INTRODUCTION

On 6 June 2000, the right to statutory recognition established by the Employment Relations Act 1999, came into effect. Subsequent evidence suggests that those rights prompted employers to reach voluntary recognition agreements in greater numbers and take a more positive approach to recognition. This guide is intended to provide basic advice on how to structure and negotiate recognition agreements and a model agreement is also available at Model Agreement to provide a starting point for negotiators.

CONTENT OF A RECOGNITION AGREEMENT

A formal recognition agreement provides a framework for industrial relations within an organisation. It sets out the rules and procedures to be used by the union and the employer in carrying out consultation, collective bargaining and representation.

It is in the interests of both parties to have a clear and comprehensive recognition agreement. A good agreement will contribute to:

- positive working relations between union and management
- high levels of employee participation
- effective procedures for dealing with problems and change

What should be in a recognition agreement

The content of recognition agreements will vary depending on the size and type of organisation. But all agreements should contain clauses covering:

The purpose of the agreement
Basic principles
The unions recognised
The scope of the agreement: negotiations and consultation
Structure of representation
Facilities
Disputes
Review and termination of the agreement

The sections below will discuss the content of a recognition agreement in more detail.
The purpose of the agreement

Most recognition agreements begin with a clause outlining the goals the parties wish to achieve. While this section does not lay down any specific rules or procedures, it does set the tone for the rest of the document. It will often include a commitment to:

- co-operate in achieving positive industrial relations;
- use a joint approach to training in industrial relations procedures
- engage in effective communications with employees
- achieve greater participation and involvement of all members of staff
- work towards a high quality service

“The purpose of this agreement is to define and clarify the relationship between SHAW Homes and UNISON in order to promote a progressive environment in which to create and maintain good employment relations between SAHW and its employees. The agreement provides methods and procedures whereby SHAW Homes and UNISON can seek to resolve by collective bargaining or joint consultation, matters affecting employees, within the scope of this agreement.”

The agreement between UNISON and Hays Clinical Support Services states: “It is in the joint interests (of both parties) to recognise each other as partners in the workplace and create a climate of good industrial relations.”

The parties in a recognition agreement may also agree on the basic purpose of the organisation. This provides a common understanding of what the organisation or company is there to do.

“The parties accept that the fundamental purpose of NCH is to work for children, young people and their families through the promotion of safer care and that this criterion will be a prime yardstick against which the success of this agreement will be judged.”

General principles

The agreement will outline the basic principles shared by the union and the employer and their understanding of their respective roles and responsibilities. These will commonly include:

- a joint commitment to furthering the aims of the organisation
- recognition of the importance of good industrial relations
- acceptance of the need for joint consultation and collective bargaining
- the need for both formal and informal channels of communication and problem solving
- the need to make information available on issues affecting the staff or business of the organisation
- recognition that it is management’s responsibility to plan, organise and manage the activities of the organisation
- recognition that it is the union’s responsibility to represent the interests of its members and work to improve their conditions of employment
• commitment to protect the right of employees to join trade unions and encourage trade union membership
• commitment to adhere to and develop policies on equal opportunities

The unions recognised

A recognition agreement names the union or unions who have rights to represent and negotiate on behalf of the employees in that workplace. It will make clear whether a particular union has sole negotiating rights for a bargaining group, or whether the employer recognises two or more unions jointly.

Scope of the agreement

The agreement will set out the issues for which the union(s) are recognised for the purposes of collective bargaining and consultation.

These may include some or all of the following:

Terms and conditions of employment
Pay awards
Job descriptions
Job grading and job evaluation
Hours of work
Holiday and sickness arrangements
Pensions
Overall salary structure
Health and safety
Equal opportunities policies
New technology
Working practices, new equipment and techniques
Training and recruitment
Staff amenities
Redundancy and redeployment
Disciplinary, grievance and procedures
Contracting out
Reorganisation of staff and relocation of offices
Any other item which both sides agree to refer

Consultation

The agreement should reflect the fact that the employer is legally obliged to consult on certain matters, in particular on business transfers and collective redundancies. In these circumstances the employer must consult with a view to seeking an agreement.

On Health & Safety, if UNISON is recognised, then a joint safety committee must be set up if two or more safety representatives request it. Normally health & safety issues should be progressed through the safety committee where one exists.
Structure of representation

The agreement sets out the union/management structures which will be used to represent union members in the workplace and negotiate on their behalf.

- This will include the composition of the joint negotiating and consultative committee. The agreement should set out the number of representatives who sit on the body from each side, and the constituencies from which they will be drawn.
- The agreement should acknowledge that union representatives will be elected in accordance with their Union Rules to act as spokespersons in representing their members’ interests.

Facilities

The agreement will detail the facilities made available to the union and to union representatives in order to carry out their duties. These should include:

Time off for trade union duties and activities

Trade union workplace representatives in recognised workplaces have a right to time off with pay to carry out their trade union duties or take part in union training. This right has been in place since 1974. Previously it applied to workplace representatives and health and safety reps only. In 2003 the right to paid time off was extended to cover union learning reps. (In UNISON these are know as UNISON Lifelong Learning Advisors).

The Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Time Off for Trade Union Duties and Activities suggests that recognition agreements should cover:

- the amount of time off permitted;
- the occasions on which time off can be taken;
- the circumstances in which time off will be paid;
- the procedures for requesting time off.

Detailed advice on negotiating time off for trade union duties is available in the bargaining guide UNISON bargaining guide on facility time

Union facilities

The agreement should require the employer to provide facilities to allow the union to represent and negotiate on behalf of its members, including some or all of the following:

- use of a designated area or secure office space
- lockable filing cabinet
- access to confidential telephone, fax, internal mail and email
- provision of pagers to trade union officers and stewards
- access to notice boards in all work sites
- access to the employer’s intranet
- reasonable access to photocopying
• the use of PCs
• reasonable accommodation for meetings and trade union education
• reasonable access to administrative support and secretarial services

In smaller workplaces it is important to be flexible and imaginative in negotiating trade union facilities. Small employers may not be able to offer the same level of resources or technical support that a large employer could provide. If it is not possible to have office space, look for an agreement on access to meeting facilities. The branch may need to consider offering a loan of equipment (laptop computer, mobile phone) in order to meet needs that cannot be met by the employer.

The agreement should also provide encouragement and support for trade union membership. This can include:

• facilities for the deduction of trade union subscriptions from payroll in the form requested by the union
• the provision of names and workplaces of new employees and those leaving
• opportunity to talk to new starters and participate in induction sessions
• the right to run recruitment roadshows at the employers' worksites

The agreement should ensure facilities are available for adequate representation of members. This can include:

• access for stewards to all documents relating to agreements which affect members represented
• assistance in conveying information to employees, including newsletters, information concerning consultation, representation or bargaining
• access to information for collective bargaining as specified by the ACAS Code, Disclosure of Information for Trade Unions for Collective Bargaining Purposes
• the facility for stewards to meet with full-time officers by arrangement
• facilities to enable recognised trade unions to conduct a ballot where this is required by law or otherwise mutually agreed

**Negotiating Structures**

A recognition agreement will set out the forums for consultation and negotiation and the role of such bodies, including their remit, membership and the frequency of meetings. These should include:

• a negotiating committee, made up of a specified number of seats for management and trade unions
• the scope of the committee's powers, particularly identifying those areas subject to negotiation and those subject to consultation
• agreed rules and procedures for how the committee conducts its business
• how the work of the committee relates to the workforce as a whole, e.g. mechanism for consultation, worker involvement, and notification of decisions
• provision for working parties and / or subcommittees to deal with specific issues
• larger employers may agree to having a layer of departmental or section bargaining structures which deal with local business under the umbrella of the employer-wide committee
Disputes

A recognition agreement should include a mechanism for dealing with disputes between the union and management. This can include a group grievance procedure for issues concerning two or more people, and a procedure to settle differences between the union and management which cannot be resolved through normal negotiation. These procedures generally involve several stages, beginning at the informal level and rising through reference to local and central negotiating forums. Some agreements will include access to an external third party, such as ACAS, for arbitration if the issue is not resolved at a lower level.

Procedures for resolving individual grievances may be included in the recognition agreement or set out in a separate agreement.

Review and termination of the agreement

Recognition agreements should make provision for periodic review. A clause will normally allow for termination of the agreement to be sought by either party after a period of notice in writing.

NEGOTIATING POINTS

While the exact structure of your recognition agreement will depend on the size and nature of your organisation, branches should seek to achieve certain basic goals.

Representative structures: only one forum

In agreeing to recognition, employers may be concerned that non-union employees will be excluded from workplace consultation. One of the options is to maintain a non-union consultative forum alongside the formal negotiating body used by the recognised unions. Try to resist this. The existence of a parallel body for consultation weakens the union’s role as the voice of the workforce. The need to provide representatives to both forums may tax the union’s ability to find members willing to be active. It may also complicate union negotiations when the positions of the two bodies conflict. Recognised unions are legally required to negotiate on behalf of all workers in a bargaining unit. They should offer to be responsible for canvassing the opinion of non-union, as well as union members.

Being representative

The Joint Negotiating Committee should have sufficient trade union members to be representative of the various sites and sectors of the workforce. Ensure that shift workers and those working part-time have representation on the Joint Negotiating Committee. Management side should include those with power to make real decisions on behalf of the employer.

Negotiation vs. consultation

Recognition agreements should be clear on what can be subject to negotiation, and what to consultation. Negotiation commits both parties reaching agreement, whereas consultation is merely a commitment to seek views. Some employers confuse consultation with the conveying of information. It is much more than this. Recognition agreements are supported
by legislation which requires employers to undertake “meaningful” consultation on certain issues. In practice, this is likely to mean the consultation process must be closer to negotiation than a mere information-giving exercise. There should be evidence the employer has attempted to reach agreement, even if agreement proves impossible.

**Scope of the agreement**

A recognition agreement should give the union the right to bargain collectively on the widest possible range of pay and conditions issues. Many existing agreements provide only limited collective bargaining rights, for example, the right to bargain on pay, holidays and hours, but not pensions, redundancy or training. Wherever possible, try to secure comprehensive negotiating rights. You may need to consider accepting partial recognition as a first stage where the employer refuses to grant full collective bargaining rights.

**Coverage of the agreement**

There are circumstances where the union is able to secure recognition for some groups of staff in an organisation, but not others. The union may not be recognised for example, for staff on certain types of contracts or for new staff after transfer to the private sector. Unless you have good reason to exclude certain categories of staff, try to ensure that all employees are covered under the recognition agreement.

**Time off for trade union duties: adequate funding**

Problems arise when employers do not adequate fund facility time to cover the absence of representatives on trade union duties. The resulting conflict between the needs of the service and the need for adequate time off, can lead to disputes with management. Tension may also arise amongst staff, as colleagues are left to cover the work of absent trade union reps. It is therefore important that sufficient funds be made available to support staff representatives’ role.

The NHS in Scotland Partnership Information Network (Pin) Board report on Facilities Arrangements states: “The Modernisation Agenda is ever increasing and to promote meaningful inclusion staff representatives they can no longer be faced with the dilemma of attending a meeting and leaving the ward or department short or having to cancel a clinic. A central top-sliced budget should be established within each employing authority to reflect the demands of the local agenda.”

**Amount of time off**

Some employers set a maximum number of hours which are available to union reps for trade union duties (e.g. no more than two hours a week). This can create difficulties when issues arise that require greater flexibility. Try to get the employers’ commitment to provide ‘reasonable’ paid time off for carrying out trade union duties or for taking part in trade union activities, rather than agreeing to fixed time limits.

NHS in Scotland notes that, “Major changes in the workplace mean trade unions are now supporting more members in a wide variety of situations (Contracting Out, Community Care, Best Value, Agenda for Change, PFI/PPP). The amount of time off available should be flexible to accommodate new demands”.

**Time off for trade union activities**

Employers should be asked to consider granting paid time off for participation in some trade union activities. This will help encourage the widest possible participation and ensure that the union is fully representative. Activities can include:

- attending workplace meetings to discuss issues relevant to the workplace
- branch, area or regional meetings of the union where the business of the union is under discussion
- meetings of official policy making bodies such as executive committees or annual conferences
- meetings of self-organised groups at local, regional or national level

**Distribution of time off**

It may be appropriate to review how agreed facility time is allocated within the branch. Fair representation is an important principle in UNISON and it is vital that union reps reflect the make up of the membership. For example, consider how much facility time is enjoyed by women, or part time workers. It may be more appropriate for paid time off to be not allocated wholly to one or more person on full time release but divided up amongst a wider group of reps.

**Monitoring of time off**

Aim to agree a monitoring system to record the amount and purpose of time off requested. A formal monitoring process will record formal authorisation given by the line manager. It requires the line manager to record the reason when authorisation has been withheld, and helps to build an accurate picture of the amount of time invested in the role of staff representatives.