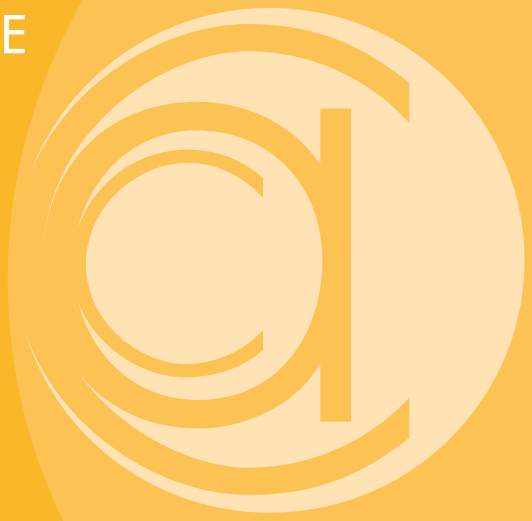
CENTRAL ARBITRATION COMMITTEE

ANNUAL REPORT 2018/19



This report of the activities of the Central Arbitration Committee (CAC) for the period 1 April 2018 to 31 March 2019 was sent by the Chair of the CAC to the Chair of Acas on 20 June 2019, and was submitted to the Secretary of State for Business, Energy & Industrial Strategy on 21 June 2019.

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CHAIR'S REVIEW OF THE YEAR

I can begin by reporting an increase in the CAC's workload in 2018-19. The number of applications for trade union recognition increased from 35 to 56 and, once the other jurisdictions are taken into account, the total across all jurisdictions increased from 54 to 69. In addition, 69 cases were completed or withdrawn compared to 60 for last year. Also there was a slight decrease in recognitions awarded without a ballot and a slight increase in ballots held and again the work was undertaken against a backdrop of legal challenges to some of our decisions. There were no new applications under Parts II to VI of the Schedule. At the risk of repeating ourselves and what has been said on many previous occasions, the CAC's workload has always had its peaks and troughs.

It would be misleading to attempt to see these figures as providing evidence of trends in the employment relations sphere. The recognition legislation has now been in place for 19 years and the outcomes of applications display a consistency that is not affected by minor fluctuations in the year-on-year statistics. It remains the case that the majority of applications are accepted. The parties continue to agree bargaining units, rather than the CAC needing to make a decision, and recognition without a ballot was granted in all the applications that reached the third stage in the process and where members of the union concerned constituted a majority of workers. Seven out of 12 ballots supported recognition, which was slightly lower than the historical average for CAC ballots, and we were not required to issue any decisions on a method of bargaining.

It has always been one of the CAC's priorities that we should at least investigate the possibilities of a voluntary agreement, either through our own efforts or by pointing the parties in the direction of Acas. Of the 25 applications withdrawn in 2018-19, 13 of those were because the parties had negotiated an agreement. This is higher than last year's figure of 12 and at least shows that, as the legislation always intended, this is a realistic option. In addition, the parties continue to agree specific elements within the statutory process such as the bargaining unit and method of bargaining, even if they are unable to agree recognition itself.

The number of Disclosure of Information complaints received was nine, a decrease from 11 received last year and there was one CAC decision on a preliminary point which is summarised later in the report. In industrial relations terms, it was again welcome to see that of the 13 cases closed in 2018-19, five were resolved by way of an agreement between the parties. The European Works Council provided two new cases and the Information and Consultation Regulations provided two new cases in 2018-19.

Judicial Reviews and Appeals

In the last annual report I mentioned the judicial review application in *TUR1/985/2016 IWGB & Roofoods Ltd*. At the permission stage the union was refused permission in respect of four out of its five grounds with the judge allowing it to go forward on one ground only. This was whether the collective bargaining rights in Article 11 of the ECHR required an interpretation of s.296(1) of TULR(C)A and the personal performance obligation that did not exclude riders from exercising those rights. The hearing took place on 14-15 November 2018 and in a judgment handed down on 5 December 2018 the claim for judicial review was dismissed. The union said that it would be appealing.

I also mentioned in the last annual report that the IWGB had given notice of its intention to apply for judicial reviews in two further cases, *TUR1/1026/2017 IWGB & Cordant Security Ltd* and *TUR1/1027/2017 IWGB & University of London*. The first case was not accepted as the panel found that there was already an existing agreement and the second case was not accepted as the panel found that the University was not the employer. Both cases were allowed forward at the permission stage with a hearing on 26 February 2019. In the first case, the union argued that their application should be accepted to give effect to their Article 11 collective bargaining rights. In the second, the union accepted that there were contracts of employment between the proposed bargaining unit and Cordant but contended that the definition of 'employer' in s 296 (2) TULR(C)A should be read in the context of an application for recognition, as including the University (de facto employer). By the time of the hearing the union withdrew its separate contention that the CAC's decision not to hold an oral hearing was contrary to its Article 6 right to a fair hearing. The High Court judgement was handed down on 25 March 2019 dismissing the challenges in both cases. The High Court refused permission to appeal, but the union confirmed an intention to seek permission directly from the Court of Appeal.

There have been two appeals to the Employment Appeal Tribunal (EAT) under the Transnational I & C Regulations on cases reported in last year's annual report. In EWC/15 ManpowerGroup, an employee appealed the CAC's decision that he was not a 'relevant applicant' (and so able to bring a complaint to the CAC), in view of the continued existence of the Special Negotiating Body (SNB), notwithstanding that no agreement had been concluded within the three year period, following the date of the valid request and the employer had not applied the provisions of the Schedule. The hearing took place on 11 October 2018 and the appeal was dismissed. The second case before the EAT is case EWC/17 Oracle Corporation UK Ltd. The Notice of Appeal was lodged at the EAT on 19 March 2018 and it was allowed forward on a paper sift to a preliminary hearing which took place on 21 November 2018. At the preliminary hearing the appeal was allowed forward to a full hearing on limited grounds – the failure of the CAC to interpret Regulations 18A and 19E(2) in accordance with the EWC Directive. Both grounds go to the timing of consultations and the EWC being able to express an opinion before any decision is made. The full hearing at the EAT took place on 5 April 2019 and we await the decision.

It has been commented on in previous reports on the low number of our decisions that have gone to judicial review or appeal. I welcome endorsements of our approach and it is also helpful to receive clarification and interpretation of the statutory provisions. The small number of adverse decisions has certainly not hindered, but has informed, our approach to cases in the past.

The Committee and Secretariat

We lost Mary Stacey as a Deputy on 31 March 2019. I was delighted that she has been appointed a Deputy High Court judge in addition to her already full life as a circuit judge sitting in the Crown Court, the County Court and the Employment Appeal Tribunal. The High Court's gain is our loss, and I realise that she no longer has time to continue as a Deputy. Mary had been a Deputy since 2000

and contributed fully and successfully to the policy and direction of the CAC. She had a wealth of experience due to the number of cases she had adjudicated on over the years. Mary's contribution and support will be missed by all of us.

In addition, the appointments of two CAC Employer Members also came to an end on 31 March 2019. They were David Bower, a member since 2000 and Rod Hastie, a member since 2002. In addition, the appointments of five CAC Worker Members also came to an end on 31 March 2019. They were Paul Gates, a member since 2000, Michael Leahy, a member since 2002, Judy McKnight, a member since 2002, Keith Sonnet, a member since 2000 and Malcolm Wing, a member since 2005. All were very conscientious and dedicated Members, and I am most grateful to them for their valuable contribution over those periods. I would also like to thank the serving Deputies and Members for their hard work throughout the year.

I am pleased to report that, BEIS started the next recruitment campaign for new Deputies and Members and interviews were undertaken in February and March 2019. I hope that we will have confirmation of new appointments by the time this report is published.

I would like to place on record my appreciation and that of the Deputies and Members for the contribution made by the CAC Secretariat, who, though now small in number, have continued to provide an impressively high level of support for the CAC, ensuring that they have a personal and detailed knowledge of the cases they handle, which enables them to give a professional service to employers, unions, and to all individuals with enquiries. I appreciate that support all the more because it has continued to be a year of change with an increased case load, more changes to the IT system and news that new premises will be required by mid-2021.

Stephen Redmond
Chair

MEMBERSHIP OF THE CENTRAL ARBITRATION COMMITTEE AT 31 MARCH 2019

Chair

Stephen Redmond

Deputy Chairs

Barry Clarke	Regional Employment Judge for Wales
Professor Kenneth Miller	Emeritus Professor of Employment Law, University of Strathclyde
Professor Gillian Morris	Honorary Professor, University College London in the Faculty of Laws, Barrister, Arbitrator & Mediator
Rohan Pirani	Regional Employment Judge for South West England
Her Honour Judge Stacey	Circuit Judge, Visiting Judge of the Employment Appeal Tribunal, and Deputy Judge of the High Court
James Tayler	Employment Judge
Charles Wynn-Evans	Partner, Dechert LLP; Fee-Paid Employment Judge

Members with experience as representatives of employers

Len Aspell	Chair and Trustee, HSBC Group UK Healthcare Trust, Formerly Group Head of Employee Relations, HSBC Group
David Bower	HR Consultant & Former Group Personnel Director, Rover Group Ltd
Mary Canavan	Director of Business Support, Shepherds Bush Housing Group
Mike Cann	Former National Negotiator, Employers' Organisation for Local Government
Nicholas Caton	Former Vice President, Human Resources, Ford of Europe, Ford Motor Company
Maureen Chambers	HR Consultant
David Crowe	Human Resources Consultant
Derek Devereux	HR Coach and Mentor, Former HR Director of Constellation Europe and Matthew Clark
Simon Faiers	Director, Energypeople Former Head of Human Resources, Eastern Group plc
Rod Hastie	Human Resources & Copyright Consultant
Susan Jordan	HR Consultant/NED Former VPHR/DHL
Tom Keeney	Employee Relations Director, BT Group
Rob Lummis	Head of Employee Experiences, Jaguar Land Rover
Alistair Paton	Head of Industrial Relations, Financial Services Industry
Michael Regan	Formerly Senior Vice President of Human Resources, AB Electrolux
Roger Roberts	Employee Relations Consultant, Former Employee Relations Director, Tesco Plc
Maureen Shaw	Former Director of Personnel Services, University of Aberdeen
Michael Shepherd	Human Resource Consultant, Former Sector HR Director, Rexam PLC, Employment Tribunal Member

Members with experience as representatives of workers

Virginia Branney	Employment Relations Consultant & Mediator
Gail Cartmail	Assistant General Secretary, Unite the Union
David Coats	Director, Workmatters Consulting, Visiting Professor, Centre for Sustainable Work and Employment Futures, University of Leicester
Paul Gates OBE	Former Deputy General Secretary, Community
Michael J Leahy OBE	Former General Secretary, Community
Judy McKnight CBE	Former General Secretary, Napo
Lesley Mercer	Former Director of Employment Relations & Union Services, CSP
Paul Noon OBE	Former General Secretary, Prospect
Matt Smith OBE DL	Former Scottish Secretary, UNISON
Keith Sonnet	Former Deputy General Secretary, UNISON
Paul Talbot	Former Community Media and Government Affairs
Gerry Veart	Former National Secretary, GMB
Fiona Wilson	Former Head of Research and Economics, Usdaw
Malcolm Wing	Former UNISON National Secretary, (Negotiations & Services Groups)

CHIEF EXECUTIVE'S REPORT

Performance

As the Chair has recorded, there was an increase in the number of applications submitted to the CAC. As history shows, the level of applications to the CAC has been subject to a degree of volatility. However, I am satisfied that we have been able to maintain our performance and as the Chair recorded we were also able to clear more actual cases over the year. The additional workload was handled by our existing staff complement and without any significant increase in expenditure.

We continue to monitor our own performance by way of a users' survey; all the parties to our cases, whether they are employers, trade unions or individual employees, are invited to submit their views, anonymously, once a case has closed. For cases that concluded in 2018-19, 100% of respondents stated that their overall level of satisfaction with the way the CAC handled their case was satisfactory or better. Looking briefly at the specific elements of the survey, most users found our written information useful, our staff helpful, and the arrangements for, and conduct of, hearings satisfactory. In addition 83% of respondents said that the way their case was handled encouraged them to consider a voluntary agreement; this represents a slight decrease on the previous year's figure. We are pleased to continue to receive such positive feedback.

For many years, we have measured and published the elapsed time for a recognition case, the period between the date an application is received and the date of issue of a declaration of recognition (or non-recognition as the case may be). For 2018-19 the average was 19 weeks compared with last year's figure of 24 weeks. Within this average, the figure for a case involving a ballot was 28 weeks, compared with 33 last year, and for a case in which there was a declaration of recognition without a ballot, the figure was 16 weeks, which is slightly higher than the figure of 12 weeks for last year. It would be misleading to suggest that these figures for 2018-19 were evidence of an obvious trend but it does perhaps show that the recognition provisions, despite their complexity, do not necessarily have to lead to long drawn out legal proceedings.

We have long held the view that members of staff should be readily available to answer telephone enquiries and during the year we received 244 compared with 219 last year, relating to all our jurisdictions but primarily trade union recognition. We also answered 132 written or e-mail enquiries, which was much higher than the figure of 83 for last year.

Development

Knowledge-sharing continues to be a priority and we devote time and resources to maintaining an internal database and an external website.

Our website on the gov.uk platform, has been in operation for just under 5 years and we continue to update it expeditiously and to review the information

we make publicly available. We welcome feedback from users on any aspect of the site and are more than willing to take any necessary steps to improve accessibility. In answer to a direct question in the users' survey, 56% of respondents said that they found the usefulness of the site satisfactory or better with 44% of respondents not using the site. This is a bit misleading as all applications are downloaded from our site so I suspect the figure is lower. However we will continue to ensure that the site is seen as the first port of call for users, and perhaps potential users, to obtain information and guidance.

Our internal database was re-vamped in 2017-18, with further changes and additional database information added throughout the last year to ensure we are able to generate statistics and case information easily. In addition, the new internal knowledge bank website was completed in 2018-19 and now holds more information in one place. Staff maintain it to assist panels and case managers in undertaking their work. I am particularly grateful to the project team in the CAC for undertaking the work in the last year to ensure the website was completed.

Stakeholders

We have continued to keep in touch with major stakeholders, such as BEIS (the Department for Business Energy and Industrial Strategy) as well as some of the trade unions that most frequently submit applications. For the most part this is by way of informal contact as there have been no issues raised over the CAC's operational performance in the past year.

Public interest

The CAC is committed to openness of information on its activities. The website provides a wide range of information and we update it regularly. We continue to publish all CAC decisions, within a short period after they have been issued to the parties concerned, and have made available decisions of a more historic interest, in electronic form. We maintain a library of decisions from the CAC and its predecessor bodies, dating back to the Industrial Court in 1919, which members of the public are welcome to consult by appointment.

The CAC remains ready to honour its responsibilities under the Freedom of Information Act and, in the past year, received seven requests under that provision. All were answered within the prescribed timescale by ACAS on our behalf.

Administration and accountability

CAC Costs

CAC expenditure in 2018-19 was slightly higher than in 2017-18. The number of applications increased and as already mentioned we cleared

more cases and undertook additional work including adapting to new IT systems, developing the new internal website and expanding our database with the same number of staff. One member of staff moved to ACAS on temporary promotion in October 2018 and an apprentice was appointed in January 2019. A summary of the CAC's expenditure is given in Appendix 2.

Governance

The CAC's Secretariat and other resources are provided by Acas, and the CAC complies with Acas's corporate governance requirements. The relationship with Acas is set out in a Memorandum of Understanding, which was updated into a 'framework document' to include our relationship with BEIS and as a result of a recommendation from the BEIS 'Tailored Review' last year. Although those who work for the CAC are Acas members of staff, the CAC, because it is operationally distinct from Acas, has always secured separately IIP status. As mentioned in previous Annual Reports, we obtained Investors in People Silver Accreditation in March 2017 for the next three years. A yearly review was undertaken by the IIP Assessor in November 2018 with positive feedback for the second year.

Equality

The CAC has a responsibility to conduct its affairs fully in accordance with the principles of fair and equitable treatment for its members, staff and users. In providing services, we ensure that our policies and practices do not discriminate against any individual or group and, in particular, that we communicate information in a way that meets users' needs. In view of the fact that the CAC is resourced by Acas, the CAC is covered by the Acas Equality and Diversity Policy and aligns itself with Acas's published equality objectives. Those documents are available on the Acas website (acas.org.uk).

James Jacob
Chief Executive

THE CAC'S CASELOAD IN 2018-19

Trade Union Recognition

In the year ending 31 March 2018, the CAC received 56 applications for trade union recognition under Part I of the Schedule[1]. This compares with 35 in the previous year and 51 two years ago. There were no applications under Parts II to VI of the Schedule.

From the CAC's perspective, there are no obvious reasons for the increase and, as we have commented on many previous occasions, the number of applications for trade union recognition has never been constant. We will, as always, describe some of the characteristics of the applications in the expectation that this may, at least, generate some discussion.

One yardstick we have used in the past is the size of the employers involved in applications for recognition. The proportion of applications involving employers of fewer than 200 workers was 29%; this compares with last year's figure of 48% and 2015-16's figure of 53%. Overall, the employer size ranged from 38 workers to over 57,000, the latter figure being attributable to the case with Boots Management Services Ltd. It would be meaningless to calculate an average figure for the employer size but the range shows that CAC applications cover a very wide span of employment sectors. The average size of a bargaining unit was 281 workers, an increase on last year's figure of 103 and higher than the 2016-17 figure of 114 and the 2015-16 figure of 100. The average size of bargaining units has also always been volatile, in the past year ranging from six to 6890 workers. The proportion of applications involving a bargaining unit of 100 workers or fewer was 63%, a decrease from 74% for 2017-18 and 71% for 2016-17. The figures appear contradictory due to the size of the bargaining units in three cases, from 1535 to 6890 workers. As a result, there has been an increase in the size of the bargaining unit and size of employer compared to previous years. The manufacturing, transport and communication sectors no longer continue to account for the majority of applications and taken together represented 48% of the applications compared with 38% in 2017-18 and despite the increase, the majority of cases received were from a wider range of sectors. Applications were received from 14 different trade unions compared with 13 in the previous year.

In 2018-19, 37 applications were subject to a decision as to whether they should be accepted, the first stage in the statutory process, and, of

1Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, inserted by the Employment Relations Act 1999 and amended by the Employment Relations Act 2004

those, 29 were accepted and eight were not. The proportion of applications accepted, at 78%, was lower than 87% for last year and the historical average of 82%. In terms of the eight cases not accepted, in one case, the panel had to nullify a previously accepted decision as the union had not completed the process to obtain a certificate of independence. In a further four cases, the reason for non-acceptance was that there were already existing agreements covering the bargaining units. In three cases, the applications were not accepted as there was insufficient evidence to show that a majority of workers in the bargaining units would be likely to favour recognition of the union. Sixteen applications were withdrawn at this stage, six for the reason that the parties had reached a voluntary recognition agreement. Two withdrawn applications were later resubmitted as they were premature. One application was withdrawn due to an existing agreement being in place while three applications were withdrawn as the bargaining unit descriptions in the request letters differed from the application forms. There was also one withdrawal as there was no request letter and another withdrawal as they didn't meet the acceptance tests. One application was withdrawn due to a company takeover while the final withdrawn case was due to the employer ceasing trading.

The second stage in the process requires an agreement, or a decision from the CAC, as to an appropriate bargaining unit. In line with the pattern in recent years, in which agreements on an appropriate unit have far exceeded the number of decisions, there were, in 2018-19, 13 agreements and six decisions. That maintained the cumulative position that, from the inception of the statutory process in 2000 to 31 March 2018, some 61% of bargaining units had been agreed by the parties. Six applications were withdrawn at this stage as they had all reached voluntary agreements. Additionally, there were three further withdrawals at the ballot stage, one as a voluntary agreement was reached and two cases where the unions decided that they did not have enough support to proceed.

The next stage in the process is for the CAC to decide if recognition without a ballot should be declared or a ballot held. There were six decisions, in 2018-19, to declare recognition without a ballot, five where a majority of workers in the bargaining unit were union members and one where recognition was declared because of a failure by the employer to provide requisite information for the union to communicate with workers via a Suitable Independent Person (SIP). There were no decisions that a ballot should be held in those circumstances where the majority of workers in the bargaining unit were union members. Since the inception of the trade union recognition provisions in 2000, there have now been 194 cases in which a union has claimed majority membership in the agreed or determined bargaining unit. The CAC has declared recognition without a ballot in 159 (82%) of those cases.

Twelve ballots were held, seven resulting in recognition and five not. The number of ballots resulting in recognition was slightly lower (58%) than the historical average of 63%.The average participation rate in a CAC commissioned ballot decreased to 61% from 72% last year due to low turnouts in four cases. The CAC was not called upon to adjudicate on any new complaints that a party had used an unfair practice during the balloting period. However, the CAC did adjudicate on two complaints carried forward from the last report, by both a union and employer in the same ballot that each had used unfair practices during the balloting period. The panel made a decision that their complaints were unfounded and the ballot decision stood. A decision of the unfair practice in the case, *TUR1/1014 (2017) GMB & M&A Pharmachem Ltd* is reported below. There is a final opportunity at this stage, and before the balloting provisions have been triggered, for the parties to reach a voluntary agreement but there were no requests in the past year.

The final stage in the process is for the parties to agree, or for the CAC to determine, a method of bargaining. As always, the parties come to agreements in the overwhelming majority of cases; the figures for 2018-19 were 12 agreements reached and no decisions. The historical average is that a method of

bargaining has been agreed in 91% of the cases that reach this stage of the process.

There were no new applications under Parts II to VI of the Schedule. There was one Part IV case and one Part VI case carried forward from the previous year and both closed during the reporting year. The Part IV case was closed following a ballot as a result of an application by the employer to end bargaining arrangements and the Part VI case was closed as de-recognition was declared. Both cases are reported below.

TUR1/1069 (2018) GMB & Careline Lifestyles (UK) Ltd

This is the first case where recognition has been declared because of a failure by an employer to provide the requisite information for a union to communicate with workers via a Suitable Independent Person (SIP).

The Schedule provides that, after an application has been accepted, the union can ask the CAC to appoint a SIP to handle communications from the union with workers in the bargaining unit. The employer has a duty to give the CAC the names and home addresses of those workers within 10 working days starting with the day after that on which the employer is informed of the name and date of appointment of the SIP. If the employer fails to do this the CAC may issue a remedial order specifying what the employer should do and within what period. The remedial order must draw the recipient's attention to the fact that, if the order is breached, the CAC may declare the union recognised provided that an appropriate bargaining unit has been agreed or determined.

In this case the case manager informed the employer that Mi-Voice had been appointed as the SIP on 6 November 2018 and that the employer should provide the names and home addresses of the workers by 20 November 2018. As the employer had a history of missed deadlines, the case manager sent the employer a courtesy e-mail to remind it of the deadline on 19 November 2018, together with a copy of the letter of 6 November 2018 for ease of reference, followed by a further courtesy reminder on 20 November 2018, a Tuesday. In response to the second reminder the employer sent an e-mail later that afternoon in which it suggested that it was "getting ridiculous" to expect it to notify 98 employees that had been forced to share their personal data with the CAC and compile the data to send to her "all within 30 minutes!". The employer requested an extension until "next Friday to complete this and I want time to consult with my legal advisors on this".

The panel issued a remedial order on 21 November 2018 requiring the employer to provide the requisite information. The panel noted that the employer's response appeared to be based on the erroneous view that it had received only 30 minutes' notice of their obligations but nevertheless took into account the request for more time in specifying a deadline of 2pm on 26 November 2018 for the information to be provided.

No information or other communication from the employer was received by the deadline. The panel was therefore satisfied that the employer had failed to comply with the remedial order and the case manager notified the parties accordingly on 27 November 2018 and also repeated, as the Schedule requires, what could follow from this. Later on 27 November 2018 the PA of the individual nominated by the employer to deal with the case, sent an e-mail to the case manager which said that the CQC was inspecting one of their homes; that the CQC would be there for the rest of that and the following day; and will "contact you as soon as he is able". The panel noted that the Schedule did not envisage a minimum period elapsing between notification to the parties of a failure to comply with a remedial order nor, in the panel's view, did it envisage further input from the parties at that stage. The panel nevertheless accorded the employer as a matter of courtesy the opportunity to communicate with the case manager in the two working days following the CQC inspection before making its decision. No communication was made.

In its decision declaring recognition the panel noted that the right of a union to communicate with workers in the bargaining unit is of fundamental importance to the

operation of the recognition procedure, as demonstrated by the remedy if an employer fails to comply with the duties whose fulfilment is essential to a union being able to exercise that right. The requirement for the employer's attention to be drawn to the fact that recognition may be awarded if the employer fails to comply with a remedial order means that it cannot come as a surprise.

TUR1/1014 (2017) GMB & M&A Pharmachem Ltd

The decision relates to complaints brought under 27A and B of the Schedule in relation to unfair practice. Under para 27A (2) a party uses an unfair practice if, with a view to influencing the result of the ballot, the party, inter alia, dismisses or threatens to dismiss a worker, subjects a worker to any detriment or uses or attempts to use undue influence on a worker entitled to vote in the ballot. Under para 27B (4) for a complaint to be well founded, the CAC must find that the party complained of used unfair practice; and be satisfied that the use of the practice changes or was likely to change, in the case of the worker entitled to vote in the ballot, his intention to vote or abstain, his intention to vote in a particular way or how he voted. Both parties alleged that unfair practices had taken place. The union complained that the company secretary had acted inappropriately by accusing the union of dishonesty by conveying incorrect information about bonus payments to directors and also implying that jobs would be lost if recognition was granted. The employer accused the union of giving incorrect information on the bonus payments which had upset staff and had acted unlawfully in seeking to misrepresent the management case against recognition. As the balloting process had finished by the time the complaints were lodged with the CAC, the ballot result was put on hold while the panel determined the complaints on written evidence and submissions provided by the parties. Despite the complaints by both sides, the panel found that neither party's complaints were found to meet the threshold of an unfair practice in relation to the legislation and the 2005 statutory code of practice on access and unfair practices during recognition ballots. As a result the ballot decision was given to the parties which resulted in the union being granted recognition and both parties have since agreed a method of collective bargaining. A full decision can be found on our website.

TUR4/006 (2018) Union Bank UK plc & Unite the Union

Part IV applies where an employer or worker seeks to de-recognise a union which was recognised following a ballot under Part 1 of the Schedule. In this case, the employer submitted an application that a secret ballot should be held to determine whether the bargaining arrangements between the employer and union should be ended as there was no longer majority support within the bargaining unit.

In order to satisfy the tests in paragraph 110(1), the employer submitted evidence of ballot results which were conducted by Dechert LLP, a firm with no prior connection to the employer. This ballot showed that a majority of the workers in the bargaining unit were in favour of de-recognition. The application was accepted by the CAC. In the subsequent CAC ballot, the proposal to end the arrangements was supported by a majority of those voting and at least 40% of the workers in the bargaining unit. The panel declared that the bargaining arrangements should cease on 1 May 2018 in accordance with paragraph 121(3) of the Schedule.

TUR6/003 (2017) Parker & Others & Boots Pharmacists Association & Boots Management Services Ltd

Background

In 2013 the panel accepted a Part I application from the Pharmacists' Defence Association Union (PDAU). The panel had rejected the employer's paragraph 35 argument that its agreement with the BPA Boots Pharmacists Association (BPA) rendered the PDAU's application inadmissible. The panel found that the agreement with the BPA provided consultation rights and negotiation rights about facilities for officials of the BPA and the machinery

for consultation but did not include negotiation rights over pay hours and holidays for collective bargaining. The panel decided that the agreement did not meet the requirement of Article 11 of the European Convention on Human Rights in accordance with the Demir Judgement which provides the right of freedom of association, including the right to trade union recognition. The panel also found (in a separate decision) that the PDAU had sufficient support which met the admissibility tests set out in paragraph 36 of the Schedule.

Judicial Reviews

The employer appealed the panel's decision to accept the PDAU's application on the paragraph 35 point. In January 2014 the High Court concluded in an interim decision that the employer had no obligation to recognise the PDAU as the employer's agreement with the BPA could block the PDAU's application under UK law. In July 2014 the PDAU made an application for incompatibility of UK law with the European Convention on Human Rights (this avenue was explored in the High Court's ruling) at which point the government intervened and BEIS was also heard by the High Court on the matter. In September 2014 the High Court ruled that the UK and European laws were compatible and the only recourse for the workers was to seek de-recognition of the BPA. In November 2016 the PDAU appealed the High Court's ruling. The Court of Appeal upheld the panel's decision that Article 11 applied and that in principle, an agreement with a non-independent union that did not cover pay hours and holiday could not block an independent union's application. However, the Court of Appeal also considered that the de-recognition procedure under Part VI of the Schedule, where employees could apply to have the BPA de-recognised, meant the Article 11 rights were not "devoid of substance". In February 2017 the Court of Appeal upheld the High Court's decision and overturned the CAC panel's decision and the PDAU's application for recognition was rejected.

De-recognition application

In July 2017, workers who were PDAU members used the Part VI de-recognition procedure to pave the way for the PDAU to apply again for recognition under another Part I of the Schedule. The same panel was appointed. The Part VI provisions broadly mirror the Part I recognition provisions but there are three parties i.e. the applicants, the employer and the non-independent union, the BPA. For the purposes of deciding the admissibility of the application the panel accepted the employer's definition of the bargaining unit. In November 2017 the panel found that the applicants had demonstrated that there was sufficient support (10% and majority likely to favour) for de-recognition for it to accept the application on the basis that: 14% of the bargaining unit signed an on-line pledge to support de-recognition; the PDAU had 31% membership which was rising and the BPA had 20% membership which was declining and in consideration of the background history of the case, the panel concluded that at least 18% of the workers who had not joined either union would have supported de-recognition.

De-recognition ballot

The panel held a hearing to understand precisely the scope of the bargaining unit and issued a decision in February 2018 stating that it would be registered pharmacists who were not in positions of senior management that would be balloted on the question of whether they wanted the BPA to continue to be recognised. It was also decided that a postal ballot would take place. There were major concerns from the union about the accuracy of the employer's database and ability to provide up to date addresses of workers for them to receive

their ballot papers. There were about 7,000 workers in the bargaining unit and the ballot period was extended to ensure there was every opportunity for workers to contact the CAC and have their ballot papers sent to the correct address. Provisional complaints were lodged dependent on the outcome of the ballot. In June 2018 the BPA was declared de-recognised by the Panel as the ballot results established that 86.6% of those voting were in favour of de-recognition of the BPA which constituted 41.02% of the bargaining unit.

TUR1/1062 (2018) PDAU & Boots Managements Services Ltd

In July 2018 the CAC received a Part I application from the PDAU for which the same panel was appointed. In August 2018 the panel found that the PDAU had met the paragraph 36 tests (10% membership and majority likely to favour recognition of the union) on the basis of the case history already known to the parties and the panel's consideration that the PDAU had maintained its support over its seven year struggle to get to this point. On 1 October 2018 the panel issued a decision determining a different bargaining unit to that proposed by the union by the exclusion of the field based and office support pharmacists and pre-registration pharmacists. The appropriate bargaining unit was:

"All registered and pre-registration store based pharmacists at levels 5, 6 and 7 employed by Boots Management Services Ltd"

On 12 October 2018 the panel issued a decision that found that the relevant bargaining unit was not found invalid within the provisions of the Schedule and therefore the application could continue through the statutory process. As the PDAU did not have a majority membership, a ballot was held. Both parties requested that the ballot timetable be varied and, unusually requested the start date of the ballot be delayed because of the busy Christmas and New Year period where workload and customer/patient numbers are at their highest during the trading year. In light of the joint request by the parties, the panel agreed to a variation of the usual timetable and Kanto Elect was appointed as QIP on 4 February 2019.

The QIP reported to the CAC on 11 March 2019 that out of 6803 workers eligible to vote, three thousand four hundred and ninety five (3495) ballot papers had been returned. Three thousand two hundred and twenty nine (3229) workers, that is 92.4% of those voting, had voted to support the proposal that the union be recognised for the purposes of collective bargaining with the employer. Two hundred and sixty six (266), that is 7.6% of those voting, voted to reject the proposal. The number of votes supporting the proposal as a percentage of the bargaining unit was 47.5% and the PDAU were declared recognised. The parties are currently agreeing a method of collective bargaining.

Disclosure of Information

The CAC also handles complaints by trade unions that an employer has failed to disclose information for the purposes of collective bargaining under section 183 of the Trade Union and Labour Relations (Consolidation) Act 1992.

The number of new complaints received in 2018-19 was nine, a decrease on last year's total of 11. The CAC also continued action on six cases carried forward from the previous year. Thirteen cases were closed which left two outstanding at the end of the year.

Our approach of encouraging the parties towards the voluntary resolution of disclosure complaints is well established and the parties are always offered the chance to meet informally under the CAC's auspices. Even if the CAC does not meet the parties, there is often a discussion between the case manager, the employer and the union to establish if there is any scope for resolving the issue voluntarily. In 2018-19, there was one informal meeting that led to a settlement of the case.

Section 183(2) of the Act provides the CAC with a duty to refer complaints to Acas where we are of the opinion that the complaint is reasonably likely to be settled by conciliation. Acas's involvement can be triggered in a number of ways: the CAC may take the initiative, the parties may suggest it or Acas itself may see if the parties are receptive

particularly if there has been some previous contact. From information of which we are aware, of the 13 cases closed in 2018-19, five were for the reason that the parties reached an agreement through direct negotiations or with assistance from the CAC or Acas.

We have commented in previous Annual Reports that formal decisions on disclosure of information complaints are a rarity and since 1977 there have only been 80 decisions which represents just 11% of complaints submitted to the CAC. In 2018-19 there were no formal decisions apart from a decision on a preliminary point resulting in the case being dismissed. The case is reported as follows:

DI/07/2018 Unite the Union & Rettig UK Ltd

The union submitted a complaint under Section 183 to an alleged failure by the employer to disclose information for collective bargaining. The union explained that the information requested related to information for pay negotiations which included various pay scales/ rates for the shop floor (bargaining group) and a copy of the latest company accounts. However, the employer stated in its response that they did not recognise the union for collective bargaining. The CAC panel stayed proceedings while the parties went to ACAS but the issue was not resolved. As a result a preliminary hearing was held where both oral and written submissions were considered.

A written agreement could not be supplied by either party and there was insufficient evidence to conclude that the union was recognised by the employer. The panel found that the union was not recognised by the employer for collective bargaining about matters, and in relation to descriptions of workers, in respect of which it sought information from the employer under section 181(1) of the Act. The decision can be found on our website.

The Information and Consultation of Employees Regulations 2004

The CAC received two fresh complaints and carried forward action on three complaints from the previous year. The two fresh complaints were brought under Regulation 22 (1). Three complaints were withdrawn which left two live cases at the end of 2018-19.

Requests under Regulation 7

The CAC received no requests from employees under Regulation 7 for the establishment of information and consultation arrangements. Under this process, which has been used 21 times since the Regulations came into effect, employees make the request to the CAC which, in turn, passes on to the employer the number of employees making the request without revealing their names.

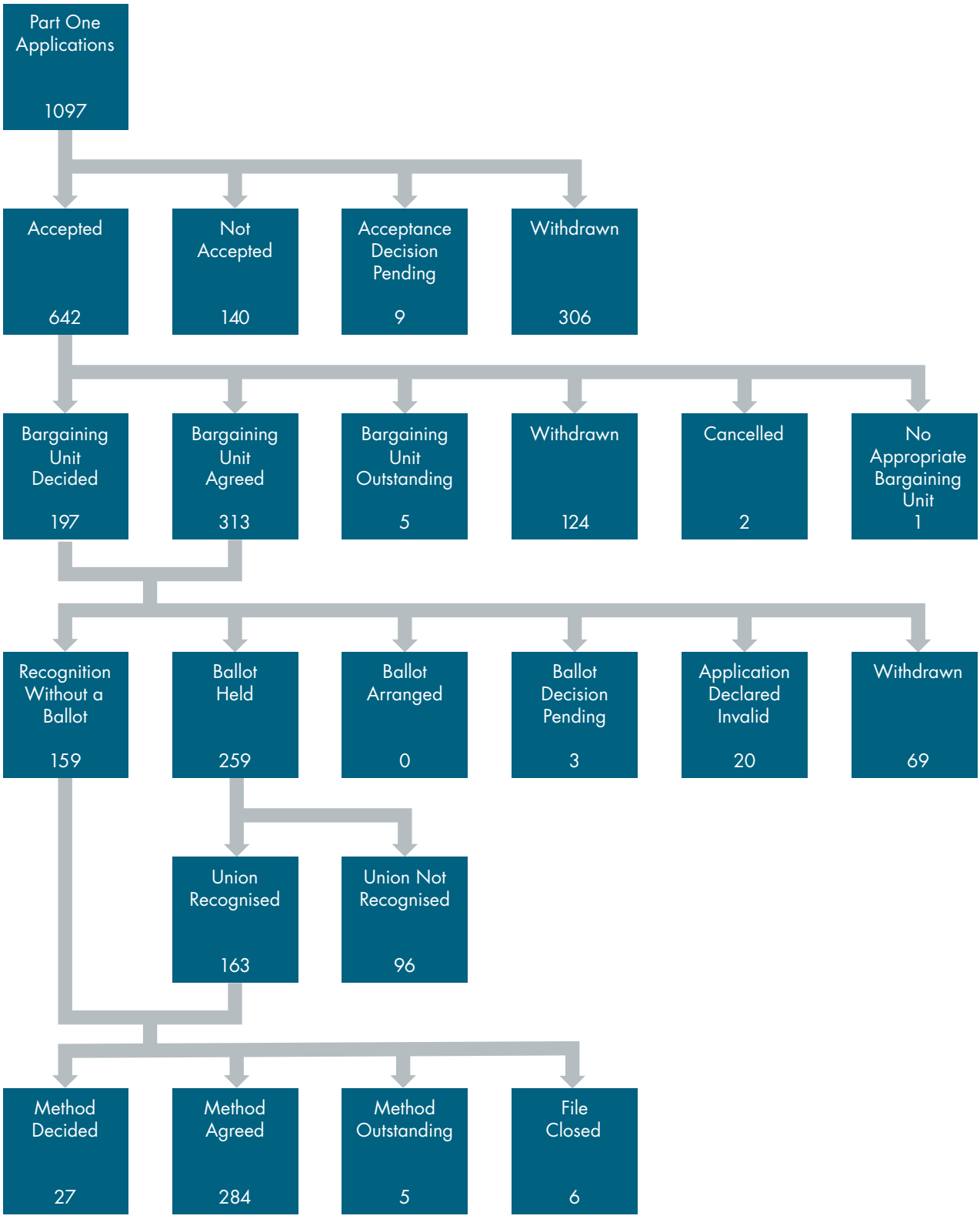
Transnational Information and Consultation of Employees Regulations 1999

There were two new complaints in 2018-19 and no complaints were carried forward from 2017-18. No complaints were closed in 2018-19 which leaves two outstanding cases carried forward.

Other jurisdictions

There were no applications under the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009, the European Cooperative Society (Involvement of Employees) Regulations 2006 or the Companies (Cross-Border Mergers) Regulations 2007.

PROGRESS CHART OF APPLICATIONS FOR RECOGNITION



THE CAC'S AIMS

Our role is to promote fair and efficient arrangements in the workplace, by resolving collective disputes (in England, Scotland and Wales) either by voluntary agreement or, if necessary, through adjudication. The areas of dispute with which the CAC currently deals are:

i. applications for the statutory recognition and derecognition of trade unions;

ii. applications for the disclosure of information for collective bargaining;

iii. applications and complaints under the Information and Consultation Regulations;

iv. disputes over the establishment and operation of European Works Councils;

v. complaints under the employee involvement provisions of regulations enacting legislation relating to European companies, cooperative societies and cross-border mergers.

The CAC and its predecessors have also provided voluntary arbitration in collective disputes. This role has not been used for some years.

Our objectives are:

1. To achieve outcomes which are practicable, lawful, impartial, and where possible voluntary.
2. To give a courteous and helpful service to all who approach us.
3. To provide an efficient service, and to supply assistance and decisions as rapidly as is consistent with good standards of accuracy and thoroughness.
4. To provide good value for money to the taxpayer, through effective corporate governance and internal controls.
5. To develop a CAC secretariat with the skills, knowledge and experience to meet operational objectives, valuing diversity and maintaining future capability.

Our performance measures and targets based on these objectives are:

- Proportion of applications for which notice of receipt is given and responses sought within one working day

  Target: 95% – *achieved 96%.*

- Proportion of users expressing satisfaction with administration and conduct of the case and/or the procedural guidance provided to them

Target: 85% – 100% of *those who responded to the customer survey, which is sent to all users, rated their level of satisfaction as good or very good.*

- Proportion of written enquiries and complaints responded to within three working days

  Target: 90% – The CAC received 132 enquiries in writing or by e-mail and we responded to 99% within this timescale.

- Proportion of Freedom of Information requests replied to within the statutory 20 working days

  There were 7 requests in 2018-19. All related to information which fell within Acas' sphere of responsibility. Replies to all requests were provided within the statutory timescale.

User Satisfaction

If you are asked for your views on any aspect of our service, we would appreciate your co-operation. But if you have comments, whether of satisfaction, complaint or suggestion, please do not wait to be asked. If you are dissatisfied with any aspect of our service, please let us know so that we can put things right. If you cannot resolve your problem with the person who dealt with you originally, please ask to speak to their manager or, if necessary, the Chief Executive who will investigate your complaint. If you wish to complain in writing, please write to:

Central Arbitration Committee
James Jacob
Chief Executive
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

In the event of any complaint, we hope that you will let us try to put things right. But if necessary you can write to your MP, who can tell you how to have your complaint referred to the Parliamentary and Health Service Ombudsman.

APPENDIX I

Analysis of References to the Committee: 1 April 2018 to 31 March 2019

	Brought forward from 31 March 2018	Received between 1 April 2018 and 31 March 2019	References completed or withdrawn	References outstanding at 31 March 2019
Trade Union and Labour Relations (Consolidation) Act 1992:				
VOLUNTARY ARBITRATION s212	–	–	–	–
DISCLOSURE OF INFORMATION s183	6	9	13	2
TRADE UNION RECOGNITION				
Schedule A1 – Part One	17	56	51	22
Schedule A1 – Part Two	–	–	–	–
Schedule A1 – Part Three	–	–	–	–
Schedule A1 – Part Four	1	–	1	–
Schedule A1 – Part Five	–	–	–	–
Schedule A1 – Part Six	1	–	1	–
The Transnational Information and Consultation of Employees Regulations 1999:	0	2	–	2
The European Public Limited-Liability Company (Employee Involvement)(Great Britain) Regulations 2009:	–	–	–	–
The Information and Consultation of Employees Regulations 2004:	3	2	3	2
The European Cooperative Society (Involvement of Employees) Regulations 2006:	–	–	–	–
The Companies (Cross-Border Mergers) Regulations 2007:	–	–	–	–
Total:	**28**	**69**	**69**	**28**

APPENDIX II

CAC Resources and Finance: 1 April 2018 to 31 March 2019

CAC Committee		
Committee Members		40
Of which	Chair and Deputy Chairs	8
	Employer and Worker Members	32
CAC Secretariat		
Secretariat staff		8
Committee fees, salary costs and casework expenses		£474,377
Other Expenditure		
Accommodation and related costs		£96,265
Other costs		£15,862
Total CAC expenditure from 1 April 2018 to 31 March 2019		**£586,504**

CAC Expenditure

The CAC's overall expenditure was higher than in 2017-18, which was attributable to increased expenditure on our accommodation and casework.

Acas, which provides the CAC with its resources, also apportions to the CAC budget the costs of depreciation and shared services. That apportionment is not included in the above figures but will be included in the Acas Annual Report and Accounts for 2018-19.

APPENDIX III

CAC Staff at 31 March 2019 and Contact Details

Chief Executive	James Jacob
Operations Manager	Maverlie Tavares
Case Managers	Nigel Cookson Sharmin Khan Linda Lehan Kate Norgate
Finance Supervisor & Assistant Case Manager	Laura Leaumont
Finance and Case Support Officer	Emma Bentley

Central Arbitration Committee
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Telephone: 0330 109 3610
E Mail: enquiries@cac.gov.uk
Web Site https://www.gov.uk/cac

CENTRAL ARBITRATION COMMITTEE

Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX

T: 0330 109 3610

E: enquiries@cac.gov.uk

https://www.gov.uk/cac