GUIDE TO STATUTORY RECOGNITION: USING THE CAC PROCEDURE

Introduction
This guide sets out the right under the Employment Relations Act 1999 and Trade Union & Labour Relations (Consolidation Act 1992 to statutory trade union recognition. This gives unions the right to be recognised for collective bargaining where there is majority support for recognition. This guide provides advice to branches on how to use the Central Arbitration Committee (CAC) procedure to win statutory recognition.

What is the Central Arbitration Committee (CAC)?
The Central Arbitration Committee is an independent tribunal with statutory powers. The CAC decides all matters in relation to recognition if the trade union and the employer cannot agree on voluntary recognition. If the employer disagrees with the bargaining unit proposed by the trade union, the CAC defines it based on various criteria set out in their procedure.

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

The Act was designed to encourage voluntary recognition, and by reviewing the last five years of the CAC's annual reports it is clear that employers have favoured the voluntary route.

Although there has been a general decline in applications the CAC annual report (2014-2015) noted that the number of applications for trade union recognition rose from 44 to 51 and bargaining units were (in most cases) agreed by parties rather than the CAC making a decision on them.

UNISON has made very limited use of the statutory procedure as UNISON branches are usually successful in negotiating voluntary recognition. However if branches are dealing with a resistant employer UNISON has its own internal procedure on applying for statutory recognition which should be followed – details of this procedure are set out in this factsheet.

What types of trade union recognition are there?
Voluntary - An employer can enter into voluntary recognition with a trade union without the involvement of the CAC. UNISON has produced guidance on how to negotiate a recognition agreement and there is a model recognition agreement branches can use which can be found here.
Semi-voluntary – It is better for all parties if recognition is settled before any legal proceeding take place. Even after the procedure for statutory recognition has been triggered the parties have various opportunities to settle voluntarily and exit the process. The CAC class this as semi-voluntary recognition and each party involved can apply to the CAC for a specific method of collective bargaining.

Statutory recognition – An application to the CAC may result in ‘statutory recognition’ for a designated bargaining unit.

What is a bargaining unit?
If you are considering applying the CAC for statutory recognition you need to decide what group of workers you want recognition for – this is what is called a ‘bargaining unit’.

In smaller workplaces you may want the recognition agreement to include everyone, regardless of occupation. In larger employers it may not be possible to include all workers and the union will have to review what grades, location sites, occupations and type of workers they wish the recognition agreement to cover.

Determining the bargaining group is one of the most important parts of applying for statutory recognition – if the bargaining group is rejected by the CAC the union is banned from reapplying for statutory recognition for three years after the application has been rejected.

Case Study – UNISON and Woodbridge Practice (July 2015)
This case study highlights the importance of due diligence before an application to for statutory recognition is made to the CAC.

UNISON applied for statutory recognition at Woodbridge practice in July 2015.

After applying unsuccessfully for voluntary recognition, the union decided to proceed using the CAC procedure. The panel proposed an independent check of the level of membership within the proposed bargaining unit. Following a membership check by the CAC the panel established the membership level to be 44.19%.

As the union only needed three new members to put the membership density over the 50% threshold for statutory recognition, the panel were satisfied that the union had made a valid request to the employer to recognise it for collective bargaining in respect of the bargaining unit.

The panel were also satisfied that, on balance, a majority of workers in the bargaining unit would be likely to support recognition of the union and on those grounds accepted the application.

UNISON Procedure

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 their regional organiser 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 officer in UNISON Centre who will involve the national secretary, UNISON Legal Services and other appropriate officers to ensure that all 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, with the assistance of UNISON Legal Services.

Step 1 - The first objective in the CAC procedure 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 it may be harder to organise within the employer, so the branch will need to consider this and be very specific and targeted about what group of workers they want to organise and gain statutory recognition for.

Step 2 - The second objective is to meet the CAC’s very strict requirements on defining the bargaining unit. 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.

Before you decide on a bargaining unit, find out as much as you can about your employer. UNISON's bargaining support unit can assist you by providing financial information about employers across all sectors. Financial reports will often tell you how many locations the business is operating in and how many members of staff they employ. If you wish to use this service contact bargaining support on bsg@unison.co.uk. In addition all UNISON organising staff will have access to the UNISON mapping tool, which will identify how many members there are in the employer and where they are located.
The branch will need to consider the following points before applying to the CAC:

**Structure of the business**

Before applying to the CAC for statutory recognition the branch will need to consider the management structure of the employer and more importantly if the bargaining unit the union is applying to cover with recognition is operated as a separate business unit.

**Local bargaining**

The branch will need to consider if local management make decisions for the proposed bargaining unit.

**Terms and Conditions**

Statutory recognition awarded by the CAC will only give the union collective bargaining rights over pay, holidays and hours but excludes other important issues like the right to collectively bargain on pensions, redundancy or training. It will always be advantageous to negotiate a voluntary recognition agreement with an employer which secures comprehensive negotiation rights and which grants full collective bargaining rights over all terms and conditions.

**Pay**

If the CAC rewards statutory recognition to the union, it will cover collective bargaining over pay. It is important to consider if pay rates and some key conditions vary across the organisation. If this is the case branches could be used this as an argument when asking for voluntary recognition and pay harmonisation as it will protect the employer against any future equal pay cases.

**Number of workers employed by the employer**

The statutory recognition scheme only covers employers with at least 21 workers or an average of 21 workers in the previous 13 weeks up to the application. Provision has been put into the legislation to include “associated employers or employers” as this prevents employers from restructuring the number of staff they employ to try and get around the legislation.

**Level of union membership**

For an application to the CAC to be successful the union must have at least 10% of the workers in the proposed bargaining unit as members. The CAC will check the union’s membership to determine the actual figure.

**A majority of the workers in the bargaining unit must be in favour of recognition**

When applying for statutory recognition the CAC will want to see some sort of indication that a majority of workers in the bargaining unit are in favour of recognition. A petition of names of employees in the bargaining unit or some signed pledge cards from staff will be evidence to show the CAC.

**Working with other unions**

It is important to consider if there are any existing recognition agreements within the employer that may cover the proposed bargaining unit. The CAC cannot consider any application for statutory recognition if there is already an agreement in place. Likewise the CAC cannot consider applications from two separate unions for recognition if there are overlaps in members and bargaining units. If the union is proposing to make a joint application with another union they must demonstrate to the CAC that they will co-operate.
The CAC Procedure

The following section of this guidance will detail the CAC’s procedure on applying for statutory recognition.

Branches need to make sure they follow UNISON’s procedures to make sure that all parts of the union are aware that an application is being made to the CAC in order that the region can support the application.

Requesting recognition from the employer

Once the union has decided what bargaining unit it wishes to represent, it should submit a request in writing to the employer for recognition. The request must clearly identify:

- The request is being made under Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- The request may clearly state the bargaining unit in the letter;
- Copies of the letter should be stored as a record and the CAC recommend that applications are sent special delivery so that the union can verify that the request was received by the employer.

A model letter requesting recognition can be found in Appendix 1 of this guidance. As this letter is being sent in the name of the General Secretary branches should get the letter signed off from their regional secretary before the letter is sent.

The employer has 10 working days to respond including the day they receive the union’s request. If the employer agrees to the request then the union will be recognised for collective bargaining.

An employer may at this stage agree to negotiate with the union around recognition and how local bargaining could work in practice. At this stage the employer and the union have 20 working days to negotiate terms.

If the employer does not agree to the request and is not willing to negotiate, the union will have to apply to the CAC for recognition. Applications forms and information for unions applying to the CAC can be found on their website here.

The union’s application must been accepted

The union must make sure that the official CAC form is filled in correctly and copied to the employer together with any supporting documentation.

On receipt of the application the CAC will then allocate panel members and review the application made by the union and any response from the employer. It is at this stage the CAC can request further information from the union. The CAC has 20 working days to check if an application has been made to the CAC in the last three years

If a previous application from the union covering the same bargaining unit has been unsuccessful, the CAC will not accept another application until the three year deadline has passed.
decide if the application has been accepted – if the application is accepted it then proceeds to the next stage.

If you haven’t been able to negotiate with the employer and agree a bargaining unit there is a period of 20 days where an agreement can be sought. ACAS can assist and facilitate these negotiations. If there is no agreement, the bargaining unit will be determined by the CAC at the hearing.

**Ballot for union recognition**

If a majority of workers within the agreed bargaining unit are not members of the union, then the CAC will have to arrange a recognition ballot. If a majority of workers in the agreed bargaining unit are members of the union then the CAC can make a decision on if statutory recognition can be granted (without a ballot).

A ballot can take place in the workplace or by post and has to be conducted by an independent agency. The CAC will consult with both parties and decide on the method of the ballot and the cost of the ballot will be split between the union and the employer. There are strict guidelines around unfair practises in the workplace during the balloting period. There is a process for complaints if either party feels the other has acted unfairly. If the ballot result concludes there is not a majority in the bargaining unit that vote in favour of recognition then under the legislation the union cannot re-apply for recognition in that employer for another 3 years.

The CAC have a list of unfair practices set out in their guidance under the BIS code of practise on access and unfair practices during balloting, these include:

- Offers to pay workers to vote in a particular way or to abstain;
- Offers to pay a reward but only if a specific declaration is achieved following the ballot;
- The coercion of relevant workers to discover how they intend to vote or have voted;
- Dismissal or threats of dismissal of a worker;
- Taking or threatening disciplinary action of a worker;
- Threatening or subjecting a worker to any other detriment;
- The use or attempts to use undue influence on a relevant worker.

**What can branches do?**

- Follow the UNISON procedure and consult your regional organiser on next steps
- Map your employer – make sure you know your membership and their locations
- Identify your bargaining unit and make sure there is no pre-existing recognition agreement with the employer.
- Target unorganised areas of your workplace – what are their concerns?
- Recruit members to the union and encourage members to become reps – The union needs at least 10% membership in the designated bargaining unit before it can apply for statutory recognition.
- If you are aiming to apply for automatic recognition the union needs the membership to be well over 50%.
• Plan a recruitment campaign – Ensure that membership is high in all other areas of the union (not just the proposed bargaining unit) as this will discourage the employer from trying to derecognise the union.
• Make sure that union members are active and involved so that they will support recognition and encourage other workers to join UNISON.
• Discuss recognition with the other unions in the workplace.
• Define the bargaining unit using job occupations and as much detail as possible in order that the CAC can make a decision.
• Before an application is made to the CAC make sure you have spoken to your employer about voluntary recognition.

UNISON has access to the Labour Research Department Payline database, which contains details of recognition agreements as well as pay and conditions for employers across the economy. For details of how to access Payline contact the Bargaining Support Group on bsg@unison.co.uk
Appendix 1 – Model letter requesting recognition

[name of appropriate manager / name of organisation / 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 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