

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DETERMINATION OF THE BARGAINING UNIT

The Parties:

Unite the Union

and

Brake Bros Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC on 2 December 2014 that it should be recognised for collective bargaining by Brake Bros Limited (the Employer) for a bargaining unit comprising "All Drivers and LGV Drivers, all Administration Clerks, all Supervisors, all Handymen, all Team Support workers, all Warehouse Operatives/Forklift Drivers, Warehouse Administrators and all Storemen/women excluding Managers" employed at the Employer's sites in Newhouse, Uddingston and Bellshill. The CAC gave both parties notice of receipt of the application on 4 December 2014. The Employer submitted a response to the CAC dated 10 December 2014 which was copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Professor Kenny Miller, Chairman of the Panel, and, as Members, Mr Dennis Cameron and Mrs Maureen Shaw. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 19 January 2015 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit but no agreement was reached. The parties were invited to supply the Panel with, and to exchange, written submissions ahead of a hearing to determine the appropriate bargaining unit. The hearing was held in Glasgow on 19 February 2015 and the names of those who attended the hearing are appended to this decision. In accordance with paragraph 19 of Schedule A1 to the Act (the Schedule) the Panel's task was to determine first whether the Union's proposed bargaining unit was appropriate and then, if it was found not to be so, to determine a bargaining unit that was appropriate.

Summary of the submission made by the Union

4. In opening the Union submitted that the bargaining unit described in its formal request for recognition and the current application had given the locations as Newhouse, Bellshill and Uddingston but now the proposed bargaining unit effectively related to non-managerial workers employed in the sole Scottish distribution hub at Newhouse, given that the Bellshill site had closed since the application had been submitted and the Uddingston site would very soon cease to exist.

5. It was the Union's case that it must show that its proposed bargaining unit was appropriate in order that it be accepted by the CAC. The proposed bargaining unit was appropriate because there was sufficient support for recognition and, as far as pay hours and holidays were concerned, the terms and conditions were homogenised across the proposed bargaining unit and it had a distinct function within the organisation, being easily identifiable as the Scottish distribution hub.

6. There was no evidence that effective management would be compromised by the proposed bargaining unit. In fact, there was already a fragmented system in place for negotiating pay, hours and holidays across the UK and so it would be consistent within the current management mode to have bargaining arrangements solely for the Newhouse site. At the time of the application being submitted the region was made up of only Scottish sites and in the Union's view, there were two obvious bargaining units - the whole region or the new hub – with the Union believing that it could show sufficient support across the whole region if this was necessary. However, as soon as the Union's application was accepted, the Union

asserted that the Employer had panicked believing that the Union would succeed with either its original bargaining unit or the wider Scottish region and so, as soon as it received notification of the hearing date to determine the appropriate bargaining unit, it broadened the parameters as to how it defined the region to include northern England where the Employer thought the Union had little support. In essence, if the Employer was successful in changing the goalposts it would be fundamentally against the spirit of the legislation and the wishes of Parliament.

7. The Union explained that it was recognised in a number of similar light goods and food distribution companies for example, DHL, Norbert Dentressangle and pay bargaining within these companies took place with the Union submitting an annual pay claim and negotiating with the employer. It was the Union's experience that it was common to have separate bargaining arrangements for hubs and spokes within these companies. The Union would also bring expertise to the Employer with consultation and obligations under legislation such as TUPE and redundancy. As for the Employer's claim that bargaining for the hub alone would cause problems with the spokes, the Union believed that this could easily be alleviated if the Employer ensured that any new terms were also applied to workers employed at the non-recognised sites.

8. The Union had been involved in individual case representation at the company having attended disciplinary meetings prior to June 2014. The opening of the new hub had created an appetite for recognition amongst the workers because membership had increased.

9. The Union noted that there were no national bargaining arrangements and no evidence of any agreed bargained terms and conditions and the employee forum that was in place was purely a consultation forum. It was clear that it was not a collective bargaining forum.

10. The Union had no prior knowledge that the Employer was changing the structure of the Scottish region to include Durham and Peterlee and in the Union's view, the hub at Warrington was geographically closer to Peterlee and Durham than the Newhouse hub and there was no tangible connection between the sites that could account for the change. Terms and conditions were different between Peterlee and Durham and the current spokes in the Scotland Region, Dundee and Inverness, and the Union understood that the two English sites were not included in the budget for the Scotland Region. It was clear to the Union that the

English sites had been put into the Scottish Region so as to dilute membership numbers and support for recognition. If the Panel allowed the Employer to organise along these lines, then the application would fail for lack of support.

11. All sites were on different terms and conditions but in Scotland the Employer had brought everyone onto common terms and conditions. There was clear interaction between Inverness, Dundee and Newhouse and if the Panel was not minded to choose the Union's proposed bargaining unit then one comprising these three sites would be a manageable bargaining unit for the Union.

12. All the Scottish sites were within the same budget and the Union understood that Warrington, Peterlee and Durham were on more favourable terms and conditions. As for the Employer's claim that the Union's proposed bargaining unit would lead to fragmentation with possible approaches from other trade unions, the Union explained that in Scotland there was a clearing house system wherein the STUC would write to all affiliated unions asking if any had an interest within a company and if not, there was an understanding not to make an approach. Any issues regarding this arrangement would be referred to the STUC Disputes Committee. It was highly unlikely therefore that the Employer would be troubled by another trade union. As for the possibility of industrial action, if industrial action did take place then it was inevitable that it would affect other parts of the business. This was the very nature of industrial action.

13. The Union viewed the role of the hub as different to that of the spokes. The hub distributed to the spokes who in turn distributed to the customers. As for how the Employer dealt with pay hours and holidays, the Union reiterated that there were no standardised terms and conditions across the board and that at the moment the Employer's plan to introduce such standardisation throughout its sites was only an aspiration.

14. Given the opportunity of asking questions of the Union, the Employer asked whether the Union really believed that it would restructure its business simply to thwart the Union's application. The Union responded saying that the reported changes had not happened yet and that it did believe that the Employer would take such steps to avoid having to recognise the Union. Asked by the Employer if the Union accepted that the sites relied upon each other, the Union said that Peterlee and Durham were closer to Warrington than Newhouse.

15. The Union did not accept that recognition in Newhouse could lead to tensions at the other sites or feelings of separation which the Employer believed was contrary to the regional structure in place. It was open to the Union to make further applications to the CAC for the other sites or the Employer could reach voluntary agreements that covered those sites.

16. The Union did agree with the Employer that there was no agreement covering Newhouse but as for the Employer's argument that it would draw resources from other sites, the Union said that it would be a matter for the Employer to decide whether or not it applied any changes in terms and conditions derived from collective bargaining to the other sites within the business. It was not the case that bargaining for the sole site at Newhouse would impact elsewhere and result in workers having different interests.

17. The Union accepted there was a commonality in terms and conditions between Inverness, Dundee and Newhouse however, as far as the Union was aware, Peterlee and Durham remained on more favourable terms.

18. Based on its experience the Union did not accept that recognition for one site would hamper the effective management of the region. Nor did it agree that because it was prepared to accept at one stage a bargaining unit comprising Dundee Inverness and Newhouse that a single site bargaining unit was not compatible with effective management.

19. In closing, the Union submitted that the test under consideration by the Panel was whether its proposed bargaining unit, comprising the Scottish hub at Newhouse, was an effective bargaining unit, not the most efficient. If the Panel accepted Newhouse by itself, then the answer would be "yes". The Employer would like a wider bargaining unit including all of the sites within the Scotland and northern England Region. In the Union's view, such a bargaining unit would not work. Referring to Harvey on employment law, the Union believed that its proposal was a sensible workable vehicle. The Union believed that the Employer was had total antipathy to any form of collective bargaining. According to Harvey, because there was more than one compatible bargaining unit did not make the proposed bargaining unit incompatible. There was no need to change the management structure and the Employer would have to allocate time to sit down with a recognised union. The views of the parties had been clearly set out. The Union said that the proposed bargaining unit of the single Scottish hub was appropriate. That the parties had been close to reaching agreement

based on a bargaining unit covering Newhouse, Dundee and Inverness did not make the single site bargaining unit any less compatible for the two options were not mutually exclusive. As for the Employer's proposal to include Peterlee and Durham, the Union would argue such a bargaining unit was not appropriate. These sites had not been integrated, did not have the homogenised terms and conditions and they should not be included. The appropriate bargaining unit was Newhouse or failing that, the Scottish depots, as they were all on the same terms and conditions. Terms and conditions had to be agreed so whilst the Employer intended to standardise those at Peterlee and Durham, it was not a foregone conclusion. Referring to the consultative forum, the Union reminded the Panel that it was not a negotiating body and should play no part in the Panels considerations. Newhouse was a single site bargaining unit of some 300 workers with a unified function so avoiding small fragmented bargaining units as the majority of workers were covered by the bargaining unit. Further, there was the STUC agreement in place which would prevent other unions taking an interest in the non-recognised sites this avoiding the creation of other units within the region. There was a commonality of terms and conditions between Newhouse, Inverness and Dundee but not a commonality of function whereas there would be no commonality if Peterlee and Durham were included and whilst there was a commonality of terms and conditions between the Scottish depots there was no common function.

Summary of the submission made by the Employer

20. In opening the Employer submitted that the bargaining unit proposed by the Union was not the appropriate bargaining unit for a number of reasons one of which being that it was not compatible with effective management. Further, one of three sites covered by the proposed bargaining unit, the Bellshill site had closed on 28 September 2014 and the Uddingston site (also known as "Glasgow") was due to close in early April 2015 which would leave only the Newhouse site as an ongoing concern.

21. The Newhouse and Uddingston sites represented only two of the supply chain sites in the Management Region that spanned Scotland and North England. There were four other sites that formed part of that Region's hub and spoke network, namely: Inverness, Dundee, Peterlee and Durham. All these sites came under the same Regional Operations Director ("ROD"), John McLintock, although Durham and Peterlee had only recently fallen within his remit. The Employer had made this change having looked to move towards a regional

structure in respect of its distribution network for some years with Scotland and the North England depots forming one region. This was documented but, as it was a sensitive and confidential document, it had not been included as part of the Employer's case. These changes were necessary as the business had grown through acquisition and, whilst retaining good customer service, it suffered from an inefficient infrastructure. The restructuring would put stock closer to the customer and avoid double trunking and involved the reduction in the number of regions, from six to four, with the North East region and Midlands Region being effectively disbanded. When asked by the Panel, the Employer agreed that the timing appeared awkward but said there had been no discussions linking the organisational changes with the Union's application. The Employer also pointed out that up until three years ago, Peterlee had been part of the Scottish Region.

22. There were approximately 7500 employees employed in the UK with only 297 employees in non-managerial roles in the Newhouse and Glasgow sites. However, in the other sites making up the Region there were a further 205 employees (in non-managerial roles) making a combined total of 502. The employees (excluding managers) in Newhouse and Glasgow represented only 59% of the employees in the entire Region. This left 41%, a significant percentage, outside the Union's proposed bargaining unit. As well as conflicting with effective management, the proposed bargaining unit also presented the risk of fragmented units as potentially other unions could seek recognition in respect of other sites within the Region. For instance, USDAW had represented employees at the Dundee site on individual matters although the Employer did confirm that it had no check-off arrangements in place for USDAW members. Effective management of the Region would be extremely difficult and the cohesion of the Region would reduce dramatically under such circumstances. It was not compatible with the regional mode of operation to deal with Newhouse/Glasgow separately to the rest of the Region nor could the structure accommodate bargaining on a site by site basis.

23. As well as having its own ROD, the Region also had its own Senior HRBP and Regional Management Accountant. There was a single management approach to Scotland and the North England Region from an operational stance, in respect of employee relations and HR strategy and in terms of finance.

24. The Regional "hub and spoke" model being implemented nationwide meant, as far as

Scotland and North England, was concerned, that the satellite depots of Dundee, Inverness, Durham and Peterlee were interdependent and were strongly connected with the Newhouse Regional Hub depot. Similarly the Newhouse hub depended upon the satellite sites/spoke network to ensure the Region ran efficiently with its customers being effectively serviced. There would be a Regional Distribution Centre for each of the four regions – Newhouse, Reading, Warrington and Harlow (due 2015) and these centres would have two functions – to deliver to customers and to feed the satellite depots such as Inverness, Dundee, Peterlee and Durham. At Newhouse, for example, 70% of its function was serving customers with some 90 routes out of the centre and 30% was carrying stock to Dundee and Inverness.

25. The sites in the Region had the same interests and one consequence of the bargaining unit not reflecting this interdependency and not treating the Region as one unit, would be to introduce a divisive structure and potentially damage the interests of those in the spoke network. A bargaining unit that reflected the Region would be more appropriate for improved industrial relations. A bargaining unit limited to Newhouse/Glasgow emphasised and enshrined a sense of separateness and such a unit would give an unnatural shape to the existing interest groups and potentially damage industrial relations. It could lead to animosity between the employees at the sites within the Region with the bargaining unit focusing on its own site interests and not taking account of the interests of the rest of the Region. The case of *ISTC and Hygena (Scunthorpe) TUR1/22/00* highlighted the importance of the workforce being treated as homogeneous and a vital part of a unified entity.

26. One particular concern was that, given the interdependency of the sites, if industrial action was being contemplated, all affected employees in the Region should have a voice, especially given that any industrial action at Newhouse was likely to disadvantage the 41% of employees throughout the rest of the region in the spoke network.

27. Demonstrating the strength and importance of the Regional structure, the ROD ensured the sites within the region were unified and cohesive through a number of procedures and methods including a weekly telephone call with all the Distribution Centre Managers ("DCMs") within the Region to co-ordinate all business activities in the Region. Additionally, the ROD co-ordinated the Region's distribution routes ensuring their effectiveness taking into account the routes covered by each site to avoiding overlap and duplication.

28. The interdependency of sites was further represented by the regular communication between DCMs across the Region. The sites were also dependent on one another in terms of trunking and the distribution of stock between them. This took place on a daily basis between sites with drivers currently moving stock from Newhouse to Dundee and Inverness extending to Durham and Peterlee in due course. Additionally, whilst there was no mobility clause within the standardised terms and conditions, employees from one site could be asked to work out of other sites in the same region or even further afield. For example, Glasgow staff had temporarily relocated up to Dundee and three employees from Grantham had helped clear the Bellshill site. Any differential in payment was made up by way of an ex-gratia payment. Such flexibility could be lost if different terms and conditions applied at Newhouse.

29. There had been significant investment in putting this regional structure in place for Scotland and North England. Following the site closures there had been, and continued to be, a transitioning process with all employees in Glasgow working out of the new multi-temperature Newhouse site by 13 March 2015. It was intended that there would be further significant investment as the Employer's future network plans continued to be implemented across the Region. The budget for the Region was managed by the ROD and related to Newhouse/Glasgow, Dundee and Inverness and would be extended to Peterlee and Durham.

30. As a result of the long legacy of acquisitions there were many different terms and conditions covering employees throughout the UK with perhaps as many as four differing sets on the one site. These included lots of different complex allowances and shift patterns which needed to be standardised across the business and rolled out on a site by site basis. These new terms and conditions had to be accepted by the employees through consultation and the Employer could report that it had not had to dismiss any employees and re-engage as the new terms were more advantageous than the previous ones. Contrary to what was asserted by the Union, these changes were not an aspiration. Whilst it may be 2016 by the time the process had finished the bulk of employees would already be on the new terms and conditions by the time the Harlow centre opened in the summer of 2015. As regards the supply chain employees in Scotland and North England, a new set of contracts of employment had been implemented following consultation in the Newhouse and Glasgow sites. Consultation had also been undertaken and completed regarding the introduction of the same set of contracts of employment in Dundee and Inverness. It was anticipated that the

process would be extended to the employees based out of Durham and Peterlee by late 2015/early 2016. There would therefore be standard terms and conditions in Newhouse, Dundee and Inverness with Peterlee and Durham to follow. There was a commonality of job roles, job descriptions, policies and procedures, shift divisions and operating practices across the Scotland and North England Region. This would progress towards greater alignment as this Region consolidated further. Given this unified set of terms and conditions that had been and will be implemented across the Region, should recognition be awarded in respect of the Union's proposed bargaining unit, it would lead to changes which related to only some of the employees in the Region limiting the resources available elsewhere. Cohesion, consistency and parity across the Region would be adversely affected. In turn, the management of the different groups of employees would be adversely affected and the effective management of the Region would be severely compromised.

31. The characteristics of the employees in the Newhouse/Glasgow site did not differ from those of the employees in the rest of the Region with there being no distinction between those employees and the other employees in terms of the roles carried out or the nature of the work.

32. For a number of years there had been in place an Employee Communication Forum for the Supply Chain arm of the business which enabled discussion, consultation and an exchange of views through chosen representatives and senior management on issues affecting employees' working lives. Currently there were regular regional meetings involving Newhouse, Glasgow, Dundee and Inverness and Durham and Peterlee would be incorporated as well. The effectiveness of this forum, which had so far proved successful, to discuss key issues on a regional basis, would be undermined should there be separate collective bargaining arrangements in respect of Newhouse. Additionally it would lead to fragmentation, confusion and duplication of effort with a disproportionate amount of time put into one site to the detriment of other employees in the Region. There would be a sense of unfairness potentially leading to an unsettled regional workforce. Feedback received already indicated employees' dissatisfaction with the historic disparity in terms and conditions between sites hence its determination to roll out new terms as soon as it was able. Indeed, many sites would like the new terms and conditions applied earlier but this was not practical.

33. The Employer approached pay, hours and holiday on both a regional and national

basis. In terms of pay-rises, these were generally agreed annually and if a pay-rise was awarded, it would be applied to all employees at a certain grade across the UK. There were some variations between sites in pay-rates which were determined at the regional level, based on the local employment market. In terms of holidays, these too were approached on a national basis in terms of the number of day's entitlement. The standard terms and conditions would eventually be rolled out across all regions and in time it sought to standardise hours for supply chain employees nationally. Negotiating and determining pay, hours and holiday in respect of the Union's proposed bargaining unit alone would be contrary to the national approach taken by the Employer in those key areas, and the regional co-ordination of local pay-rates. Newhouse/Glasgow would be the one site nationally out of alignment with the rest of the supply chain in terms of these matters.

34. Considering all the factors and particularly the need for the bargaining unit to be compatible with effective management, the Employer's view was that the most appropriate bargaining unit would be the employees in the Scotland and North Region supply chain (excluding managers). Such a unit would not be small and fragmented. It was anticipated that it would be functional, workable and efficient. A bargaining unit that reflected the Region would be more appropriate for improved industrial relations.

35. In summary, given the single management approach and structure in the Scotland and North England Region, a recognised union in respect of only part of this Region as proposed by Union could lead to significant challenges across Scotland and the North England sites. Ensuring parity of treatment and consistency of approach to all employees in the region would prove difficult where only part of the Region was covered by collective bargaining arrangements and 41% of the remaining employees in the Region were not.

Considerations

36. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the Union's proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that

need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate. The Panel must also have regard to paragraph 171 of the Schedule which provides that "[i]n exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned."

37. Since the Union first submitted its formal request for recognition on 8 August 2014 the Employer has made changes to the structure of the company in Scotland and Northern England. Whilst the Union was clearly unconvinced as to the reasons given by the Employer for the restructuring, believing that it was done with the intention of thwarting the Union's claim for recognition, the Panel accepts that this was not the case and that whilst the timing of the change was unfortunate, it was purely coincidental rather than an deliberate attempt to affect the dynamic of the Union's application.

38. Initially the Union proposed a three site bargaining unit but this quickly became a two site unit with the closure of Bellshill in September 2014 and it will soon be a single site bargaining unit when Uddingston is closed in April 2015. The Union put forward its arguments based on the premise that the Uddingston closure will go ahead as scheduled and so sought to persuade the Panel that the single site bargaining unit was appropriate. It did, however, have an alternative up its sleeve in the event that we found its proposed bargaining unit wanting, and this was one comprising the three Scottish sites in the Scotland and Northern England Region, i.e. Newhouse, Inverness and Dundee. Whilst the workers at Newhouse shared a common purpose as well as common terms and conditions, the Union's thinking in presenting its alternative bargaining unit was that the workers at the three sites, whilst not sharing a common purpose, at least shared common terms and conditions.

39. The Employer, on the other hand, argued that the single site bargaining unit was not appropriate and put forward its own proposal which encompassed all the sites in the Scottish and Northern England Region. This would comprise the three sites from the Union's alternative bargaining unit and the sites at Peterlee and Durham which had recently been subsumed, in the case of Peterlee, again, into what was the Scotland Region to form the new region that extended coverage to Northern England.

40. The Union argued that the site at Newhouse was an appropriate bargaining unit given it served a different function to the other sites at Dundee, Inverness, Peterlee and Durham. Newhouse was the Regional Distribution Centre – the “hub” – and the other sites were the “spokes” in the Employer's supply chain and operations organisation. The Employer disagreed and said that only 30% of Newhouse's role was acting as the central distribution point and that 70% of its role was servicing customers direct, the very same role undertaken by the sites identified as “spokes”.

41. When it came to the parties' views on the characteristics of the workers, the Employer explained how its business had grown and that it was now faced with many differing sets of terms and conditions across the UK. It had embarked on a plan to tackle this and bring harmonised terms and conditions to its workforce. By the employer's own admission this would take time to achieve. At the date of the hearing, as far as the sites that are relevant to the proceedings are concerned, workers at the depots in Newhouse, Inverness and Dundee are all working under the new terms and conditions whereas Peterlee and Durham remained on historic terms and conditions, which the Union suggested were more favourable than in Scotland, and would not be brought in line until later this year or early 2016.

42. The Employer set out its concerns as to the effect of having single site recognition within a region and the problems that it could face. It mentioned its unease as to the possible effect of industrial action on the spokes should the bargaining unit only comprise the hub and how all workers should have a voice on the matter. It was also worried that a single site bargaining unit would leave the field open for other unions to apply for recognition in respect of the other sites. The Union countered this by reminding the Employer that regardless of the size of the bargaining unit the very nature of industrial action was that other workers would be affected and in any event, in seeking a mandate for industrial action only members of the Union would have a say as the views of non-members could not be taken into account. As

for other unions seeking recognition for the spokes, the Union assured the Employer that there was a process in place involving the STUC that would prevent any predatory union making an approach.

43. We have reached our decision after full and detailed consideration of written and oral submissions and the evidence before us and responses to questions addressed to the parties at the hearing. We also bear in mind that our task is to find an appropriate bargaining unit rather than to find the most appropriate bargaining unit out of those that have been proposed. As stated above, the Panel's first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union's proposed bargaining unit is appropriate. We applaud the Employer as it moves the company to common terms and conditions and we appreciate that this is a period of transition within the business but the final outcome is far from certain and the date for complete integration is as yet unclear. The Panel must make its decision only on the basis of the facts as they stand at the time of its decision.

44. In our view the Union's proposed bargaining unit is compatible with effective management based on the function and characteristics of the workers employed at the site at Newhouse. The workers share a commonality of purpose and terms and conditions that clearly distinguishes them from the other workers at the sites in Peterlee and Durham and a commonality of purpose that distinguishes them from the workers employed at Inverness and Dundee. In arriving at our decision we considered, as we are duty bound, the alternative bargaining unit put forward by the Employer but it is clear that as matters stand at the moment, it would not be appropriate, in our view, for the bargaining unit to include, on the one hand, the site at Newhouse which has transitioned onto the new terms and conditions and, on the other, the sites at Peterlee and Durham that have not. As it said in its own words, the Employer has embarked on a journey and so the current structure is a model in transition. To accept the bargaining unit proposed by the Employer would involve a speculative exercise on the part of the Panel as to whether the sites in Peterlee and Durham will fall in line with the new terms and conditions that the Employer seeks to roll out given the target date for the assimilation of these sites reaches into 2016. As already stated, we must make a determination based on how matters stand today.

45. The Employer did submit that the single site bargaining unit was not compatible with effective management given that it would engender conflict with different terms and

conditions being championed by the Union at Newhouse which was at odds with the Employer's desire for homogenous terms and conditions across all its sites. However, the Panel did not accept that this would be the case, especially given that the Employer admitted to having sites within its current infrastructure with up to four sets of terms and conditions. Moreover, even if the Employer's suggested bargaining unit were to be accepted there would still be scope for different terms and conditions in the other three Regions.

46. In its submissions the Employer also made clear its concern that the strength and importance of the Regional structure, including the interdependency of sites, would be compromised if the Panel found in favour of the Union. However, we are not persuaded by the Employer's arguments in this regard, more so given the structural matrix currently in place within the company. A weekly phone call from the Regional Operations Director to the Distribution Centre Managers to discuss business activities within the Region did not, so the Panel finds, amount to significant evidence as to the interdependency of the sites and having the Union bargain over pay, hours and holidays at the single site at Newhouse would not prevent such discourse. We are satisfied that the Regional structure would not be undermined in the way foreseen by the Employer as the Newhouse hub has its own day to day operational managers on site and so, in our view, the impact on the overall management configuration within the Region would be minimal.

47. The Panel has considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. The Panel is satisfied that there are no existing national or local bargaining arrangements in this case. Third, the Panel considered whether the Union's proposed bargaining unit would give rise to small fragmented bargaining units within the undertaking. We are assisted on this point by the analysis of Collins J in the matter of *R (Cable & Wireless Services U.K. Limited) & Central Arbitration Committee & The Communication Workers Union [2008] EWHC 115 (Admin)*. When addressing the desirability of avoiding such units he observed:

“However, it is obvious that the real problem is the risk of proliferation which is likely to result from the creation of one such unit. Hence it is important to see whether such a unit is self-contained. Fragmentation carries with it the notion

that there is no obvious identifiable boundary to the unit in question so that it will leave the opportunity for other such units to exist and that will be detrimental to effective management.”

48. In our view the site at Newhouse would form a self-contained bargaining unit with a clear and identifiable boundary. As far as the characteristics of workers are concerned, we are satisfied that the terms and conditions and function carried out at Newhouse is sufficient to differentiate the site from both the sites at Dundee and Inverness and the sites at Durham and Peterlee. All the workers in the proposed bargaining unit are located at a single site. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

Decision

49. The appropriate bargaining unit in this matter is "All Drivers and LGV Driver, all Administration Clerks, all Supervisors, all Handymen, all Team Support workers, all Warehouse Operatives/Forklift Drivers, Warehouse Administrators and all Storemen/women excluding Managers" employed at the Employer's sites in Newhouse and Uddingston.

50. We have included the Uddingston site for completeness and in the knowledge that it will close within a few weeks but, as stated before, our decision is based on how matters currently stand and the fact is that according to the Employer's submissions, the site has yet to close. Upon closure of this site the bargaining unit will comprise the single site at Newhouse.

Panel

Professor Kenny Miller, Chairman of the Panel

Mr Dennis Cameron

Mrs Maureen Shaw

10 March 2015

Appendix

Names of those who attended the hearing on 19 February 2015:

For the Union

Tam Connarty	-	Regional Officer
Mark Lyon	-	Regional Stand Down Officer
David Martyn	-	Thompsons Solicitors

For the Employer

Tim Pool	-	Senior HR Business Partner
Andrew Bush	-	Group HR Director
John McLintock	-	Regional Operations Director
Megan O'Hara	-	Legal Representative, Outset (UK) Ltd