



CENTRAL ARBITRATION COMMITTEE

**ANNUAL REPORT**  
**2019/20**

**INVESTORS IN PEOPLE**<sup>1</sup>  
**We invest in people** Gold

This report of the activities of the Central Arbitration Committee (CAC) for the period 1 April 2019 to 31 March 2020 was sent by the Chair of the CAC to the Chair of Acas on 17 June 2020, and was submitted to the Secretary of State for Business, Energy & Industrial Strategy on 18 June 2020.

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# Chair's Review of the Year



***At the time of you reading this review, the CAC will have been in existence in its current form for 20 years. This is a marvellous achievement and I am proud to be at the helm at this time. Whilst I won't be providing an analysis of how we have performed over these years in this report, I will briefly summarise why we are so required later in this review.***

Firstly, I will record what's taken place over the last year. A general election has taken place which has not led to any radical changes for the organisation. The CAC's caseload has for the second successive year increased but, on this occasion, considerably from the previous year. Applications for trade union recognition rose from 56 to 69. These applications were all made under Part I of Schedule A1 to the 1992 Act and none were made under Parts II to Part VI. Once all other jurisdictions are considered, this rises from 69 to 86. To add to this, 84 cases were completed or withdrawn whereas there were 69 last year. This is another example of the peaks and troughs that occurs with the CAC's caseload as there was a decrease in the caseload in 2017-18 following three successive years of increases, even though it was a modest decrease. What should be noted is that there were no complaints or applications received under the Information and Consultation Regulations for the first time since it came into being on 6 April 2005. It's not clear why this mechanism was not used in this period but with the slight change in the Regulations from 6 April 2020, it is envisaged this will lead to more being submitted, maybe even surpassing its peak in 2009-10; only time will tell.

As mentioned in previous reports most trade union applications are accepted at the first stage in the statutory process. Following this is the bargaining unit stage. Agreements continue to be reached between the parties, with on occasions the need for the CAC to determine these. All unions that reached the stage where they could request recognition without a ballot and had met the statutory requirement to have a majority membership in the bargaining unit, were awarded this. In relation to ballots which took place, there were only six compared with 12 last year and for the third successive year, no decisions were required for a method of collective bargaining.

The CAC always encourages voluntary agreements by providing assistance or by directing the parties to be aided by Acas. In 2019-20, 42 cases were withdrawn with 19 reaching a voluntary agreement. This is a further increase on the last three years and demonstrates that an amicable solution is possible. This does not take away from the

agreements reached by the parties within the statutory process at the bargaining unit stage and method of collecting bargaining, which were not included in this figure.

There were 10 Disclosure of Information complaints received which is a slight increase on last year's figure of 9, but still lower than the 11 received in 2017-18. Of the 11 cases closed in this reporting period none required a decision from the CAC. I am however pleased to report that nine of the parties were able to resolve these complaints through negotiating an agreement. There were seven new cases received for European Works Councils. This is the highest amount in a year since the Transnational Information and Consultation of Employees Regulations 1999 came into force on 15 January 2000.

## Judicial Reviews and Appeals

As mentioned in last year's report there was a judicial review hearing for the case *TUR1/985/2016 IWGB & Rooffoods Ltd*. The hearing took place on 14-15 November 2018 and was dismissed in a judgement handed down on 5 December 2018. The union said it would appeal this and was granted permission to do so. The hearing was scheduled to take place on 7-8 April 2020 but has been adjourned.

The other appeal I mentioned in last year's report was regarding two Part I trade union recognition cases: *TUR1/1026/2017 IWGB & Cordant Security Ltd* and *TUR1/1027/2017 IWGB & University of London*. The union in these cases applied for judicial reviews as both cases were not accepted. The High Court judgement dismissed both cases. The union said it would seek permission to appeal this at the Court of Appeal. This it has done, and it is listed to be heard late in November 2020. We are awaiting confirmation of the date.

There was one appeal outstanding at the Employment Appeal Tribunal (EAT) under the Transnational Information and Consultation of Employees Regulations. I reported on this in last year's annual report and it was in relation to the case *EWC/17 Oracle Corporation UK Ltd*. The appeal was allowed to go to a full hearing

on the grounds of the CAC's failure to interpret Regulations 18A and 19E(2) in accordance with the EWC Directive. The EWC was arguing that both grounds go to the timing of consultations and that it should be able to express an opinion before any decision is made. The full hearing at the EAT took place on 5 April 2019. The EAT upheld the CAC's decision and the appeal was dismissed.

## The Committee and Secretariat

I mentioned earlier that I wanted to briefly give my view on why the CAC is still very much required. The CAC's incarnation was in 1919 and it has appeared in different guises since then, whether it be as the Industrial Court (not to be confused with our sister organisation in Northern Ireland) or the Industrial Arbitration Board as we were named in 1971. The CAC is a specialist body and we are here to adjudicate, arbitrate and facilitate on collective bargaining agreements. In its current form there have not been any requests for us to arbitrate as this is firstly provided by Acas. I can however proudly state that we have been successful in facilitating good industrial relations between unions and employers, leading to a number of voluntary agreements and ending disputes when information is sought by unions allowing the parties to proceed with collective bargaining negotiations. The CAC is well-established and respected in the employment relations sphere and this can be attributed to my predecessor Sir Michael Burton, who did an excellent job in overseeing the establishment of these well-founded practices and procedures leading to my appointment in 2017. Unions, employers and employees still see the benefit in the service we provide, even if we have past the peak for receipts for trade union recognition applications. The fact that they continue to submit applications and complaints to us under the various jurisdictions confirms this.

There have been five Chief Executives prior to my joining who have steered the Secretariat to provide the necessary support to the Chairs, Panel Chairs and the Committee Members. James Jacob was the incumbent Chief Executive when I was appointed to this role. With regret, he retired from this position at the end of

February 2020, having worked in the CAC for over 11 years and the civil service for almost 40 years. For the duration of this time he provided me with sterling support as I became familiar with the nuances for this post. He ensured the smooth running of the CAC and oversaw all tranches for the newly appointed Committee Members from 2016 to the present day. He was instrumental in developing the Secretariat leading to it initially being awarded Investors in People Silver Award. This status has since been elevated to Investors in People Gold Award following reaccreditation in March of this year. I thank James for his hard work and dedication which have been through some testing times.

I would also like to give my thanks to Lesley Mercer, who due to other commitments decided to relinquish her position as a Worker Member in July 2019. She was appointed in 2002 and was very experienced in employment relations. The CAC also had to say farewell to Employer Members Michael Regan and Michael Shepherd and Worker Members Gail Cartmail and Paul Talbot as their appointments ended on 31 July 2019. Michael Regan had been a Committee Member since 2002, whilst Gail Cartmail, Michael Shepherd and Paul Talbot since 2005. Their appointments ended not through choice as the CAC had recommended that their appointments be renewed for another term. All of them have my gratitude for the valuable contributions they have made over the years. Lastly, Employer Member Simon Faiers appointment came to an end on 31 March 2020. He has been a Committee Member since we began in 2000. The work he has provided for us has been priceless, especially as he was always willing to assist us in other matters such as training new Committee Members and participating in assessments on the performance of the Secretariat. His loss from the Committee and that of all of the previously mentioned Committee Members will be missed.

There was however good news on the horizon. I mentioned in the last report interviews had taken place to recruit new Deputies and Members. I am pleased to announce that 29 were appointed. These were six Deputies, 11 Employer Members and 12 Workers Members and their details can be found in this report within the Membership

of the CAC. They have all been inducted and received training on the various legislations. I am very pleased with these appointments and hope they all find their time with the CAC fulfilling.

## Our stakeholders

I would like to put on record the support and assistance the CAC receives from our stakeholders: CBI, Acas, TUC and BEIS (the Department for Business, Energy and Industrial Strategy).

## Conclusion

It would be amiss for me to end my review without mentioning what took place towards the end of this reporting year, namely the global coronavirus pandemic. This was a challenging time for all us, which required us to adapt quickly to new ways of working. We were able to achieve this whilst maintaining a professional service. I therefore would like it noted as always, my gratitude to the Deputies and Members who themselves were having to navigate through this difficult time in their other roles. I also extend my thanks to the Secretariat. There was much change for them with the retirement of the Chief Executive, James Jacob and the emergence of the restrictions placed upon us all to counter the spread of Covid-19. The cases received were at times more difficult in nature, but the team has been committed to ensure the correct information has been provided, whether it's to support the panels on cases with their decisions or responding to general enquiries from stakeholders and the general public. Their support has been resolute and did not lessen at a time when we were under so much pressure.

I conclude by looking at the year ahead. It will be interesting to see how the employment sphere changes following this pandemic and what the impact will be on the CAC's caseload if any. We still have the negotiations for Brexit taking place and are awaiting the outcome of this and what this will mean for the European legislation which is part of the CAC's jurisdiction. I will provide an update on this in the next report.

**Stephen Redmond**  
Chair



# Membership Of The Central Arbitration Committee At 31 March 2020

## Chair

Stephen Redmond

## Deputy Chairs

Naeema Choudry

Partner at Eversheds Sutherland and Fee Paid Employment Judge

Barry Clarke

Regional Employment Judge for Wales

Lisa Gettins

Employment Lawyer and Head of Employee Relations at Virgin Media

Sarah Havlin

Solicitor, currently serving as the Certification Officer of Northern Ireland

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

Laura Prince

Barrister at Matrix Chambers and specialist in Employment law

Stuart Robertson

Regional Employment Judge, Employment Tribunals  
(England & Wales), North-East Region

Tariq Sadiq

Barrister specialising in Employment, Public Law and Sports work

James Tayler

Employment Judge

Charles Wynn-Evans

Partner, Dechert LLP; Fee-Paid Employment Judge



## Members with experience as representatives of employers

<b>Len Aspell</b>	Chair and Trustee, HSBC Group UK Healthcare Trust, Formerly Group Head of Employee Relations, HSBC Group
<b>David Cadger</b>	HR Director of Employee Relations at Serco Group
<b>Mary Canavan</b>	Former Director of Business Support, Shepherds Bush Housing Group
<b>Mike Cann</b>	Former National Negotiator, Employers' Organisation for Local Government
<b>Nicholas Caton</b>	Former Vice President, Human Resources, Ford of Europe, Ford Motor Company
<b>Maureen Chambers</b>	HR Consultant
<b>David Crowe</b>	Human Resources Consultant
<b>Derek Devereux</b>	HR Coach and Mentor, Former HR Director of Constellation Europe and Matthew Clark
<b>Simon Faiers</b>	Director, Energypeople Former Head of Human Resources, Eastern Group plc
<b>Mustafa Faruqi</b>	Head of Workplace Relations at Tesco
<b>Richard Fulham</b>	VP Employee and Industrial Relations BP Plc
<b>Kieran Grimshaw</b>	Director of HR Business advisory and employee relations at Equinix; formerly Head of Employee Relations and European HR at easyJet
<b>Elsbeth Hayde</b>	Director of People and Culture at Evolve Housing and Support
<b>Kerry Holden</b>	Non-Executive Director & Executive Human Resources Consultant; Member of the Armed Forces Pay Review Body
<b>Susan Jordan</b>	HR Consultant/NED Former VPHR/DHL
<b>Tom Keeney</b>	Employee Relations Director, BT Group
<b>Alastair Kelly</b>	Assistant Chief Officer for Leicestershire Police
<b>Martin Kirke</b>	HR Consultant, Coach and Non-Executive Director
<b>Rob Lummis</b>	Chair of Trustees, Jaguar Land Rover Trustees Limited, formerly Group Employee Relations Director, Jaguar Land Rover
<b>Sean McIlveen</b>	Honorary Teaching Fellow, Lancaster University Management School and Managing Director at Infinite Perspective Consulting Ltd
<b>William O'Shaughnessy</b>	Managing Director, Northcote Consulting Company Ltd
<b>Alistair Paton</b>	Head of Industrial Relations, Financial Services Industry
<b>Roger Roberts</b>	Employee Relations Consultant, Former Employee Relations Director, Tesco Plc
<b>Maureen Shaw</b>	Former Director of Personnel Services, University of Aberdeen
<b>Gillian Woodcock</b>	Director, People Development & Culture for Civils & Lintels; formerly IR Consultant, Employee Relations ASDA



## Members with experience as representatives of workers

<b>Janice Beards</b>	Former trade union officer, NUT & NAHT. Employment tribunal employee side non-legal member and social security tribunal disability qualified member
<b>Anna Berry</b>	Former Trade Union Official, UNISON and NASUWT, and Non-legal Member at London East Employment Tribunal
<b>Virginia Branney</b>	Employment Relations Consultant & Mediator
<b>Joanna Brown</b>	Former Chief Executive and General Secretary of the Society of Chiropodists and Podiatrists (SCP) and the College of Podiatry (COP), and magistrate in Sussex
<b>Nicholas Childs</b>	Senior Regional Officer for the National Education Union
<b>Michael Clancy</b>	General Secretary and Chief Executive of Prospect
<b>David Coats</b>	Director, Workmatters Consulting, Visiting Professor, Centre for Sustainable Work and Employment Futures, University of Leicester
<b>Steve Gillan</b>	General Secretary of Prison Officers Association; and member of the TUC General Council
<b>Ian Hanson QPM</b>	Retired, previously Chair of Greater Manchester Police Federation, Chair of The Police Treatment Centres & St George's Police Children's Trust
<b>Stephanie Marston</b>	Former trade union official, Prospect; Associate Lecturer, LSBU School of Business
<b>Paul Moloney</b>	Trade Union and Industrial Relations Manager, the Society of Radiographers
<b>Paul Morley</b>	Employment Officer for Lancashire County Council, Unison Representative
<b>Paul Noon OBE</b>	Former General Secretary, Prospect
<b>Hannah Reed</b>	National Officer and Team Leader at Royal College of Nursing (RCN)
<b>Matt Smith OBE DL</b>	Former Scottish Secretary, UNISON
<b>Claire Sullivan</b>	Director of Employment Relation and Union Services at the Chartered Society of Physiotherapy, with a background as a physiotherapist
<b>Gerry Veart</b>	Former National Secretary, GMB
<b>Fiona Wilson</b>	Former Head of Research and Economics, Usdaw

# Chief Executive's Report



## View from the outgoing Chief Executive

### Performance

Over the last two years the number of applications has increased steadily. On this occasion it is the highest recorded increase since 2003-2004. As stated in previous reports the level of applications has been subject to a degree of unpredictability, but I am pleased that we were able to handle these without the increase in the Committee Membership and the Secretariat. This may appear contradictory as we have increased the number of Committee Membership recently, but their appointments took place at the latter end of 2019-20, so they did not have a role in handling these applications. In addition to this we lost five Committee Members, one through resignation and four through their contracts not being renewed so we were in fact working with a reduced capacity. When you also factor in that we cleared more cases this year since 2004-05, this is a remarkable achievement. This has however led to an increase in our expenditure which can be viewed at Appendix 2.

Our users' survey provides valuable feedback on our performance. The survey covers the performance of both the panels considering the applications and the staff. We invite all parties, which are trade unions and employers on our cases, to submit their views anonymously once a case is closed. One area they are asked to provide their level of satisfaction on is with the way in which the CAC handled their case. The overall level was 100% being satisfactory or better. This is a noteworthy achievement considering this is a process which can at times be acrimonious and confrontational. Another area where views are sought is on the encouragement provided for the parties to reach a voluntary agreement. Again, the level of satisfaction was high being 94%. We are very pleased that the service we provide is received positively and highly valued by our customers.

Over the years, we have provided the elapsed, measured time for a recognition case, from the date when an application is received to the date of issue of a declaration of recognition or non-recognition. For 2019-20 the average figure was 18 weeks which is a slight decrease on an average of 19 weeks for 2018-19. Within this average, the figure for a case involving a ballot

was 29 weeks, compared with 28 last year. For a case in which there was a declaration of recognition without a ballot, the figure was 11 weeks, which is much lower than the figure of 16 weeks for last year. It's not surprising that a case involving a ballot would take longer to conclude when it involves the arranging and conducting of the ballot, which includes the parties reaching an agreement on the access arrangements. These intricacies are not required for a declaration of recognition without a ballot.

We ensure that our staff are regularly available to answer both telephone and written enquiries. During this year we received 182 telephone enquiries, which is a substantial reduction on last year's 244. These enquiries covered all jurisdictions, but the majority related to trade union recognition. For written enquiries which include those received by email, we received 154 which is an increase on the last two years which were 132 and 83 respectively.

## Development

We continue to devote much time and resources as a priority in knowledge-sharing. This includes maintaining our internal database and external website.

Our website is on the gov.uk platform and has been in operation for almost six years. We continue to update it expeditiously and to review the information we make publicly available. All feedback is welcome from our users on any aspect of the site and we are more than willing to take any necessary steps to improve its accessibility. In answer to a direct question in the users' survey, it was split with 50% of respondents finding the usefulness of the site as satisfactory or better, whereas the other 50% did not use the site all. This is a bit misleading as all applications are downloaded from our site, so my belief is that the figure for not using it is in fact lower. However, this will not deter us from continuing to ensure that the site is seen as the first port of call for users, and perhaps potential users, to obtain information and guidance.

Staff continue to maintain our internal knowledge bank which has proven to be a useful resource in assisting panels and case managers in undertaking their work. I am sure

our newly appointed Committee Members will find this beneficial too.

My final comment on development is to commend the team on its achievement in being accredited Investors in People Gold Award. We were informed that this is not an easy feat with few organisations attaining this. It was also noted that this was made even more difficult by the fact that we are only small in number. We persevered leading us to strengthen and develop our team working, practices and procedures. This would not have been possible without the cooperation and enthusiasm in the team. I thank you all for the concerted effort you put in which has led to this deserved recognition.

## Stakeholders

We have continued to keep in touch with major stakeholders, such as CBI, TUC, BEIS, and 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.

## 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 we 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 GDPR (the General Data Protection Regulation) and the Freedom of Information Act. In the past year we have received 13 requests under the Freedom of Information Act provision which is an increase from last year's seven. 12 were answered by Acas on our behalf and all 13 were within the prescribed timescale.

## Administration and accountability

### CAC Costs

CAC expenditure in 2019-20 has increased significantly and was a direct consequence to the increased caseload and the appointment of 29 Committee Members. We cleared a higher number of cases and completed the expansion of our database with the same amount of staff. A detailed breakdown of the CAC's caseload is provided in Appendix I and its expenditure 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 as a result of a recommendation from the BEIS "Tailored Review" in 2017. This ensures that as an independent body the CAC receives suitable support and gives assurance to Acas and BEIS that our activities and the resources used are appropriate and compliant with public sector policies. 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 Investors in People (IIP) status. As mentioned in the Chair's Review, we obtained Investors in People Gold Accreditation in March 2020 for the next three years. This is an excellent achievement and all personnel in the Secretariat have worked hard and as a team to achieve this. Very positive feedback was received from the IIP Assessor and yearly reviews will take place to monitor our performance.

### 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](http://acas.org.uk)).

### My departure

You will have read in the Chair's report that I have left my position with the CAC. This was at the end of February 2020 having taken retirement. I worked in the CAC initially as the Operations Manager and was promoted to the Chief Executive post, taking this position full time in April 2016. Prior to this I worked in Acas in various roles including on the helpline, as a conciliator and as a manager to a team of conciliators. I am excited that I can spend my time experiencing new challenges, even if the first one relates to the current pandemic the world finds itself in. I have enjoyed working at the CAC, meeting and interacting with so many different people. Even though a permanent successor has not yet been appointed to my role, my deputy, Maverlie Tavares is currently filling this position and I am certain she will do a great job going forward.

#### James Jacob

Chief Executive

April 2016 - February 2020





# Remarks from the Acting Chief Executive



*I am delighted that the Chair, Stephen Redmond, has given me his support and trust by allowing me this opportunity to fill the Chief Executive post at the CAC, in the interim whilst procedures are being undertaken for a permanent replacement. This allows for a seamless transition for the organisation following the departure of the previous Chief Executive, James Jacob. It comes at a pivotal time where there is anticipated change on the horizon for the CAC, as we all find ourselves in an unprecedented situation due to the coronavirus pandemic.*

Much has already been said earlier in this report by the Chair and James Jacob on what has taken place in the CAC in 2019-20. The Chair has mentioned possible impacts to the CAC's caseload following the change in the threshold for the Information and Consultation Regulations from 6 April 2020 and on what the outcome of the negotiations taking place for Brexit will have on the CAC's European legislation. Whilst I can't predict what will happen on this, I do know that the CAC finds itself in an exciting period having welcomed 29 new Committee Members. They will provide us with a renewed perspective on what is taking place in the employment relations sphere. The Chair, the other Committee Members and the Secretariat all look forward to working with them.

There was also the excellent news that the CAC was accredited with Investors in People Gold status in March 2020 and much thanks is to be given to James Jacob for this. He worked tirelessly with the Secretariat whilst leading the organisation for almost four years, providing the team with ample opportunities to learn and develop their skills which was taken by all. I personally want to thank him for doing this and for the encouragement and support he provided to me.

It will be interesting to see what the impact will be on industrial relations once this pandemic situation is over. I am certain that the CAC will be ready to continue to provide the support and professional service to all our customers and stakeholders.

## **Maverlie Tavares**

Acting Chief Executive  
From March 2020

# The CAC's Caseload in 2019-20



## Trade Union Recognition

In the year ending 31 March 2020, the CAC received 69 applications for trade union recognition under Part I of the Schedule<sup>1</sup>. This compares with 56 in the previous year and 35 two years ago. There were no applications under Parts II to VI of the Schedule.

As mentioned on previous occasions, from the CAC's perspective, there are no obvious reasons for the increase particularly as the number of applications for trade union recognition has never been constant. Described below are some of the characteristics of the applications and we expect that this may cause some discussion.

Firstly, we will measure the size of the employers involved in applications for recognition as we have used this before. The proportion of applications involving employers of fewer than 200 workers was 32%; this is a slight increase on last year's figure of 29% but still less than 2017-18's figure of 48%. Overall, the employer

size ranged from 23 workers to over 57,000, the latter figure being attributed to the case with the Ministry of Defence. As reported in previous reports, it would be meaningless to calculate an average figure for the employer size, but the applications received do cover a wide span of employment sectors. The average size of a bargaining unit was 118 workers, a decrease on last year's figure of 281 but higher than the figure of 103 workers in 2017-18. The average size of bargaining units has also always been volatile, and in the past year it has ranged from two to 1499 workers. The proportion of applications involving a bargaining unit of 100 workers or fewer was 78%, an increase from 63% for 2018-19 and 74% for 2017-18. There continues to be a decline in the number of applications received from the manufacturing, transport and communication sectors. This year they represented 36% compared to 48% of the applications received in 2018-19. This is more in line with the applications received in 2017-18 which was 38%. It demonstrates that most cases

<sup>1</sup> Schedule 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



received were still from a wider range of sectors. There was an increase this year in the number of applications received from different trade unions. This year it was 15 compared to 14 different trade unions last year and 13 in 2017-18.

In 2019-20, 40 applications were subject to a decision as to whether they should be accepted. This is the first stage in the statutory process, and of those, 34 were accepted and six were not. The proportion of applications accepted, at 85% was higher than last year at 78%, and above the historical average of 82%. In the six cases that were not accepted, in one case there was already an existing agreement covering the bargaining unit. In a further four cases there was insufficient evidence to show that a majority of workers in the bargaining units would be likely to favour recognition of the union. In the final case the union was unable to provide evidence that the employer had received a copy of its application. 29 applications were withdrawn at this stage, 12 for the reason that the parties had reached a voluntary recognition agreement. One application was withdrawn and later resubmitted as it was premature. Another application was withdrawn due to an existing agreement being in place, while two applications were withdrawn as the bargaining unit descriptions in the request letters differed from the application forms. Two applications were withdrawn as the bargaining unit descriptions were incorrect in the request letters, but both were later resubmitted. Another one was withdrawn due to the request letter being sent to the wrong employer and was later resubmitted. A further application was withdrawn as the union wanted to reconsider its bargaining unit. Two applications were withdrawn as the unions could not provide evidence that the employer had received their request letters. In another case the union withdrew its application as a copy of it had not been sent to the employer. One application was withdrawn as the union decided it did not want to proceed whilst another was withdrawn due to changes in the workplace. There was one application that was withdrawn whilst negotiations were taking place for a voluntary agreement. One application was withdrawn as the union didn't meet the acceptance tests and finally two applications were withdrawn with no reasons provided.

The second stage in the process is in relation to an appropriate bargaining unit and requires an agreement between the parties, or a decision from the CAC. The pattern continues as in recent years, in which agreements on an appropriate bargaining unit have far exceeded the number of decisions. There were 15 agreements and eight decisions in 2019-20. Since the inception of the statutory process in 2000 to 31 March 2020, 62% of bargaining units have been agreed by the parties. There were eight applications withdrawn at this stage due to voluntary agreements being reached compared to six last year. One application failed the recognition tests following the determination of the bargaining unit. In addition to this there were five withdrawals at the ballot stage. Two were withdrawn as a voluntary agreement was reached, whereas the unions in the other three cases 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 nine decisions in 2019-20, to declare recognition without a ballot. All of these were where a majority of workers in the bargaining unit were union members. Consequently, there were no decisions that a ballot should be held in these circumstances. Since the inception of the trade union recognition provisions in 2000, there have now been 203 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 168 (83%) of those cases.

There were six ballots held, with four resulting in recognition and two not. The number of ballots resulting in recognition was higher (67%) than the historical average of 63%. The average participation rate in a CAC-commissioned ballot increased to 69% compared to 61% in the previous year. The CAC was not required to adjudicate on any new complaints that a party had used an unfair practice during the balloting period. 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. The parties continue to come to an agreement in the overwhelming majority of cases. The figures for 2019-20 were 12 agreements reached with no decisions. The historical average for a method of bargaining being agreed is 92% in the cases that reach this stage of the process.

There were no applications received under Parts II to VI of the Schedule and none were brought forward from 2018-19.

## Disclosure of Information

Complaints are received at the CAC from trade unions in relation to an employer failing to disclose information for the purposes of collective bargaining. This provision is under section 183 of the Trade Union and Labour Relations (Consolidation) Act 1992. The CAC received 10 new complaints and action continued on two complaints carried forward from the previous year. 11 complaints were concluded, none of which required a formal decision. One complaint was outstanding at the end of the year. The pattern for many years has not changed in that the majority of complaints

were resolved through further direct negotiations, with the CAC's assistance or by way of Acas conciliation.

## The Information and Consultation of Employees Regulations 2004

As recorded in the Chair's review, there have been no complaints received under this provision for the first time since the provision came into force on 6 April 2005. The two outstanding complaints carried forward from the previous year were withdrawn.

## Requests under Regulation 7

Under the provision Regulation 7 for the establishment of information and consultation arrangements, the CAC has received two requests from employees. Since the Regulations came into effect, there have been 23 requests. Employees are required to make the request to the CAC which, in turn, is passed on to the employer who is provided with the number of employees making the request without revealing their names.



## The Transnational Information and Consultation of Employees Regulations 1999

Seven new complaints were received in 2019-20 with two carried forward from 2018-19. Six complaints were closed by way of a decision, which leaves three outstanding cases carried forward. One European Works Council (Verizon European Works Council) submitted three of these complaints. These three complaints are reported below, with highlights of the points of wider relevance which arose in each of these cases.

### EWC/22/2019 - Verizon European Works Council and another and The Central Management of the Verizon Group

In this case one issue was whether the Verizon European Works Council ("VEWC") was entitled to legal representation before the CAC paid for by The Central Management of the Verizon Group ("the Employer"). The VEWC claimed that the Employer's refusal to pay for legal representation constituted a breach of the Verizon European Works Council Agreement ("the Charter"), which stated that the "reasonable expenses necessary" for the functioning of the VEWC would be borne by the Employer, and of regulation 19A of TICER, which requires the central management to provide the members of an EWC with the "means required to fulfil their duty to represent collectively the interests of the employees ...." The Employer maintained that the VEWC was not entitled to any expert assistance in relation to complaints before the CAC.

In *Emerson Electric European Works Council and Emerson Electric Europe EWC/13/2015*, the Panel had held that the CAC was not a body where lawyers were required, and the CAC took steps to ensure that an unrepresented party was not disadvantaged. The Panel concluded that failure to pay legal costs as such did not constitute a breach of the Emerson Electric EWC Agreement or of regulation 19A of TICER. In *Emerson* the Employer had said that it would have been willing to fund one or two experts to

assist the Select Committee in the proceedings and had offered to pay the reasonable fees of the solicitor representing the Select Committee in attending the hearing as an expert so the Panel had not been required to make any additional findings about the role of experts.

In *Verizon* the Panel concurred with the view in *Emerson* that the CAC was not a body where lawyers were required and that failure to pay legal costs as such did not breach the Charter or regulation 19A of TICER. However, the Panel said that this did not mean that such a failure could never constitute such a breach. The Panel considered that, as a general principle, the assistance of an expert was "necessary" under the Charter and fell within the "means required" under regulation 19A in relation to proceedings before the CAC. The Panel also considered that the expert was entitled to reasonable payment for acting as such and that the Charter and TICER required the expenses of his or her appointment to be borne by the Employer. The Panel considered that the choice of expert was a matter for the VEWC; that an individual was not debarred from acting as an expert because he or she was legally qualified; and that the VEWC and the expert should be assured at the outset that the "reasonable expenses" incurred as a result of the expert's appointment would be met by the Employer, either on a fixed fee or other basis as agreed. The Panel did not exclude the possibility that there may be circumstances where recourse to the assistance of more than one expert could be justified but did not consider that this was required in this case.

### EWC/23/2019 - Verizon European Works Council and The Central Management of the Verizon Group

In this complaint the Panel was required to consider whether "sufficient information" had been provided by The Central Management of the Verizon Group ("the Employer") about a proposed transformation of the Employer's Accounting and Finance function to enable the Verizon European Works Council ("VEWC") to undertake its role. The first issue for the Panel was whether the test of whether sufficient information had been provided was purely an objective one, as the Employer maintained, or



whether some deference should be paid to the opinions of experienced VEWC members about whether they understood the Employer's decision and the rationale for it. The Panel considered that the VEWC's opinion was material to its considerations but the fact that the VEWC was not satisfied with the information provided was not an overriding factor; rather the Panel was required to look at all the evidence. The Panel examined in detail four areas chosen by the VEWC to exemplify its contention that the information provided by the Employer was insufficient. One question that arose was whether it was sufficient for the Employer to invite the VEWC to address any questions it may have on the implications of Brexit to a specialist team within the Employer. The Panel considered that in general the individual nominated by the Employer to deal with information and consultation of a specific area should answer the VEWC's questions directly and that routinely to refer the VEWC to another individual or department would place an undue burden on its members. However, in the context of a complex area such as Brexit, for which a specialist team within the Employer was responsible, the Panel did not consider it unreasonable for the Employer to invite the VEWC to put specific questions to that team.

The Panel agreed with the VEWC that there was no "bright line" test to determine whether the

information provided by an Employer in any given context is sufficient and that to fulfil its role it must understand a decision and the rationale for that decision. However, this did not mean that the VEWC should feel unable to fulfil its role without having access to the full range of information it considered it would need were it in the shoes of the Employer as decision-maker. Having reviewed the totality of the evidence the Panel concluded that the information provided by the Employer was sufficient in the circumstances to enable the VEWC to carry out its role in the information and consultation process.

### **EWC/26/2020 Verizon European Works Council and The Central Management of the Verizon Group**

In *Verizon European Works Council and The Central Management of the Verizon Group*, EWC/26/2020, the proposed sale by The Central Management of the Verizon Group ("the Employer") of a subsidiary, "Tumblr", to Automatic Inc was announced by a press release prior to any notification to or discussion with the Verizon European Works Council ("VEWC"). The VEWC was provided by the Employer with a slide deck about the sale the day after the press release and a conference call between the parties was held some days later to discuss the matter. The VEWC complained that, as the information and consultation process took



place after a definitive agreement had been reached between the Employer and Automatic Inc, any input on the VEWC's part would have been meaningless. The Employer submitted that confidentiality arrangements incorporated in a Non-Disclosure Agreement ("NDA") and Exclusivity Agreement with Automatic Inc meant that it had been unable to commence the information and consultation process prior to the proposed sale having been announced and that it had informed the VEWC at the earliest time that it could do so. The Employer relied upon regulation 24 of TICER which provides that information need not be disclosed where its nature is such that, according to objective criteria, disclosure would "seriously harm the functioning of, or would be prejudicial to, the undertaking", together with an equivalent provision of Verizon European Works Council Agreement ("the Charter").

The Panel agreed with the Employer that the obligation to inform and consult could not be avoided or restricted merely by a contractual arrangement with a third party and that the circumstances in which that obligation could be limited under regulation 24 and the Charter would be rare. The Panel would not therefore

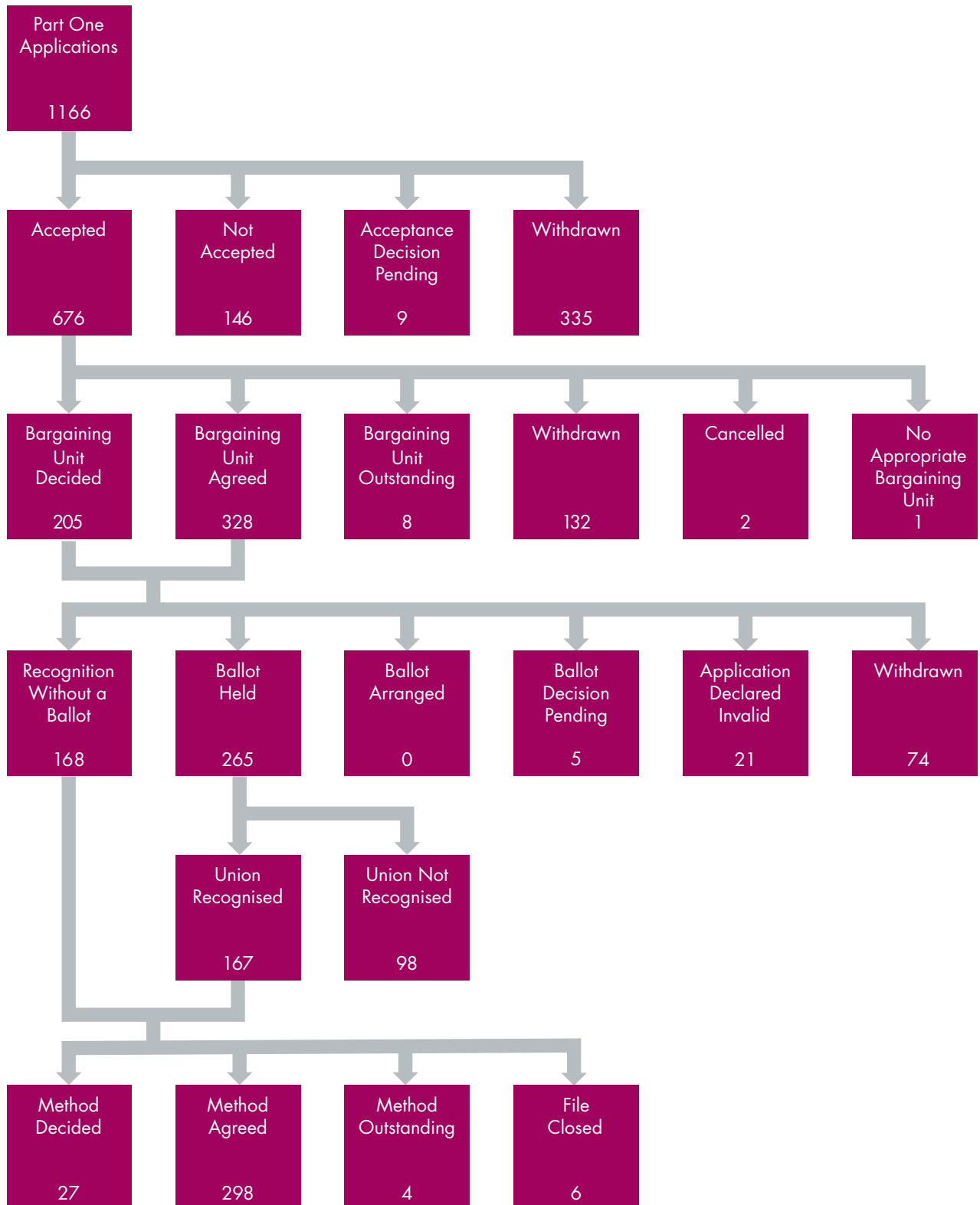
have been prepared to find that limitation was justified merely on the basis of the NDA and Exclusivity Agreement alone. The Panel looked closely at the commercial context of the transaction, including the Employer's fears that Tumblr would be difficult to sell because its profitability challenges and tight restrictions on knowledge of the proposed sale within the Employer itself, and concluded that in this case the requirements of regulation 24 and the Charter had been met. The Panel accepted that regulation 23 of TICER, which provides that it would be a breach of statutory duty for a member of an EWC to disclose information entrusted to him or her in confidence, would not have sufficed to protect the Employer in this case where the mere fact of disclosing the information would have been prejudicial.

### 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 97%*.

- 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 154 enquiries in writing or by e-mail and we responded to 100% within this timescale.*

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

*There were 13 requests in 2019-20. 1 request was responded to by the CAC. 12 requests 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:

Maverlie Tavares  
Acting Chief Executive  
Central Arbitration Committee  
Fleetbank House  
2-6 Salisbury Square  
LONDON  
EC4Y 8AE

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 2019 to 31 March 2020

	Brought forward from 31 March 2019	Received between 1 April 2019 and 31 March 2020	References completed or withdrawn	References outstanding at 31 March 2020
<b>Trade Union and Labour Relations (Consolidation) Act 1992:</b>				
VOLUNTARY ARBITRATION s212	-	-	-	-
DISCLOSURE OF INFORMATION s183	2	10	11	1
TRADE UNION RECOGNITION				
Schedule A1 – Part One	22	69	65	26
Schedule A1 – Part Two	-	-	-	-
Schedule A1 – Part Three	-	-	-	-
Schedule A1 – Part Four	-	-	-	-
Schedule A1 – Part Five	-	-	-	-
Schedule A1 – Part Six	-	-	-	-
<b>The Transnational Information and Consultation of Employees Regulations 1999:</b>	2	7	6	3
<b>The European Public Limited-Liability Company (Employee Involvement)(Great Britain) Regulations 2009:</b>	-	-	-	-
<b>The Information and Consultation of Employees Regulations 2004:</b>	2	-	2	-
<b>The European Cooperative Society (Involvement of Employees) Regulations 2006:</b>	-	-	-	-
<b>The Companies (Cross-Border Mergers) Regulations 2007:</b>	-	-	-	-
<b>Total:</b>	<b>28</b>	<b>86</b>	<b>84</b>	<b>30</b>

# Appendix II

## CAC Resources and Finance: 1 April 2019 to 31 March 2020

<b>CAC Committee</b>		
Committee Members		56
Of which	Chair and Deputy Chairs	13
	Employer and Worker Members	43
<b>CAC Secretariat</b>		
Secretariat staff		7
Committee fees, salary costs and casework expenses		£518,913
<b>Other Expenditure</b>		
Accommodation and related costs		£83,276
Other costs		£30,989
<b>Total CAC expenditure from 1 April 2019 to 31 March 2020</b>		<b>£633,178</b>

## CAC Expenditure

The CAC's overall expenditure was higher than in 2018-19. This was due to the increases in casework and the membership of the Committee.

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 2019-20.

# Appendix III

## CAC Staff at 31 March 2020 and Contact Details

Acting Chief Executive	Maverlie Tavares
Acting Operations Manager	Sharmin Khan
Case Managers	Nigel Cookson 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 8AE

**Telephone:** 0330 109 3610  
**E Mail:** [enquiries@cac.gov.uk](mailto:enquiries@cac.gov.uk)  
**Web Site** <https://www.gov.uk/cac>











**CENTRAL  
ARBITRATION  
COMMITTEE**



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

**T:** 0330 109 3610

**E:** [enquiries@cac.gov.uk](mailto:enquiries@cac.gov.uk)

**<https://www.gov.uk/cac>**