



CENTRAL ARBITRATION COMMITTEE

Annual Report
2020/21



This report of the activities of the Central Arbitration Committee (CAC) for the period 1 April 2020 to 31 March 2021 was sent by the Chair of the CAC to the Chair of Acas on 30 June 2021, and was submitted to the Secretary of State for Business, Energy & Industrial Strategy on 30 June 2021.

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Chair's Review of the Year



Stephen Redmond
Chair

The last 12 months have been challenging with the difficulties faced by all due to the ongoing coronavirus pandemic. To add to this, we entered uncharted waters with Brexit taking place on 1 January 2021. Whilst there is hope on the horizon with the rollout of the vaccine programme to bring back some form of normality, I will focus attention on the activities of the CAC during this period.

The CAC's caseload decreased this year, but it was still higher than we anticipated on the face of a prolonged period of global lockdown. With the enforced closure of so many businesses, the applications for trade union recognition fell from 69 to 50.

All of these applications were made under Part I of Schedule A1 to the 1992 Act with no applications being made under Parts II to Part VI. When including applications made under the other jurisdictions of the CAC, this figure rises from 50 to 68, making a shortfall of only one application in comparison with the number of cases received in the year 2018-2019.

There is, however, a much larger shortfall when compared to 2019-2020 with 18 fewer cases being received. Across all jurisdictions 66 cases were concluded or withdrawn in the last year whereas 84 cases were concluded or withdrawn in the year before.

As in the previous year, the majority of applications were accepted by the CAC. Determining whether an application is accepted is the first stage in the statutory process for trade union recognition. The next stage in the process, in the

absence of any agreement between the parties, is for the Panel to decide the bargaining unit. It is common practice that agreements are reached between the parties as to the appropriate bargaining unit and so the CAC is not required to reach a determination in all cases. In the year ending 31 March 2021 the CAC determined the appropriate bargaining unit on nine occasions. If a union has majority membership in the agreed or determined bargaining unit, it can request the CAC to award recognition without the need for a secret ballot. Of the applications that reached this stage of the statutory process, recognition without a ballot was awarded in 21 cases. Even with the restrictions in place because of the pandemic, five ballots took place in the last year. This compares to six in the previous year. Finally, for the first time since the reporting period 2015-16, four decisions were made in respect of the method of collective bargaining.

One of the important principles of the legislation is that the parties are given the opportunity to negotiate their own agreements. The CAC continues to encourage the parties to do this by either providing assistance direct or by signposting them to the offices of our colleagues in Acas. I am pleased that this continues to be a priority. In this reporting period there were 15 cases where a voluntary agreement was reached. To add to this, in many cases parties were able to reach agreements at different stages during the statutory process on specific matters.

The number of Disclosure of Information complaints fell from 10 to seven this year. No decisions were required for the five cases which were closed in this period. In each case the parties were able to resolve their complaints through negotiation, in the main with the assistance of the CAC Panel Chair. The number of cases received under the Transnational Information and Consultation Regulations 1999 increased once again. The number received was nine, up from the seven received in 2019-20 which was then the highest number ever received since the Regulations came into force in early 2000. No one could have predicted that this would happen this year, particularly following the changes in the regulations brought about by the UK's departure from the European Union. Finally, we received two complaints or applications under the Information and Consultation Regulations and both were closed in this period without the need for a Panel determination.

Judicial Reviews and Appeals

Over the last three years it has been reported to you about the judicial review in the matter of TUR1/985/2016 IWGB & Rooffoods Ltd. This claim was dismissed in a judgment handed down on 5 December 2018. The union's appeal was dismissed by the Court of Appeal on 24 June 2021 and the Court of Appeal also refused to grant it permission to appeal this decision to the Supreme Court.

The other live judicial review 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 Administrative Court dismissed both applications for judicial review in a judgment handed down on 25 March 2019. The union was then successful in its application for permission to appeal to the Court of Appeal. Prior to the hearing, the union withdrew its appeal against the University of London which left the case against Cordant Security Ltd. This was heard on 26 November 2020 and was dismissed in a judgment handed down on 26 February 2021 with the Court finding that the union had not established any violation of the Article 11 rights of its members or of the union itself. The union sought permission from the Court of Appeal to appeal to the Supreme Court, but this was refused on 3 March 2021. It was then open to the union to apply directly to the Supreme Court for permission to appeal but to date we have received no notification that permission has been sought and the 28 days in which it must do so have now expired.

In the case EWC/22(2019) Verizon European Works Council & Other & The Central Management of Verizon Group, the Verizon European Works Council (VEWC) applied to the Employment Appeal Tribunal on 8 September 2020 for a penalty notice against The Central Management of Verizon Group. This was following a decision from the CAC dated 9 October 2019 where the Panel found the VEWC's complaints to be well-founded. The penalty notice was brought in respect of two matters. The first was that the Central Management had failed to properly inform and consult with the VEWC about a proposed reorganisation involving redundancies in eight European countries between 21 December 2018 and 24 January 2019. The second related to the refusal by the Central Management to pay the expenses relating to the appointment of an expert by the VEWC between 18 and 21 June 2019 in order to pursue the complaint to the CAC. The EAT found in VEWC's favour and issued a penalty notice for £40,000. This was the first penalty notice issued by the EAT under the TICE Regulations and was reported as being the highest fine ever imposed in Europe.

The Committee and Secretariat

As I briefly mentioned in last year's report, I am proud to announce that the CAC has reached its 20 year milestone. We didn't celebrate it but hope to do so when there is more semblance of normality in the near future. It is a marvellous accomplishment and you will find statistics in this Report as to what we have achieved during this time. For instance, in those twenty years we received 1179 applications for trade union recognition. These were from 59 different trade unions and covered different employers with the largest having a workforce in excess of

236,000 workers. Of these that were not withdrawn at the very beginning of the statutory process, 729 applications were processed which resulted in trade unions being declared recognised for statutory recognition for collective bargaining in 339 cases. We had more parties that were able to reach voluntary agreements and this totalled 390.

This year there have been three Committee Members whose appointments came to end on 31 March 2021. These are Employer Members David Crowe and Maureen Shaw and Worker Member Gerald Veart. Both David and Maureen had been Committee Members since 2000 and Gerald since 2005. We also had to say farewell to Barry Clarke and James Tayler. Both Barry and James were Deputy Chairs from July 2016 and relinquished their roles in July 2020 having taken new positions. Barry Clarke has taken on the mantle of President of the Employment Tribunals, England and Wales and James Tayler has taken the role of the Senior Circuit Judge of the EAT. They all used their vast knowledge and expertise to determine some very complex issues and I give my thanks and gratitude to them for their commitment and support.

In the Secretariat there have been additions to the Senior Management Team. I would like to welcome Nigel Cookson and Bola Olayinka to their posts as the Senior Case Manager and the Operations Manager respectively. I congratulate them both on their promotion to these positions and I also congratulate Maverlie Tavares on permanently securing the role of the Chief Executive Officer. You will find an introduction to Nigel and Bola later in this report.

Our stakeholders

The CAC's good relationship with our stakeholders namely: CBI, Acas, TUC and BEIS (the Department for Business, Energy and Industrial Strategy) remains unchanged.

Conclusion

I am now in my third year in the privileged position as the Chair of the CAC. The most recently appointed Committee Members have managed to settle into their roles in this most unusual year and this would not have been accomplished so readily if it wasn't for the Deputies and Members already in post who readily shared their expertise, guidance and support. I fully appreciate their professionalism and hard work, even more so during this unprecedented period. Included in this praise are the Secretariat who work tirelessly behind the scenes to ensure the Committee Members and our customers have the best experience.

As we move from the lockdown restrictions placed upon us and the impact Brexit may have on the country, it will be interesting to see what will become of the employment landscape.

Stephen Redmond
Chair



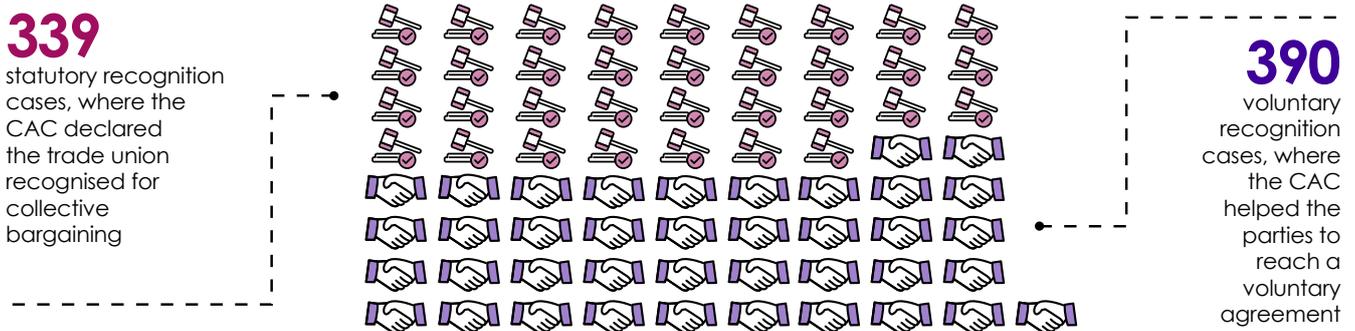
20 YEARS of Trade Union Recognition by the Central Arbitration Committee (CAC)

For the last 20 years, the Central Arbitration Committee has encouraged fair and efficient arrangements in the workplace by resolving collective disputes across Great Britain, either by voluntary agreement or, if necessary, through a legal decision.

During its first 20 years of operation, the CAC received **1179** applications for recognition for collective bargaining ...



... and handled **729** recognition cases



79%

of users across all cases said that the CAC handled their case in a way that encouraged them to try and reach a voluntary agreement

85%



of users rated CAC case handling as 'good' or 'very good'

93%



of users rated the helpfulness of CAC staff as 'good' or 'very good'



88% of users whose case went to a hearing rated its conduct as 'good' or 'very good'

*Figures from CAC caseload statistics covering the period 6 June 2000 - 5 June 2020, and CAC customer satisfaction survey data 2003/4 - 2019/20.



Membership of the Central Arbitration Committee at 31 March 2021



Chair

Stephen Redmond

Deputy Chairs

Naeema Choudry

Partner at Eversheds Sutherland and Fee Paid Employment Judge

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, Employment Tribunals (England & Wales), South West Region

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

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 Cadger	HR Director of Employee Relations at Serco Group
Mary Canavan	Former Human Resources Director
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	Former HR Consultant
David Crowe	Human Resources Consultant
Derek Devereux	HR Coach and Mentor, Former HR Director of Constellation Europe and Matthew Clark
Mustafa Faruqi	Head of Workplace Relations at Tesco
Richard Fulham	VP Employee and Industrial Relations BP Plc
Kieran Grimshaw	Director of HR Business advisory and employee relations at Equinix; formerly Head of Employee Relations and European HR at easyJet
Elsbeth Hayde	Director of People and Culture at Evolve Housing and Support
Kerry Holden	Non-Executive Director & Executive Human Resources Consultant; Member of the Armed Forces Pay Review Body

Susan Jordan	HR Consultant/NED Former VPHR/DHL
Tom Keeney	Employee Relations Director, BT Group
Alastair Kelly	Assistant Chief Officer for Leicestershire Police
Martin Kirke	HR Consultant, Coach and Non-Executive Director
Rob Lummis	Chair of Trustees, Jaguar Land Rover Trustees Limited, formerly Group Employee Relations Director, Jaguar Land Rover
Sean McIlveen	Honorary Teaching Fellow, Lancaster University Management School and Managing Director at Infinite Perspective Consulting Ltd
William O'Shaughnessy	Employee Relations & Wellbeing Director Automobile Association
Alistair Paton	Senior Director, Labour Relations & Change, ASDA
Roger Roberts	Employee Relations Consultant, Former Employee Relations Director, Tesco Plc
Maureen Shaw	Former Director of Personnel Services, University of Aberdeen
Gillian Woodcock	Director, People Development & Culture for Civils & Lintels; formerly IR Consultant, Employee Relations ASDA

Members with experience as representatives of workers

Janice Beards	Former trade union officer, NUT & NAHT. Employment Tribunal employee side non-legal member and social security tribunal disability qualified member
Anna Berry	Former Trade Union Official, UNISON and NASUWT, and Non-legal Member at London East Employment Tribunal
Virginia Branney	Employment Relations Consultant & Mediator
Joanna Brown	Former Chief Executive, the Society of Chiropractors and Podiatrists and the College of Podiatry
Nicholas Childs	Senior Regional Officer for the National Education Union
Michael Clancy	General Secretary and Chief Executive of Prospect
David Coats	Director, Workmatters Consulting, Visiting Professor, Centre for Sustainable Work and Employment Futures, University of Leicester
Steve Gillan	General Secretary of Prison Officers Association; and member of the TUC General Council
Ian Hanson QPM	Retired, previously Chair of Greater Manchester Police Federation, Chair of The Police Treatment Centres & St George's Police Children's Trust
Stephanie Marston	Former trade union official, Prospect; Associate Lecturer, LSBU School of Business
Paul Moloney	National Officer, Pharmacists Defence Association Union

Paul Morley

Financial Assessment Officer at Lancashire County Council,
UNISON Trade Union Representative

Paul Noon OBE

Former General Secretary, Prospect

Hannah Reed

National Officer and Team Leader at Royal College of Nursing (RCN)

Matt Smith OBE DL

Former Scottish Secretary, UNISON

Claire Sullivan

Director of Employment Relation and Union Services at the
Chartered Society of Physiotherapy, with a background
as a physiotherapist

Gerry Veart

Former National Secretary, GMB

Fiona Wilson

Former Head of Research and Economics, Usdaw

Chief Executive's Report



Maverlie Tavares
Chief Executive

Performance

The number of applications received in this reporting period has decreased, which is not surprising in what has been a very challenging year. Having said that, the total was only one short of the number received in 2018-2019, so the downturn was not as drastic as first expected, even allowing for the unique circumstances that we have all faced since the start of 2020.

In any event, it is true to say that the number of applications received each year is subject to a degree of unpredictability. I am however pleased that we were able to maintain service standards during this difficult period, the like of which has not been encountered before in the modern era.

“The respondents’ level of satisfaction was 86% or better with only 14% not using the site at all.”

To ensure we do maintain high standards we continue to seek feedback on the CAC services we provide through our customer survey. Whilst we saw a slight decrease in the number of returns received, it continues to provide us with valuable feedback. The customers we seek feedback from are the trade unions and employers on our cases and 93% of them reported that they were satisfied with the manner in which the CAC handled their case. This is an excellent endorsement of the professionalism provided by the Committee Members and the CAC Secretariat.

This leads me to report on the time elapsed for the completion of a trade union recognition case from the date when an application was received to the date of issue of a declaration of recognition or non-recognition.

For this reporting period the average elapsed time was 26 weeks. Within this figure were cases involving a ballot which averaged at 48 weeks. In addition to this, the average elapsed time for cases in which the union was declared recognised without a ballot, was 22 weeks. The length of time taken in all of these cases shows a significant increase compared to the averages for 2019-20.

This should not come as a surprise when you consider that most employers were legally required to close for significant periods during the year which caused delays in most cases especially when it prevented unions gaining access to the workforce.

As previously, staff continue to be available to answer enquiries received in writing and by telephone covering all jurisdictions. For this year we received 93 telephone enquiries, the majority being in relation to trade union recognition, which was a noteworthy reduction compared to last year's figure of 182. The number of written enquiries which were all received by email was 169. This is a modest increase on last year's receipts of 154.

Development

We regularly assess the knowledge-sharing that we provide in order to improve on this. This comprises of reviewing and maintaining both our internal database and external website.

The CAC's website is on the gov.uk platform and changes were made to it in line with the Accessibility Regulations which came in to being on 23 September 2020 and then to update everyone on the changes which occurred to our European statutes

following the UK's departure from the European Union and the transition period ending on 31 December 2020. As part of the customer survey we issue to the parties, they were asked a question on the usefulness of the website. The respondents' level of satisfaction was 86% or better with only 14% not using the site at all. We are pleased with these results and will continue to encourage potential users to obtain information and guidance from this as their first port of call.

Our internal knowledge bank is maintained by staff and is recognised for its usefulness as a resource in assisting panels and case managers whilst undertaking their work.

Stakeholders

Throughout this period, we have continued to keep in touch with our major stakeholders: BEIS, CBI, TUC. This has been achieved 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. This is primarily achieved by the information provided on our website, which is updated regularly. All CAC decisions are published within a short period after they have been issued to the parties concerned. Decisions of a more historic interest have also been made available in electronic form. We also maintain a library of decisions from the CAC and its predecessor bodies, dating back to the Industrial Court in 1919. These are available to members of the public by appointment.

The CAC will continue 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 20 requests under the Freedom of Information Act provision which is an increase from last year's total of 13. Of these, 18 were answered by Acas on our behalf and all 20 were processed within the prescribed timescale.

Administration and accountability

CAC Costs

CAC expenditure in 2020-21 has decreased substantially and this is directly attributed to the changes in our work practices due to the ongoing coronavirus pandemic. Hearings and informal meetings all took place online meaning the associated costs were significantly lower. You can see the breakdown of the CAC's caseload in Appendix I and our 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 to include our relationship with BEIS as a result of a recommendation arising from the BEIS "Tailored Review" in 2017. This is refreshed periodically and ensures that, as an independent body, the CAC receives suitable support. It gives assurance to Acas and BEIS that our activities and the resources used are appropriate and compliant with public sector policies.

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).

Secretariat

As an aside to the usual reporting, I would like to comment on the change in the Senior Management Team. This has been mentioned in the Chair's Review of the Year, but I felt it needed to be stated once more. Nigel Cookson has taken the role of the Senior Case Manager and Bola Olayinka has replaced me as the Operations Manager. I'd like to congratulate them both on their achievements and look forward to working with them in their new positions. I would also like to thank the Secretariat for their hard work through this unprecedented year. Without their steadfast resolve the CAC would not have been able to provide its continued highly praised service.

Maverlie Tavares | Chief Executive

Remarks from the Senior Case Manager



Nigel Cookson
Senior Case Manager

Whilst it is only six months since my appointment as Senior Case Manager, initially on a temporary basis, this year will be my 19th year at the CAC so whilst I am relatively new to this particular role, I am no stranger to its work.

I hope to use this experience to maintain the CAC's position as an organisation respected by both sides of industry and one that is renowned for its hard work and impartiality. Before the CAC I was at the Employment Appeal Tribunal for a number of years and worked under a succession of Presidents, starting with Sir John Mummery. It was Sir John who inspired my interest in Employment Law and this interest continues to this day.

“The past year has been a test for everyone.”

I look forward to working with Maverlie and Bola to ensure that the CAC has the skills and ability to continue to deliver a service of which we are proud.

The past year has been a test for everyone and the CAC has been able to continue to meet its objectives, due in the main, to it having been at the forefront of flexible working. This meant that we already had processes for remote working in place and so could continue our service without interruption when the order to close offices was issued.

Now that life is slowly returning to normal, we will look at what lessons we have learnt over the past year, such as the impact of virtual hearings on the speed in which cases are processed and, going forward, will adopt those that benefit our users.

Finally, I would like to thank my colleagues at the CAC for their continued support both since I have taken on the mantle of Senior Case Manager and before. Without their hard work and endeavour, the CAC would not be the place it is today.

Nigel Cookson | Senior Case Manager

Remarks from the Operations Manager



Bola Olayinka
Operations Manager

I am delighted to have been successful in becoming the new Operations Manager for the CAC. Before the CAC, I worked primarily in the investigations field, beginning my career in a criminal law firm for two years as a police station accredited paralegal, meaning I could advise those arrested and detained by the police. I then moved on to the Association of Chartered Certified Accountants for 18 months, then the Independent Office for Police Conduct for six years. I am a big advocate for learning, and I seize any opportunity to learn, which is reflected in my educational background. I have a Law degree and a Masters in International Law and Criminal Justice and a Masters in Criminal Law and Criminal Justice.

In addition, I also have professional qualifications in Leadership and Management.

Combining my work and educational background, they have provided me with various transferrable skills to this role. One of the primary skills I am bringing to the CAC is delivering work at pace, as like my previous roles, when there is an urgent task at hand, usually this must be completed within a tight legal deadline. I have learnt that the same applies here at the CAC, that the skills I have developed from managing competing deadlines are also needed to ensure the delivery of the operational work of the CAC.

I began my role as the Operations Manager in March 2021, and this was during the work from home directive due to the COVID-19 pandemic.

I was nervous starting this new role remotely; however, the CAC Secretariat has been supportive and helped ease me into my role. There is much to learn as some of the areas are new to me, but I know I have the capabilities and the support to become the Operations Manager the CAC needs.

Looking at the future and as we ease out of the pandemic, I look forward to growing with the CAC and seeing the changes which will come about. I have great faith in the Secretariat and the work that the CAC does and know it will continue to grow from strength to strength.

Bola Olayinka | Operations Manager

The CAC's Caseload in 2020-21

Trade Union Recognition

In the year ending 31 March 2021, the CAC received 50 applications for trade union recognition under Part I of the Schedule.¹ This compares with 69 in the previous year and 56 two years ago. There were no applications under Parts II to VI of the Schedule.

In the past, the CAC has attempted to explain the characteristics of the applications received and to draw attention to any trends. The only conclusion that can be drawn thus far is that there is no established pattern and that the caseload for trade union recognition continues to vary widely.

If we look at the size of the employer in Part I recognition cases, 40% of our cases involved employers with fewer than 200 workers compared with last year's figure of 32% and 29% in 2018-19. Overall the size of the employer ranged from 21 to 187, 318 with the latter figure being Wipro Limited. The average size of a bargaining unit was 139, which is an increase compared to last year's figure of 118 but not as high as in 2018-19 when the average size was 281. The proportion of applications involving a bargaining unit of 100 workers or fewer was 64% which is a decrease on last year's figure of 78% but still higher than the 63% in 2018-19.

The average size of bargaining units has also always been subject to fluctuation, and in the past year it has ranged from five to 2423 workers. There continues to be a decline in the proportion of applications received from the manufacturing, transport and communications sectors. This year they accounted for 26% of the applications received, which is much lower than last year's figure of 36% and 48% in 2018-19.

¹ 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

In 2020-21, 41 applications were subject to a formal decision as to whether they should be accepted, this being the first stage in the statutory process. Thirty-six were accepted and five were not. The proportion of applications accepted was 88%, a small increase on last year's figure of 85%. In the five cases that were not accepted, two already had existing agreements covering some of the workers in the proposed bargaining unit. In another case, the request letter to the employer proposed a different bargaining unit compared to the one stated on the submitted application form. In a further case, the union relied on an earlier request letter to the employer rather than its most recent one. In response to the latest request, the employer had agreed to enter into negotiations. The statutory time frame for negotiations had not expired before the union submitted its application meaning the application to the CAC was premature. In the final case that was not accepted, the union did not provide sufficient evidence to demonstrate that a majority of workers in the bargaining unit would be likely to favour recognition of the union. Fourteen applications were withdrawn at the acceptance stage. Of these, one formal request for recognition was not served on the correct employer; in a further three cases the union decided it wanted to change, redefine or review its proposed bargaining unit and would resubmit an application. In another two, the proposed bargaining unit was incorrect. In another case, the employer did not employ at least 21 workers which is a requirement under paragraph 7 of the Schedule for an application brought to the CAC. In two more cases, the applications were withdrawn as the unions concerned believed that they could reach a voluntary agreement with the employers. Voluntary agreements were reached in the remaining five cases.

The next stage in the statutory process requires an agreement between the parties or a decision by the CAC on the appropriate bargaining unit. As in previous years, the number of agreements for an appropriate bargaining unit have continued to exceed the number of cases in which it has been necessary to make a determination. It is to be noted that in the period since the inception of the statutory process back in 2000 to 31 March 2021, the proportion of bargaining units that have been agreed by the parties stands at 62%. This year there were 23 agreements and nine cases requiring decisions. Four applications were withdrawn at this stage due to voluntary agreements being reached. This was a slight decrease from last year's total of eight. If a bargaining unit is changed from that which was proposed by the union, whether by agreement or decision, the CAC is required to decide if the application remains valid. There were four decisions relating to this and an additional case was withdrawn at this stage as a voluntary agreement was reached between the parties. Another case was withdrawn following agreement on a changed bargaining unit as a voluntary agreement was reached.

The third stage in the process is for the CAC to decide if a union should be awarded recognition without a ballot or whether a ballot should be held. In 2020-21 there were 21 decisions where recognition without a ballot was declared. Since the statutory recognition provisions were introduced in 2000, there have been 224 cases in which a union has claimed majority membership in the agreed or determined bargaining unit and the CAC has declared recognition without a ballot in 189 (84%) of these cases.



There is a final opportunity at this stage, before the balloting provisions have been triggered, for the parties to reach a voluntary agreement but there were no requests at this point in the past year. Ballots were held in a further five cases in which a union did not have majority membership. Of these ballots, which was only one less from the previous year, three were in favour of recognition and two against. The number of ballots resulting in recognition remains at 67% which is higher than the historical average of 63%. The average participation rate in a CAC-commissioned ballot increased to 73% compared to 69% in the previous year. The CAC was required to adjudicate on three complaints that a party had used an unfair practice during the balloting period, of which one was upheld, and an Order was made.

The final stage in the process is for the parties to agree, or for the CAC to determine, a method of collective bargaining. As in previous years, the parties continue to come to an agreement in the overwhelming majority of cases. The figures for 2020-21 were 13 agreements reached and four decisions were needed. The historical average for a method of collective bargaining being agreed is 91% of 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 2019-20.

Disclosure of Information

The CAC received seven new complaints 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. Action continued on one carried forward from the previous year. Five complaints were concluded with none requiring a formal decision. Three complaints were outstanding at the end of the year. As in previous years, 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

There were two complaints received under these Regulations and both were withdrawn. No complaints were brought forward from the previous year.

Requests under Regulation 7

Under the provisions of Regulation 7 employees have the option to make the request to negotiate an agreement in respect of information and consultation on an anonymous basis via the CAC, rather than making the request directly to the employer. The CAC will then, having obtained the necessary information from the employer, confirm the number of employees that have made the request without revealing their names. The CAC has received six such requests from employees this year. Since the Regulations came into effect, there have been a total of 29 requests made under this provision.

The Transnational Information and Consultation of Employees Regulations 1999

Nine new complaints were received in 2020-21 with three carried forward from 2019-20. Of these, five complaints were closed by way of a decision, whilst four were withdrawn. This leaves two outstanding cases being carried forward. The complaints were received from an assortment of complainants with two being reported below.

These reports for the two complaints highlight the points of wider relevance which can arise in these cases.

EWC/29/2020 HP Inc European Works Council & The Central Management of HP Inc

This was a complaint made under regulation 21 of the Transnational Information and Consultation of Employees Regulations 1999 (as amended) (TICER), in which the HP Inc European Works Council (EWC) alleged that the Central Management of HP Inc had failed to inform and consult in accordance with regulation 18A and to hold a valid exceptional information and consultation meeting within paragraph 8 of the Subsidiary Requirements set out in the schedule to TICER (the SRs).

The context was a proposal in April 2020 to implement up to 350 job cuts within the European Union/European Economic Area during the employer's financial year ending 31 October 2020. The employer accepted that these amounted to exceptional circumstances affecting the employees' interests to a considerable extent, triggering paragraph 8 of the SRs.

The issue for the panel was whether the employer, in the circumstances of the case, gave sufficient information to satisfy regulation 18A of TICER about its proposal to make the job cuts. The employer conceded that if it did not, the exceptional meeting that was held on 7 May 2020 did not satisfy paragraph 8 of the SRs.

The EWC contended that the information provided was insufficient to enable it to undertake a detailed assessment of possible impact or for consultation to take place allowing the EWC to express an opinion based on that information.

The case required a decision of fact by the panel whether, in all the circumstances, the information which the employer provided was sufficient to enable the EWC to undertake detailed assessment and for consultation to take place, as referred to in regulation 18B(3).

The panel were referred to previous decisions of the CAC on information and consultation in British Council (2) [EWC/7/2012], Oracle [EWC/17/2017], Vesuvius (1) [EWC/20/2019] and Verizon (2) [EWC/23/2019].

Allowing that previous decisions of the CAC are guidance only and do not bind panels in subsequent cases, the panel applied the following principles:

- A in reaching its decision of fact whether the information provided, and the consultation, was sufficient within regulations 18A(3) and (5), the panel should consider the overall pattern or flow of communication between the parties. However, that overall flow of communication must concern the proposals in question, rather than generally;
- B the extent and quality of the employer's communications about other matters was irrelevant as to whether it had satisfied regulation 18A and paragraph 8 about these proposals;
- C the wording of paragraph 8(3), stipulating that the information and consultation meeting shall take place on the basis of the report provided by management, demonstrated the importance of the contents of the report in determining the question of compliance with regulation 18A and schedule 8;
- D although the employer was not required to answer each of the EWC's questions asked during the course of communication between the parties, in assessing the overall flow of communication, the panel should take into account what was asked and how it was answered;
- E whilst there is a distinction between, on the one hand, seeking financial detail of the business case for reorganisation in order to challenge or seek to reverse managerial decision and, on the other hand, seeking information necessary to understand the rationale or thinking behind a proposed action, this might not be an altogether easy distinction to draw in any particular case. TICER requires that the information given must be enough to enable the EWC to undertake a detailed assessment of impact, which must include information sufficient to understand the in-depth financial thinking or rationale for the proposals;
- F information and consultation must fall within the EWC's transnational remit;
- G it was a question of fact for the panel whether, if information was not in the hands of central management, it was reasonably accessible, in the context of the obligations upon management under TICER;
- H the EWC is not entitled to the same information available to the employer as decision-maker. The extent of the information required will depend on the rationale for the proposals. It is not the role of the EWC to assess whether the employer's business reasons are sound; and there is no definitive "bright line" test whether information is sufficient in any particular case; it is a question of fact.

The panel examined the course of communications between the parties, including the global context for the proposals, the contents of the April 2020 management report, which for the proposed job cuts in Europe, consisted of two presentation slides, the employer's responses to the EWC's questions, and what was said at the information and consultation meeting between the parties in May 2020, and concluded that the information given by the employer was insufficient to enable the EWC to undertake a detailed assessment of possible impact, or to provide an opinion following consultation based on such information. The employer therefore failed to comply with regulation 18A of TICER and paragraph 8 of the SRs.

The panel noted:

- A** the lack of any clear statement within the information provided of the basis of the proposals which originated from individual European businesses' efforts to align and manage their activities within a global Transformation Project;
- B** it would have been relatively easy for management to obtain from the individual businesses further

information about their proposals which had been prepared as part of global workforce planning, and it was no answer in the circumstances of this case for the employer to say that it did not have the required information when it was ascertainable from the group businesses which had produced it;

- C** the employer had not adduced evidence that it would have been unduly onerous or difficult to obtain the required information;
- D** the information was transnational; it concerned the activities of the employer's businesses which each operated across at least two EU/EEA countries;
- E** the employer did not provide the financial rationale for the specific job cuts, it did not explain how the number of proposed job cuts had been arrived at, which was fundamental to understand and assess the basis for the proposals; it gave inadequate information about the savings and costs involved, the figure based on average salaries across European countries being meaningless, when not based on the actual jobs proposed to be lost; it did not identify the actual job roles proposed to be cut, such that it was impossible for the EWC to carry out a detailed assessment without knowing what jobs were to go within the businesses, and what business process and reasoning informed what job roles should go; and it did not identify the impact on the retained workforce and on customers.



The panel therefore upheld the HP Inc EWC's complaint but limited its decision to a declaration. It made no further orders, because the exercise to which the proposals related was completed, and the provision of further information would not have had any practical purpose.

EWC/30/2020 Walgreen Boots Alliance European Works Council & Walgreens Boots Alliance- Alliance Healthcare & International Retail

In this complaint the issues of general relevance were firstly, whether the employer had grounds to exclude the Chair of the Employee Representatives on Walgreen Boots Alliance European Works Council from European Work Council meetings for breaching confidentiality. The second issue was whether the Transnational Information and Consultation of Employees Regulations (TICER) regulation 19A was confined to situations where information and consultation was required under regulation 18A.

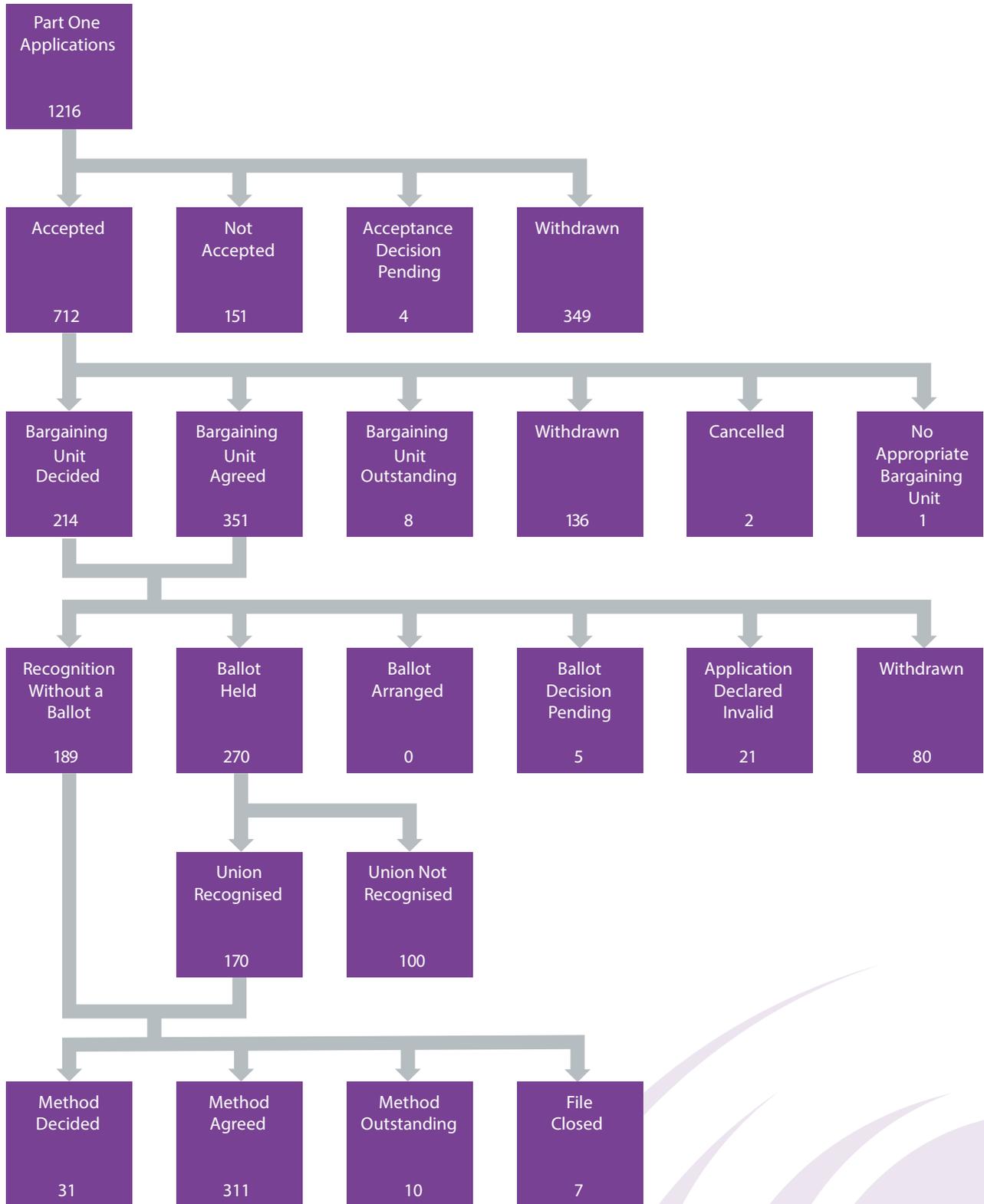


The panel's decision was that the employer did not adequately communicate the confidentiality obligation it was seeking to impose and was not therefore entitled to exclude the Chair of the Employee Representatives on Walgreen Boots Alliance European Works Council from European Work Council meetings. Regulation 19A applies to the functions of the European Works Council as specified in the Agreement under which the European Works Council is established. Regulation 21 applies only to breaches of a European Works Council Agreement which have already occurred and the CAC does not have jurisdiction to make orders governing the future conduct of the parties.

Other jurisdictions

There were no applications under the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009, and none were made under the European Cooperative Society (Involvement of Employees) Regulations 2006 or the Companies (Cross-Border Mergers) Regulations 2007 up to 31 December 2020. The legislation for the latter two was revoked following the United Kingdom's departure from the European Union taking effect from 1 January 2021.

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, where the provisions will continue to be applicable from 1 January 2021 to the UK Societas domestic framework.

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% - 93% 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 169 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 20 requests in 2020-21. two requests were responded to by the CAC. 18 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, Chief Executive,
Central Arbitration Committee,
PO Box 78137
London
SW1P 9XE

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 2020 to 31 March 2021

Jurisdiction	Brought forward from 31 March 2020	Received between 1 April 2020 & 31 March 2021	References completed or withdrawn	References outstanding at 31 March 2021
Trade Union and Labour Relations (Consolidation) Act 1992:				
VOLUNTARY ARBITRATION s212	-	-	-	-
DISCLOSURE OF INFORMATION s183	1	7	5	3
TRADE UNION RECOGNITION				
Schedule A1 – Part One	26	50	49	27
Schedule A1 – Part Two	-	-	-	-
Schedule A1 – Part Three	-	-	-	-
Schedule A1 – Part Four	-	-	-	-
Schedule A1 – Part Five	-	-	-	-
Schedule A1 – Part Six	-	-	-	-
The Transnational Information and Consultation of Employees Regulations 1999:	3	9	10	2
The European Public Limited-Liability Company (Employee Involvement)(Great Britain) Regulations 2009:	-	-	-	-
The Information and Consultation of Employees Regulations 2004:	-	2	2	-
The European Cooperative Society (Involvement of Employees) Regulations 2006:	-	-	-	-
The Companies (Cross-Border Mergers) Regulations 2007:	-	-	-	-
Total:	30	68	66	32

Appendix ii

CAC Resources and Finance: 1 April 2020 to 31 March 2021

CAC Committee		
Committee Members		53
Of which	Chair and Deputy Chairs	11
	Employer and Worker Members	42
CAC Secretariat		
Secretariat staff		8
Committee fees, salary costs and casework expenses		£477,439
Other Expenditure		
Accommodation and related costs		£100,937
Other costs		£14,808
Total CAC expenditure from 1 April 2020 to 31 March 2021		£593,184

CAC Expenditure

The CAC's overall expenditure was lower than in 2019-20, due to the impact of the restrictions imposed because of the coronavirus pandemic. This led to all informal meetings and hearings being held online reducing the costs associated with holding these meetings in person.

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 2020-21.

Appendix iii

CAC Staff at 31 March 2021 and Contact Details

Chief Executive	Maverlie Tavares
Senior Case Manager	Nigel Cookson
Operations Manager	Bola Olayinka
Case Managers	Sharmin Khan
	Linda Lehan
	Kate Norgate
Finance Supervisor & Assistant Case Manager	Laura Leumont
Finance & Case Support Officer	Emma Bentley

Central Arbitration Committee,
PO Box 78137
London
SW1P 9XE

Telephone: 0330 109 3610

E Mail: enquiries@cac.gov.uk

Web Site <https://www.gov.uk/cac>



The CAC over the last 20 years





**CENTRAL
ARBITRATION
COMMITTEE**



PO Box 78137 London SW1P 9XE

T: 0330 109 3610

E: enquiries@cac.gov.uk

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