



**central arbitration
committee**

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April 2017

Statutory Recognition

Guide for the Parties

Introduction

1.1 This booklet is a practical guide and should not be relied on as a statement of the law. If you wish to understand the rights and obligations of trade unions and employers fully, you should study the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Employment Relations Act 1999 and the Employment Relations Act 2004) available from TSO www.tso.co.uk and on the following web site, www.legislation.gov.uk, or consult a lawyer. This Guide will continue to evolve in the light of experience.

1.2 Besides this guidance, you may wish to consult:

- the *Code of Practice on Access and Unfair Practices During Ballots for Trade Union Recognition and Derecognition* available from the Department for Business, Energy & Industrial Strategy (BEIS), the CAC and at www.gov.uk.
- the *Trade Union Recognition (Method of Collective Bargaining) Order 2000 (SI 2000 No. 1300)*, also available from the CAC, the web sites listed in paragraph 1.1 above and at legislation.gov.uk.
- the [CAC web site](http://www.cac.co.uk) gives information on the CAC, its members, its role and the statutory recognition processes,
- the CAC's Application Form and notes on the Form, available on the [CAC web site](http://www.cac.co.uk).

1.3 Under Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (enacted in the Employment Relations Act 1999 and amended in the Employment Relations Act 2004) trade unions may apply to the Central Arbitration Committee (CAC) for the legal right to be recognised by an employer for collective bargaining over pay, hours and holidays, in respect of a group of workers in a particular “bargaining unit”. The Schedule also deals with certain other statutory procedures (see Annex 2), and, under Section 5 of the Employment Relations Act 1999, the determination by the CAC of a method of collective bargaining following statutory recognition creates a requirement for the union to be consulted about training arrangements.

1.4 Unions can, of course, continue to agree arrangements with employers on a completely voluntary basis for trade union recognition with no reference to Schedule A1. We call this “voluntary recognition”. However, if a recognition request has been made under Schedule A1, there is also scope for the union and employer to reach an agreement for recognition and then withdraw from the statutory process. The Schedule calls these “agreements for recognition”. These “agreements for recognition” are sometimes described as “semi-voluntary recognition” to distinguish them from cases where no request has been made under Schedule A1. However this is not a statutory term and is not used by the CAC. If, following a request under Schedule A1 and an application to the CAC, the parties do not reach a voluntary agreement; the application may eventually result in statutory recognition.

The Central Arbitration Committee

2.1 The Central Arbitration Committee (CAC) is an independent tribunal with statutory powers. Its chairman is Sir Michael Burton, who is also a High Court Judge. Under the Employment Relations Act 1999, it has been given statutory responsibility to adjudicate disputes over trade union recognition. It also has powers in relation to the Information and Consultation Regulations, European Works Councils and the European Company Statute and it determines claims from trade unions on the disclosure of information for collective bargaining purposes. It can also provide voluntary arbitration on a reference from Acas. The CAC's approach is flexible and seeks to be problem-solving, in line with its general duty under paragraph 171 of the Schedule to "have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace". The CAC's role with regard to trade union recognition presently forms the vast majority of its work. This guide only covers the statutory recognition provisions in the Trade Union and Labour Relations (Consolidation) Act 1992.

Statutory recognition

2.2 The statutory recognition provisions of the Act provide that, in certain circumstances, a trade union may apply to the CAC for a declaration that it should be recognised to conduct collective bargaining regarding pay, hours and holidays on behalf of workers employed by an employer in a particular bargaining unit. The basic principle is that recognition is granted if a majority of the workers in the bargaining unit wish it, provided that the application meets the statutory criteria (for example, applications cannot be accepted where the employer employs a total of fewer than 21 workers). The CAC may declare the union to be recognised without a ballot if more than 50% of the workers in the bargaining unit are members of the union. If, alternatively, the CAC calls for a ballot, recognition will be granted if a majority of those voting, and at least 40% of the workers in the bargaining unit, vote in favour. Following a declaration of recognition, either party can ask the CAC to try to help the parties agree a bargaining procedure. If the parties cannot agree, the CAC specifies a procedure. A procedure specified by the CAC is legally enforceable unless the parties agree otherwise.

2.3 Once the CAC has accepted an application for recognition of a particular bargaining unit, no other application can be accepted from that union in respect of that bargaining unit, or one that is substantially the same, for three years. The statutory recognition process is set out more fully at Annex 1.

2.4 There are also statutory procedures for de-recognition, the impact on statutory recognition of changes to the bargaining unit and specifying a method of bargaining where the parties have reached a semi-voluntary agreement. These are briefly summarised in Annex 2 and separate Guides for those procedures are available from the CAC's offices and on the CAC's website.

CAC Proceedings

3.1 The CAC will be even-handed in its application of the provisions of the legislation. The procedures will be as user-friendly for both employers and trade unions as possible. Applications for statutory recognition may be made to the CAC if a direct request to the employer does not result in recognition.

3.2 On receipt, applications will be allocated to a CAC case manager, a member of the Secretariat. The case manager will first check that the application is properly made in line with the statute and may return incomplete applications to unions for resubmission. The existence of each application will be made public on the [CAC web site](#).

3.3 A panel of three CAC members will be convened to deal with each application. The panel will consist of the CAC Chairman or, more usually, one of the Deputies and one Member with experience as a representative of employers and one Member with experience as a representative of workers. While the composition of the panel will normally remain the same throughout an application, it may be necessary to change the membership in the event of unavailability of one of the members. Changes to the panel will only be made after one of the stages in the statutory process, and not during a stage unless exceptional circumstances prevail. Both parties will be informed of the names of the panel members, and of any changes in the composition of the panel.

3.4 A CAC official will be appointed to act as case manager for the application. The case manager will contact both parties when an application is received, and will be the main point of parties' contact, making enquiries of the parties on the instructions of the Panel. The case manager will ensure that correspondence and documents are cross copied between the parties and the panel as appropriate. The case manager will do all he or she can to explain the statutory procedures and help both parties understand the implications of the legislation, as well as resolve difficulties. Either party can contact the case manager with queries concerning the application and the statutory procedure; the case manager can quickly liaise with the Panel where necessary. Should the case manager be out of the office for any reason, another CAC official will handle the case in his/her absence.

3.5 The CAC's approach will be as flexible as possible, given that the processes are laid down in legislation and are quite formal in nature. The CAC will try to take a problem-solving approach and to help the parties, where possible, reach voluntary agreements outside the statutory process. Both parties are free to contact the case manager at any time to discuss any aspect of the application. The CAC panel will expect the parties to co-operate in providing any relevant information. The CAC is enabled to make its decisions by the submissions and evidence put before it by the parties. Whilst there are some matters (e.g. the composition of the bargaining unit and the number of union members) on which the Panel may as a matter of routine make enquiries of one party or the other, it will be for the parties to take the initiative in developing their submissions and marshalling their evidence in preparation for each decision point. The onus is on a party that wishes to have an issue considered to raise it formally with the CAC.

3.6 Since the CAC has a duty to help the parties to resolve underlying problems and reach agreement, some contacts between the CAC and the parties will be of an informal nature. However the CAC also has to take formal decisions based on evidence available to both parties, so there is a mix of informal and formal processes. Where necessary, the case manager and panel members will make it clear to the parties when they are discussing matters informally and when the discussion is part of a formal process.

3.7 Whilst not all decision points will arise in every case, the key CAC decision points are:

- whether to accept the application (in all cases);
- what the bargaining unit should be;
- if the bargaining unit agreed or decided is different from that in the original application, whether the application is valid with the new bargaining unit;
- whether a ballot is needed, and how it is to be conducted;
- what the method of conducting collective bargaining should be.

Application form

3.8 The application form is available from the CAC, together with notes on the information required from unions making applications. Applicants should complete the form in as much detail as possible, but in the knowledge that it and any supporting documentation sent with it must be copied to the employer. It would therefore not normally contain names or addresses of individuals. It is however essential that the description of the bargaining unit in the application is sufficiently clear for the CAC, and the employer, to be able to identify readily which posts are covered by the bargaining unit and which are not. Information about the number of workers in the bargaining unit who belong to the union making the application should also be included, together with evidence (in any form) that the majority of workers in the bargaining unit is likely to favour recognition; if a petition has been used, and will be relied on as evidence, then this should be referred to but should only be attached to the application form if it is intended to be shared in full with the Panel and the employer. In defining the bargaining unit, it can sometimes be helpful to define it by stating which posts or functions are excluded (eg all workers except...) as well as categories of workers to be included. The CAC appreciates that in some circumstances, the union may have difficulty in providing a precise definition of the workers falling in its proposed bargaining unit (eg it may not use the exact job titles or work group identification as used by the employer, or may include posts that no longer exist, or may be unaware of or inadvertently overlook posts obviously falling within the scope of the bargaining unit). The CAC will take a common sense approach about allowing some clarification during the application process. However this will only be done where it does not materially alter the bargaining unit the union was attempting to define.

3.8A When an application has been lodged with the CAC the Secretariat will send notification of receipt to both the union and the employer. The employer will be asked to complete a questionnaire for the CAC with questions that are designed to elicit information and evidence germane to the admissibility criteria of Schedule A1. This questionnaire allied to the Union's application form and supporting documents will

inform the Panel of any issues that are disputed and enable it to make focused further enquiries before deciding whether to accept the application (see 4.5 below). The responses given by an employer may raise additional issues to those relevant at the 'acceptance' stage, such as the employer's view of what the appropriate bargaining unit is. Such issues, where not immediately relevant to the decision on whether to accept an application, will, if the application is accepted, be taken into account at the appropriate stage of the procedure.

Confidentiality

3.9 Under paragraph 34 of the Schedule an application to the CAC is not valid unless the union gives to the employer "a copy of the application and any documents supporting it." For the avoidance of doubt, the CAC's understanding of this provision is that the application and any documents submitted as part of, or at the same time as, the application documentation must be copied to the employer. Therefore both the union's application papers and the employer's comments on them will be copied to the other party. Names and addresses of individuals, if supplied as part of the application documentation (ie at the same time as the application) must be supplied to the other party. If it is desired that names and addresses should not be disclosed, they should not be supplied to the CAC without seeking prior clarification from the CAC. The CAC may in certain circumstances be able to receive such information or relevant parts of it on the basis of confidentiality: this will normally be achieved by an agreement between the parties that they will each supply information to the CAC case manager on the basis that such information supplied by one party is not disclosed to the other. The CAC has the power to require certain information to be supplied to the case manager by the parties and to draw an adverse inference if such information is not supplied.¹

3.10 There may be informal communications and discussions in pursuit of the CAC's duty to help the parties reach a voluntary agreement, and both parties can give the CAC case manager or the CAC panel information on a confidential basis during that period, but must make it plain that such information is confidential and/or speculative. Where appropriate, CAC panels or the case manager will explain to the parties in advance the consequences of discussing matters with the CAC. However, this confidentiality is qualified: if the confidential information disclosed to the CAC panel concerns key facts that are relevant to the panel's decision, in the interests of fairness, the CAC panel will, if the matter continues to a contested decision, later be obliged to make that information available to both parties so as to enable it to be checked and/or challenged at a hearing. The panel will always warn the parties concerned in advance that this may occur and inform the party concerned before disclosing any information previously given in confidence.

3.11 If either party wishes to discuss any information informally with confidentiality guaranteed, they can contact Acas about this, whether or not Acas are already

¹In any processing or disclosure of names or other personal information to the CAC in connection with applications for statutory recognition, unions and employers should note the power under paragraph 170A of Schedule A1 and the requirements of the Data Protection Act 1998 (See also pages 12, 20 & 21). For further information on the Data Protection Act, they should consult the Information Commissioner's Office (tel 0303 123 1113 or at www.ico.gov.uk).

involved. Anything said to Acas in confidence would not be passed to the CAC and, therefore would not be taken into account in any decision.

Hearings

3.12 Hearings are not always necessary and some decisions may be taken by the Panel on the papers after giving each party the opportunity to make submissions or if it appears to the Panel that there is no material dispute. If it appears that a hearing will be necessary, the chairman of the CAC panel may hold a preliminary meeting in order to set out procedures and identify the issues disputed. The parties will be asked to submit and exchange evidence in the form of written submissions prior to the hearing. New evidence will only be admitted at hearings for good reasons and at the discretion of the panel and, where it is admitted, parties can request that the panel allows some additional time, such as a short adjournment, to consider the new evidence. The parties will be asked to inform the CAC panel in advance of the names of the speakers and any witnesses proposed for the hearing. Speakers should be persons who are capable of representing the positions of the parties and who can contribute appropriately to the evidence required to assist the panel's considerations at the particular stage in the statutory procedure. The parties may appoint representatives but there is no requirement to use lawyers. Hearings will generally be held in public, although it is open to the CAC to hold a hearing (or part of a hearing) in private, for example if the panel considers there are areas of particular confidentiality or that it is necessary in order to reach a satisfactory settlement. The CAC intends to hold hearings in as informal a way as is consistent with clarity and fairness. Each party will be asked to comment on and amplify its written statement and to comment on the other's evidence and to answer questions put by the CAC panel. Speakers and any witnesses may be cross-questioned where factual issues are in dispute, at the discretion of the chairman of the panel.

3.13 In particular cases the CAC panel may determine that stricter standards of evidence are required, or that more formality in proceedings is appropriate. Parties will be advised if this is the case in good time prior to the hearing.

3.14 The CAC is required to meet relatively short deadlines set by statute, and hearings, if they are necessary, will normally be arranged as quickly as possible in order to meet these deadlines. Wherever possible hearing dates will be arranged taking account of the convenience of the parties but there are occasions where it is necessary for the CAC to impose a hearing date in order to comply with its statutory obligations. Where a hearing date is imposed the CAC will give as much notice to the parties as is possible in the light of the statutory requirements. The CAC expects that hearings will normally be completed in a day, and the procedures adopted at the hearings will be based on that expectation. While the CAC is based in London, it may hold hearings at other locations where this is believed helpful and/or more convenient to the parties. The decision on location will rest with the CAC. Forthcoming hearings are listed on the CAC's website.

CAC Decisions

3.15 Decisions, declarations, and determinations of the CAC are publicly available, but are not normally publicised by means of a Press Notice. Where decisions of the CAC are publicised, the parties will be informed first. All decisions are made in the name of the CAC rather than that of the individual panel members. After notification has been made to the parties, decisions of the CAC are posted on the [CAC web site](#). The Panel's decisions concerning the processing of an application (eg to conduct a membership check, or to hold a hearing, or to grant an extension) will be communicated to the parties in a letter signed by the case manager. However the decision itself will always have been made by the panel. Extensions are covered in more detail below.

Extensions

3.16 At most stages of the statutory process, the time limits may be extended by the CAC panel as long as it gives the parties notice of the extension and states the reasons for the extension. Where one of the parties requests an extension to a statutory time limit, the panel, in deciding whether to grant the extension, will follow these principles:

- a) the panel will take into account the views of the party making the request, the reasons for the request and any relevant circumstances in which the request is made,
- b) the panel will seek to avoid giving an unfair advantage to either party,
- c) the panel will aim to keep such extensions to a minimum,
- d) the panel will take all reasonable steps to consult the other party and seek their views prior to reaching a decision,
- e) the case manager will inform the parties in writing of the panel's decision with regard to the extension, together with the reason for the extension (if any) and its duration.

3.17 Extensions may also be granted by the panel at the joint request of both parties. In addition, the panel may grant an extension at its own instigation where, for example, it needs more information or to conduct a membership check or hearing. In such cases, the parties will be informed of the reason for the extension and its duration.

3.18 The CAC does not charge for carrying out its statutory functions (and there is no scope for the CAC to pay the expenses of either party). However, where a ballot is held (see Annex 1, Stage 7), the costs are divided between the parties on a 50/50 basis.

Contact details for CAC:

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

Tel: 020 7904 2300

Fax: 020 7904 2301

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

Contact names:

Chief Executive - James Jacob
Operations Manager - Maverlie Tavares

CAC

April 2017

User Satisfaction

If you are asked for your views on any aspect of our service, we would appreciate your cooperation. 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 the problem with the person who dealt with you originally, please ask to speak to the Operations Manager or, if necessary, the Chief Executive who will investigate your complaint. If you wish to complain in writing, please write to James Jacob, Chief Executive, at the address above.

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 Commissioner for Administration (the Ombudsman).

Applications for statutory recognition under Schedule A1, Part I

Stage 1 - request to employer

4.1 Before a union can apply to the CAC, it must make a request, in writing, to the employer concerned for recognition for collective bargaining purposes. The request must clearly identify the union and the bargaining unit, and it must state that the request is made under Schedule A1. Unions are advised to send the request to the employer by special delivery post or some other method by which receipt of the request by the employer can be verified. The employer has 10 working days in which to respond, starting with the day after it receives the request for recognition. If the employer rejects the request, or fails to respond in this timescale, the union can apply to the CAC. If the employer agrees to the request, then the union is recognised for collective bargaining. If, following the union's request to the employer, a voluntary agreement cannot be reached and the union wishes to make a formal application to the CAC, application forms are available from the CAC or via the [CAC web site](#). These can be sent electronically or in hard copy. In making an application to the CAC, the bargaining unit should be described in identical terms as that in the request to the employer. In addition, there needs to be clarity as to which workers are included in the bargaining unit (but see 3.8 above). This is because, if at a later stage in the process, a ballot is held, both parties need to be quite clear as to which workers are entitled to receive a ballot paper. In defining the bargaining unit, it can sometimes be helpful to define it by stating which posts or functions are excluded (eg all workers except) as well as categories of workers to be included.

Stage 2 - negotiation between union and employer

4.2 If, having received the request for recognition, the employer informs the union within 10 working days that it does not accept the request but is willing to negotiate then there is an additional 20 days for negotiation, starting the day after the first 10 day period ends. (The 10 day period starts on the day after the request is received. The 20 day negotiation period can be extended if the parties so agree).

4.2A If no agreement is reached at the end of that period, or if a bargaining unit has been agreed but it has not been agreed that the union be recognised, the union can apply to the CAC.

4.2B However no application can be made to the CAC if the employer proposes that Acas assistance be requested, and the union fails to respond within 10 working days or rejects such a proposal. (The 10 working days are calculated from the day after that on which the proposal was made). For this bar to operate the proposal has to be made by the employer within 10 working days of having informed the union of its willingness to negotiate. (The period starts with the day after it so informs the union.) In the event that negotiations between the parties following a request lead to the union's proposed bargaining unit being modified, but do not result in an agreed bargaining unit, the Schedule requires that a fresh request, complying in full with the statutory requirements, should be made to the employer prior to an application to the CAC.

Stage 3 - application to the CAC; admissibility tests

4.3 The Chairman appoints a panel of three CAC members to consider the application (see para 3.3 above) and make any decisions required under Schedule A1(see 3.7 above).

4.4 Schedule A1 requires that, before the CAC can formally accept an application, it must first consider whether a valid recognition request was made to the employer and whether the timescales described under Stage 1 and 2 above have been observed. Before accepting an application the CAC must also apply a number of admissibility tests and it must consider evidence given to it by the employer and the union when it considers the tests. The tests are described below.

- *Is the application in the proper form (paragraph 33 of Schedule A1)?* The CAC has prepared an application form, available from the [CAC web site](#) or from the CAC Secretariat's offices, please ring 020 7904 2300.
- *Has the application been received by employer (paragraph 34)?* The CAC cannot accept any application unless the union has copied it to the employer, together with any *supporting* documents. Unions may wish to send documentation by recorded delivery or special delivery to ensure and verify its arrival.
- *Does the union have a certificate of independence from the Certification Office (paragraph 6)?* The CAC cannot accept applications from trade unions that do not hold a current Certificate of Independence.
- *Does the employer employ at least 21 workers (paragraph 7)?* If the employer, together with any associated employer(s), employs fewer than 21 workers, the statutory recognition procedure does not apply. This limitation applies to all workers employed, not just those in the bargaining unit. In determining the numbers of *workers*, part-time workers count as whole numbers. Temporary workers are counted if they are directly employed by the employer; those employed by agencies generally do not count².
- *Is there a competing application (paragraphs 14 and 38)?* The CAC cannot adjudicate between competing applications which relate to the same or overlapping bargaining units. If only one of the unions making an application has at least 10% membership in the bargaining unit, the CAC will only consider that application, and is required to reject all others. If more than one application has 10% union membership, the CAC cannot accept any of them, and must reject them all. Please note that, in this context, bargaining units which have just one worker in common count as overlapping.

² Under the Agency Workers Regulations 2010 an agency worker whose contract with a temporary work agency is not a contract of employment is to be treated as having a contract of employment with the temporary work agency during an assignment with an employer. If employers and trade unions are unsure as to the status of any workers and, in particular, whether or not individuals meet the definition of "worker" in the 1992 Act, they may wish to take their own legal advice.

- *Is there an existing recognition agreement (paragraph 35)?* The CAC cannot accept an application if there is an existing agreement under which a union is entitled to conduct collective bargaining on behalf of any workers in the bargaining unit. For this purpose, the existing agreement can be with any trade union, whether or not it has a certificate of independence, and can be a voluntary or statutory agreement. Equally, an existing collective agreement does not need to cover hours, pay or holidays (subject to (b) below) as long as it covers one or more of the *matters* specified in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992. The existing agreement only needs to cover one worker in the bargaining unit to make the application inadmissible. There are two exceptions to the rule about existing agreements.
 - a) if the union recognised is a non-independent union that was de-recognised in the preceding three years, then an application from an independent union can be accepted. Without this provision an employer attempting to avoid statutory recognition could simply re-recognise a non-independent union (or staff association) as soon as it was de-recognised following an application (under part VI of the Schedule) from a worker, therefore barring the independent union indefinitely.
 - b) if there is an existing agreement with the same union as is making the application, and that existing agreement does not cover all of the following: pay, hours and holidays, then the application can still be accepted.
- *Is there at least 10% union membership (paragraph 36)?* The CAC cannot accept an application unless at least 10% of the workers in the **proposed** bargaining unit belong to the union making the application. The CAC must therefore be satisfied that at least 10% of the workers in the proposed bargaining unit are members of *the* union. Where the employer provides conflicting evidence to challenge the union's membership figures, there may be an independent check by a CAC case manager on the level of union membership in the bargaining unit (see also stage 6 below). The check can take a number of forms. If confidentiality is not required or where, more usually, the parties agree in advance to provide lists on the basis of confidentiality, the check can take the form of a direct comparison of lists. In these circumstances the CAC case manager would produce a numerical report of the results of the comparison for the Panel (the names themselves will not be given to the Panel) and the parties will be asked to comment on the report and the admissibility test.
- *Is the majority of workers likely to favour recognition (paragraph 36)?* The CAC cannot accept an application unless a majority of the workers in the bargaining unit would be likely to favour recognition. The parties can provide evidence as to whether or not the majority are likely to be in favour in any form available. A possible example would be a petition from workers. If confidentiality is required the parties must agree in advance to their being provided on the basis of confidentiality. The value and weight to be attached

to various forms of evidence may vary, depending, for example on the circumstances in which that evidence has been obtained, when it was obtained and the wording of the petition that may be submitted. **Where it is intended to rely on a petition, pledge cards or some other form of signed statements as evidence of support, it will be helpful if the parties make clear the period within which the signatures were given, for example by the inclusion of a column for indicating the date of signature. If this information does not appear on the petition/pledge statement, then the party submitting the evidence may be asked to provide written verification of the date or dates.**

The CAC's consideration of the admissibility tests under paragraph 36 will be based on the best evidence available. If the CAC considers it necessary, it can require an employer to provide, to a CAC case manager, information concerning the workers in a bargaining unit and the likelihood of a majority of those workers being in favour of the applicant union conducting collective bargaining on their behalf. The CAC can also, where it considers it necessary, require a union to provide to the case manager information concerning the union members in a bargaining unit and the likelihood of a majority of those workers being in favour of the applicant union conducting collective bargaining on their behalf. If the CAC considers these steps necessary it will specify to the parties what information it requires and the date by which it is to be supplied. Such requirement may include information as to the nature and number of employees in a bargaining unit, and as to the membership, subscriptions and rules of a union. The case manager may also require more information from either or both sides on the job titles of employees covered in the bargaining unit.

Once the required information has been received the CAC case manager will compile a report and a copy of the report will be given to the Panel, to the employer and to the union. If either of the employer or the union fails to supply the information required by the CAC then the report must mention that failure and the CAC can draw an inference against the party who has so failed.

- *If the application is made by more than one union, can they show they will co-operate with each other (paragraph 37)?* If an application is made by more than one union, then the unions concerned must show that they will co-operate with each other to achieve *stable* collective bargaining arrangements. The unions must also show that they will conduct single table bargaining arrangements if the employer wishes.
- *Has there been a previous application in the last three years (paragraphs 39, 40 and 41)?* The CAC cannot accept an application if a previous application from the same union covering the same or substantially the same bargaining unit has been accepted by the CAC within the last three years. It is for the CAC to decide if one group of workers is substantially the same as another. Similarly the CAC cannot accept an application within three years of that union failing to achieve recognition following a ballot, or within three years of the union being de-recognised following a ballot.

How the CAC decides whether an application can be accepted

4.5 The CAC panel has ten working days in which to determine whether an application can be accepted. The panel can extend the period if they inform the parties, giving reasons for an extension (see paragraph 3.16 above). The CAC panel will try to avoid the need for extensions in order to help the application progress as expeditiously as possible. Preliminary enquiries to gather comments and evidence to assist the panel's consideration of whether the tests have been satisfied will be made as a matter of procedure by the case manager (and other CAC staff). Subject to any confidentiality agreement relating to lists of names, the case manager will pass all correspondence and other documents to the panel as soon as reasonably practicable. On receipt of an application, the case manager will send to the employer a questionnaire regarding the application for return to the CAC within 5 working days. The questionnaire will encourage the employer to put forward any evidence it believes relevant for the acceptance stage. Upon receipt of the completed questionnaire the case manager will pass a copy of it to the Panel and to the Union. The CAC panel may decide that further enquiries are necessary and of whom any such enquiries should be made. Whether an application can be accepted is, as with all decisions under Schedule A1, the sole preserve of the CAC Panel and is made on the basis of the evidence before it. Where the Panel considers that it cannot make a decision on the basis of the evidence before it, it will call a hearing to determine the issue.

Consequence of the CAC accepting an application

4.6 The union can withdraw its application without penalty at any time up to the point that the CAC has accepted it. However once an application has been formally accepted by the CAC, the union is then barred from re-applying for statutory recognition in respect of the same or substantially the same bargaining unit for three years (see admissibility tests above referring to paragraphs 39, 40 & 41 of the Schedule). Although the union can, subject to the limits described above, withdraw its application even after it has been formally accepted by the CAC, this does not negate the bar on re-applying within three years.

Scope for withdrawal and semi-voluntary agreements.

4.7 Having submitted its application form to the CAC, a union may, for whatever reason, subsequently decide that it no longer wishes to pursue statutory recognition and can withdraw the application. Alternatively, an employer may reach an agreement for recognition voluntarily with a union which makes the need for any further consideration by the CAC unnecessary; in such circumstances the union can either unilaterally withdraw its application (as set out in paragraph 16 of Schedule A1) or the parties can jointly request that the CAC cease its considerations by providing the CAC with a "joint notice to cease consideration" as set out in paragraph 17 of Schedule A1. The Schedule allows for such withdrawals and joint requests but sets limits on when these options can be used.

4.8 The union can unilaterally withdraw its application from the statutory process at any stage up to either the date that the CAC declares it recognised without a ballot or the date that it receives a notice that the CAC intends to arrange a ballot.

4.9 The two parties (union and employer) can enter into an agreement for recognition after a request is made under Schedule A1 (as described in paragraph 1.4 above) and then provide the CAC with a joint notice to cease consideration of the application (as described in paragraph 4.7 above). This can be done at any stage of the statutory process up to the date the CAC declares the union recognised or the last day of the ballot notification period. This process is described briefly at Annex 2. If an agreement for recognition is reached voluntarily and a joint notice to cease consideration has been provided, either party can apply to the CAC to specify a method of collective bargaining. This process is described briefly at Annex 2 of this guidance and is also explained in the CAC's *Guide for the Parties on Part II of Schedule A1*.

Duty on an employer where the application is accepted by the CAC

4.10 Where a union's application is accepted by the CAC, but the bargaining unit has not been agreed, an employer is under a duty to provide certain information to both the CAC and the union within 5 working days, starting with the day after being given notice of the acceptance decision. The information that must be provided is:

- a list of the categories of worker in the proposed bargaining unit,
- a list of the workplaces at which they work ('workplace' is defined in the Schedule as the set of premises a person works at/from or, where there are no such premises, the premises with which the worker's employment has the closest connection), and
- the number of workers the employer reasonably believes are in each of the categories at each of the workplaces.

The information that the employer provides to the union and the CAC must be the same and must be as accurate as is reasonably practicable in light of the information in the employer's possession at the time.

4.11 This duty obliges the employer to pass information to the union, and to the CAC, which may assist the parties' negotiations during the next stage of the statutory procedure. If, within the specified time, the employer fails to supply the required information, or fails to provide it in accordance with the statutory criteria, the union can request that the CAC moves straight to its next formal decision (CAC decides the bargaining unit; see stage 4 below). If the CAC receives such a request and is – either at the time that request is made or at some time later in the appropriate period (see 5.1 below) - of the opinion that the employer has failed to comply with this duty, it must take the steps to decide the appropriate bargaining unit described in stage 4 below. The CAC must decide the appropriate bargaining unit within 10 working days starting with the day after the day on which the request was made, although this period can be extended where the CAC gives a notice with reasons.

Union communications with workers after acceptance of application

4.12 Where an application is accepted by the CAC the union has the facility to communicate with workers who are in the proposed or agreed bargaining unit. To do so, the union must apply, in writing, to the CAC asking it to appoint a suitable independent person (SIP) to handle these communications. The CAC will appoint the SIP as soon as possible after the union's request and will then notify the name, and appointment date, of the appointed person to the parties. This notification will begin the 'initial period' throughout which the union can send information to workers through the SIP.

The Initial Period

4.13 The initial period starts with the day the CAC notifies the parties of the name and date of appointment of the SIP. The initial period then ends when one of the following occurs-

- the union withdraws the application (see 4.7 to 4.9 above);
- the CAC finds the application is invalid (see 6.4 below);
- the union is declared recognised without a ballot (in the circumstances described below at 4.20 & 7.5)
- the CAC informs the union of the name of the person appointed to conduct a ballot (see 8.8 below).

It is throughout the initial period that the Union can communicate with the relevant workers through the SIP.

The suitable independent person

4.14 The SIP, referred to in the Schedule as 'the appointed person', is appointed by the CAC panel when the union requests it. The SIP will send to any relevant worker information that is provided to it by the union and will charge the union for this service.³ The CAC has no role in vetting the content of the communication and thus cannot deal with any complaints about accuracy or content.

4.15 The union bears the costs of the SIP; where there is a joint application for recognition, the unions can decide between themselves how to apportion the costs or can simply pay equal measures of the costs. The SIP will send the union a demand setting out its costs, the costs will include only those that were necessary to handle communications between the union and the relevant workers during the 'initial period', a reasonable charge for services and any other costs that the union agrees. Whilst the Schedule charges the CAC with the task of appointing the SIP and passing the information on relevant workers to it, it is advisable for the union to

³ A person may act as a SIP if specified in the Recognition and Derecognition Ballots (Qualified Persons) Order 2000 [SI 2000 No 1306] and (Amendment) Order 2010 [SI 2010 No 437] and there are no grounds for believing either that he or she will carry out any functions arising from the appointment other than competently or that his or her independence in relation to those functions might reasonably be called into question.

clarify with the SIP its full likely charges before commencing communications with the relevant workers so that additional expenditure is minimised; for example a union may wish to carry out its own printing of literature if it can do this more cost effectively. Once the SIP's demand for costs is received, the union is then required to pay the SIP within 15 working days (starting with the day after receipt of the demand). If the demand is not paid then a county court can order that the demand is recoverable under a court order.

4.16 If the union disputes the demand then it can appeal to an Employment Tribunal within 4 weeks, starting with the day after receipt of the demand. The Employment Tribunal will dismiss an appeal unless it is shown either that the amount specified in the demand as being the costs of the appointed person is too great or the share of the cost to be met by the appellant is too great. If the Tribunal allows an appeal then it will also rectify the demand for costs accordingly. While there is an outstanding appeal against the costs, the demand from the SIP is not enforceable.

Duties on the employer after appointment of SIP

4.17 An employer who is notified of the appointment of a SIP must comply with duties to provide information to the CAC that will enable the SIP to fulfil its role (so far as it is reasonable to expect the employer to do so). These duties are in addition to the duty to provide the information described in 4.10 above but they will only be triggered where the CAC appoints a SIP at the request of the union.

4.18 These duties are as follows;

- to give the CAC the names and home addresses of the 'relevant workers'. This must be done within ten working days starting with the day after that on which he or she is informed of the name and date of appointment of the SIP. 'Relevant workers' are either those falling within the proposed bargaining unit or, if a bargaining unit has already been agreed by the parties or decided by the CAC, those within that bargaining unit.
- if the employer has given the CAC the names of workers within the proposed bargaining unit and a different bargaining unit is then agreed by the parties or decided on by the CAC, the employer must give the CAC the names and home addresses of those who are now the 'relevant workers', ie. those workers who fall within the different bargaining unit. This must be done within 10 working days starting with the day after that on which the bargaining unit is agreed or the CAC's decision is notified to the employer.
- to notify the CAC as soon as reasonably practicable of the name and home address of any worker who subsequently joins the bargaining unit after the initial list has been supplied.
- to inform the CAC, as soon as reasonably practicable, of any worker who ceases to be a 'relevant worker' because he or she has left the bargaining unit (except where a new complete list is supplied because the definition of the bargaining unit changes).

The CAC must pass all information it receives to the SIP as soon as possible. The CAC will not pass on the information to anyone else.

4.19 In the event that the employer does not comply with these duties the CAC may, if the initial period has not yet ended, order the employer to remedy the failure within a set timescale. Given the seriousness of the available penalty (see 4.20 below), the panel will spell out the consequences of not complying with an order from the CAC when it is made. If the employer *fails* to comply with the order the CAC, again providing the initial period has not yet ended, will issue a notice to both parties confirming that there has been a failure to comply with the remedial order; this notice will spell out the consequences of the failure to comply with the remedial order.

Penalty for non-compliance with a CAC remedial order

4.20 If the CAC issues a notice confirming that the employer has failed to comply with the remedial order then it may also issue a declaration that the union is recognised. This will only occur where the CAC is also satisfied that;

- a) the bargaining unit has been agreed by the parties or has been decided by the CAC; and
- b) the agreed or decided bargaining unit has not led to the application being invalid (see 6.4 below); and
- c) the initial period has not yet ended.

If the CAC is not satisfied that these conditions are met then no declaration will be issued until such time as they are met, unless the employer meanwhile complies with the order.

Stage 4 - Deciding the appropriate bargaining unit

5.1 Where the bargaining unit is not already agreed before an application is accepted, the CAC panel, following acceptance, has a duty to try to help the parties reach agreement on what the appropriate bargaining unit is. In trying to help the parties, the CAC may suggest the parties seek help from Acas, the CAC may itself mediate between them or, if the parties prefer, they may conduct these negotiations directly. The CAC has 20 working days in which to try to help the parties reach an agreement; the Schedule refers to this as the appropriate period and it starts with the day following the CAC giving notice that the application is accepted. The CAC can extend the appropriate period beyond the 20 working days if reasons are given to the parties. The 'appropriate period' may also be brought to an end where the CAC believes that there is no reasonable prospect of agreement being reached before the due end date. If the CAC reaches this conclusion then it must notify the parties of the end date and give reasons for its conclusion; the appropriate period then ends with the date of the CAC's written notification. If, during the appropriate period, both parties apply to the CAC for a declaration that the period will end on an earlier date than scheduled, the CAC can specify that the new end date is the one the parties have applied for. The CAC may subsequently notify a later end date if it gives reasons for the extension.

5.2 If agreement cannot be reached between the parties, or the union makes a request in the circumstances described in 4.11 above, then the CAC must decide within a period of 10 working days whether the union's proposed bargaining unit is appropriate. The CAC can extend this bargaining unit decision period by giving the parties a notice with reasons for the extension. If the CAC's decision is that the union's proposed bargaining unit is not appropriate then the Schedule requires it to go on and decide a bargaining unit which *is* appropriate; this decision must also be made in the bargaining unit decision period. In reaching its decision on whether the proposed bargaining unit is appropriate and, where required, in deciding an alternative bargaining unit which is appropriate, the CAC has to take into account a number of factors:

- *Need for the unit to be compatible with effective management,*
- *views of employer and union*
- *existing national and local bargaining arrangements*
- *desirability of avoiding small, fragmented bargaining units*
- *characteristics of workers in the proposed bargaining unit and any other employees the CAC considers relevant*
- *location of workers.*

Of these factors, the first in the list takes priority in the sense that the Schedule states clearly that the other factors can only be taken into account so far as they do not conflict with the need for the unit to be compatible with effective management.

5.3 When making its decision on whether the union's proposed bargaining unit is appropriate, the CAC must take into account any views that the employer has on any other bargaining unit that it considers would be appropriate.

5.4 Before the CAC makes any decision on the bargaining unit it will write to both the employer and the union asking for specific comments on all of the matters listed above. If there is conflicting evidence on whether the proposed bargaining unit is appropriate then the CAC panel is likely to call a hearing to determine the question.

5.5 Whether the bargaining unit is agreed directly between the parties or is decided by the panel, there needs to be clarity as to which workers are included in the bargaining unit. This is because if, at a later stage in the process, a ballot is held, both the parties and the CAC will need to be quite clear as to which workers are entitled to receive a ballot paper. Since the bargaining unit that is defined at this stage cannot be modified or re-defined later, the definition must be clearly understood by both parties as well as the panel. In defining the bargaining unit, it can sometimes be helpful to define it by stating which posts or functions are excluded (eg all workers except.....) as well as categories of workers to be included.

Stage 5 - Changes to the proposed bargaining unit

6.1 Whether a bargaining unit is agreed between the parties or is decided by the CAC, if that bargaining unit is different from the bargaining unit proposed in the union's application then the CAC has to apply validity tests to the new bargaining unit.

6.2 The tests that need to be applied are:

- *Is there an existing recognition agreement in respect of any workers covered by the new bargaining unit (paragraph 44 of Schedule A1)?* The application cannot be valid if there is an existing agreement under which a union is entitled to conduct collective bargaining on behalf of any workers in the new bargaining unit. For this purpose, the existing agreement can be with any trade union, whether or not it has a certificate of independence, and can be a voluntary or statutory agreement. Equally, an existing collective agreement does not need to cover hours, pay or holidays (subject to (b) below) as long as it covers one or more of the matters specified in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992. The existing agreement only needs to cover one worker in the new bargaining unit to make the current application invalid. There are two exceptions to the rule about existing agreements.
 - a) if the union recognised is a non-independent union that was de-recognised in the preceding three years, then an application from an independent union can be accepted as valid. Without this provision an employer attempting to avoid statutory recognition could simply re-recognise a non-independent union (or staff association) as soon as it was de-recognised following an application (under Part VI of Schedule A1) from a worker, therefore barring the independent union indefinitely.
 - b) if the existing agreement is with the same union as is making the current application, and the existing agreement does not cover all of the following: pay, hours and holidays, then the application can be accepted as valid.
- *Is there 10% union membership in the new bargaining unit (paragraph 45 of Schedule A1)? *See below*
- *Is the majority of workers in the new bargaining unit likely to favour recognition (paragraph 45 of Schedule A1)?*See below*

*The CAC's consideration of the validity tests under paragraph 45 will be based on the best evidence available. If the CAC considers it necessary, it can require an employer to provide, to a CAC case manager, information concerning the workers in a bargaining unit and the likelihood of a majority of those workers being in favour of the applicant union conducting collective bargaining on their behalf. The CAC can also, where it considers it necessary, require a union to provide to the case manager information concerning the

union members in a bargaining unit and the likelihood of a majority of those workers being in favour of the applicant union conducting collective bargaining on their behalf. If the CAC considers these steps necessary it will specify to the parties what information it requires and the date by which it is to be supplied. Such requirement may include information as to the nature and number of employees in a bargaining unit, and as to the membership, subscriptions and rules of a union. The case manager may also require more information from either or both sides on the job titles of employees covered in the bargaining unit.

Once the required information has been received the CAC case manager will compile a report and a copy of the report will be given to the Panel, to the employer and to the union. If either of the employer or the union fails to supply the information required by the CAC then the report must mention that failure and the CAC can draw an inference against the party who has so failed.

- *Is there a competing application including any workers covered by the new bargaining unit (paragraph 46 of Schedule A1)?* The CAC cannot adjudicate between competing applications *made* by different unions which relate to the same or overlapping bargaining units. If at least one worker in the new bargaining unit also falls in the bargaining unit of another accepted application and that other application is still under consideration, then the current application will not be valid.
- *Has there been a previous application in respect of the new bargaining unit (paragraphs 47, 48, 49 and 50 of Schedule A1)?* The application cannot be valid if a previous application from the same union covering the same or substantially the same bargaining unit has been accepted by the CAC within the last three years. Similarly the application cannot be valid within three years of the same union failing to achieve recognition following a ballot, or being de-recognised following a ballot of the same or substantially the same bargaining unit. It is for the CAC to decide if one group of workers is substantially the same as another.

6.3 Preliminary enquiries to enable the panel to determine whether the validity tests are satisfied will be carried out by the case manager (and other CAC staff) who will report his/her findings to the panel and pass on correspondence as appropriate. If there is conflicting evidence, the CAC panel may call a hearing. Again the decision period is 10 working days or longer if reasons are notified to the parties.

Implications of a change to the bargaining unit

6.4 The CAC panel has to decide the appropriate bargaining unit, on the basis of the criteria set out above (para 5.2), before the validity tests are applied. If, as a result of changes to the bargaining unit (whether agreed by the parties or decided by the CAC panel), the application does not meet the applied validity tests, the CAC cannot proceed with the application. Rejection at this stage means that, while the union concerned cannot apply for three years in respect of the bargaining unit proposed in the original application (or one substantially the same), the three year

bar does not apply to the bargaining unit agreed by the parties or decided by the CAC panel (ie the new bargaining unit that has rendered the application invalid).

Stage 6 - Testing union support

7.1 Once an application has been accepted, and the bargaining unit settled, the CAC panel has to decide whether to call a ballot on union recognition.

7.2 The main test is the level of union membership in the bargaining unit. Unless the CAC panel is satisfied that the majority of the workers in the bargaining unit belong to the union making the application, it has to call a ballot. Where the union argues that it has a majority of the workers in the bargaining unit and the employer provides conflicting evidence to challenge the union's membership figures, there may be an independent check carried out by a CAC case manager on the level of union membership in the bargaining unit. The check can take a number of forms. If confidentiality is not required or if the parties agree to providing lists on the basis of confidentiality, it could be a comparison of lists (where the decision would be based on the case managers' report of the check; the names themselves will not be given to the panel) or detailed checks involving visits to employer or union premises. The parties will be asked to consent to any such check and will be informed of the results before any decision is taken.

7.3 The CAC's consideration of whether there is majority union membership in the bargaining unit will be based on the best evidence available. If the CAC considers it necessary, it can require an employer to provide, to a CAC case manager, information concerning the workers in a bargaining unit. The CAC can also, where it considers it necessary, require a union to provide information concerning the union members in a bargaining unit. If the CAC considers these steps necessary it will specify to the parties what information it requires and the date by which it is to be supplied.

7.4 Once the required information has been received the CAC case manager will compile a report and a copy of the report will be given to the Panel, to the employer and to the union. If either of the employer or the union fails to supply the information required by the CAC then the report must mention that failure and the CAC can draw an inference against the party who has so failed.

7.5 If the majority of the workers in the bargaining unit belong to the union making the application, the CAC must issue a declaration of recognition for the union without a ballot, but see below.

7.6 Notwithstanding any finding that a majority of workers in the bargaining unit are members of the union, the CAC has to call a ballot if any of the following conditions apply:

- a) If the CAC is satisfied that a ballot should be held in the interests of good industrial relations,

- b) If the CAC has evidence, which it considers credible, from a significant number of union members in the bargaining unit that they do not want the union to conduct collective bargaining on their behalf,
- c) Membership evidence regarding the circumstances in which workers joined the union or length of membership leads to doubts whether a significant number of union members in the bargaining unit want the union to conduct collective bargaining on their behalf.

7.7 The CAC panel will consider any evidence that the parties, or union members within the bargaining unit, submit on these conditions. The CAC panel may call a hearing to help it determine whether any of the factors apply. In the event that a hearing was being held on the question of whether the majority of the workers are union members, consideration of these three conditions could be combined with it. If the CAC has credible evidence from union members in the bargaining unit indicating that they are opposed to the union being recognised for collective bargaining the CAC Panel will consider it. The identity of the individuals informing the CAC will not be disclosed by the case manager to the panel or to the other party; however the panel may ask the case manager to obtain information from both the employer and the union to assess whether the individuals are workers in the bargaining unit and whether they are union members. This information can be required by the CAC in the same way that information can be required for case manager checks for earlier purposes such as acceptance, validity and whether there is majority union membership.

Stage 7 - Holding a ballot

8.1 If the CAC decides a ballot is required, it will notify the parties in writing that it intends to arrange for a secret ballot in which the workers in the bargaining unit will be asked whether they want the union to be recognised for the purposes of collective bargaining on their behalf. This notice, once received by the parties, will begin the 'notification period' the expiry of which will require the CAC to hold the ballot.

8.2 From the date the union receives the CAC's notice it has the 10 working days of the notification period in which it can notify the CAC that it does not wish a ballot to be held. In addition, the union and employer can jointly notify the CAC of this (for example, if they reach a semi-voluntary agreement). In the latter case, the start date of the notification period will be determined by reference to the date on which the last of the parties received the CAC's notice. The 10 day period can be extended by the CAC.

8.3 Withdrawing from the ballot at this stage is withdrawal from the statutory process and would still mean that the union was barred from applying to the CAC for three years in respect of the same or substantially the same bargaining unit. Once the notification period is passed, it is no longer possible for the union or the union in agreement with the employer, to withdraw from the statutory procedure and a ballot must be arranged. The notification period can be extended, but only in circumstances where the parties have applied jointly to the CAC for the extension.

8.4 Notwithstanding that there may be negotiations for a semi voluntary agreement, the parties should use the notification period to agree access arrangements for the union during the ballot period. It is helpful if a copy of the access agreement is sent to the CAC case manager. If there are problems in agreeing access then the parties may seek the help of Acas to conciliate as soon as possible. The case manager is likely to be in touch with the parties before the expiry of the notification period in case a hearing on access needs to be arranged or some other assistance can be offered by the CAC.

8.5 Assuming no notice to withdraw from the ballot is received from the union (or from union and employer), the CAC panel appoints a qualified independent person (QIP) to conduct the ballot. The panel selects the QIP from those bodies specified in the Recognition and Derecognition Ballots (Qualified Persons) Order 2000 [SI 2000 No 1306] and (Amendment) Order 2010 [SI 2010 No 437]. While the QIP conducts the ballot, the CAC panel has to decide whether the ballot should be a workplace ballot or a postal ballot (or, if special factors apply, a combination of the two). The CAC panel will decide on the form of the ballot depending on the circumstances of the case. It is required to take into account the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace, together with costs and practicality. It may also take into account any other matters it considers appropriate. These are likely to include the preferences of the parties. The case manager may visit the workplace before the decision on the form of ballot is decided to advise the Panel on the physical arrangements.

8.6 Special factors that would justify a combination of a workplace and postal ballot are those arising from the location of workers and the nature of the work, or other factors put to the panel by either party. Where a workplace ballot has been ordered and there will be workers who, for reasons relating to them as individuals (such as known sick absence, the taking of annual leave, maternity or paternity leave etc), will not be at work on the day of the ballot, the ballot arrangements may, at the CAC's discretion, include provision for those workers to vote by post where a request for such is made far enough in advance of the ballot for this to be practicable.

8.7 The ballot must be held within 20 working days of the appointment of the QIP. Again the CAC panel can extend this period.

8.8 Once the CAC has selected the QIP, the case manager will inform the parties of the QIPs name and contact details and the date of the QIPs appointment. The CAC letter will confirm that the ballot must now take place, will give details of the ballot timetable and will draw attention to the need to agree access arrangements (if this has not already been achieved) and the opportunity for the union to use the services of the QIP to circulate material to the workers in the bargaining unit (see below). A copy of the QIP's estimate of costs will also be sent to both parties. Once the employer has been informed of these details by the CAC letter, the employer has five duties with which it must comply:

- to co-operate generally with the union and the QIP in connection with the ballot

- to give the union reasonable access to the workers in the bargaining unit to enable it to inform those workers of the object of the ballot and to seek their support and their opinions on the issues involved. (in accordance with the Code of Practice on Access to Workers during Recognition and Derecognition Ballots, prepared for this purpose)

What constitutes reasonable access, and the basis on which it should be given, is spelt out in greater detail in the Code of Practice on Access and Unfair Practices during Ballots for Trade Union Recognition or Derecognition. However the Schedule itself specifically provides that employers are taken to have breached this duty if they refuse a request for a meeting between the union and any workers in the bargaining unit without either they or their representative (other than one who has been invited to attend) being present and it is not reasonable in the circumstances for them to do so. The duty is also breached if the employer or a representative of the employer attends such a meeting without an invitation, or the employer seeks to record or otherwise be informed of the proceedings at any such meeting (or refuses to undertake not to seek to do so) unless this is reasonable in the circumstances.

- to pass names and addresses of workers in the bargaining unit to the CAC. The names and addresses must be given to the CAC within the period of 10 working days starting with the day after the employer was informed of the QIP's name and ballot arrangements. After providing this initial list the employer must also pass to the CAC details of any workers joining or leaving the bargaining unit. The CAC case manager will then pass the names and addresses of workers to the QIP. Where the employer has already provided names and home addresses of relevant workers for the purposes of a union's communications with them after the application was accepted (see 4.7 above) this duty is amended accordingly so that the obligation on the employer is to provide the names and home addresses of any workers who have joined or left the bargaining unit since the date that the employer was informed of the QIP's name and ballot arrangements. The CAC will specify all relevant dates for the employer and, if the QIP is not the same organisation that was appointed as the SIP, the CAC will, as soon as possible, pass on to them the names and home addresses already submitted by the employer for the earlier purpose.
- to refrain from making any offer to workers, or any individual worker, that induces them not to attend a relevant meeting between the union and the workers unless it is reasonable in the circumstances (relevant meetings are those that are arranged under the access agreement or arranged as a result of a step ordered by the CAC in a remedial order (see 8.11 below))
- to refrain from taking or threatening any action against a worker because they attended or took part in a relevant meeting or they indicated their intention to do so.

8.9 The union can use the QIP to distribute information from the union to the workers in the bargaining unit at their home addresses (providing the union bears the cost of sending the information), but neither the CAC nor the QIP can give the

information on names and home addresses to the union. Equally neither the CAC nor the QIP can pass names of union members to the employer. If the union wishes the QIP to distribute information to the workers, it must ask the QIP directly. The CAC has no role in vetting or approving the content of any communication and cannot adjudicate on such a complaint unless it falls within the ambit of an unfair practice (paragraphs 8.12–8.14). Similarly it is for the union to approach the employer with regard to access arrangements. The Panel may suggest to the employer (through the case manager) that it would be helpful to display a notice at the workplace about the ballot so that the workers in the bargaining unit are made aware of the arrangements.

8.10 Any complaint that the employer has not complied with any of the five duties must be made known to the CAC before the ballot has been held. Complaints regarding the employer's compliance with the duties, or any complaints by the employer about lack of co-operation by the union, should be sent to the CAC case manager. As long as the ballot has not already been held the CAC panel will investigate the complaint, seeking advice from the QIP as appropriate. A hearing or, in some circumstances, a site visit may be needed. The CAC panel can extend the timetable for the ballot in these circumstances.

8.11 If the CAC panel decide that the employer has failed to perform any of the duties above, they can order the employer to remedy the failure within a set timescale. If the employer fails to remedy the failure the CAC can issue a declaration of recognition. Given the seriousness of this penalty, the panel will spell out the consequences of not complying with an order from the CAC when the order is made. The CAC panel can take into account all relevant circumstances including the behaviour of the union.

Unfair Practices

8.12 Each of the union and employer once informed by the CAC of the name and appointment date of the QIP and the balloting arrangements (see 8.8 above) must refrain from using any unfair practice. Either of the union and employer can complain to the CAC if they believe the other has used an unfair practice and the CAC must decide whether the complaint is 'well founded'. A complaint will be well founded if the unfair practice was used and the CAC is satisfied that it changed or was likely to change a relevant worker's intention to vote or abstain from voting, intention to vote a particular way or how he or she actually did vote.

8.13 The BEIS Code of Practice on Access and Unfair Practices during Ballots for Trade Union Recognition or Derecognition recommends steps that can assist good practice for both employers and unions and gives guidance on what activities should be avoided in order to minimise the disruption to ballots that can be caused by complaints to the CAC.

8.14 The Schedule lists unfair practices. The following acts by the employer and the union are unfair practices if they are used with a view to influencing the result of the ballot:

- Offers to pay, with money or to give money's worth, for a relevant worker to vote in a particular way or to abstain;
- Offers to pay, with money or money's worth, a reward to a relevant worker but only if a specific declaration is achieved following the ballot (the union being declared recognised or the union being declared not recognised) – this offer must be “outcome specific” as opposed to being conditional on any developments resulting from the declaration;
- The coercion or attempted coercion of relevant workers to discover whether he or she intends to vote or abstain or how they intend to vote or have voted;
- Dismissal, or threats of dismissal, of a worker – note that this is not confined to just those workers entitled to vote in the ballot;
- Taking or threatening disciplinary action against a worker – again this is not confined to workers entitled to vote in the ballot;
- Subjecting, or threatening to subject, a worker to any other detriment – again this is not confined to workers entitled to vote in the ballot; and
- The use or attempts to use undue influence on a relevant worker.

An unfair practice complaint must be made on or before the first working day after the date of the ballot or, if votes can be cast on more than one day such as in a postal ballot, the last of those days. Where a complaint is made after this period there is no provision in the Schedule for the CAC to consider whether one of the parties has used an unfair practice.

8.15 If an unfair practice complaint is made within the specified time, the CAC has 10 working days in which to decide whether the complaint is well founded, starting with the day following receipt of the complaint. The CAC can extend this period and if it does so it must give reasons to the parties. If at the beginning of this decision period the ballot has not begun, the CAC can postpone it by giving a notice to the parties and the QIP; the notice will say when the ballot will begin and the new date must be after the end of the decision period.

8.16 If the CAC decides that the complaint is well founded (see 8.12 above) it will declare this finding and may then do one or both of the following:-

- Issue a remedial order telling the party what steps it must take in order to mitigate the effect of the unfair practice and when to take those steps by; or
- Give notice to the parties that a secret ballot will be held – in effect ordering a new ballot.

The CAC may make a remedial order and/or issue a ballot notice either at the same time as it declares the unfair practice has occurred or at any other time before it informs the parties of the ballot result and issues a declaration of recognition or non-recognition. The Schedule makes clear that the CAC can give more than one order under these provisions.

Circumstances in which the CAC can abandon a ballot and issue a declaration

8.17 In some circumstances where there have been serious failures by either the employer or the union, the CAC has the power to cancel a ballot and make a declaration that the union is, or is not, recognised. The CAC can consider taking this step in the following circumstances:

a) If the CAC declares that an unfair practice complaint is well founded (see 8.12 above) and that the unfair practice consisted of, or included,

- the use of violence, or
- the dismissal of a union official.

OR

b) The CAC has issued an unfair practices remedial order and the party to whom it is issued fails to comply with it;

OR

c) The CAC, having issued an unfair practice remedial order to a party, then makes a further declaration (see 8.16 above) that a complaint that the same party used an unfair practice is well founded.

In these cases of serious and/or repeated failures by the parties, if the failing party is the employer then the union can be declared recognised and if the failing party is the union then the CAC may declare the union is not recognised.

8.18 The power to cancel the ballot and make these declarations is in addition to the power to issue remedial orders and/or order a new ballot; there is no presumption that the power will therefore need to be used in every instance of repeated failures, this will be a question for the Panel to determine in the circumstances of the individual case.

8.19 Where the CAC declares that an unfair practices complaint is well founded and orders a fresh ballot - or where the CAC declares that the union is recognised or not recognised in the circumstances described in 8.17 above - the CAC will take steps to cancel the 'original' ballot. If that ballot is nonetheless held it will have no effect and any result that is reported by the QIP will not be acted on by the CAC or passed on to the parties.

8.20 If the CAC orders a fresh ballot in the circumstances described at 8.16 above then the following changes to usual ballot procedure will take effect:-

- a) the notice period (for a union, or joint, request to cease the ballot arrangements) is reduced to 5 days.
- b) the Employer only needs to update the information on workers' names and addresses rather than provide them afresh
- c) any remedial order given as a result of a failure to fulfil one of the employer's duties or because of non-compliance by one of the parties with a unfair practice is carried over and must be acted on by the party concerned to the extent that the CAC will specify in a notice to the parties – it does not wither away just because the tainted ballot has been abandoned.
- d) the cost of the fresh ballot will be borne by whoever the CAC decides, or in whatever proportions the CAC decides, it should be.

8.21 Unless the circumstances in 8.20 d) apply the costs of the ballot are shared between the employer and the union on a 50/50 basis. The case manager will send both parties a copy of the estimate of costs that was received from the QIP and will ask that the QIP notify the CAC and each of the parties of any likely changes to that estimate, and the reasons for the changes, as soon as reasonably practicable. In general terms, workplace or combination ballots tend to be more expensive than postal ballots.

8.22 Following the ballot the QIP will send the employer and the union, subject to any CAC decision to the contrary (see 8.20d) above, a demand for its costs. The demand will show the gross costs of the ballot and the share of the cost to be paid by the employer and the union. The employer and the union are then required to pay the QIP within 15 working days (starting with the day after the demand is received). If the employer or the union disputes the demand then it can appeal to an Employment Tribunal within 4 weeks, starting with the day after receipt of the demand. The Employment Tribunal will dismiss an appeal unless it is shown either that the gross costs of the ballot are too great or the share of the cost to be met by the appellant is too great. If the Tribunal allows an appeal then it will also rectify the demand for costs accordingly. While there is an outstanding appeal against the costs, the demand from the QIP is not enforceable.

Stage 8 - Result of ballot

9.1 In order for a trade union to be recognised for collective bargaining purposes following a ballot, a majority of those voting and at least 40% of the workers in the bargaining unit must vote in favour of recognition. After the ballot the CAC will either declare the union recognised, or issue a declaration that the union is not recognised. Following a declaration of non-recognition, the CAC cannot accept any applications from the union concerned in respect of the balloted bargaining unit, or one substantially the same, for three years. Once the QIP has submitted a written report of the ballot result to the CAC it must be considered by the Panel. The CAC Case Manager will only be permitted to inform the parties of the ballot result once

authorised to do so by the Panel. In normal circumstances this will be within 48 hours of completion of the balloting period.

Stage 9 - Establishing the bargaining procedure

10.1 Statutory recognition is for collective bargaining on pay, hours and holidays (and any other matters agreed by the parties). Once a union is recognised, a method for conducting collective bargaining on pay, hours and holidays needs to be agreed. If a method cannot be agreed, then the CAC, taking into account the “model method” determined by Parliament, must specify a method of collective bargaining to the parties.

10.2 In the first instance it is for the two parties themselves to attempt to reach an agreement on a method of bargaining; they may wish to seek the help of Acas in doing so. If the parties cannot agree a procedure themselves within 30 working days, either party (union or employer) can apply to the CAC for assistance. The CAC panel then has the duty to try to help the parties reach agreement (which at this stage would not necessarily need to accord with the Trade Union Recognition (Method of Collective Bargaining) Order 2000 - the “model method”). The period for helping the parties reach agreement is 20 working days. The CAC panel can extend this period with the consent of both parties.

10.3 If the parties cannot reach agreement with the help of the CAC, the CAC panel will specify the method of collective bargaining. In drawing up a method, the CAC panel will take account of the views of the parties, and also of the Trade Union Recognition (Method of Collective Bargaining) Order 2000 (the “model method”). Where either party wishes the CAC panel to depart from the model method, it should propose changes to the model and explain its reasons for the changes. The CAC may call a hearing to decide the method.

10.4 At any time up to the point at which the CAC specifies the method of collective bargaining, it is still open to the parties to jointly request that the CAC ceases its consideration of the method and the CAC will comply with that request. This might perhaps be the case in circumstances where the parties believe that agreement is preferable to the imposition of a method by the CAC.

Consequences of the CAC specifying a method

10.5 Where the CAC specifies the method of collective bargaining, that method is legally enforceable unless -

- a) both parties agree in writing that the method – or a specific part of that method - is not to be legally binding, or
- b) where both parties agree in writing to vary or replace the method.

in these circumstances it is the written agreement between the parties that is legally enforceable.

10.6 As with any legally binding contract, enforcement is a matter for the courts. The remedy for a breach of any aspect of the method is specific performance. If either party ignored a court order for specific performance, it would be in contempt of court. It is not the CAC's role to enforce the method of collective bargaining that has been specified.

Stage 10 - Performance of procedure

11.1 If the method of collective bargaining was agreed between the parties, rather than specified by the CAC, then in the event that either of the parties believe the other has failed to carry out the method it can apply to the CAC for assistance. In these circumstances, the CAC will repeat stage 9 (in other words, first try to help the parties reach agreement, and then if no agreement is reached, specify a method of collective bargaining).

11.2 As stated above at Stage 9, a bargaining method specified by the CAC is legally binding (unless both parties agree that it should not be).

Outline of other procedures under Schedule A1

12.1 While Part I of Schedule A1 deals with statutory recognition, applications can also be made under other Parts of the Schedule.

12.2 This note only gives a very brief outline of the processes under other parts of the Schedule. For more detailed information, you should consult the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Employment Relations Act 1999 and the Employment Relations Act 2004), available from the web sites listed in paragraph 1.1 of this Guide. Explanatory Guides for these other parts of the Schedule and the relevant application forms are available from the CAC or from the [CAC web site](#).

12.3 Part II (agreements for recognition)

This applies where the union and employer have reached a voluntary agreement for recognition following a request by the union for statutory recognition, and the union withdraws that request and has not yet submitted an application to the CAC for statutory recognition. It also applies where the parties have reached an agreement for recognition voluntarily after an application has been submitted to the CAC and when both parties have provided to the CAC a “joint notice to cease consideration” as set out in paragraph 17 of the Schedule. The parties can then ask the CAC to specify the method of collective bargaining. Any method specified by the CAC will be legally binding unless both parties agree otherwise. The employer cannot unilaterally terminate an agreement under Part II for three years, but the union can end it at any time.

12.4 Part III (changes affecting bargaining unit)

This applies if, following statutory recognition, there is a change in the organisation, structure, or activities of the business, or a substantial change of the numbers employed which makes the bargaining unit inappropriate. Either party may make an application under Part III. If the CAC accepts the application, the parties can reach agreement on a new unit. If the parties fail to reach agreement, the CAC will consider whether the unit is still appropriate, and if not, decide what the new unit should be. Where the new unit overlaps with an existing bargaining unit, special provisions apply depending on the status of the overlapped bargaining unit. In addition, applications under Part III can be made by an employer on the grounds that the bargaining unit has ceased to exist. Applications under Part III can be made at any time after a declaration of recognition, provided that a method of conducting collective bargaining is in place.

12.5 Part IV (derecognition where recognition was achieved following a ballot)

This applies where an employer or worker seeks to derecognise a union which was recognised under Part I. Statutory derecognition can only take place three years or more after recognition was granted. The employer can ask the union to end

recognition arrangements and if the union does not agree, the employer can apply to the CAC asking for an end to the bargaining arrangement. The CAC conducts tests similar to the Part I admissibility tests in reverse, and the question is settled by a ballot. A worker or workers in the bargaining unit can apply to the CAC for an end to the bargaining arrangements. The employer can also apply for derecognition on the grounds that the entire workforce has fallen below 21. The CAC has produced a Guide to Part IV

12.6 Part V (derecognition where recognition was achieved without a ballot)

This applies where the union was granted recognition under Part I or Part III without a ballot. The differences from Part IV are that only the employer can make use of this Part of the Schedule and the test for accepting the employer's application is whether fewer than half the workers in the bargaining unit are members of the union. As with Part IV, the question of derecognition is settled by a ballot. Again the employer cannot apply for three years after recognition was granted.

12.7 Part VI (derecognition where the union is not independent)

If a non-independent union is voluntarily recognised for collective bargaining purposes, a worker or workers within the bargaining unit can apply to the CAC to have the bargaining arrangements ended. While the workers concerned can be backed by another union, that union cannot itself use this route. Again the CAC applies some initial tests of admissibility, attempts to help the employer, union and worker to end the bargaining arrangements and arranges a ballot to take place if necessary. This process has to be halted if the non-independent union obtains a certificate of independence.

12.8 Part VII (loss of independence)

If a union recognised under Part I of the Schedule loses its certificate of independence, then statutory recognition ceases.