's reply dated the 12th July 1967 was considered by the Union to be unsatisfactory, and they wrote to the Company again on the 26th July. The Company's further reply dated the 18th August was also considered unsatisfactory, and arrangements were then made for a meeting between the Parties which took place on the 31st August 1967. (Copies of the letters referred to were placed before the Court.)

7. At the meeting on the 31st August 1967 the Company produced a document (a copy of which was placed before the Court) setting out points of guidance to interviewers in connection with a salary review which the Company had undertaken, and incorporating an outline of their future policy on salaries. One of the points of guidance read as follows:- "Each person shall be told that in future National Awards birthday increases etc. will not necessarily be paid." In the Union's submission this clearly showed that the Company did not intend in the future to implement settlements reached between the Union and the Federation.

8. On the 20th September 1967 the Union reported the matter to the Ministry of Labour's Industrial Relations Officer for Wales, and under his chairmanship a meeting between the Parties took place on the 18th October 1967. As the differences between them could not be resolved the matter was referred to this Court.

9. It was submitted that the Company must comply with the terms of the 1967 Agreement unless they were able to satisfy the Union that they could justifiably claim exemption from so doing in the circumstances set out in the points for guidance subsequently issued by the Union and the Federation (see paragraph 4 above). In other words the only salary increases which could be offset against the general increases provided by the 1967 Agreement were those specified in point 1 of the points for guidance.

10. The points for guidance were an integral part of the Agreement, having been drawn up in order to set out what was the generally understood position with regard to the implementation of settlements reached between the Union and the Federation, and it was submitted that the true interpretation of their wording was as follows:- Where, since the 20th July 1966, a company had anticipated the national settlement by giving general increases of differing amounts to all or substantially all their workers to whom that settlement applied, only that part of the increases which was given to all the workers concerned of the same age and sex could be offset against the increases provided by the Agreement. A company might have given different increases to different workers in consideration of individual merit or of extra responsibility, or might merely have differentiated according to age and sex, and the purpose of the points for guidance was to make it clear that all individual considerations were to be ignored in ascertaining what were the general basic increases which had been applied.

11. It was therefore necessary, in implementing the terms of the 1967 Agreement in the circumstances referred to above, to identify the lowest increases given to males and females in each age group, ignoring any workers (who could be only a small minority) to whom no increases were given. If, for example, the general picture was of an increase to workers of the same age and sex of 15s. or more, and the appropriate increase under the Agreement was 17s. 6d., then all workers in that group would be entitled to a further 2s. 6d., while those who had received no increase would be entitled to the whole of the national increase of 17s. 6d. If, exceptionally, an individual
had not then been able to calculate.

12. It was stated that the above interpretation of the way in which the 1967 Agreement had been challenged by a number of Federated companies, but had always been upheld as correct by the Federation. In this connection the Union placed before the Court a copy of a transcript of the proceedings at a Central Conference between the Union and the Federation, held on the 23rd November 1967, which dealt with the failure of a number of companies in Leicester to pay the national increases in full.

13. In the light of the information in the schedule which the Company had produced (see paragraph 29 below) there were in the Union's submission eleven cases (details of which were given) where the full increases provided by the 1967 Agreement had not been implemented by the Company. According to the Union's calculations the general increase which the Company had given to women aged 21 years and over was 10s. and therefore under the terms of the points for guidance all female clerical staff in that category should have been given at least an additional 5s. It was contended that anything given in excess of 10s. arose, on the Company's own evidence (see paragraphs 26 and 27 below), from the examination of individual merit and the appraisal of job values which the Company had carried out, and represented the cost to the Company of introducing their job evaluation scheme.

14. The Company had also given general increases of 10s. to females of 19 and 20 years of age, and in their case the additional increases payable were 1s. 6d. and 3s. 3d. respectively. As far as males were concerned, an increase of 14s. 6d. had been given at age 25 and over and of 10s. at 21 years of age, so that additional increases were payable to the workers concerned of 5s. and 5s. respectively. In the Union's submission some of the eleven employed had not received any increases at all within the terms of the 1967 Agreement, and these should be given the full amount of the increase provided thereby which was appropriate to their age and sex.

15. It was submitted that the job evaluation exercise which the Company had carried out (see paragraph 26 below) had not necessarily anything to do with a general increase in salaries, but was merely intended to establish an orderly structure within the Company by bringing salaries into line with the appropriate rates for the jobs. The Company was contending that the increases they gave during the course of their salary review satisfied the requirements of the 1967 Agreement (see paragraph 27 below), but it could not be said, and the Federation would not accept, that any increases the Company gave before the 2nd July 1967 (the effective date of the review) satisfied those requirements. Such increases were necessary to retain the staff concerned and were obviously personal to them. They were therefore, in the words of point 2 of the points for guidance, "increases conceded on the basis of individual merit which do not form part of a general settlement".

16. In the Union's submission any increase given by the Company after the 2nd July 1967 was also unacceptable as forming part of the general settlement, and was in fact an individual increase given for a specific reason. They therefore took the view that if no increase had been given on the 2nd July then no increase at all had been given under the terms of the 1967 Agreement. They accepted, however, that this Court would take into account any subsequent increases given by the Company up to the 29th September 1967, the date on which the present claim was reported to the Minister.

17. With regard to the Company's argument that the salaries of staff who entered their employment after the 20th July 1966 had been fixed at a level which anticipated the increases provided by the Agreement (see paragraph 32 below), it was submitted that as the Company's review of salaries was not finished until July 1967 (see paragraph 26 below) it could not have been possible for them to take into account an earlier date smoothing which they had not then been able to calculate.
18. The Company had contended that any individual claim for an increase should be regarded as "a specific claim" for the purposes of the 1967 Agreement and could therefore be offset against the national increase (see paragraph 30 below). The intention of the Parties to the Agreement had however been that only increases arising from specific claims made by the Union in respect of individual companies, which were paid to all or substantially all the workers concerned, could be so offset.

19. As to the Company's contentions with regard to the rider to the points for guidance, which indicated that individual cases might have to be examined in detail (see paragraph 33 below), it was submitted that "individual cases" was intended to refer to individual companies and not to individual employes within one company. The intention was that such an examination should take place where there was a challenge by the Union as to the interpretation by a particular company of the 1967 Agreement.

20. In reply to the Company's arguments in support of their contention that their terms and conditions were not less favourable than the recognised terms and conditions (see paragraphs 34 and 35 below), it was submitted that the present claim related only to general increases provided by the Agreement. Those were additions to existing salaries, which varied very considerably, as between different companies. Some engineering employers in South Wales paid higher salaries than the Company and some lower, but in the Union's view all companies engaged in engineering should implement the terms of the Agreement irrespective of the level of the salaries they paid.

21. The Union considered that their view was endorsed by the decisions reached in previous cases of this nature by the Industrial Disputes Tribunal in their awards Nos. 248, 688 and 690, and by this Court in Award No. 3125. It was in their view important in the present case that the award, if in their favour, should be made retrospective.

Main submissions on behalf of the Company

22. It was stated that the Company's arguments related to three points: (1) that on the true construction of Section 8 of the Act the expression "terms or conditions" meant general terms and conditions of employment over the whole range of the employees' rights and obligations, and was not apt to cover a mere variation of one term such as the variation regarding an increase in pay which was the subject of the 1967 Agreement on which the Union relied; (2) that the Company in any event had not failed to comply with the terms of the 1967 Agreement; and (3) that if the Court should find against the Company on points (1) and (2), the terms and conditions which the Company regarded in respect of the workers concerned were not less favourable than the recognised terms and conditions.

23. With regard to point (1) above reference was made to the majority decision of the Court of Appeal in the case of R. v. Industrial Disputes Tribunal, Ex parte Technology Ltd., [1954] 2 Q.B. 46, in which it was submitted, it was held that the expression "terms or conditions" in the Industrial Disputes Order 1951 meant terms and conditions as a whole and was not apt to cover a single variation of wages. It was further submitted that the 1951 Order was the progenitor of the Act, that the wording in that Order and in the Act was almost exactly the same, and that the expression "terms or conditions" in the Act must be construed in accordance with the majority decision in the Technology case.

24. In the Company's submission the above interpretation was borne out by the wording of the double proviso to subsection (1) of Section 8 of the Act, which was as follows:

"(i) no claim shall be reported under this section as respects workers whose remuneration or minimum remuneration is fixed (other than by the employer, with or without the approval of any other person) in pursuance of any enactment other than this section or in the case of whom provision is made by or under any enactment other than this section for the settlement of questions as to remuneration or minimum remuneration;

(ii) no claim shall be reported under this section as respects terms or conditions fixed as aforesaid."
It was submitted that if "terms or conditions" meant any single term as opposed to overall terms and conditions then it would be unnecessary to refer in proviso (i) to "workers whose remuneration or minimum remuneration is fixed ....", since they would be covered by the terms of proviso (ii).

25. In support of the Company's contention that they had not failed to comply with the terms of the 1967 Agreement an explanation was given of the way in which they had carried out their review of salaries. It was stated that the Company had sincerely endeavoured to introduce an enlightened job evaluation scheme. They had decided on this course in about April 1966, but the implementation of the scheme had been affected by the 'wage freeze' imposed on the 20th July 1966 and by the ensuing period of severe restraint. Copies of correspondence between the Union and the Company dated from 29th April 1966 to the 31st August 1967 were placed before the Court, together with the Minutes of a meeting between then on the 14th September 1967, and it was shown that the Union had stated that they were in favour of job evaluation schemes in principle, but had asked for assurances regarding reductions in salary and active participation by the Union in the scheme. They were given assurances that the scheme itself would not breed redundancies and would not lead to any reductions in salary, but were told that they could not participate in it because the very nature of the scheme ruled this out. They were however told that they could make representations as to each individual case.

26. The scheme adopted by the Company involved a job evaluation exercise, as a result of which each job was allocated to a grade of the salary structure with a salary range between a minimum and a maximum, followed by evaluation interviews by which each individual's position in the appropriate salary band was determined according to his performance, capabilities and merit. The individual staff interviews and the detailed consideration of individual salaries required by the scheme began in September 1966 and were completed in July 1967, the increases arising therefrom being paid on the 20th July with effect from the 2nd July 1967. In some cases, however, some very substantial increases were given throughout the Spring and early Summer of 1967, either because it had become obvious that a particular employee was being underpaid or because of an individual claim from an employee which the Company had to meet in order to retain his services.

27. This review of salaries, it was submitted, was not simply and solely a merit review, as the Union had suggested. The individual's performance was naturally taken into account, but so were all the other relevant factors, including cost of living, salaries paid by local firms, national averages, market rate, market performance, service, responsibility, authority, qualifications, ability, quality of work and the general economic climate of the industry and the Company. Furthermore, the Company had been aware for some months that a national increase was to be negotiated between the Union and the Federation and at about the end of June 1967 had written to a factor to take account of this which in the event proved to be two per cent. below the settlement which was incorporated in the 1967 Agreement. Before finalising their new salary figure at the end of the review the Company had referred all the recommendations back to departmental heads and had asked them whether they wished to make any revisions in the light of the increases provided by the 1967 Agreement. The Company had therefore taken that Agreement fully into account, together with all other relevant factors, and had so informed the Union in a letter dated the 12th July 1967, a copy of which was before the Court.

28. It was stated that at all material times the Company had paid the workers concerned in the claim rates which were in excess, and usually substantially in excess, of the minimum rates negotiated by the Union; and that, taking into account the whole period since the 20th July 1966 (the date referred to in clause 1 of the 1967 Agreement - see paragraph 3 above), they had given substantially greater increases than those provided by the 1967 Agreement. The total weekly salaries being paid by the Company to the workers concerned amounted to £623 3s. 6d., whereas if they had adhered to the minimum rates negotiated by the Union they would be paying only £673 1s. 6d. Since the 20th July 1966 the increases paid by the Company to the workers concerned totalled £73 1s. a week, but the total increases which would have been due to
them under the 1967 Agreement amounted to only £2 16s. 6d. a week. If the increases paid by the Company before the 2nd July 1967 were added to the increases they had paid totalled £2 7s. 6d. a week. Even if the increases they had paid with effect from the 2nd July 1967 were taken in isolation and those paid before or after that date were ignored, the total of £4 8s. was only marginally less than what would have been required under the 1967 Agreement.

29. The Company placed before the Court a schedule setting out the name, age and occupation of each of their clerical and administrative employees, together with details in each case of the appropriate minimum rate provided by the 1967 Agreement, the weekly salary currently being paid by the Company, the dates and amounts of the last increase and the previous increase, and the date of commencement of employment with the Company. It was shown that in the great majority of cases the Company had given increases since the 20th July 1966 which were equal to or greater than those provided by the 1967 Agreement; and that in every case where the full increase was not paid the employee concerned had entered the Company's employment very recently or during the period of the 'wage freeze'. It was submitted that, on the true construction of the wording of the 1967 Agreement, the Company had complied with its terms in every case.

30. It was provided in clause 1 of the 1967 Agreement (see paragraph 3 above) that "Employers will be required to ensure that, including any increases paid domestically on or after 20th July 1966, which resulted from the settlement of a specific claim or which were paid to all or substantially all clerical workers, the following increases are applied: ...". In the Company's submission this wording contrasted a specific claim - which in their view meant an individual claim or a group of individual claims - 'with general 'across-the-board' increases. There was nothing in the Agreement itself to support the Union's contention that "a specific claim" meant a claim by the Union (see paragraph 18 above), and nothing to show that the specific claim must have been paid generally to all workers. Those increases which had been paid by the Company before July 1967 as the result of individual claims should therefore be offset against the increases provided by the 1967 Agreement.

31. If, however, the above interpretation were not accepted, the increases given to the employees concerned during the course of the Company's salary review were properly to be regarded as advance payments against the general settlement which was concluded in July 1967, and would be regarded as satisfying the provisions of the Agreement which permitted such payments to be taken into account.

32. The 1967 Agreement did not mention employees who had entered employment during the 'wage freeze' but it was submitted that in view of the reference to the 20th July 1966 in clause 1 thereof and of the later reference to the 'early warning system' it was clear that the settlement had been reached against the background of the Government's income policy. It had been fundamental to that policy that any increases granted during the period of the 'freeze' should be offset against any increases awarded thereafter. There must therefore be implied into the terms of the Agreement that those who entered employment after 20th July 1966 were not entitled automatically to a flat rate increase on the 22nd July 1967, and accordingly those few employees of the Company who had not been paid increases equivalent to those provided by the Agreement were not, it was submitted, covered thereby. In any case the salaries for those employees had been fixed having regard to the salary review which the Company were then undertaking, and would be said to have anticipated the increases provided by the Agreement.

33. The points for guidance on which the Union relied (see paragraph 4 above) were not, in the Company's submission, part of the 1967 Agreement but merely a guide to a suggested interpretation of its provisions, and the references in the points of guidance to "general increases" (point 1) and to "increases conceded on the basis of individual merit" (point 2) were in conflict with the terms of the Agreement itself, which referred to a 'general increase' and made no mention of individual merit. The Federation had issued on the 25th July 1967 a document (a copy of which was placed before the Court) which incorporated the agreed points for guidance with the important rider: - "it being
recognised that individual cases may nevertheless have to be examined in detail." The document in question, it was submitted, showed that the points for guidance came into existence some three weeks after the date of the 1967 Agreement, and could not therefore be regarded as part of it. If, however, it were held that the points for guidance must be taken into account together with the Agreement, then they must be taken into account as a whole, including the rider referred to above. It was stated that in every case where the Company had not implemented in full the increases provided by the 1967 Agreement the individual circumstances had in fact been examined in detail, and explanations were given to the Court of the reasons for the Company's decision in each case.

34. It was further submitted that if, contrary to the Company's contention, they were held not to have complied with the provisions of the 1967 Agreement, the terms and conditions which they were observing were not less favourable. In the Company's submission the Court were invited under the terms of the Act to compare overall the terms and conditions of the Company's employees with their position overall under the 1967 Agreement, or in other words to weigh the relevant terms and conditions of the Company's employees as a whole against the recognised terms and conditions applicable to them as a whole. To look purely at the position of the individual employee in relation to the recognised terms and conditions would discourage employers from introducing enlightened schemes such as the Company had introduced, which provided overall substantial advantages to employees, since it would mean that they could not implement a flat rate increase.

35. If the Company's contentions with regard to the construction of the Act were right it was in their view quite clear that the Company's scheme was not less favourable than the recognised terms and conditions. All the Company's employees would be reviewed annually in future, and in fact a new job evaluation review had already begun. Each review would take account of all the factors referred to in paragraph 27 above, and each employee would then be able to take up formally with his immediate superior the question of his individual salary. The figures of overall weekly increases and salaries paid by the Company as a result of the 1966-67 review (see paragraph 28 above) demonstrated that their terms and conditions were more favourable, looking at the position as a whole, than those on which the Union relied. In the Company's submission the overall advantage to their employees was not undermined by the fact that a few of them had not been given the full increases provided by the 1967 Agreement, since in each case there was a rational explanation for their having been treated differently from the others in that they had joined the Company only a short time before that Agreement was made.

36. If the Company were wrong in their submission that, in considering whether the terms and conditions they observed were not less favourable it was necessary to look at them as a whole, and not to take any individual employee's case in isolation, it would in their view be appropriate and indeed helpful if the Court were to find that the Company's terms and conditions were not less favourable than the recognised terms and conditions except in respect of certain named employees. The Company did not consider that in the circumstances of the case a retrospective award would be justified.

Award

37. Having given careful consideration to the evidence and submissions of the Parties, the Court find and Award as follows:

(1) There are established in the Engineering Industry in respect of clerical and administrative workers recognised terms and conditions of employment which have been settled by agreements negotiated from time to time between the Union and the Federation, including the 1967 Agreement.

(2) The Company are not observing the recognised terms and conditions in that they have not implemented in respect of all the workers concerned the increases provided by the 1967 Agreement.
(3) The Court are satisfied that, except as indicated in (4) below, the terms and conditions which the Company are observing are not less favourable than the said recognised terms and conditions.

(4) At the date when the claim was reported to the Minister the Company were not paying to five of the workers concerned the appropriate weekly increases provided for by the 1967 Agreement.

(5) The Court require the Company to observe the recognised terms and conditions by paying to the five workers referred to in (4) above the balance of the weekly increases due to them, as follows:

- Mrs. E. Hill, 7s. 6d.
- Mrs. S. Pisan, 5s. Od.
- Mrs. C. Rooshe, 5s. Od.
- Miss A. Santwris, 1s. 9d.
- Mrs. C. Spinks, 15s. Od.

(6) This Award shall have effect from the 20th September 1967.

ROY WILSON, President.
A. G. TOMKINS.
F. I. TUCKWELL.

J. A. EAST,
Secretary,
1 Abbey Garden,
Great College Street,
Westminster, S.W.1.

29th January 1968
Appendix IC.2

Industrial Court Award
Centrax Limited
(ADVANCE COPY)

THE INDUSTRIAL COURT

(3150) Observance of Recognised Terms and Conditions of Employment in respect of Clerical Workers employed by a Firm in Newton Abbot, Devon engaged in the Engineering Industry

Employers concerned:-

Centrax Limited

Trade Union reporting the claim:-

Clerical and Administrative Workers' Union

1. The Minister of Labour on the 28th April 1967 referred to this Court for settlement, in accordance with the provisions of the Terms and Conditions of Employment Act 1959 (hereinafter referred to as "the Act") the following claim which had been reported to him on the 5th April 1967 by the Clerical and Administrative Workers' Union under Section 8 of the Act:—

(a) That there are established in the Engineering Industry in respect of Clerical workers terms or conditions of employment which have been settled by agreement between the Engineering Employers' Federation and the Clerical and Administrative Workers' Union.

(b) That the parties to these agreements are organisations of Employers and of Workers which represent, respectively, a substantial proportion of the Employers and of the Clerical Staff to which the agreements relate.

(c) That, as respects Clerical workers, Centrax Limited of Newton Abbot, being engaged in the Engineering Industry, are not observing the terms or conditions of employment in the agreements mentioned in (a) above.

The Parties were heard in London on the 6th July 1967.

2. The claim of the Clerical and Administrative Workers' Union (hereinafter referred to as "the Union") concerns some 130 clerical workers employed by Centrax Limited (hereinafter referred to as "the Company") at Newton Abbot, Devon. The Union are claiming that the Company should observe, in respect of the employees concerned, the terms and conditions established in the Engineering Industry by agreements made between the Engineering Employers' Federation (hereinafter referred to as "the Federation") and the Union, and in particular an agreement relating to general wage increases which was reached on the 25th August 1965 and was effective from the 30th August 1965 (hereinafter referred to as "the 1965 Agreement").

3. The provisions of the 1965 Agreement are not set out in any formal document, but are contained in a transcript of the proceedings of the National Conference held on the 25th August 1965 between the Federation and the Union. That part of the transcript which is directly relevant to the present claim reads as follows:-

"The Federation will make a recommendation to member firms, through federated Associations, for increases to be paid to clerical workers, as follows:

<table>
<thead>
<tr>
<th>Age</th>
<th>Per week</th>
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<tbody>
<tr>
<td>21 and 22</td>
<td>9s.</td>
</tr>
<tr>
<td>23 and 24</td>
<td>10s.</td>
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<tr>
<td>25 and over</td>
<td>11s. 6d.</td>
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</tbody>
</table>

with proportional increases for juniors, as follows:

<table>
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<tr>
<th>Age</th>
<th>15</th>
<th>16</th>
<th>17</th>
<th>18</th>
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<tr>
<td>Rate</td>
<td>22s. 6d.</td>
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<td>Increase</td>
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</table>

The parties to these agreements are organisations of Employers and of Workers which represent, respectively, a substantial proportion of the Employers and of the Clerical Staff to which the agreements relate.

The Federation will make a recommendation to member firms, through federated Associations, for increases to be paid to clerical workers, as follows:

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with proportional increases for juniors, as follows:

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<table>
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<th>Age</th>
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<tr>
<td>21 and over</td>
<td>9s.</td>
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with proportional increases for juniors, in accordance with previous practice, as follows:

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<th>Age</th>
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<td>16</td>
<td>3s.</td>
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<tr>
<td>17</td>
<td>3s. 6d.</td>
</tr>
<tr>
<td>18</td>
<td>6s.</td>
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</tbody>
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Those are, of course, the same increases as to male juniors. Then, for reasons we all know, at 19 the figure for females is 7s. increase and at 20 8s. increase; a little more than is given to males at those ages.

We have agreed that all these increases should be recommended to apply as from Monday, 30th August, 1965.

The salary limits, which customarily we have given, shall apply in relation to these recommendations. These are affected by what was last done in general increase agreements and they are: Male clerical workers, 21 years of age and over, up to and including £825 per annum; female clerical workers, 21 years of age and over, up to and including £660 per annum.

Main submissions on behalf of the Union

4. It was stated that in the middle of 1966 the Union's membership among the Company's employees had substantially increased and on the 29th June 1966 the Company had agreed to recognise the Union. At that time the Union had supplied the Company with a copy of a handbook setting out the various agreements they had reached with the Federation, but the handbook did not include the 1965 Agreement. It was unfortunate that the Union had not then mentioned the existence of that agreement (see paragraph 13 below), but they weren't at the time aware that the Company were not complying with its terms. The Union were first informed by their members in January 1967 that the Company were not so complying, and on the 10th February 1967 they had written to the Company accordingly.

5. At a meeting with the Company on the 22nd February 1967 the Union had repeated their request that the Company should implement the terms of the 1965 Agreement and had indicated that they would be reasonable as regards the question of retrospective. In response to a request from the Company the Union had written to them again on the 6th March 1967, quoting the terms of this Court's Award No. 3123 dated the 29th November 1966, which related to a similar claim by the Union against another engineering firm.

6. On the 29th March 1967 the Company had replied that they were unable to accede to the Union's claim, pointing out that all their clerical employees were paid in excess of the established minimum rates and that all had received increases since the 25th August 1965 in excess of, or equal to, those provided by the 1965 Agreement. The Union had accordingly reported their claim to the Minister for reference to this Court. (Copies of the correspondence referred to in this paragraph and in paragraphs 4 and 5 above were placed before the Court).

7. The Union had been surprised to receive the Company's letter of 29th March 1967, particularly in view of the fact that the Company had implemented the increases provided in 1963 by a previous agreement between the Union and the Federation. Although the Company were not members of the Federation, they followed the recommendations of that body in respect of their manual workers and technical staff, and in the Union's submission they should also, as an engineering establishment, accept the settlements reached between the Union and the Federation.

8. The Company's argument that they were paying rates in excess of the established minima was in the Union's submission irrelevant, since those minima were not paid, to the Union's knowledge, by any engineering employer, and in fact the maximum salary paid by the Company to certain grades of clerical workers fell far short of the minimum paid by other similar firms.

9. As to the Company's contention that the Union's claim was met by the increases paid to the Company's staff since August 1965, those increases were, in the Union's view, clearly merit increases such as were commonly given in recognition, for example, of ability and punctuality. The Union could produce a list of firms which had given merit increases similar to those given by the Company in addition to the general increases.
provided by the 1965 Agreement. The Company had given their increases on an individual basis, of different amounts at different times of the year, and they could not by any means be described as being of a general nature and in conformity with the 1965 Agreement. The Union could not accept the Company's argument that, since merit increases were given only to employees who were above the average, the lower half of the increases they had given could be regarded as being general increases (see paragraph 16 below).

10. It was submitted that the Company had in the past distinguished between merit increases and general increases. They had made it clear in a document they had issued in 1963 that the increases they had given at that time (see paragraph 7 above) were national increases. A copy of the document in question was placed before the Court.

11. With regard to the Company's division of their employees into clerical and non-clerical grades (see paragraph 16 below), it was stated that the Union covered both clerical and administrative workers and they represented employees in many of the grades which the Company regarded as non-clerical. Furthermore, their agreements with the Federation were generally accepted as being applicable to those other grades and were applied to them. The Union were however prepared, in the event of an award in their favour, to negotiate with the Company as to which of their employees were covered by it.

12. In the Union's view their claim against the Company was supported by Awards Nos. 248, 813 and 840 of the Industrial Disputes Tribunal and, as they had indicated to the Company (see paragraph 5 above), by Award No. 3123 of this Court. In asking the Court to find in their favour the Union were not seeking a retrospective award.

Main submissions on behalf of the Company

13. It was stated that the Company had been misled, albeit unintentionally, by the Union in that the Union had not made it clear that the only agreement on which they relied in the present reference was represented by the extract from the transcript of the proceedings referred to in paragraph 3 above, of which they had sent the Company on the 23rd February 1967. The Union had made no reference to the existence of the 1965 Agreement when they sent the Company in June 1966, and it was not mentioned in the handbook they had then produced (see paragraph 4 above). Since the reference to the Court of the present claim the Company had attempted, without success, to obtain a copy of the relevant Agreement from the Union and the Ministry of Labour, and had eventually been sent a circular by the Federation which was unfortunately of no real assistance to them. They had therefore been unable to discover the precise nature of the claim against them until immediately before the commencement of the present hearing; and this, it was submitted, would be relevant to the question of the date from which the Court's award should take effect in the event that such award were against the Company.

14. The Company reviewed the salary of their clerical workers individually at regular periods. Each department carried out their reviews separately, some every three months, some every six months and some every 12 months. The reviews took into account all relevant factors, including the cost of living, salary levels in the district, satisfactory service and conduct, ability and punctuality. If the Company had known of the provisions of the 1965 Agreement, and if they had appreciated that they were applicable to their employees, the increases they had implemented since the operative date of that Agreement would have been granted on a different basis.

15. The wage structure which the Company operated provided for minimum wages for both male and female clerical workers which were higher at all ages than the minimum rates agreed between the Federation and the Union. A schedule comparing the minimum referred to was placed before the Court.

16. Some of the Company's staff were only partly engaged in clerical duties, and it was their practice to treat as clerical workers only those who spent more than half their time on such duties. A schedule was placed before the Court indicating, on the above-described basis, these categories of the Company's staff which they regarded as clerical and those they regarded as non-clerical. In the Company's view clerical workers could reasonably be defined as those wholly or mainly engaged in clerical work, but their own classification was less rigid than this.
They accepted, however, that if the Court should find in favour of the Union's claim discussions should take place between the Parties on this point (see paragraph 11 above).

17. The Company also placed before the Court a schedule setting out the names, ages and occupations of those staff who they regarded as clerical workers and who were in their employment at the 30th August 1965 (the effective date of the 1965 Agreement), together with details of their current salaries in comparison with the national minimum rates, and the increases they had received since August 1965 (and before the Union had made their present claim to the Company) in comparison with the increases to which they would have been entitled under the 1965 Agreement. It was stated that the current salaries of the employees concerned were clearly very much higher than the national minimum. Moreover the increases they had been granted were almost uniformly very much larger than those provided by the 1965 Agreement. There were only four cases, details of which were given, where the increases granted by the Company had been smaller than those agreed between the Federation and the Union, and in each of those cases the worker concerned had since been given a further increase, back-dated to the 10th February 1967, sufficient to make up the deficiency.

18. The Company were unable to say why the four workers referred to above had received much smaller increases than those given to the majority, since those matters were decided by the heads of departments. It could perhaps be assumed, however, that they were not altogether satisfactory in some way or that their rate of remuneration was considered to be too high having regard to their capabilities, and that the small increase given to them represented a reduction of the general increase given to the other workers, and could not be regarded as a measure of that general increase. In the Company's view no general inference could be drawn from these isolated cases in which special circumstances applied.

19. It was submitted that, although one or two other workers had been given increases only slightly in excess of those provided by the 1965 Agreement, the broad picture was of increases substantially in excess, and the general assumption must be that where the increase given was much below the average it was a general increase and not a merit increase. The substantial nature of the increases given to almost all the workers concerned, which ranged between £1 and £2 a week and sometimes more, indicated that they included both general increases and merit increases.

20. Since the average worker was neither exceptionally good nor exceptionally bad, a considerable proportion of each of the majority of the increases granted must have been in the nature of a general increase rather than a merit increase. It was impossible to determine the exact proportion in each case, but on average it was probably about 5 per cent of salary. It was however unlikely that more than 30 per cent of the workers concerned would deserve merit increases, and it was therefore reasonable to regard the lower half of the increases given as being almost wholly general increases. On this basis the general increases had been something of the order of £1 a week, which was well in excess of the amounts provided by the 1965 Agreement. There was therefore, in the Company's submission, no ground for the claim that the Company had not complied with that Agreement, even though they had not given their increases on the basis set out therein because they were unaware of its existence.

21. Further schedules were placed before the Court which related respectively to those clerical workers in the Company's employment at the 30th August 1965 who were under the age of 21 at that date, and to those who had entered the Company's employment since that date. With regard to the latter it was submitted that the Company's only obligation as far as any national agreement was concerned was to pay not less than the established minimum, and that the salaries they paid to the workers concerned were in all cases well above those minimums.

22. It was however conceded that, as shown in the relevant schedule, five of the workers in the Company's employment at the 30th August 1965 who were under the age of 21 at that date had since been given only those increments based on age progression to which they were contractually entitled, and had not received any general increase over and above those increments such as were provided by the 1965 Agreement.
23. It was stated that the Company's first line of defence was that broadly they had done what was required of them, but if it were held that they had not given general increases in the manner provided for in the 1965 Agreement they would submit that their terms and conditions were not less favourable. In their view it would be unfair if the scales were to be weighted against them merely because the Agreement in question had not been brought to their notice. If it had been brought to their notice in August 1965, and if they had then given the prescribed increases, their employees would have been given smaller increases since that date. The Company had implemented the national increases provided in 1963 (see paragraph 7 above) because they had considered it necessary to do so in order to compete successfully for staff, but that reason no longer applied.

24. The Company operated a normal working week of 37 1/2 hours, which was permitted under agreements between the Federation and the Union. They paid for overtime at the flat rate, except that for night work the rate was time-and-a-third. This compared favourably with the national overtime conditions, whereby the first three hours of overtime were not necessarily remunerated and other overtime, except at weekends, was paid for at the flat rate. There was no national agreement which laid down the holiday entitlement of engineering clerical workers, whereas the Company gave 12 working days of annual holiday in addition to the usual public holidays. They also provided a sickness payments scheme and free membership of a social club with sports facilities, as well as a staff canteen. In addition they administered a contributory pension fund to which both the Company and their employees contributed.

25. It was further submitted that for the Union's claim to succeed it must be established under Section 8(1)(a) of the Act that terms or conditions of employment (which must in the Company's view be uniform terms or conditions) were established in the relevant trade or industry or section thereof, either generally or in a district, which had been settled by an agreement. In the Company's submission the extract from the proceedings of the Central Conference on which the Union relied did not constitute an agreement which established such uniform terms or conditions, but merely an agreement that there should be a variation of the terms of employment by superimposing specified increases on varying rates of remuneration. That variation would of course have the effect of increasing all the minimum rates, but as there was no agreement relating to wages other than that laying down minimum rates it would also have the effect of creating many different new rates of remuneration. Such varying rates could not be said to constitute recognised terms of employment within the meaning of the Act; to be recognised terms they must be full terms. There were therefore no recognised terms of employment with which to compare the terms and conditions which the Company observed, and Section 8 of the Act was not applicable to a situation of this kind. The Company appreciated, however, that they had made similar submissions on this point at a previous hearing of the Court, which resulted in Award No. 2877 dated the 16th November 1961, and that the Court had rejected them on that occasion.

Award

26. Having given careful consideration to the evidence and submissions of the Parties, the Court finds and awards as follows:-

(1) There are established in the Engineering Industry in respect of clerical workers recognised terms and conditions of employment which have been settled by agreements between the Federation and the Union, including the 1965 Agreement referred to in paragraph 3 above.
(2) The Company are not observing the recognised terms and conditions contained in the 1965 Agreement in that they have not paid to the workers concerned the increases provided for by that Agreement.

(3) The Court are not satisfied that the terms and conditions which the Company are observing are not less favourable than the said recognised terms and conditions.

(4) The Court accordingly require the Company to observe the said recognised terms and conditions as respects all the workers concerned.

(5) This Award shall have effect from the beginning of the first full pay period following the date hereof.

ROY WILSON, President

A. G. TOMKINS

P. I. TUCKWELL

J. A. EAST,
Secretary.

1, Abbey Garden,
Great College Street,
Westminster, S.W.1.

31st July 1967
TUC Unions membership ‘overlap’ by Industry and Employment– Areas of potential conflict

The following is taken from the web-sites of the four largest unions. The list shows the industries and job classifications covered by these largest unions. Each of these largest unions not only have overlapping spheres of interest one with another, but also all have similar overlaps with many of the smaller unions, some of whom are relatively highly organised ‘specialist unions’ which are likely to be very defensive of their ‘territory’. A clear indication that whilst the number of unions may have declined the overlapping spheres of interest continue.

Amicus – Membership 2002 – 1,250,000
main trades and industries manufacturing, engineering, energy, construction, IT, defence aerospace, motor industry, civil aviation, chemicals and pharmaceuticals, steel and metals, shipbuilding, scientists, technologists, professional and managerial staff, electronics and telecommunications, tobacco, food and drink, textiles, ceramics, paper, professional staff in universities, commercial sales, the voluntary sector, financial services, and the National Health Service

GMB – Membership 2002 – 683,680
main trades and industries civil air transport, security, AA, aerospace, defence, clothing, textiles, food production and distribution, retail, hotel, catering, chemicals and process, construction, building supplies, furniture and timber, local government, NHS, care, education, engineering, offshore oil development, shipbuilding, energy utilities

Transport and General Workers’ Union – Membership 2002 – 858,804
main trades and industries administrative, clerical, technical and supervisory; agriculture; building, construction and civil engineering; chemical, oil and rubber manufacture; civil air transport; docks and waterways; food, drink and tobacco; general workers; passenger services; power and engineering; public services; road transport commercial; textiles; vehicle building and automotive.

UNISON – Membership 2002 – 1,272,470
main trades and industries local government, health care, the water, gas and electricity industries, further and higher education, schools, transport, voluntary sector, housing associations, police support staff
PARTNERSHIP AGREEMENT
between
CSC COMPUTER SCIENCES Limited
and
THE MANUFACTURING, SCIENCE & FINANCE UNION

THE AGREEMENT

1. DEFINITION OF PARTIES

The Agreement is between CSC Computer Sciences Ltd, UK Division, (which includes Managed Services, Support functions and Consulting staff) and UK-based Global Infrastructure Services (GIS) staff (hereinafter referred to as “CSC”) and Manufacturing, Science & Finance Union (hereinafter referred to as “MSF”).

2. PREAMBLE

This Partnership Agreement introduces a partnership approach to the working relationship between the two organisations, both of which are key players in the IT industry.

CSC and MSF are committed to achieving a constructive and mutually beneficial relationship, consistent with the business and management needs of a progressive company, operating in a rapidly changing and very challenging business environment and a high profile trade union, committed to the development of leading edge approaches to modern labour relations.

CSC and MSF share a common objective of ensuring the efficiency and prosperity of CSC and the delivery of a superlative service to the CSC’s customers. MSF recognises that it is only by this means that the prosperity of CSC for the benefit of customers, employees and shareholders can be assured. To this end MSF recognises CSC’s management responsibility to plan, organise and manage its operations, in order to achieve and maintain its optimum efficiency and financial performance.
MSF agrees that the spirit and intent of this Agreement is the attainment of a relationship with CSC, which will serve the best interests of all concerned and place CSC at the forefront of its market as 'the employer of choice'. In consequence of this, MSF accepts its responsibility under the terms of this Agreement to act in strict accordance with the terms of this Agreement. MSF agrees not to engage in industrial action of any description, without the whole of the appropriate procedures, as agreed with CSC, including the use of the TUC and ACAS procedures, as appropriate, and also all statutory requirements, having first been completely exhausted.

3. GENERAL PRINCIPLES

(1) Both parties recognise and respect each other's separate and shared aims in the context of building a successful business.
(2) CSC recognises its responsibility to seek to maintain the highest possible level of employment security for its employees.
(3) MSF recognises its responsibility to do all within its power to assist CSC in the attainment of principle (2) above.
(4) MSF recognises the importance of timely employee communication and accepts the right of CSC's management to communicate directly with its employees in order to effect the planning and management of the business.
(5) CSC in turn respects and welcomes the right of its employees to elect to join a trade union.
(6) Both parties, in accordance with this Agreement, will seek always to work together in a spirit of partnership and co-operation and as such, commit themselves to the avoidance of disputes, or any other form of confrontation or conflict, which could damage the business.
(7) In the furtherance of collaborative partnership, CSC will consult with MSF prior to undertaking any major change programmes.
(8) Information will be shared with the appropriate MSF representatives of the Union to establish understanding and where appropriate, mutual co-operative action for the joint exploration of issues.
(9) The advantages of joint communication is accepted by both parties and there will be commitment to developing jointly effective two-way communications, whenever appropriate.
(10) Communications by both CSC and MSF, whether joint or separate, will be conducted at all times through the recognised procedures and media and will at all times be professional, factual and accurate.
(11) CSC will ensure that each of its managers who may have responsibilities under the terms of the Agreement, are fully aware of and act in accordance with the provisions, and the provisions of all other associated Agreements, as appropriate.
CSC and MSF agree that, as a means of ensuring better understanding of their Partnership Agreement, appropriate 'joint management /staff representative training' will be arranged from time to time.

4. BASIS OF RECOGNITION

4.1. Individual Representation
CSC acknowledges and supports the legal right of MSF to represent the interests of its members as individuals and will set out the framework within which this will be undertaken in 'Framework for Employee Representation' – which is annexed hereto as Appendix 1

4.2. Collective Consultation
CSC will engage in meaningful collective consultation with MSF in a number of formal ways:

4.2.1 MSF representatives, who are employees of CSC, will have The right, along with other staff representatives, to be consulted on relevant redundancy/TUPE issues, within the framework of sub groups of the UK Works Council*, constituted from time to time, as required.

4.2.2. MSF Representatives will also have the right to membership of other sub groups of the UK Works Council, constituted from time to time to deal with matters on behalf of staff groups, which include union members.

4.2.3. CSC will enter into talks with MSF on a national basis through the creation of a National Forum. This Forum will meet at least once per year and will be chaired by the Chief Operating Officer, of the CSC UK Division. The National Forum will appoint joint secretaries and will be attended by at least 2 CSC directors and up to 2 MSF national officials, or their nominated deputies who must be full-time officials of MSF, together with 4 employed lay MSF representatives. The constitution and nominated attendees will form the 'National Forum Constitution' - which is annexed here to as Appendix 2.

4.2.4. All MSF members of the National Forum will be required to sign the' Confidentiality Agreement ' – which is annexed hereto as Appendix 3

4.3. The terms of this Partnership Agreement will operate on the basis of providing collective consultation rights to MSF, and individual representation rights, both of which as described within this Agreement and its appendices. CSC, however, by this Agreement, intends that MSF
shall be accorded all of the statutory rights and protections of TULR(C)Act 1992, Sections 152, 168 and 170, such as may apply had it been recognised for all or some of the purposes described within Section 178 of the Act.

5. SOLE RECOGNITION STATUS

5.1. The Partnership relationship between the two organisations provides sole recognition to MSF for the purposes described in 4 above. In conferring this status upon MSF, CSC demonstrates its commitment to an exclusive long term working partnership with MSF, the strength of which will be of critical future business importance, and thereby mutually beneficial.

* The constitution and administrative provisions of the UK Works Council are at the date of this Agreement to be established. However, MSF will work in the spirit of co-operation with the K Works Council and CSC management to improve consultation and communication for all of its employees.

5.2. Where CSC has acquired or is bidding for new business, the employees of which are already MSF members, MSF will work with CSC to help ensure the smooth transition of those MSF members into the framework of this Agreement.

5.3. MSF accepts that from time to time CSC may acquire new business, which may result in members of other unions becoming employees of CSC. MSF will work with the Company to help ensure the smooth transition of those other union members into the framework of this Agreement.

5.4 MSF accepts that CSC cannot lawfully require other such union members to relinquish their membership nor transfer their union affiliation to MSF. In such circumstances, MSF agrees that they will seek to establish an amicable basis for resolving any such union membership issues as may arise. If necessary, MSF will negotiate and seek to agree with the 'other unions' in consultation with and subject to the final agreement of CSC, arrangements for representation and consultation on behalf of their members. It is envisaged that such arrangements will, as far as practicable, be contained within the framework of this Agreement between CSC and MSF.

5.5. In the event of any dispute, of whatever nature, arising between the MSF and any other unions regarding membership, MSF agrees that the provisions of the TUC inter-union dispute procedures will be used as the means of achieving settlement. MSF also agrees that it will put into immediate effect, all provisions of any awards or decisions of such procedures. Notwithstanding the use or outcome of such procedures and any
settlement, all inter-union membership disputes will be contained in such a manner, as to have no effect upon CSC and its business operation.

5.6. Should an acquisition involve the transfer of a number of other union members similar or greater in size to the MSF membership, MSF accepts that such a situation impacts upon the 'sole union' provisions of the Partnership Agreement and, that CSC reserves the right to review the ongoing practicality of the sole recognition status. In such circumstances, MSF agrees to co-operate with any review of the sole recognition provisions of this Agreement.

6. FACILITIES

6.1 Accreditation of representatives, time off for trade union duties, payment of expenses and the use of administrative equipment and facilities will be afforded according to the agreed procedure set out in 'Facilities and Other Rights' – which is annexed hereto as Appendix 4

6.2 Where members so choose, deduction of trade union subscriptions will be made by CSC, on behalf of MSF, according to the prevailing statutory regulations, in respect of any of its members in the employ of CSC.

7. DATE AND TERMINAL ARRANGEMENTS

This Agreement is effective from 1st October 2000. Termination will be subject to 6 months notice in writing given by one party to the other. Amendments to the Agreement will be by mutual consent.

Signed on behalf of "CSC"

Name _______________ Elizabeth Rosemeyer
Designation Director of Human Resources, UKD
Date Wednesday, 13th September 2000

Signed on behalf of "MSF"

Name _______________ Roger Lyons
Designation General Secretary
Date Wednesday, 13th September 2000
CSC-MSF
Framework for Employee Representation
FRAMEWORK FOR EMPLOYEE REPRESENTATION

1. This Appendix to the Partnership Agreement between CSC and MSF dated October 2000 sets out the agreed framework for employee representation associated with the Partnership Agreement:

2. PURPOSE

A framework of union representatives will be created in order to provide adequate and consistent coverage of union members for individual representation and consultation purposes across the Company's UK Division.

3. ORGANISATION

3.1 This framework will be organised on a regional basis in order to provide representation on all sites within the UK, where union members are present. These regions will be as follows:

Scotland
North
Midlands
South

(For breakdown of site geography see the Regional Union Representation Framework diagram below)

3.2 Representation within each region will be for all union members operating within that geographical area, regardless of job function or skill set.

3.3 The number of representatives within each region will broadly be based on a ratio of 1:50 union members. Therefore, where necessary, a number of less densely populated sites will be covered by a Union Representative based at a neighbouring site.
3.4. In addition to individual representation issues, Union Representatives within the various regions will also be responsible for liaison and communication with union members on inputs to and outputs from consultations with the Company.

3.5. All facilities required for the effective performance of these duties will be afforded to Union Representatives as defined in the Facilities Appendix to the Partnership Agreement.

4. ANNUAL REVIEW

At the outset of this Partnership Agreement, a quota of 12 Accredited Union Representatives has been established. The distribution between regions is as set out in the Regional Representation Framework diagram below. The ongoing need for the number and distribution of Union Representatives will be reviewed on an annual basis at the National Forum, or at such time as either party judges that a substantial change has taken place.

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(Membership at 31st July 2000)

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* Denotes estimated total MSF membership/workforce size by September 2000 due to BAeS staff transfer
Appendix E 2

CSC-MSF
National Forum Constitution
APPENDIX E 2

NATIONAL FORUM CONSTITUTION

1. This Appendix to the Partnership Agreement between CSC and MSF dated the 1st October 2000, sets out the agreed constitution of the National Forum.

2. PURPOSE

2.1. It is agreed between CSC and MSF that in the furtherance of the spirit and intent of the Partnership Agreement, there is a need to have an appropriate means by which collective consultation can take place and information can be shared. To this end a National Forum has been established and its role defined below.

2.2. The National Forum will not be used as a vehicle for dealing with individual employee issues. The appropriate procedures must be used in all such cases.

3. MEETINGS

3.1 The National Forum will meet at least once each year. The precise date of the 'statutory' meeting will be by agreement between CSC and MSF at national level.

4. MEMBERSHIP

4.1. The National Forum will appoint joint secretaries and will be attended by at least 2 CSC Directors and up to 2 MSF National officials or their nominated deputies who must be full-time officials of the Union, together with 4 employed lay union representatives.

5. CO-OPTION

5.1. By agreement between CSC and MSF, persons with specialist knowledge or who, in some other respect may be able to assist the National Forum in its deliberations, may be co-opted on to its meetings.
6. AGENDA

6.1. The statutory meeting will have as its primary agenda items, the following:

- Company business report - preceding 12 months
- Business developments - preceding 12 months
- Business developments - ensuing 12 months
- Employment security
- Employment benefits

6.2. The agenda for the statutory meetings will be drawn up by the joint secretaries in consultation with the appropriate MSF National Official. The final agenda will be distributed to those attending the meeting not later than two weeks prior to the date of the meeting. Any items additional to those listed above must be notified to the joint secretaries no later than one month prior to the date of the meeting.

6.3. Either party may request a meeting of the National Forum and such meetings will be held by mutual agreement. The purpose of such 'additional meetings' will be to consult or to provide information about serious/urgent matters, which may arise from time to time.
Appendix E 3

CSC-MSF
Facilities and other Rights
APPENDIX E 3

FACILITIES AND OTHER RIGHTS

1. This Appendix to the Partnership Agreement between CSC and MSF dated the 1st October 2000, sets out the agreed arrangements for the facilities and other rights accorded to Union Representatives covered by the Partnership Agreement:

2. ACCREDITATION OF STAFF REPRESENTATIVES

2.1. The Company will afford the facilities as defined in this document to Accredited Union Representatives up to 12 members of staff, in total, for the purposes of individual staff representation and to act as representatives to serve on agreed consultative bodies.

2.2. Only Accredited Union Representatives will be accorded the facilities described within this Appendix to the Partnership Agreement.

2.3. MSF will ensure that Union Representatives are appointed or elected. The names and other appropriate information as to the identity of each Union Representative will be provided by MSF in writing to Head of Employee Relations. Credentials will be signed between both parties (see below). Each Union Representative will then be given a 'credential card', which identifies his/her role.

2.4. Union Representatives must carry their 'credential card' with them whenever they are engaged in any activity under the terms of the Agreement and be prepared to show their 'credential card' to management when visiting other teams or sites.

2.5. The Company accepts that the Union shall appoint or elect Union Representatives in accordance with its own procedures. The Union agrees that it will take all necessary steps to ensure that the Union Representatives at all times act in accordance with the strict provisions of the Agreements between the Company and the Union and their spirit and intent. The Company agrees that the performance of the role of Union Representative shall not in any respect be detrimental to the individual employees.

2.6. The Union accepts the Company has the right to raise with its full-time officials any concerns, which it may have about the performance of a
Union Representative in the pursuit of his/her role under the terms of the Agreements between the Company and the Union. Such concerns will be raised by the Company’s Head of Employee Relations with the appropriate National Official of the Union. The Union undertakes to cooperate with the Company in jointly enquiring into the circumstances giving rise to the complaint. When all appropriate enquiries have been pursued, joint discussions will take place without delay, involving all appropriate parties to seek a resolution to the complaint.

2.7. Union Representatives shall conform to their conditions of employment and the requirements of the Agreement. Where there is potential conflict, the representative should discuss this in the first instance with his/her line manager. However, actions taken by any employed staff representative in good faith and in pursuance of his/her duties, shall not adversely affect his/her employment.

2.8. Union Representatives have a responsibility under the terms of the Partnership Agreement to ensure that the appropriate procedures are used for the purposes of dealing with all matters affecting union members for whom they are responsible.

2.9. Any grievance or disciplinary matters requiring the involvement of a Union Representative MUST be dealt with through the established procedures.

3. TIME OFF

3.1 Time off with pay will be granted to Union Representatives to carry out the following:

a) Representation of individual members, including time to interview the individual, investigate the case, attendance at hearings, etc.

b) Membership of agreed consultative bodies including, time to collect input to meetings from members, attendance at meetings, time to disseminate the outcomes.

3.1.2 The Company will also grant time off with pay to attend certain agreed training courses directly relevant to the Union Representatives’ role.

3.1.3 All such time off must be agreed in advance with the representative’s team leader/manager. While every effort will be made to grant such time off, decisions will be subject to business demands.
3.1.4 Requests for time off for any other purpose must be made in the first instance to the local Human Resources Adviser, who will liaise with the representative’s team leader/manager.

3.2. Time off without pay may be granted to Union Representatives in order to participate in certain Union activities. All such requests must be agreed in advance with both the representative’s team leader and the local Human Resources Adviser. While every effort will be made to grant such time off, decisions will be subject to business demands.

3.2.1 In exceptional circumstances, time off with pay may be granted to representatives to attend external union activities. Such requests must be made to the local Human Resources Adviser.

3.3. All time off for trade union duties and activities should be recorded on the weekly TES system.

4. ACCESS TO STAFF

CSC will give reasonable access to MSF in the pursuance of its recruitment efforts.

5. DISCLOSURE OF INFORMATION

Both parties recognise that open sharing of relevant information will be fundamental to the creation and development of trust and confidence required to underpin the partnership relationship.

6. TRAVEL EXPENSES

The Company will pay travel expenses incurred when attending meetings agreed in advance in accordance with to the guidelines set out in 3 above. Payments will be made inline with the current Company Expenses Procedure and should be agreed in advance with the local Human Resources Adviser.

7. ADMINISTRATION

7.1 Access to administrative equipment, e-mail, intranet, internet, notice boards, telephones etc., will be given to union representatives on sites, as appropriate, to carry out the duties as defined in the Partnership Agreement. The use of all such media will be subject to the usual Company policies and guidelines.
7.2 Where a representative requires assistance with the allocation of such facilities he/she should contact the local Human Resources Adviser in the first instance, who will liaise with the appropriate management.

8. **DEDUCTION OF CONTRIBUTION AT SOURCE**

8.1 Deduction of trade union subscriptions will be made by payroll on receipt of duly completed authorisation from individual employees.

8.2 The Union is required to notify the Human Resources Adviser of any changes to the amount of subscriptions at least 2 months in advance of the effective date.

8.3 The Company will supply a monthly 'exception' report to the Union, in the agreed format, of all new deductions and cessation of deductions. In addition, it will supply a biannual summary of all deductions. The union will in turn supply a similar summary of payment details relating to staff subscribing by direct debit.
Union Representatives Credentials
UNION REPRESENTATIVES CREDENTIALS

The Company and the Union jointly agree on the following credentials for (Name) ...................................................... who has been appointed to represent the Union.

1. The Union Representative will be accredited for the period for which he/she is appointed. If he/she ceases to be an employee of the Company or a paid up member of the Union or if he/she is transferred from the office/location for which he/she was appointed as a Union representative, his/her appointment and accreditation automatically terminates.

2. When acting in his/her Union Representative capacity he/she will be subject to the rules and regulations of the Union. He/she will also be subject to the Company’s rules and regulations and the terms of his/her contract of employment.

3. The union Representative agrees at appointment to accept the provisions of all agreements or regulations in respect of the manner in which he/she may perform his/her role on behalf of the Union, which may come into force from time to time.

4. The Union Representative agrees to abide by and use his/her best efforts to ensure that the Unions members abide by the terms of any agreement between the Company and the Union.

5. The Union Representative will not act outside the office/location without the express agreement of the company’s Head of Employee Relations.

Signed for the Company ......................................................

                      date ......................................................

Signed for the Union ......................................................

                      date ......................................................

Union Representative

signature ................................. date .................................
Regional Union Representation Framework
**Regional Union Representation Framework**  
*(Membership at 31\textsuperscript{st} July 2000)*

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<th>Suggested Region</th>
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<th>M'ship Direct Debit</th>
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* Denotes estimated total MSF membership/workforce size by September 2000 due to BAeS staff transfer.
The experience of settling union claims for recognition under the provisions of the Employment Relations Act 1999 (ER Act 1999) procedures is for both trade unions and employers a bit like the Curates Egg.

Over the period from 1998, shortly prior to the ER Act 1999 becoming law, cases referred to the Advisory Conciliation and Arbitration Service (ACAS) have produced similar results in terms of numbers of recognition claims resolved as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Total cases</th>
<th>Full recognition/Partial recognition</th>
<th>claim rejected</th>
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</thead>
<tbody>
<tr>
<td>1998-1999</td>
<td>146</td>
<td>52%</td>
<td>48%</td>
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<tr>
<td>1999-2000</td>
<td>384</td>
<td>66%</td>
<td>33%</td>
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<tr>
<td>2000-2001</td>
<td>385</td>
<td>66%</td>
<td>33%</td>
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<tr>
<td>2001-2002</td>
<td>376</td>
<td>66%</td>
<td>33%</td>
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</tbody>
</table>

Data Source: Advisory Conciliation and Arbitration Service (ACAS) UK Annual Reports.

Reviewing the operation of the Central Arbitration Committee (CAC) over the period 2000 to 2002 shows that the CAC received 174 applications for recognition under Part 1 of the legislation. Only 99 of these claims were accepted and 12 were not accepted. Of the 99 claims accepted two were found to be invalid, 86 claims were withdrawn for various reasons including the fact that some were settled between the parties. Of the remaining cases completed, 20 have been awarded in favour of the applicant union and 9 have been rejected.

It would seem therefore that there is a one in three chance of unions failing in the conciliation processes operating within the UK on trade union recognition, and a slightly better than 50% chance of achieving recognition through the full procedures provided by the law.

Data Source: Central Arbitration Committee (CAC) UK, Annual Reports 1999-2002.

1 The CAC did not start its full statutory process of hearing claims under the ER Act 1999 until mid 2000.
## Table 10
Non-TUC Unions merging with TUC unions 1979 – 2002

<table>
<thead>
<tr>
<th>Year</th>
<th>Unions Merging</th>
<th>Affiliations</th>
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</thead>
<tbody>
<tr>
<td>1979</td>
<td>1. Association of Licensed Aircraft Engineers</td>
<td>TGWU</td>
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<td></td>
<td>2. National Union of Insurance Workers</td>
<td>ASTMS (MSF)</td>
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<tr>
<td></td>
<td>3. Colonial Mutual Life Assurance Society Field Staff Association</td>
<td>ASTMS</td>
</tr>
<tr>
<td></td>
<td>4. Management Association of Reckitt and Colman</td>
<td>ASTMS</td>
</tr>
<tr>
<td></td>
<td>5. South East Lancashire and Cheshire Weavers and Winders Association</td>
<td>ATWU</td>
</tr>
<tr>
<td></td>
<td>6. Union of Jute Flax and Kindred Textiles Operatives</td>
<td>NUDBTW</td>
</tr>
<tr>
<td></td>
<td>7. Coopers and Allied Workers Federation of Great Britain</td>
<td>NUGMW (GMB)</td>
</tr>
<tr>
<td></td>
<td>8. Phoenix Staff Union</td>
<td>BIFU</td>
</tr>
<tr>
<td></td>
<td>9. National Union of Wallcoverings Decorative and Allied Trades</td>
<td>NGA</td>
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<tr>
<td></td>
<td>10. British Aircraft Corporation (Military Division) Professional Staff Association</td>
<td>EMA</td>
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<tr>
<td></td>
<td>11. British Aerospace Staff Association</td>
<td>EMA</td>
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<td></td>
<td>12. Laurence Scott and Electromotors Foremans Association</td>
<td>EETPU</td>
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<tr>
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<td>13. Yorkshire Society of Textile Craftsmen</td>
<td>NUDBTW</td>
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<td>14. Huddersfield and District Healders and Twisters</td>
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<td>15. Trade and Friendly Society</td>
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<td>16. Telephone Contract Officers Association</td>
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<td>17. Australia and New Zealand Banking Group Ltd</td>
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<td>18. London Staff Association</td>
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<td>19. Britannic Assurance Chief Office Staff Association</td>
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<tr>
<td></td>
<td>20. United Kingdom Association of Professional Engineers</td>
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<tr>
<td></td>
<td>21. Telecommunications Staff Association</td>
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<td>22. Steel Industry Management Association</td>
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<tr>
<td></td>
<td>23. National Wool Sorters Society</td>
<td>APEX</td>
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<tr>
<td></td>
<td>24. Nottingham and District Dyers and Bleachers Association</td>
<td>NUHKW</td>
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<tr>
<td>1980</td>
<td>25. National Union of Gold, Silver and Allied Trades</td>
<td>AUEW (TASS)</td>
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<td></td>
<td>26. Hawker Siddley Power Engineering Engineers Association</td>
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<td>27. Eagle Star Staff Association</td>
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<tr>
<td>1981</td>
<td>28. Youth Hostels Association Staff Association</td>
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<td>29. The British Roll Turners Trade Society</td>
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<td></td>
<td>30. The National Association of Executive Managers and Staffs</td>
<td>NATTKE</td>
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<td></td>
<td>31. The National Society of Brushmakers and General Workers</td>
<td>FTATU</td>
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<td>32. The Scottish Lace and Textile Union</td>
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<td>33. Association of Management and Professional Staffs</td>
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<td>34. Rolls Royce Management Association</td>
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<td>35. Cosesa</td>
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<td>36. Chelsea Building Society Staff Association</td>
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</table>
86. Television and Film Production Employees Association
87. Haslingedene and District Power Loom Overlookers
88. National Association of Power Loom Overlookers

1991
89. PMB Staff Association
90. Wire Workers Union
91. Australian Mutual Provident Society Staff Association

1992
92. British Cement Staffs Association
93. Association of National Health Service Officer

1993
94. Yorkshire Association of Power Loom Overlookers
95. Association of Staff of Probation and Bail Hostels
96. Association of preparatory Workers
97. A.Monk and Company Staff Association
98. Hospital Physicists Association
99. Lancashire Box Packing Case and General Workers Friendly Relief Sick and Burial Society

1994
100. Ceram Research Staff Association

1995
101. Electrical and Plumbing Industries Union
102. Film Artist Association

1996
103. Scottish Health Visitors Association
104. Procurator Fiscal Society
105. Rossendale Union of Boot Shoe and Slipper Operatives
106. North of Ireland Bakers Confectioners and Allied Workers

1997
107. United Association of Power Loom Overlookers
108. Amalgamated Power Loom Overlookers Association
109. College of Health Care Chaplins
110. National Provincial Building Society Staff Association
111. Association of University and College Lecturers
112. Government Communication Staff Federation

1998
113. Communication Managers Association
114. Gas Managers Association

1999
115. NatWest Staff Association
116. Cabin Crew 89
117. Union of Royal and Sun Alliance
118. Nielsen Staff Association
119. Lufthansa Staff Association UK
120. Corporation of London Staff Association
121. United Friendly Agents Association (MSF)
122. Britannic Supervisory Union (MSF)

2000
123. National League of the Blind and Disabled (ISTC)
124. Scottish Prison Officers Association (POA)
125. Northern Carpet Traders Union (TGWU)
126. British Aerospace Senior Staff Association (AEEU)
127. Lloyds Register (UK) Staff Association (MSF)
128. Axis The Axa Sun Life Staff Association (UNIFI)
129. Society of Chief Officers of Probation/ (MSF)

2001
130. Managerial and Professional Officers Union (GMB)
131. Associated Metal Workers Union (AEEU)
132. Leicester Housing Association Staff Association (MSF)

2002
133. Union of Woolwich Staff (UNIFI)
134. Union of Textile Workers (MSF)
135. Girobank Senior Managers Association (ALGUS)
137. CGNU Staff Association (Amicus)

Six most frequent ‘acquiring’ unions
*MSF = 30
*EETPU = 19
**GMB = 13
*UNIFI (BIFU) = 12
**TGWU = 10
**AEEU (Amicus) = 10

* Unions with 100K+ membership
**Unions with 500K+ membership
Chronology of trade union law 1979-1995

1980 Employment Act (*Jim Prior*)
Definition of lawful picketing restricted to own place of work
80% ballot needed to legalise a closed shop*
Funds offered for union ballots
Restricted right to take secondary action
Code of practice (six pickets)
Repeal of statutory recognition procedure
Restricts unfair dismissal and maternity rights
Unfair dismissal rights to protection minimum length of service period increased from 6 months to 1 year in companies under 20

1982 Employment Act (*Norman Tebbit*)
Further restrictions on industrial action - eg. definition of trade dispute
Further restricted action to 'own' employer
Employers could obtain injunctions against unions and sue unions for damages
80% rule extended to ALL closed shops every 5 years*
Compensation for dismissal because of closed shop*
Removed union only labour clauses in commercial contracts

1984 Trade Union Act
EC elections every 5 years by secret ballot
Political fund ballots every 10 years
Secret ballots before industrial action

1986 Public Order Act
Introduced new criminal offences in relation to picketing
1988 Employment Act

Unions to compensate members disciplined for non-compliance with majority decisions

Members can seek injunction if no pre-strike ballot

Union finances to be open to inspection

Unions prevented from paying members' or officials' fines

Action to preserve post entry closed shop made unlawful *

New restrictions on industrial action and election ballots

Ballots for separate workplaces

Ballots for non-voting EC members

Election addresses controlled

Independent scrutiny

Establishment of CROTUM

1989 Employment Act

Tribunal pre-hearing review and proposed deposit of £150

Removal of restrictions on the work of women and young workers

Exemption of small employer from providing details of disciplinary procedures

Restricts time off with pay for union duties

Written reasons for dismissal now require 2 years' service

Redundancy rebates abolished

Abolition of training commission

1990 Employment Act

Pre-entry closed shop - unlawful to refuse to employ non-union member

1979-1984 membership losses = 1,944,000*

1984-1992 membership losses = 3,367,000*

*1980-1982-1990 were the most significant pieces of anti closed shop legislation and coincidentally the years of highest membership losses
Figure 12: Virtuous cycle of trade union growth

Appendix I

Vicious cycle

TRADE UNION GROWTH

Figure 1.3