



## Guide to Statutory Recognition: Using the CAC procedure

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# Introduction

The right to statutory trade union recognition has been in effect since 6 June 2000. The law, established by the Employment Relations Act 1999, gives unions the right to be recognised for collective bargaining where there is majority support for recognition.

This guide provides an overview of the regulations and advises branches on how to use the procedures to win statutory recognition. Each step of the legal procedure is explained, along with advice, case studies and information on important rulings by the Central Arbitration Committee (CAC).

The Employment Rights Act 2004 has introduced some changes to the statutory recognition procedure designed to outlaw intimidation of workers and unfair practices by employers. These will be flagged up in their appropriate sections.

## UNISON PROCEDURES

To ensure that applications to the CAC are pursued successfully, branches and Regions are asked to follow the procedure below.

- Where a branch has attempted to secure voluntary trade union recognition with an employer and has been unsuccessful, they are advised to consider pursuing the statutory route using the CAC procedure.
- The branch should liaise with the regional officer to ensure that there is sufficient membership to sustain an application and that recruitment activity is stepped up.
- Where there is support for using the statutory procedure the regional secretary's agreement should be obtained.
- The region should then contact the national organiser in Mabledon Place who will involve the national secretary, the Employment Rights Unit and other appropriate officers to ensure that all the necessary conditions have been met. It will normally be desirable for a meeting to be held between local, regional and national officials.
- Once it has been confirmed that the request for voluntary recognition has been turned down by the employer and the necessary preparations have been made, an application will be submitted to the CAC in the name of the general secretary.

## Bargaining guide to statutory recognition

Using the CAC procedure to win legal recognition

Where do we start?

**Decide on the bargaining unit**

Use BIS to find out about the employer

**Follow the UNISON procedures**

**Recruit!**

Circulate a petition to show support

**Write to the employer asking for recognition**

If the employer won't agree to voluntary recognition

**Submit application to CAC**

**Make sure the application is admissible\***

\*At least 10% membership, majority support.

**Stop & think!**

Withdraw the application if it might not succeed

**If the application is accepted . . .**

**Employer must provide lists**

QIP gives union material to workers in proposed bargaining unit.

**If 50%+ membership – automatic**

**Less than 50% membership – ballot**

Majority of those voting – 40% of those eligible to vote say yes

**RECOGNITION!**

## The Central Arbitration Committee:

# The story so far

The Act permits trade unions to apply to the Central Arbitration Committee (CAC) for the legal right to be recognised by the employer on behalf of workers in a particular bargaining unit. The CAC is an independent tribunal with statutory powers. It decides all matters in relation to recognition if the trade union and the employer cannot agree. For instance, if the employer disagrees with the bargaining unit proposed by the trade union, the CAC defines it based on various criteria set out in the procedure.

Legal recognition entitles the union to engage in collective bargaining on pay, hours and holidays. For the CAC to grant recognition the union must show – either through a ballot or through levels of membership—that it has the support of a majority of workers in the bargaining unit.

The Act was designed to encourage voluntary recognition, and on the whole both employers and unions have favoured the voluntary route. Since the legislation came into force in June 2000, only a small proportion of recognition applications have gone through the full CAC legal procedure.

It is clear that the existence of a statutory procedure has encouraged more employers to agree to trade union recognition. The number of new recognition deals recorded by the TUC rose sharply in each of the first three years the legislation was in operation. The CAC reported 83 new applications in 2004-5, showing that there is still strong demand from trade unions for access to the statutory recognition process. From June 2000 to March 2005, there have been 444 applications under Part I of the Schedule. Recognition has been declared in 116 cases and there are now nearly 23,000 workers covered by collective bargaining as a result of CAC applications.

UNISON has made very limited use of the statutory procedure. Only three formal applications have gone forward to the CAC on behalf of UNISON branches, two of which have been completed. (See case studies below.) Employers approached by UNISON branches have on the whole been willing to negotiate voluntary recognition agreements. However, branches may find future recognition targets more resistant, making the statutory route more important. It is vital that branches understand how to secure recognition using the CAC procedures.

The Employment Relations Act 2004 introduced changes to the statutory recognition procedures which, for the first time, legally ban intimidation by unions or employers during statutory union recognition ballots in the UK.

These changes:

- revise the obligations on employers to provide the union with access to the workers in the bargaining unit during the period of a recognition (or derecognition) ballot
- prohibit the use of ‘unfair practices’ by either the employer or the union during the period of such ballots. ‘Unfair practices’ are defined by the Act, but in general terms they include actions to bribe, coerce or unduly influence workers within the bargaining unit, with a view to influencing the outcome of a ballot.

The measures draw on rules of conduct for general and local elections and outlaw practices such as dismissing union activists or threatening workers in an attempt to influence the outcome of the ballot.

## Three routes to recognition

The legislation is structured to allow three routes to recognition.

**Voluntary** — A union can agree arrangements with the employer on a completely voluntary basis with no reference to the CAC at all.

**Semi-voluntary** — Even after they begin procedures leading to statutory recognition the parties have various opportunities to settle voluntarily and exit from the legal process. The CAC refers to this as ‘semi-voluntary recognition’. If a semi-voluntary agreement is reached, either party can apply to the CAC to specify a method of collective bargaining.

**Statutory** — An application to the CAC may result in ‘statutory recognition’.

## Route to success — doing your research before you start

Before making an application for statutory recognition you need to decide what group of workers you want recognition for – this is called the ‘bargaining unit’. This may be straightforward: in a small workplace you may want to include everyone, regardless of grade, occupation or location. In some workplaces, however, it will be sensible to exclude certain grades or types of workers, or restrict recognition to those working at certain sites. **It is very important to get this right.** If the union fails to gain compulsory recognition for the bargaining unit, it cannot reapply for the same unit for three years.

## Can it be organised? Does it meet the CAC criteria?

There are two objectives to be considered in how you define the bargaining unit. They can be contradictory so you should think them through carefully. The first objective is to define the bargaining unit so that there is a realistic possibility of achieving majority support for recognition. If the employer has multiple sites or units, some of which are difficult to organise, you may want to restrict the bargaining unit to one or more where you have strong organisation. Similarly, you may want to argue for the exclusion of certain groups of staff – such as managers who are not sympathetic to the union or casual staff whose connection to the workplace makes them hard to recruit.

The second objective is to meet the CAC’s requirement that the bargaining unit be ‘compatible with effective management’. The legislation discourages the establishment of small fragmented bargaining units and encourages the inclusion of all workers sharing common terms and conditions in one unit. If you chose a unit that is too small in order to find an easy organising target, or exclude ‘hard to recruit’ workers who actually share a common interest with the main body of staff, the CAC may decide that your bargaining unit is not appropriate.

The mistake most likely to lead to the CAC rejecting the union’s definition of the bargaining unit is the failure to do enough research into the employer’s organisational structure. It is important to find out how the employer works as an industrial entity. What are its internal procedures? How does it manage its personnel and management functions? At what level are decisions around pay and conditions, grievance and discipline made?

Before you decide on a bargaining unit, find out as much as you can about your employer. UNISON’s Bargaining Information System (BIS) holds information on the

structure and finances of almost all UNISON employers. Regional staff can access BIS directly or contact the Bargaining Support Group for help. Use the checklist opposite to determine where management authority lies. More detailed information about the definition of the bargaining unit is included in the CAC procedures below.

Defining exactly which grades of workers should be covered by a recognition agreement and exactly where they work is not easy, but the more precise you are the better you can gauge union membership and numbers, and more easily back up your argument that the unit is compatible with effective management. The CAC's own guidance stresses that "it is essential that the description of the bargaining unit in the application is sufficiently clear for the CAC, and the employer, to be able to identify readily which posts are covered by the bargaining unit and which are not." The

CAC will allow some clarification of the bargaining unit during the application process – but only if it doesn't materially alter the bargaining unit the union is trying to define.

There is no one 'correct' bargaining unit. Different circumstances will require different – and sometimes contradictory – arguments to the CAC. For example, in the case of Craegmoor Group Ltd. UNISON argued that the bargaining unit should consist of workers in a single care home in Wales, despite the fact that the home was part of a chain of 277 institutions across the UK. The union successfully argued that there was sufficient local variation in pay and conditions for collective bargaining to apply to one site only. In the case of Parkwood Leisure, however, the union defined the bargaining unit as staff in five different facilities in one London borough.

Despite their differences, both of these bargaining unit definitions were accepted by the CAC (though the Parkwood application failed for other reasons. *See p11 below*).

The CAC has been quite good at recognising smaller segments of a larger organisation as different potential bargaining units, as long as there are small but significant differences in their conditions (for example, location, type of pay or history). It has also taken into account the norms across an industry. It has rejected employers' arguments that they are in the process of merging terms and conditions, or that they plan to do so in the future.

## Checklist:

If you want to apply for recognition for a bargaining unit that is a section, office or division of a larger organisation, check whether there is sufficient management autonomy at that level to allow for collective bargaining.

In the case of *UNIFI and Nottingham Building Society, June 2004*, the CAC disagreed with the exclusion of certain groups of workers:

'Having considered all the evidence the Panel's decision... was that the Union's proposed bargaining unit... was not compatible with effective management and was not appropriate. There are a number of reasons for this, but primarily the Panel considered that the exclusion from the bargaining unit for example of trainee or peripatetic posts in jobs which otherwise were included in the proposed bargaining unit had not been justified and was inappropriate... Secondly, whilst there were some differences in the terms and conditions between branch-based staff who were in the proposed bargaining unit and those based elsewhere who were outside it the Panel was aware that both shared many common features, policies and practices. These included the integrated grading structure, jobs in the same grades being excluded from the proposed bargaining unit, the common bonus and appraisal – related pay reviews and other relevant conditions.'

## **What unit is appropriate?**

- Is the management structure of the company centralised or decentralised?
- Is the bargaining unit operated as a separate business unit?
- Does local management have control over some portion of the budget, or are all financial decisions taken centrally?
- Are at least some pay and conditions determined independently at a local level?
- Do pay rates and some key conditions vary between different sections of the organisation?
- Are final decisions on matters of discipline and dismissal taken locally?
- Is there a distinctive local labour market?
- Are there cross-the-board structures for negotiations?
- Is there a single set of terms and conditions, set out in an employer's handbook?
- Is there a universally applied annual pay increase?
- Is there a compelling need for labour to be able to move from one site to another?  
Is mobility required or voluntary?

### **The Kwik-fit case**

Kwik-Fit GB is a company operating throughout Great Britain. It has 646 centres, of which 110 are located in London. For two years, the Transport and General Workers Union had been actively seeking to organise and recruit Kwik-Fit employees in the London area. In October 2001, it submitted an application for statutory recognition by Kwik-Fit of these employees under Part 1 of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 ('the TULR(C)A').

The CAC determined that the bargaining unit proposed by the TGWU, namely the two London divisions, was appropriate. Kwik-Fit challenged that decision in court, claiming that the CAC should have given equal weight to its proposal that the most appropriate bargaining unit would be a one covering the company at large.

The Court of Appeal judgement supported the original CAC decision, saying that the CAC was required to determine whether the bargaining unit proposed by the union was suitable for the "conduct of collective bargaining for a group of workers". If the proposal put forward by the union was found to be appropriate, then the CAC was required to go no further. The legislation did not require the CAC to determine which of all possible bargaining units was the most appropriate.

## **Which workers should be included?**

- Are there significant differences in how terms and conditions are determined for different groups of staff?
- Are there posts with sufficient management responsibility to be excluded?
- Do some groups have different characteristics than others (eg casual, student labour vs. permanent staff).

## **The importance of the Kwik-Fit Decision**

The CAC does not have to decide that the definition of the bargaining unit proposed by the union is the 'best possible' arrangement, only that it is 'appropriate'. The employer may propose what it considers a better arrangement, but the CAC does not have to accept it if the union's proposal meets the statutory requirements.

The Kwik-Fit decision has been quoted in subsequent CAC decisions where the employer has argued for a different bargaining unit than that proposed by the union. In each case the CAC has made a decision based first and foremost on the merits of the union's proposal, testing whether it meets the criteria for 'appropriateness' rather than judging whether the proposed bargaining unit is the best possible arrangement.

# The CAC procedure

## **First hurdle: requesting recognition from the employer**

Once the union has decided on the bargaining unit it wants to represent, it submits a request in writing to the employer for recognition. The request must clearly identify the union and the bargaining unit and it must state that the request is made under Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992. A model letter can be found on *page 19*.

It is advisable to send the request to the employer by special delivery post or some other method that allows you to verify that the employer has received the request.

The employer has 10 working days to respond, starting with the day after they receive the request for recognition. If the employer agrees to the request, then the union is recognised for collective bargaining. If the employer does not agree to the request, or shows no willingness to negotiate, the union can apply to the CAC for recognition. The application form is available from the CAC ([www.cac.gov.uk](http://www.cac.gov.uk)) together with notes on the information required from unions making applications. The union should complete the form in as much detail as possible. But bear in mind that the application and any supporting documentation sent with it will be copied to the employer. It should not therefore normally contain names or addresses of individuals.

If the employer does not accept the request, but is willing to negotiate, then 20 working days are allowed for this to take place, including possible assistance from Arbitration and Conciliation Services (ACAS). Deadlines can be extended by agreement. If negotiations then fail to produce an agreement, the union can apply to the CAC. No CAC application is allowed, however, if the union fails to respond within 10 days to an employer request for ACAS assistance.

## **Second hurdle: ensuring the application is admissible**

The CAC must decide if the application is admissible before accepting it. It has 10 working days after it receives the union's application in which to do so, though it can extend this deadline if it needs to.

The CAC will then apply a set of **validity** tests to the application:

- **Is the application in the proper form?** Only official CAC forms will be accepted.
- **Has the employer received the application?** The CAC cannot accept any application unless the union has copied it to the employer, together with any supporting documents.
- **Does the union have a certificate of independence from the certification officer?** The CAC cannot accept applications from trade unions that do not hold a current Certificate of Independence.

- **Does the employer employ at least 21 workers?** The statutory recognition scheme only covers employers with at least 21 workers, or an average of twenty-one in the previous 13 weeks. Workers employed by an “associated employer or employers” are taken into account when determining the number of workers employed, so the employer cannot seek to avoid the law by, for example, restructuring itself into smaller companies. In determining the numbers of workers, part-time workers count as whole numbers. Temporary workers are counted if they are directly employed by the employer; those employed by agencies generally do not count.
- **Does the union have 10% membership?** At least 10% of the workers in the proposed bargaining unit (not the workplace overall) must be members. The CAC has 10 days to determine whether there is at least 10% membership. If the employer provides conflicting evidence to challenge the union’s membership figures, an independent check may be carried out by a CAC case manager.
- **Are the majority of workers in favour of recognition?** The CAC will also want an indication that a majority of workers in the bargaining unit would be likely to favour recognition of the union. A petition or individual pledge cards signed by a majority of workers in the bargaining unit indicating their willingness to be represented by the union would provide evidence of this support. Guidance on the petition can be found on *page 20*.
- **Is there a competing application?** The CAC cannot adjudicate between competing applications for the same or overlapping bargaining units. (Bargaining units with just one worker in common count as overlapping.) If only one of the unions making an application has at least 10% membership in the bargaining unit, the CAC will only consider that application and is required to reject all others until that application is concluded. If more than one application has 10% union membership, the CAC cannot accept any of them, and must reject them all. ***Careful thought should be given, therefore, to UNISON’s relationship with other unions in workplaces where we might be seeking statutory recognition.***
- **Is there an existing recognition agreement?** The CAC cannot accept an application if there is an existing agreement entitling a union to conduct collective bargaining on behalf of any (even one) of the workers in the bargaining unit. The existing recognition agreement will disqualify the application, even if it is with a non-independent union or staff association. The existing collective agreement does not have to cover hours, pay or holidays to invalidate the application, as long as it covers one or more of these categories. The important exception to this is where there is an existing agreement with the union that is making the application, which does not cover all three statutory categories: pay, hours and holidays. Then the application can be accepted.
- **Can unions making a joint application show that they will co-operate?** If the application is made by more than one union, they will need to show that they will co-operate with each other to achieve stable collective bargaining arrangements. The unions must also show that they will conduct single table bargaining arrangements if the employer wishes.
- **Has there been a previous application in the last three years?** The CAC cannot accept an application if a previous application from the same union covering the same or substantially the same bargaining unit has been accepted by the CAC within the last three years. The CAC will also not accept an application within three years of that union failing to achieve recognition following a ballot, or within three years of the union being de-recognised following a ballot.

The CAC's decision about whether the application is admissible will be based on the evidence provided, so it is important to ensure that the union's evidence is complete, consistent and accurate.

## **UNISON case study: *Parkwood Leisure***

The case of Parkwood Leisure illustrates the need to do accurate research into the appropriate bargaining unit and to secure sufficient support for the application.

In February 2005 UNISON failed in its application to the CAC for recognition on behalf of a bargaining unit made up of five leisure centres operated by Parkwood Leisure in Bexley, South London. UNISON originally estimated that there were 250 workers in the proposed bargaining unit, but in fact there were 310. The union had 55 members (15.8%) in the proposed bargaining unit, satisfying the requirement for at least 10% membership, but an indicative ballot showed just 30.38% support for the recognition. In its decision the CAC said, "The Panel is not satisfied that the level of union membership...when considered with the level of support indicated by the results of the Union's ballot provides sufficient evidence that the majority of workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit." The Panel also rejected the union's attempt to break down the ballot results by location or employment status. It noted that the union had made the application for a bargaining unit consisting of all five sites, and it was against this unit that the statutory tests had to be applied.

### **Lessons learned by the branch:**

- Put all efforts into getting full support in the indicative ballot.
- Do it quickly after a transfer to a private contractor when the proportion of transferred staff is still high.
- Think carefully about whether to include casual staff who work a small number of hours—perhaps late at night—in your bargaining unit. If you cannot reach enough of them, you will not be able to count on winning a majority, even if you have support from most regular permanent staff.

## ***Crucial time for the union to stop and think!***

If you have doubts about your ability to secure statutory recognition – for example if you don't think you can recruit enough members in your proposed bargaining unit to win automatic recognition or succeed in a ballot, this may be the time to withdraw your application and rethink your strategy. The union can withdraw its application without penalty at any time up to the point that the CAC has accepted it. Nothing then prevents the union from reapplying for statutory recognition for the same or similar bargaining unit at any time in the future. However once an application has been formally accepted by the CAC, the union is barred from re-applying for statutory recognition for the same or substantially the same bargaining unit for three years. If the union withdraws its application after it has been formally accepted by the CAC, it is still barred from reapplying for three years. Better to withdraw the application and fight another day than to have the application accepted and fail!

Alternatively, a union may reach a 'semi voluntary agreement' with an employer. This makes the need for any further consideration by the CAC unnecessary and the parties can jointly request that the CAC cease consideration of the application.

## UNISON case study: *National Star Centre College*

The National Star College of Further Education in Cheltenham is a national facility serving students with disabilities. Despite significant union membership —150 out of the 350 staff— and two years of discussions, management had refused to reach a voluntary recognition agreement with UNISON. In May 2005 the union decided to initiate a CAC application.

The branch was concerned that workers would be reluctant to sign a petition which would make their support for recognition public. Instead, stewards distributed ‘tear off’ ballot papers with an accompanying letter from the regional officer. The letter informed staff of the current position between the union and the college and explained the purpose of the survey. With each paper was a pre-paid envelope addressed to regional officer Steve Belcher. He was the only one to view the ballot papers, ensuring that staff views remained confidential.

UNISON asked ACAS to verify the returned papers, on the understanding that they would be returned to be included as evidence in any application made for recognition ballot to the Central Arbitration Committee. The result of the ballot was a 73.4% vote in favour of recognition. “As an exercise, not only was it useful in determining views”, said the regional officer, “it was also a good recruitment exercise.”

After being presented with the results, North Star management agreed to allow ACAS to run a ballot with binding results.

‘So long as we can secure 40% support of a 50% turnout then they will enter into a voluntary recognition agreement with us. We have agreed some ‘ground rules’ for this ballot with equal access to everybody in the bargaining unit. We have tied them down to a deadline of half term by which it should be completed. The survey that UNISON have just completed gave us 73.3% of a turnout just below 40%. I am confident that we can achieve a very clear majority in an ACAS run ballot.’

Unlike with a CAC-run ballot, however, the union will not have to wait for three years to try again should they fail to reach the threshold.

### ***What happens once the application is accepted?***

The acceptance of the application sets a number of processes in motion:

**The employer must provide information about the bargaining unit.** If the union’s application is accepted but the bargaining unit has not been agreed, the employer must provide the following information to both the CAC and the union within five working days:

- a list of the categories of worker in the proposed bargaining unit
- a list of the workplaces at which they work
- the number of workers the employer reasonably believes are in each of the categories at each of the workplaces.

If the employer fails to provide the required information, the union can request that the CAC moves straight to bargaining unit determination. The CAC must then decide the appropriate bargaining unit within 10 working days starting with the day after the day on which the request was made. This period can be extended by the CAC.

**The union has facility to communicate with the workers.** The union now has the right to communicate with workers who are in the proposed or agreed bargaining

unit. The union does not do this directly, but through a 'suitable independent person' (SIP). The union applies in writing to the CAC asking it to appoint a SIP. The CAC will make the appointment as soon as possible, notifying the name and appointment date of the appointed person to the parties. The union is responsible for paying the expenses of the SIP.

The union can send information to workers through the SIP throughout the **initial period**. The initial period starts with the day the CAC notifies the parties of the name and date of appointment of the SIP and ends when one of the following occurs:

- the union withdraws the application
- the CAC finds the application is invalid
- the union is declared recognised without a ballot
- the CAC informs the union of the name of the person appointed to conduct a ballot.

Within 10 working days of being notified of the appointment of a SIP, the employer must provide the CAC with the names and home addresses of the 'relevant workers'—that is those within the proposed or agreed bargaining unit. Lists must be updated if the definition of the bargaining unit changes or workers join or leave the bargaining unit after the list has been supplied. The CAC will pass this information to the SIP as soon as possible. If the employer fails to provide the required information, the CAC will take steps to ensure compliance and may declare the union recognised under certain circumstances.

## **Deciding the appropriate bargaining unit**

If the definition of the bargaining unit has not already been agreed before the application has been accepted, the CAC will help the parties come to an agreement. This can be done face to face, through CAC mediation or with the help of ACAS. The CAC has 20 working days to help the parties reach an agreement, which can be extended if necessary.

Under changes to the procedure arising from the ERA 2004, the CAC can now end the negotiating period before the 20 days where:

- they believe there is 'no reasonable prospect' of agreement being reached by the end date
- there is a joint request made by the union and employers to end the period on a particular date. The period can be extended again if the parties then change their minds.

If agreement cannot be reached between the parties then the CAC has 10 days to decide whether the union's proposed bargaining unit is appropriate.

In making this decision the CAC must follow the line set by the Kwik Fit Judicial Review (see details on page 8), then take into account the key tests:

- need for the unit to be compatible with effective management
- views of the employer and union
- existing national and local bargaining arrangements
- desirability of avoiding small, fragmented bargaining units
- characteristics of workers in the proposed bargaining unit and any other employees the CAC considers relevant

- location of workers.

Of these factors, the first in the list takes priority. Other factors can only be taken into account if they do not conflict with the need for the unit to be compatible with effective management.

If the CAC decides that the proposed bargaining unit is not appropriate it will decide an appropriate unit. It must then apply all of the **validity** tests (*on pages 9-10*) to the new bargaining unit. If the new bargaining unit fails any of these tests, the application cannot go ahead.

## Case Study: *Craegmoor Healthcare*

Craegmoor Healthcare is a vast private healthcare company employing 7,000 staff in 277 establishments across Britain. Where a company is so spread out it can be extremely difficult to organise, with members divided between dozens of different sites. But the Cedars, a nursing home and specialised mental health establishment at Llanattock Park, near Crickhowell in Powys, had a significant block of UNISON members.

UNISON sought recognition and was rebuffed repeatedly. So the union changed its approach. With the help of UNISON's Employment Rights Department, the union launched a challenge under the right to statutory recognition.

As Peter Short, Regional Officer explained, "It's the first time that UNISON has resorted to this. First, we had to make an application to the Central Arbitration Committee to determine what the bargaining unit was. "We said: 'this one home is a bargaining unit'. The company disagreed, but eventually, the CAC decided that it was an appropriate bargaining unit."

Once that decision had been announced, the branch faced a ballot on recognition that was run by Electoral Reform Services on behalf of the Central Arbitration Committee. They achieved the necessary mandate of 40% of the bargaining unit voting in favour of recognition.

Craegmoor was certainly not averse to using spoiling tactics to avoid recognition. Before the ballot, for example, the union should have been able to approach staff, but the company stopped that and the union had to go back to the CAC to get access. Even after winning the ballot, Craegmoor's behaviour in the first negotiating round was so poor that the union was forced to return to ask the Central Arbitration Committee to impose a legally binding and enforceable negotiating procedure.

The CAC acceded to our claim. "Eventually, we were able to complete the 2004/2005 pay round, with rises for the lowest paid of over 9% and a new minimum of £5.20 per hour."

Before the ballot, UNISON membership was over 50% at the Cedars. That had been no mean achievement in itself, with difficult work, low pay and a high turnover. But if the struggle with Craegmoor at the Cedars now takes new directions, getting this far is quite a significant precedent, says Mr Short. "It's difficult to get national recognition in such big companies, so this is a major breakthrough."

## Automatic recognition

There is a 'short step' procedure to recognition, when the trade union has a majority

of the bargaining unit in membership. If that is the case, then the CAC can award recognition 'automatically' – i.e. without a ballot. But the CAC can still order a ballot if it considers that this would be in the interests of 'good industrial relations' or where a significant number of workers request one, or if there is membership evidence that a significant number do not want the union to be recognised.

## **Ballots**

If the union does not have a majority in membership, there must be a ballot. If the CAC order a ballot it should take place within 20 days after the appointment of a 'qualified independent person' (QIP).

The employer is under a duty to co-operate with the balloting process and they must pay half the costs.

The CAC will notify the parties in writing that it intends to arrange a secret ballot. The receipt of this notification begins the **notification period**.

The union has 10 days from the date it receives the CAC's notice to tell the CAC if it does not wish the ballot to go ahead. The union and employer can jointly notify the CAC of this (for example, if they reach a semi-voluntary agreement). Withdrawing from the ballot at this point would mean that the union could not apply to the CAC for three years in respect of the same or substantially the same bargaining unit. Once the notification period is passed, it is no longer possible for the union or the parties jointly, to withdraw from the statutory procedure and a ballot must be arranged.

The notification period should be used to agree access arrangements for the union during the ballot period. If there are problems in agreeing access then the parties may seek the help of ACAS to conciliate as soon as possible.

The CAC will appoint a QIP to conduct the ballot, decide how the ballot will run and set a timetable. It will decide whether to have a ballot at the workplace or by post, or by a combination of the two, taking account of costs and fairness. The ballot must be held within 20 working days of the appointment of the QIP. This period can be extended by the CAC.

## **Fairness in the conduct of the ballot**

New provisions have been added to the procedures to prohibit unfair practices during the ballot and set penalties when unfair practices take place.

Once the employer has been notified of the QIP's appointment they have five duties:

- to co-operate generally with the union and the QIP in connection with the ballot
- to give the union reasonable access to the workers in the bargaining unit to enable it to inform those workers of the object of the ballot and to seek their support and their opinions on the issues involved
- to pass names and addresses of workers in the bargaining unit to the CAC within 10 working days from the day after the employer was informed of the QIP's name and ballot arrangements. The employer must also give the CAC details of any workers joining or leaving the bargaining unit
- to refrain from making any offer to workers, or any individual worker, that induces them not to attend a relevant meeting between the union and the workers unless it is

reasonable in the circumstances

- to refrain from taking or threatening any action against a worker because they attended or took part in a relevant meeting or they indicated their intention to do so.

The union can use the QIP to distribute information from the union to the workers in the bargaining unit at their home but neither the CAC nor the QIP can give the information on names and home addresses to the union, nor can the CAC or the QIP pass names of union members to the employer.

Any complaint that the employer has not complied with any of the five duties must be sent to the CAC case manager before the ballot has been held. The CAC panel will investigate the complaint, seeking advice from the QIP. The CAC panel can extend the timetable for the ballot in these circumstances.

If the CAC panel decides that the employer has failed to perform any of the duties above, they can order the employer to remedy the failure within a set timescale. If the employer fails to do so the CAC can issue a declaration of recognition.

## **Unfair practices**

Once they have been informed by the CAC of the name and appointment date of the QIP and the balloting, both the union and employer must refrain from using any unfair practice. Either of the union and employer can complain to the CAC if they believe the other has used an unfair practice that changed a relevant worker's voting intentions. The CAC must decide whether the complaint is 'well founded'.

The following acts by the employer and the union are considered unfair practices if they are used with a view to influencing the result of the ballot:

- offers to pay, with money or to give money's worth, for a relevant worker to vote in a particular way or to abstain
- offers to pay, with money or a non-cash offer, as long as a particular outcome is achieved. For example an offer to pay a worker £100 if the ballot does (or does not) result in recognition would be considered unfair practice
- the coercion or attempted coercion of relevant workers to discover whether he or she intends to vote or abstain or how they intend to vote or have voted
- dismissal, or threats of dismissal, of a worker – and this is not confined to just those workers entitled to vote in the ballot
- taking or threatening disciplinary action against a worker – again this is not confined to workers entitled to vote in the ballot
- subjecting, or threatening to subject, a worker to any other detriment – again this is not confined to workers entitled to vote in the ballot
- the use or attempts to use undue influence on a relevant worker.

If a complaint made to the CAC of unfair practice is found to be valid, it may result in the ballot being rerun or, in extreme cases, abandoned and a declaration on recognition made by the CAC.

Details of procedures in the case of unfair practices can be found in the CAC's Statutory Recognition Guide for the Parties found at:

<http://www.cac.gov.uk/Publications/publicathead.htm>

## **Results of the ballot**

To succeed in the ballot, the union needs to have won the support of a majority of those voting and 40% percent of all workers in the bargaining unit eligible to vote.

If the union fails to win the level of support needed to obtain recognition, it is barred from making another application in respect of the same or substantially the same bargaining unit for a period of three years.

Statutory recognition will normally last for a minimum of three years and cannot be ended unilaterally by the employer, even at the end of the three year period, except through one of the de-recognition procedures in the Act.

## **Determining a bargaining procedure**

If recognition is granted, or if it is voluntary, the union and employer must agree a 'method of collective bargaining'. There are 30 days for agreement (with the possibility of an extension of time). If no agreement is reached either party can ask for CAC assistance. An extendable 20 day period is allowed for the parties to agree, failing which the CAC will specify a procedure.

In contrast to the general position relating to collective agreements, the document setting out the method of collective bargaining will be legally enforceable. Either party will be able to go court for an order of specific performance.

## **Changing circumstances**

There are extensive provisions on changes that subsequently affect the bargaining unit – when either party believes that the bargaining unit is no longer appropriate or the employer believes the unit has ceased to exist.

There is a roughly mirror-image procedure on derecognition. It can be initiated by the employer or a worker but must be more than three years after a grant of recognition. If the majority of workers in the bargaining unit are still members, the employer cannot initiate a derecognition ballot. Derecognition can be ordered if the number of employees falls below 21. Otherwise, there has to be a ballot. A worker can apply to end recognition of a non-independent or 'sweetheart' union.

## **Protection for workers**

The Act protects workers from dismissal or victimisation in connection with recognition or derecognition. Protection from victimisation applies to workers who: show support or take action in relation to recognition or derecognition; influence voting or vote in a ballot.

Complaints about victimisation can be lodged with an employment tribunal within a three-month period from the date the victimisation occurred.

The Act makes clear that the dismissal or redundancy of an employee for activities related to recognition would be automatically unfair. This protection applies to employees regardless of length of service.

## Action checklist

### To establish or strengthen recognition

- consult your regional officer/regional organiser
- map your branch
- identify bargaining units where there is no recognition agreement
- target unorganised areas of your workplace; find out their key concerns
- recruit members and elect representatives in non-recognised areas. Remember that you need at least 10% membership to make an application through the statutory process
- if you are aiming for automatic recognition, make sure your membership is well above 50%. The CAC may not accept your definition of the bargaining unit. If you lose a section with high membership, it could pull you below 50%
- plan a recruitment campaign. Ensure membership is high in all recognised areas to dissuade employers from trying to derecognise the union
- make sure that union members are active and involved so that they will support recognition
- discuss recognition with other unions in your workplace
- think about the best definition of the bargaining unit. Anticipate the employer's arguments in opposition to your definition
- talk to your employer about the advantages of voluntary recognition.

## Model letter requesting recognition

*[Name of appropriate manger/name of organization/correct address]*

*[Date]*

Dear

This is a formal request that you recognise UNISON for collective bargaining purposes in respect of the bargaining unit consisting of [all staff/the following staff groups] working for [employer's name and full address].

UNISON has in membership [a majority/significant proportion of the workforce] within the bargaining unit.

This request is being made under Schedule A1 of the Trade Union and Labour Relations (Consolidation Act) 1992. Under that procedure you have ten working days starting with the date after you received this letter to do one of the following: agree our request for recognition; agree the bargaining unit; or agree to negotiate over recognition. If you do none of these things, I confirm that we will take the next step under the procedure namely to apply to the Central Arbitration Committee for an order that you recognise UNISON in respect of the bargaining unit.

However, I hope that recourse to the statutory procedure will not prove necessary. We look forward to working with you in a spirit of co-operation on behalf of the workforce in [organisation name].

Yours sincerely

Dave Prentis

General Secretary

## Guidance on petition for statutory recognition

*Write on UNISON headed notepaper*

*Begin with “the undersigned”*

**name and signature,  
job title,  
workplace if relevant**

*support recognition of UNISON for collective bargaining on pay, hours and holidays.*

## How to use the petition

You will probably want to produce a leaflet or letter to accompany the petition explaining that:

- under the legislation workers have a right to vote for union recognition and that if a majority do so, the employer will be obliged to recognise the union.
- the purpose of the petition is to demonstrate to the CAC that a majority would support recognition
- why workers would benefit from recognition

You can use either a standard petition form, or if workers are concerned about confidentiality, you could use individual pledge cards or tear off slips for each worker with a self addressed, stamped envelope to the regional officer guaranteeing that only she/he will view the form.

# Definitions

'Recognition' means an employer recognising the union as being entitled to conduct collective bargaining on behalf of workers in a particular bargaining unit.

'Collective bargaining' is defined as covering negotiations with the employer on three core issues only — pay, hours and holidays. The employer must "inform and consult" the union on training but this is not included in the collective bargaining definition. If negotiations are to include other issues, that must be the subject of a separate, voluntary, agreement with the employer.

# Resources

More help is available on UNISON's website:

Bargaining Zone – [www.unison.org.uk/bargaining](http://www.unison.org.uk/bargaining)

Activists Zone – [www.unison.org.uk/activists](http://www.unison.org.uk/activists)

Publications available from UNISON Bargaining Support:

— *Negotiating Recognition Agreements: A Guide*

— *The Right to be Accompanied: A Guide*

— *Statutory Recognition: A Guide*

UNISON publications available from Bargaining Support, UNISON, 1 Mabledon Place, London WC1H 9AJ, e-mail [bsg@unison.co.uk](mailto:bsg@unison.co.uk), or the UNISON Bargaining Zone [www.unison.org.uk/bargaining](http://www.unison.org.uk/bargaining)

## **Publications available from other sources:**

### **Central Arbitration Committee**

*Annual Report 2004—2005*

[http://www.cac.gov.uk/cac\\_2\\_annual\\_report/Reports](http://www.cac.gov.uk/cac_2_annual_report/Reports)

*Guide for the Parties, June 2005*

<http://www.cac.gov.uk/Publications>

### **TUC**

*The Employment Relations Act 2004: A TUC Guide* available from the TUC on 0207 467 1294 or [smills@tuc.org.uk](mailto:smills@tuc.org.uk)

# FAX Back [020 7551 1766]

—sharing experience of negotiating recognition

Have you made an attempt to secure recognition using the statutory procedures? What was the result? Let us know so we can spread best practice throughout UNISON and help other branches, stewards and regions.

Name

---

Branch

---

Position in UNISON

---

Contact details (phone and email or address)

---

Date

---

## ***About the attempt to gain recognition***

Date

---

What employer did it involve?

---

What service (eg. cleaning, housing, care) did it involve?

---

What UNISON service group did it involve?

---

What UNISON region did it involve?

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Give brief details of your application for recognition

Give brief details of the results of your application

