Department for Business, Innovation, Science and Trade

# Code of Practice: Access and Unfair Practices During the Recognition and Derecognition Process

**October 2026**

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# Preamble

This document revises and supersedes the Code of Practice on Access and Unfair Practices during Recognition and Derecognition Ballots, which came into effect on 1 October 2005.

Pursuant to *section 208(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act)*, that Code shall cease to have effect on the date on which this Code of Practice comes into effect.

The Code has been revised as a consequence of the *Employment Rights Act 2025* (ERA 2025) which amends *Schedule A1 to the 1992 Act by strengthening union access and measures to tackle unfair practices in the recognition and derecognition processes.* Workers have a right to join a trade union, a right to organise and a right to be represented by trade unions to further their interests. This is reflected in the UK's trade union legislation, of which the statutory trade union recognition provisions have been strengthened as a result of the changes in the ERA 2025. The Code reflects these changes and seeks to encourage both unions and employers to realise the benefits of collective bargaining and to work together constructively to resolve issues voluntarily in the first instance, with the help of the Advisory Conciliation and Arbitration Service's (Acas) conciliation service if necessary. If voluntary agreement is not possible, then Schedule A1 provides statutory application processes. The changes to the access and unfair practices provisions made in the ERA 2025 seek to level the playing field during the recognition process so that both the union and the employer can present their case and workers are then free to decide democratically through a secret ballot whether they are in favour of union recognition.

This Code intends to provide statutory guidance on these provisions in a manner that is clearly accessible for both employers and workers. The access provisions addressed in this Code are distinct and separate from the provisions relating to the general right of access to workers and workplaces for trade union officials as introduced in chapter *5ZA of Part 1 of the 1992 Act* which are addressed in the Code of Practice, 'Right of trade unions to access workplaces'.

The approach in this Code is in line with the changes made by the *Employment Rights Act 2025*. As well as access and unfair practices provisions applying from the point the Central Arbitration Committee (CAC) accepts a recognition, derecognition or bargaining unit (Schedule A1, Part III) application, and there being new timescales for the parties to agree an access agreement, Section D of this Code sets out what a good access agreement should look like.

This Code does not mandate that the parties' access agreement includes all these elements, though this is encouraged unless there is good reason not to do so. Where

the parties cannot agree to an access agreement, then those elements will be considered by the CAC when making its determinations in relation to access agreements (although this does not prevent the CAC considering other elements, as it considers appropriate).

The CAC is a tribunal Non-Departmental Public Body (NDPB), independent of Government, that considers applications for statutory recognition, derecognition, and other matters. Applications for statutory recognition are considered by the CAC for bargaining units where the employer has at least 21 workers. Employers that have 20 workers or fewer are out of scope of the statutory trade union recognition and derecognition processes. During a relevant application, both unions and employers are encouraged to seek the CAC's advice and consult the CAC's guides to the parties, in addition to reading this Code and *Schedule A1 to the 1992 Act.* The CAC – as well as Acas - can also assist the parties in helping resolve any disputes that they may have.

The legal framework within which this Code will operate is explained in its text. While every effort has been made to ensure that explanations included in the Code are accurate, only the courts can give authoritative interpretations of the law.

*Section 203(1)(a) of the 1992 Act* gives a general power to the Secretary of State to issue Codes of Practice containing practical guidance for the purpose of promoting the improvement of industrial relations. Specific paragraphs in *Schedule A1 (paragraphs 19L, 19M, 81F, 81G, 116G and 116H)* set out that the general power under *Section 203(1)(a)* to issue Codes of Practice can include matters in relation to access and unfair practices in recognition, *Schedule A1 Part III* and derecognition applications.

Unfair practices and access are applicable to the processes of recognition, derecognition and *Schedule A1 Part III applications* (changes affecting the bargaining unit). For simplicity, most examples and explanations in this Code relate to the case where the union is seeking recognition. Where statutory references are given, and again for simplicity, these mostly relate to the recognition process notwithstanding similar provision in *Schedule A1* for derecognition and *Part III* applications. However, where this Code uses the term 'relevant application', this should be taken to mean reference to any of these aforementioned applications.

Under *Schedule A1 to the 1992 Act*, there is normally a 15 working days period for the union and employer to negotiate an access agreement. This is referred to in this Code as the 'negotiation period'.

Unless the text specifies otherwise, (i) the term "union" should be read to mean "unions" in cases where two or more unions are seeking to be jointly recognised; (ii) the term "workplace" should be read to mean "workplaces" in cases where a relevant application covers more than one workplace; and (iii) the term "working day" should be

read to mean any day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday.

Passages in this Code which appear in *italics* are references to, extracts from, or re-statements of, provisions in primary legislation. In this Code, the term 'must' denotes a legal requirement, while 'should' denotes a recommended step or expectation of reasonableness.

# Section A - Introduction

## Background

1. *Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992,* inserted by the *Employment Relations Act 1999* and subsequently amended by the *Employment Relations Act 2004* and the *Employment Rights Act 2025*, sets out the statutory procedure for the recognition and derecognition of trade unions for the purpose of collective bargaining.

2. Where an employer and a trade union fail to reach agreement on recognition voluntarily, the statute provides for the union to apply to the CAC to decide whether it should be recognised for collective bargaining purposes. In certain cases, the CAC may reject an application or award recognition without a ballot. In other cases, the CAC will be obliged to hold a secret ballot of the relevant workers to determine the issue. If a ballot takes place, the CAC will decide the balloting method. The ballot must be conducted by a Qualified Independent Person appointed by the CAC.

3. Where the CAC has accepted an application for statutory recognition, the union can apply for access to the relevant workers. This access is separate and distinct from any access agreement the union may have with the employer under the general access provisions in the *Employment Rights Act 2025*[1]. In relation to the statutory union recognition scheme to which this Code relates, *Schedule A1 to the 1992 Act* codifies the process and timeframes to agree an arrangement for access during recognition, derecognition and *Part III* processes which will be communicated throughout this Code. Section C of this Code aims to communicate the process and timescales that *Schedule A1* sets out for the parties to agree an access agreement and, failing that, for the CAC to determine the access agreement. The employer and the union will then be required to comply with the access agreement or the CAC determined agreement.

4. *Schedule A1* places various duties and obligations on parties during the recognition and derecognition process. Some of these are summarised under Section B of this Code. In addition to these, this Code encourages the parties to adopt behaviours that would generally be regarded as reasonable to promote voluntary resolution during the statutory union recognition and derecognition process. Such behaviours might include:

[1] See chapter 5ZA of Part 1 of the 1992 Act (right of trade unions to access workplaces), as incorporated by the ERA 2025.

- building trust and mutual respect for each other's roles and responsibilities, while respecting areas of difference
- operating with openness and transparency
- ensuring that leaders on both sides show up so that the right people are in the room, demonstrating how to work together, innovate and solve problems
- committing to early discussion of emerging issues and to maintain dialogue on policy and priorities
- respecting confidentiality
- taking account of the other party's public positions where necessary, and
- making the best use of scarce resources.

## General Purposes of the Code

5. This Code covers two related subjects: the union's access to workers and the prohibition of unfair practices during a relevant application. As regards the first topic of access, this Code gives practical guidance about the issues which arise when an employer receives a request by a union to be granted access to the workers at their workplace and/or during their working time. Section D of this Code also gives practical guidance on the matters that should be addressed in an access agreement. Of course, the union does not need the employer's consent or assistance to arrange access to workers outside the workplace and outside working hours - for example, when hiring a public hall to hold a meeting or using social media to put across its case. The Code does not therefore deal with the issues that arise when arranging such access, though those parts of the Code which concern the conduct of parties when campaigning are relevant. This Code deals with the specific circumstances of access during the recognition or derecognition processes, and where an application is made under *Part III of Schedule A1* in relation to changes in the bargaining unit. It does not provide guidance on access at other times.

6. The second purpose of this Code is to help parties avoid committing unfair practices. Recognition and derecognition ballots usually occur because the employer and the union cannot agree the way ahead. In some cases a party will wish to communicate its views to the workers concerned through active campaigning once the CAC has informed it that an application has been accepted or that a ballot will be held. This Code aims to encourage reasonable and responsible behaviour by both the employer and the union when undertaking campaigning activity during a relevant application. A failure to follow

the Code's guidance on responsible behaviour may not necessarily mean that an unfair practice has occurred. However, responsible campaigning should help ensure that acrimony between the parties is avoided and it greatly reduces the risk that individual workers are exposed to intimidation, threat or other unfair practices when deciding which way to cast their vote. It would also help preserve more cordial industrial relations in the long run. Additionally, the restriction on the use of unfair practices is not tied to the influencing of the ballot only but rather extends to influencing the outcome of the application more generally. As regards the treatment of individuals, both parties should note that the law provides protections against dismissal or detriment for workers who campaign either for or against recognition. The Code does not cover campaigning activity which occurs before the CAC has accepted an application. However, parties are still advised to act responsibly when undertaking any early campaigning and they may benefit by drawing on the guidance provided by this Code.

## Structure of the Code

7. This Code deals mainly with issues concerning access and unfair practices. These are distinct, though related, matters and all sections of the Code should therefore be read in conjunction with each other. Section B sets out certain duties that the parties must comply with. Sections C – E contain guidance on access, whilst Section F provides guidance on conduct to avoid committing an unfair practice. Finally, Section G provides guidance on the resolution of any disputes which might arise about the access arrangements or about the conduct of either the employer or the union when campaigning during the application period.

## Legal Status of the Code

8. This Code itself imposes no legal obligations and failure to observe it does not in itself render anyone liable to proceedings. *But section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that any provisions of this Code are admissible in evidence and are to be taken into account in proceedings before any court, tribunal or the CAC where they consider them relevant*.

# Section B – Duties on the parties

## Recognition

9. *Schedule A1* to the 1992 Act places various duties and obligations on parties during the recognition and derecognition process, including those set out in the remainder of this paragraph 9. Parties should be aware that it is possible that an access agreement may be put in place before the bargaining unit has been agreed or decided upon, as provided for in *Schedule A1* (see in particular the meaning of the "relevant workers" in *paragraphs 19G(3) and 19J(6))*. In such a case, the parties should make sure their access agreement is flexible enough to allow for the details of the bargaining unit to change without negating the whole agreement. Alternatively, the parties may wish to consider delaying implementation of the access agreement until the bargaining unit is agreed or determined."

*a)* *Paragraph 19J(3) of Schedule A1 places a duty on the employer and the union to comply with the access agreement (either agreed between parties or imposed by the CAC).* This duty requires the employer to give the union access in accordance with any access agreement in place between parties under *Schedule A1* and requires the union to comply with the agreement. Although the process of coming to an access agreement will run from when the union requests access, duties relating to access will not take effect unless and until there is an access agreement in place for the employer and the union to comply with.

*b)* Where an access agreement has been entered into or determined, *paragraph 19J(4) of Schedule A1 places a duty on the employer to refrain from making any offer to any or all of the relevant workers constituting the bargaining unit which (a) has or is likely to have the effect of inducing any or all of them not to attend a relevant meeting between the union (or unions) and the relevant workers and (b) is not reasonable in the circumstances. A 'relevant worker' is a worker employed by the employer in the proposed or determined bargaining unit.* In complex cases, the bargaining unit may not have been formally agreed or decided upon at the point at which the duty under *paragraph 19J(4)* has started to be applied. A "relevant meeting" is defined as *a meeting arranged in accordance with an access agreement or in accordance with an order of the CAC and which the employer, under that agreement or CAC order, is required to permit the worker to attend (paragraph 19J(8), Schedule A1)*.

*c)* *Paragraph 19J(5) of Schedule A1 places a duty on the employer to refrain from taking, or threatening to take, any action against a worker solely or mainly on the grounds that they attended or took part in any relevant meeting between the union (or unions) and the relevant workers, or on the grounds that they indicated an intention to attend or take part in such a meeting.* The definition of a "relevant

meeting" is the same as at (b) above. The bargaining unit may not have been agreed or decided at the point at which the duty starts to apply. This duty will be applicable from the stage at which an access agreement has been agreed or determined.

d) *Paragraph 19M of Schedule A1 places an obligation on both the employer and the union to refrain from using any unfair practice in relation to the application for statutory recognition.* The unfair practices are defined by *paragraph 19M of Schedule A1* and are the subject of Section F of this Code.

e) Where the CAC informs the parties that there will be a ballot, *paragraph 26(2) of Schedule A1* requires that *the employer must cooperate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and no other duty of the employer…is to prejudice the generality of this.*

f) The employer must also, under *paragraph 26(4), and so far as this is reasonable to expect*, *give to the CAC within a period of 10 working days starting the day following the CAC's notification to the parties of information about the ballot under paragraph 25(9), the names and home addresses of the workers eligible to vote in that ballot.* However the employer is exempted from having to do this under *paragraph 26(4F) if the list has already been provided under paragraph 19D in the case of where a Suitable Independent Person (SIP) has been appointed. The employer is also required to inform the CAC, as soon as is reasonably practicable, of any worker who ceases to be within the bargaining unit.*

## Derecognition

10. In general, the duties and obligations on the parties as regards access and unfair practices are similar in both recognition and derecognition applications and similar duties to those detailed above also apply to the derecognition process. The processes and duties in respect of access and unfair practices are applicable from the stage that the CAC accepts the application for derecognition.

11. The derecognition processes contain similar duties at *paragraphs 116A-E to paragraphs 19G to 19K of Schedule A1. Paragraph 116D(3) places a duty on both the employer and the union to comply with the access agreement.*

12. Similarly, the duties on the employer to refrain from making offers to workers not to attend access meetings and from taking or threatening action against workers for attending meetings are replicated *(paragraph 116D(4) and (5), Schedule A1) and paragraph 116H requires each of the parties including, in cases where workers are applying to derecognise the union, those workers, to refrain from using an unfair practice once informed of acceptance of the application by the CAC.*

# Section C – Preparing for access and establishing an access agreement

## What is access?

13. *Where the parties are not able to agree access terms, the CAC will decide the terms on which the union is to have access to the relevant workers or will decide that the union is not to have access (see paragraph 19I of Schedule A1).* Given the legislative context (including Article 11 of the European Convention on Human Rights) , circumstances in which the CAC would rule against access altogether would be likely to be exceptional. It is therefore more likely that agreement or a CAC ruling focuses on the nature of the access to be provided. *Paragraph 19I(4) of Schedule A1 provides that any terms decided by the CAC must be terms that the CAC regards as allowing such access as is reasonable to enable the union to (a) inform the relevant workers of the object of the application or any ballot arising and (b) seek their support and opinions on the issues involved*.

14. Access during the recognition process can take many and varied forms depending largely on the type of workplace involved and the characteristics of the balloted workforce. As referred to above, the overall aim is to ensure that the union can reach the workers involved and put forward their case in favour of statutory recognition and answer any questions that the workers may have. It is then for the balloted workforce to decide democratically whether they wish to agree to statutory union recognition. Local circumstances will need to be taken into account when deciding what form the access should take. For example, a common scenario would be where an employer has a large percentage of workers with hybrid working arrangements who spend significant amounts of time working from home. In such cases, a pragmatic, flexible and problem solving approach is needed to resolve issues around the location and means of access. In this scenario, a combination of digital and physical access arrangements should generally be made to meet the needs of the workforce.

15. There are three types of access referred to in this Code. Physical access is where a union physically attends a workplace to communicate with workers in person, for example in meetings or by holding surgeries. Digital access is where a union uses digital channels of communication to communicate with workers, for example through online meetings or via the dissemination of materials via an email or on an employer's intranet. Notwithstanding the separate Suitable Independent Person (SIP) arrangements referred to in paragraph 19 below, the

employer and the union are also free to agree to written access (i.e. the distribution of written materials from the union) in their access agreement.

## When should preparations for access begin and what is the timetable for establishing an access agreement?

16. Preparations for access should begin as soon as the union requests access in connection with a relevant application. Requests for access should be in writing, and copies of such requests and responses by the employer should be kept as they may be useful for future use. The normal 20 working days (starting with the day after the day the CAC gives the union notice that the application is accepted) to reach a voluntary access agreement in writing is broken down initially into 5 working days for the union to make a request for access to the relevant workers. At that point, the union may consider what type of access it requires: whether it requests physical, digital or written access, some combination of these or all of these. This is then followed by around 15 working days for the parties to negotiate an access agreement from the date the union notifies the employer and the CAC. This is referred to as the 'negotiation period' throughout this Code.

17. The normal 20 working days may be shorter or longer depending upon when the union requests access and the length of time for the subsequent negotiations on access, which may in some circumstances be shortened or lengthened by the CAC. *If there is no agreement on access at the end of the negotiation period, the CAC will have 10 working days to adjudicate and decide any access terms that must be abided by the employer and the union, or that the union is not to have access to the relevant workers. However, the CAC may specify that longer than 10 working days is needed before giving its decision. In doing so, it must give reasons for the extension to the parties.*

18. The parties should make good use of the negotiation period to negotiate and prepare for access. The union and/or the employer should request an early meeting in this period to discuss access arrangements. The employer should agree to arrange the meeting on an early date and at a mutually convenient time. The employer and the union should ensure that the individual or individuals representing them at the meeting are expressly authorised by them to take all relevant decisions regarding access, or are authorised to make recommendations directly to those who take such decisions. Acas may assist parties.

19. If a union, irrespective of whether it wishes or not to seek physical or digital access, wishes to have written access, it can seek this in an access agreement.

Alternatively, it should apply to the CAC for a suitable independent person (SIP) to be appointed under *paragraph 19C of Schedule A1 to facilitate the union's written communications with the workers in the bargaining unit. The union should make the application within the same period of 5 working days referred to in paragraph 16 above*. *The costs of appointing a SIP will be borne solely by the union.* The role of the SIP is set out at paragraph 106 of this Code.

## Joint applications by two or more unions

20. Where there is a joint application for recognition by two or more unions acting together, the unions should act jointly in proposing, preparing and implementing the access arrangements. Therefore, unless the employer and the unions agree otherwise, the unions should have common access arrangements. The amount of time needed for access would normally be the same for single or joint applications.

## Establishing an access agreement

21. It would be reasonable for the employer to want to give its prior permission before allowing a union official who is not a member of the employer's staff to enter the workplace and talk to its workers. In particular, the employer may have security, confidentiality and health and safety issues to consider. The parties should discuss practical arrangements for the union's activities at the workplace, and seek to record what is agreed in the access agreement.

22. As referred to at paragraph 16 above, there is a negotiation period for the employer and the union to reach an access agreement if possible. The parties are encouraged to document the access agreement in writing. The agreement (see Section D) could include, but need not be limited to:

- the union's programme for where, when and how it will access the workers at the workplace and/or during their working time; and
- a mechanism for resolving (between the parties) disagreements, if any arise, about implementing the agreed programme of access.

23. When negotiations about access arrangements are taking place, parties should also seek to reach understandings about the standards of conduct expected of those individuals who campaign on their behalf (see paragraphs 80 to 83 below for more guidance on this point).

*24.* In seeking to reach an agreement, the union should put its proposals for accessing the workers to the employer. It is recommended that these be in writing. The employer should not reject the proposals unless it considers the

union's requirements to be unreasonable in the circumstances. If the employer rejects the proposals, it should offer alternative arrangements to the union at the earliest opportunity, preferably within three working days of receiving the union's initial proposals. In the course of this dialogue the union will need to notify the employer of any plans for on-site access. The parties are encouraged to explain the reasoning behind their proposals and counter-proposals in order to help foster greater understanding in the negotiations and reach an agreement. However, there is not a requirement to do so. *Throughout this period and if the parties wish it, the CAC and Acas will be available to assist the parties to reach an access agreement.*

25. It is reasonable for the union to request information from the employer to help it formulate and refine its access proposals. In particular, the employer should disclose to the union information about its typical methods of communicating with its workforce and provide such other practical information as may be needed about, say, workplace premises or patterns of work. Where relevant to the union in framing its plans, the employer should also disclose information about its own plans to put across its views, directly or indirectly, to the workers about the recognition (or derecognition) of the union. The employer must not, however, disclose to the union the names or addresses (postal or e-mail) of the relevant workers, unless the workers concerned have individually consented to the disclosure.

## Existing access agreements

26. If a union already has an access agreement in place for other or more general purposes (which might be one reached under the provisions of chapter 5ZA of part 1 of the 1992 Act), the union may decide not to seek additional access as part of the recognition process. If the union does seek additional access, they should, so far as possible, seek to use their existing agreement as the basis upon which to agree bespoke elements for the recognition process. In any event, in negotiating an access agreement for the recognition process, the parties should seek to avoid any conflict between the provisions of that agreement and the provisions of any general access agreement already in place.

27. Similarly, the CAC may wish to take into consideration any existing general access agreement between the parties when determining an access agreement as part of a recognition process.

## Providing for flexibility in the access agreement

28. Every effort should be made to ensure access agreements are faithfully implemented. Indeed, *the parties are required by the legislation to comply with the access agreement, whether its terms are agreed between the parties or determined by the CAC (see for example paragraph 19J(3) of Schedule A1).* A breach of an access agreement can lead to orders made against the defaulting party and this is set out at *paragraphs 19K, 81E and 116E of Schedule A1*. To avoid misunderstandings on the ground, the employer should seek to draw the attention of relevant managers to the access agreement and any commitments to release workers to attend access meetings. Likewise, the union should take steps to ensure that the relevant union officials and representatives are made aware of the agreed arrangements. However, in some cases, the agreement may need to provide for flexibility where circumstances alter. For example, a union official selected to enter the workplace may be unexpectedly called away by their union on other urgent business. Likewise, the employer might wish to re-arrange an event if the selected meeting room is unexpectedly and unavoidably needed for other important business purposes. In such a circumstance, a suitable alternative room in the same building may be used and notification should be given by the employer to the union with suitable advanced notice before the relevant meeting. The parties should consider whether such flexibility is needed and provide for it in the access agreement.

## Resolving differences about agreeing access arrangements

29. During the negotiation period, the parties are encouraged to communicate with the CAC or Acas who may be able to assist them should they encounter difficulties in reaching agreement. *The CAC may, with reasons, end the negotiation period early if it concludes there is no reasonable prospect of agreement. Where the employer and the union fail to agree access arrangements voluntarily within the negotiation period, and there is no agreement among the parties to extend this period, then the CAC will be required to determine access arrangements.*

30. Under *Schedule A1* the negotiation period on access should run broadly in parallel to any necessary negotiating period in relation to the agreement or determination of the bargaining unit. This is intended to avoid a protracted negotiation period relating to different matters for both the employer and the union. Where there is no voluntary agreement on access, the bargaining unit or both, the CAC will normally seek to determine both access and the bargaining unit at broadly the same time, i.e. within 10 working days or such further period as extended by the CAC. As mentioned at paragraph 9 above, where there is an

agreement on access, but the bargaining unit has not yet been agreed or determined, the parties should make sure their access agreement is flexible enough to allow for the details of the bargaining unit to change without negating the whole agreement, or delay implementation of the access agreement until the bargaining unit is agreed or determined.

31. *The CAC will decide on terms which it considers reasonable to allow the union to inform the relevant workers of the object of its application for recognition (or any ballot arising) and to seek the support and opinions of the workers*. In doing so, the CAC will normally take into account the content of this Code. In negotiating and seeking to agree an access agreement, the parties should take into account that this will be the approach taken by the CAC if it becomes necessary for it to decide the terms.

# Section D – Access agreement

## Purpose of this Section D

32. This section of the Code sets out suitable elements that constitute a good access agreement. This Code does not mandate that the parties' access agreement includes all these elements, though this is encouraged unless there is good reason not to do so. Where the parties cannot agree to an access agreement, then those elements will normally be considered by the CAC when making its determinations in relation to access agreements.

## What is the access period?

33. Following a voluntary access agreement reached by the parties or determination by the CAC, the access period will commence. The access period will end when the application is no longer in progress.

34. Where the CAC holds a ballot in order to determine the outcome of an application, access under the access agreement – whether voluntarily agreed by the parties or determined by the CAC - will normally continue until the close of the ballot.

35. Where a ballot is not being held, e.g. in situations *where the CAC receives a notification from the trade union that it does not want the CAC to arrange the holding of the ballot (paragraph 24(2), Schedule A1)* or *where the CAC is satisfied that a majority of the bargaining unit (excluding new joiners) are union members and the CAC decides to award automatic recognition to the union* (*paragraph 22(2), Schedule A1*), then access will no longer be required.

36. Where a ballot is being held, as soon as is reasonably practicable, the CAC must inform the parties of the fact that it is arranging the ballot, the name of the Qualified Independent Person (QIP) appointed to conduct the ballot, and the period within which the ballot must be conducted. The duties of the QIP are set out at paragraph 107 of this Code. *The ballot must be held within 20 working days from the day after the appointment of the independent person, or longer if the CAC should so decide*. Where the CAC has determined the access agreement, the period of access will normally begin as soon as the parties have been informed of the access arrangements by the CAC.

37. Access agreements, whether agreed by the parties or determined by the CAC, will also include access arrangements should there be a subsequent ballot. The period of access should normally come to an end on the closing date of the balloting period, unless the access agreement provides an earlier time or date. If

the ballot is to be conducted at the workplace, access will continue until the ballot has closed. However, where the ballot is to be conducted at the workplace, and assuming the union has already had adequate access opportunities, both the employer and the union should confine their activities during the actual hours of balloting to the encouragement of workers to vote (rather than encouragement to vote in a particular way, in favour of or against recognition). They should reduce or cease other campaigning activity at this time. For example, both the employer and the union should avoid scheduling large meetings at such times. This should ensure that the ballot is conducted in a calm and orderly fashion, with minimum disruption to the normal functioning of the workplace.

## Who may be granted access?

38. The access agreement should specify who should be given access to the relevant workers. Employers should be prepared to allow access to the relevant workers by:

(a) individual union members employed by the employer, who are nominated by the union as the lead representative of their members at workplaces where the bargaining unit is situated;

(b) individual union members employed by the employer, who are nominated by the union as the lead representative of their members at other workplaces in the employer's business, provided that it is practicable for them to attend events at workplaces where the bargaining unit is situated. The costs of travelling from other workplaces should be met by the individuals or the union; and

(c) officials employed by the union, who are officials of the union within the meaning of *section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992*).

39. The number of union representatives entitled to access should be proportionate to the scale and nature of the activities or events organised within the agreed access programme.

## Where or how will the access take place?

40. The location(s) and/or means, potentially including postal and electronic means, of access should be addressed in the access agreement. Where practicable, a union should be granted access to the workers at their actual workplace. However, each case will depend largely on the type of workplace concerned, and the union will need to take account of the wide variety of circumstances and operational requirements that are likely to be involved. In particular, consideration will need to be given to the employer's responsibility for

health and safety, safeguarding and security issues and, where relevant, the need for the employer to protect commercial confidentiality. Common factors that should be taken into account to help the parties reach common ground would include, for example, operational complexity, the availability of space, and cover arrangements. In other words, access arrangements should reflect local circumstances and each case should be examined on the facts. That said, the issues referred to in this paragraph will not be insurmountable in the great majority of cases: they should be resolved through negotiation so that the union can have access to the workers whilst appropriately respecting those considerations. Parties are therefore encouraged to take a practical problem-solving approach when negotiating access.

41. Where they are suitable for the purpose, the employer's typical methods of communicating with its workforce should normally be used as a benchmark for determining how the union should communicate with members of the same workforce during the access period, which in many cases will extend to digital access. If the employer follows the custom and practice of holding large workforce meetings in, for example, a meeting room or a canteen, then the employer should make similar facilities available to the union. However, in cases where the workplace is more confined, and it is therefore the employer's custom and practice to hold only small meetings at the workplace, then the union may also be limited to holding similar small meetings at that workplace. In exceptional circumstances, due to the nature of the business or severe space limitations, access may need to be restricted either to digital meetings or to meetings away from the workplace premises, and in the latter case the union will need to consider finding facilities off-site at its own expense unless it agrees otherwise with the employer. In these circumstances, the employer should give all reasonable assistance to the union in notifying the workers in advance of where and when such off-site or digital events are to take place. Where such exceptional circumstances exist, it would normally be expected that the employer would not hold similar events at the workplace. It should be noted that if digital meetings are encouraged/permitted as part of the access agreement this could reduce the need for off-site meetings and further reduce both travel time and cost.

42. While access agreements may focus on physical access to the premises of the workplace, digital options are also an important way of achieving access. Whilst digital technology can create risks including to privacy and cybersecurity, which should be considered and adequately resolved by all parties, it also has benefits. When negotiating access agreements, parties are encouraged to consider the use of digital meetings to improve accessibility for all workers, taking into

account work patterns, disability, privacy, confidentiality, data protection considerations and financial costs. Any digital arrangements, which parties are encouraged to consider as part of the access agreement, should always be conducted in good faith and whilst respecting relevant law relating to data protection and protection of confidentiality. Subject to that, parties are encouraged to share necessary information with each other to facilitate this type of access where this will assist workers. It should be noted that digital access and physical access are not mutually exclusive and, except in circumstances where all workers clearly benefit from either physical or digital access being exclusive of the other, both forms of access should be considered by the parties.

## When in particular, during the access period, will the access take place?

43. The timing of access should be addressed in the access agreement. The union should ensure that disruption to the business is minimised, especially for small businesses which might find it more difficult to organise cover for absent workers. The union's access to the workers should usually take place during normal working hours (this includes weekends where workers normally work at weekends) but at times which minimise possible disruption to the activities of the employer. This will ensure that the union is able to communicate with as large a number of the workers as possible. Again, the arrangements should reflect the circumstances (eg the common working patterns of the workforce, peaks and troughs in business demand, the ability of the union to communicate with workers meaningfully) of each particular case. Consideration should be given to holding events, particularly those involving a large proportion of the workers in the bargaining unit, during rest periods or towards the end of a shift. In deciding the timing of meetings and other events, the union and the employer should be guided by the employer's custom and practice when communicating with its workforce. If, due to exceptional circumstances, access needs to be arranged away from the workplace, this might be a reason to look to hold meetings digitally instead, or it might be practicable to arrange physical events in work time if they are held nearby, within easy walking distance. Otherwise, off-site events should normally occur outside work time.

## The frequency and duration of union activities

44. The frequency and duration of union activities should be addressed in the access agreement. Subject to the circumstances discussed in paragraphs 40-43 above, the employer should allow the union to hold one meeting of at least 45 minutes in duration for every 5 working days of the access period, or part thereof, which all workers or as many workers as is reasonably practicable in the circumstances are given the opportunity to attend. The parties are free to agree

to go beyond this and are encouraged to consider flexibility in terms of how agreed frequency and duration of meetings are allocated, especially where this is needed to reach workers who want the opportunity to hear from and communicate with the union. Paragraphs 61 to 63 of this Code also set out arrangements that should be considered for non-typical workers that should be included in an access agreement. In circumstances where the employer organises similar large-scale meetings in work time, where the employer argues against the recognition application (or in favour of derecognition), then it would be reasonable for the union to hold additional meetings, if necessary, to ensure that in total it has the same number of large-scale meetings with broadly the same level of access to workers as the employer and its supporters.

45. Where they would be appropriate having regard to all the circumstances, union "surgeries" could be organised at the workplace during working hours at which workers would have the opportunity, if they wish, to meet a union representative for fifteen minutes on an individual basis or in small groups of two or three. The relevant circumstances would include whether there was a demand from the workforce for surgeries, whether the surgeries could be arranged off-site as effectively, whether the holding of surgeries would lead to an unacceptable increase in tension at the workplace and whether the employer, line managers or others use similar one-to-one or small meetings to put across the employer's case. The union should organise any such surgeries in a systematic way, ensuring that workers attend meetings at pre-determined times, thereby avoiding delays before workers are seen and ensuring that they promptly return to their workstations afterwards. Wherever practicable, the union should seek to arrange surgeries during periods of down-time such as rest or meal breaks. Where surgeries do not take place, the minimum time allowed for each larger scale meeting should be 60 minutes.

46. An employer should ensure that workers who attend a meeting or a "surgery" organised by the union with the employer's agreement during work time, should be paid, in full, for the duration of their absence from work. The employer will not be expected to pay the worker if the meeting or surgery takes place when the worker would not otherwise have been at work, and would not have been receiving payment from the employer.

47. Where the union wishes a union representative who is one of the employer's workers to conduct a surgery, the employer should normally give time off with pay to the worker concerned. The worker should provide the employer with as much notice as possible, giving details about the timing and location of the surgery. Exceptionally, it may be reasonable for the employer to refuse time off. This could apply if unavoidable situations arise where there is no adequate

cover for the worker's absence from the workplace and continuity of production or service cannot otherwise reasonably be maintained. Before refusing permission, the employer should discuss the matter with the union and the worker to explore alternative arrangements.

## Privacy of meetings

*48.* Employers should respect the privacy of access meetings, including surgeries, larger meetings and digital meetings, and the access agreement should set out how this will be achieved. Supervisors or managers may attend an access meeting, even though they may be seen as representatives of the employer, provided they have been invited to attend by the union. In general, it should be expected that such relevant workers would be invited by the union to attend access meetings where they may fall within the bargaining unit and could therefore be entitled to vote should a ballot take place. Some flexibility to amend who is invited to attend access meetings should be allowed, to take into account the agreed or determined bargaining unit.

49. However, there may be circumstances - for example, where the attendance of supervisors or managers would deter other workers from expressing their opinions, or where managers are campaigning on behalf of the employer or are key decision makers for the employer on matters of human resources – where it is reasonable for the union not to invite them. In such circumstances, consideration should be given to arranging separate access meetings for the supervisors and managers concerned. In situations where they are not invited to attend meetings with other workers, supervisors or other managers should not insist on attending simply because they are part of the bargaining unit. To avoid uncertainty and the disruption of meetings, the union should consider in advance whether it wishes to exclude such individuals from meetings, taking steps where possible to inform the individuals concerned before the meeting occurs. The union should avoid issuing generalised or loosely drafted invitations to attend access meetings, if its intention is to prevent certain individuals from attending.

50. In small workplaces or in workplaces with no dedicated meeting rooms, it may be difficult to find suitable accommodation on site which can be set aside for the exclusive use of the union to hold a meeting. Achieving privacy in such circumstances may be difficult, but solutions might be found by holding meetings during lunch breaks or at other times when business would not be significantly affected if managers or other work colleagues were required to vacate the premises or meeting area in question. In extreme cases, for example where continuous working is necessary, privacy may be achieved only by holding

meetings away from the workplace. Digital meetings may be used to ensure greater accessibility for those wanting to attend as well as maintaining privacy.

51. Many employers have security cameras or other recording equipment permanently positioned on site to monitor or record workplace activity. Most are installed for reasons of security, health and safety or quality control. Where such equipment is used, and could record meetings, the employer should inform the union accordingly unless key security considerations prevent such disclosure. The employer and the union should then discuss ways to ensure the privacy of meetings and set out the outcome of their negotiations in the access agreement. It may be possible, for example, to turn off the equipment in question for the short period of meetings. Alternatively, the employer may wish to ensure that any transmissions from the surveillance equipment during the period of the meeting are not viewed live or recorded. The scope for such measures may be limited in rare cases where security or health and safety may be significantly and unavoidably jeopardised as a result.

52. The employer should not eavesdrop on access meetings or pressurise any of those attending to disclose what occurred at them. Generally, the employer should not seek to question attendees about the proceedings of meetings but, in exceptional cases of, say, alleged harassment or damage to property, there may be a need for the employer to investigate the conduct of meetings. However, it should be recognised that information often circulates quite widely within workplaces, and the employer may therefore learn what took place even though it took no specific steps to discover what had occurred. In some cases, individual workers may disclose, without prompting, what took place at meetings in their ordinary exchanges with line managers or other work colleagues.

53. Where digital access is agreed, the access agreement should also set out how privacy is maintained in relation to digital meetings and electronic communications. Both parties should be transparent and seek to agree on how they will record and store data during and after the access period. The employer should not eavesdrop or monitor digital access meetings. It is recommended that the parties consider whether they wish to record the union's presentation during an access meeting to enable this to be distributed to workers who could not attend that meeting. Should a recording be made, care should be taken not to record the questions and views of workers following the trade union presentation at an access meeting as this would breach their privacy. Electronic communications between the union, its representative(s) and the workers should likewise not be monitored or eavesdropped by the employer. This does not prevent the employer from monitoring its systems for legitimate business as usual purposes.

## What about written communication under the access agreement?

54. The use of written communication outside the SIP arrangements should where relevant be addressed in the access agreement. The union may want to display written material at the place of work. Employers, where practicable, should provide a notice board for the union's use. This notice board should be in a prominent location in the workplace and the union should be able to display material, including references to off-site meetings, without interference from the employer other than to make clear the information is from the union, which also means that the employer should not veto the information displayed by the union (this will also apply to information displayed on the employer's staff intranet or information from the union that is forwarded electronically to the workers). Often, an existing notice board could be used for this purpose. The union should also be able to place additional material near to the noticeboard including, for example, copies of explanatory leaflets, which the workers may read or take away with them. If there are no union representatives within the meaning of paragraphs 38(a) and 38(b) above present at the workplace, the employer should allow access to an official employed by the union to display the material. Additionally, it is advisable to extend this to the use of the employer's staff intranet as a digital noticeboard although this should be carried out on behalf of the union by an employee (who may be a union representative or otherwise) or HR official (or other nominated employee) within 2 working days of the union's request, after which confirmation should be sent to the union. This should be done to ensure the widest possible number of relevant workers have access to the relevant information. This is particularly true in cases where there are a large number of hybrid or remote workers and the use of only a physical noticeboard would not be practical or effective for the parties involved.

55. The union may also wish to make use of its own web-site pages on the internet for campaigning purposes. An employer should allow its workers access to the union's website material in the same way that it explicitly, or tacitly, allows its workers to view or download information in connection with activities not directly related to the performance of their job. If an employer generally disallows all such internet use, it should give permission to one of its workers nominated by the union to download the material, and it would be this person's responsibility to disseminate it more widely among other workers. The employer should allow the nominated employee (who may be a union official or otherwise) or HR official to use the employer's systems to disseminate this information either via email or through the staff intranet. Again, this should be done within 2 working days of the union's request, after which confirmation should be sent to the union.

56. Nothing in this Code requires or encourages the employer to give the union itself, including any union official who is not one of the employer's workers, information that would be in breach of data protection legislation, including the UK General Data Protection Regulation (UK GDPR). Nor does this Code require or encourage an employer to give the union itself, including an employee of the union, access to the employer's electronic systems or to change their IT system to meet access obligations.

57. Where the employer has nominated an employee (usually an HR official) to disseminate union materials using the employer's electronic systems, it should be made clear that the information is from the union and not the employer. The employer, when disseminating union materials electronically or otherwise, is not required or encouraged to disseminate information that is contrary to the employer's legal obligations, unlawful, harassing, discriminatory, threatening or defamatory. Where the employer believes that one or more of these exceptions apply, then it should inform the union of its decision to refuse to disseminate the information, giving reasons in writing within two working days of the union's request.

58. However, apart from these exceptions set out above, the employer should not veto the content of the union's information (this applies to information sent digitally and to information in physical form such as on noticeboards or leaflets). The employer should also not refuse to distribute the union's materials simply because the content is contrary to the employer's views. This would include any disagreement about facts. Any disputes in relation to the dissemination of union materials should be resolved promptly by the parties and if this is not possible, then referred to the CAC.

59. A nominated union representative employed by the employer may also want to make use of internal electronic communication, such as electronic mail or intranets, for campaigning purposes. For example, they may want to remind workers of forthcoming union meetings or surgeries. The employer should allow the representative to make reasonable use of these systems if the employer explicitly, or tacitly, allows its workers to use them for matters which are not directly related to the performance of their job. In cases where such use is disallowed, it would still be reasonable for the representative to use them, if the employer uses such forms of communication to send to the workers information arguing against the union's case for recognition. When sending messages in this capacity, the representative should make it clear that the advice comes from the union and not the employer. The representative should also be mindful that the content of any union material that they circulate is not contrary to the employer's legal obligations, unlawful, harassing, discriminatory, threatening or defamatory.

## What about small businesses?

60. Access arrangements under this statutory recognition scheme only apply where the employer has at least 21 workers. Access arrangements for small businesses with at least 21 workers need not necessarily create difficulties. For example, it may be easier to arrange for a smaller number of workers to meet together. On the other hand, there may be difficulties providing cover for workers in smaller organisations, or in finding accommodation for meetings. In such cases, the employer and the union should try to reach an understanding about how access arrangements can be organised to ensure minimum disruption while facilitating access, such as opening a premises early or late, or allowing union officials to come in more frequently to meet small numbers of staff for shorter periods where larger meetings are not feasible. Agreements may need to be flexible to accommodate the needs of the employer. A way of ensuring minimal disruption and overcoming difficulties may be to hold digital meetings.

## Arrangements for non-typical workers

61. Any necessary arrangements for non-typical workers should be addressed in the access agreement. Many, or sometimes most, relevant workers may not work full time in a standard Monday-Friday working week. Others might rarely visit the employer's premises. The employer should bear in mind the difficulties faced by unions in communicating with:

- shift workers
- part-time workers
- homeworkers
- a dispersed or peripatetic workforce
- those on maternity or parental leave
- those on sick leave.

62. The employer, bearing in mind its obligations under the Equality Act 2010, should be receptive to a union's suggestions for securing reasonable access to such "non-typical workers", and allow them, where practicable, to achieve a broadly equivalent level of access to those workers as to typical workers. It would be reasonable for the union to organise its meetings or surgery arrangements on a more flexible basis to cover shift workers or part-time workers. An employer should agree to sufficient flexibility of arrangements, where reasonable in the circumstances. This would not extend to an employer being obliged to meet the travel costs of its workers attending meetings

arranged by the union. Among other options, the use of digital meetings and communications could also act as a means of ensuring accessibility and reducing financial costs.

63. The SIP may be used by the union (or unions) to handle communications between the workers and the union during the initial period *(see paragraph 19C(5) of Schedule A1),* provided that the application from the union for the SIP to do this is made before the end of the period of 5 working days starting with the day after the day on which the CAC gives the union notice that the application is accepted *(paragraph 19C, Schedule A1).* The union will be able to make use of the SIP to distribute information to the workers' home addresses via the postal service. This will ensure that literature will be received by any workers who are not likely to attend the workplace during the access period, for example those on maternity or sick leave. The CAC will supply the name, address, email address and telephone number of the SIP to both the union and the employer.

## What about joint employer/union activities?

64. There may be scope for the union and the employer to undertake joint activities where they both put across their respective views about recognition, derecognition or *Part III applications in relation to the bargaining unit* in a non-confrontational way. Such joint activities can be an efficient method of providing information, minimising business disruption and costs. For example, the parties may wish to consider:

- the arrangement of joint meetings, with each party allocated a period of thirty minutes to address the workers; and
- the use of a joint notice-board, where an equal amount of space is devoted to the employer and the union.

# Section E – Other access issues

## Observing an access agreement

65. *Both parties are bound by a statutory duty under Schedule A1 to ensure they observe the access agreement, whether negotiated between the parties or decided by the CAC (paragraph 19J(3), Schedule A1).* For example, if the parties agree to hold a meeting lasting 45 minutes in duration, the meeting should not over-run its allocated time, unless by agreement. Likewise, neither party should remove, or tamper with, material placed on a notice board or digital equivalent by the other party under the access agreement, unless one of the exceptions referred to in paragraph 57 applies.

66. *If at any time after an access agreement is in place, whether agreed between the parties or decided by the CAC, a party fails to comply with it, the other party will be able to bring a complaint before the CAC for a remedy. The CAC may order a party in breach to take reasonable steps within a reasonable period. Breach of that order may lead to the CAC declaring that the union is recognised or not entitled to be recognised (see paragraphs 19K, 81E and 116E of Schedule A1).*

67. Contractual remedies are not available because *the access agreement is conclusively presumed not to be a legally enforceable contract (paragraphs 19J(12), 81D(12) and 116D(10), Schedule A1).*

## Behaving responsibly

68. Both parties should endeavour to ensure that, wherever possible, potentially acrimonious situations are avoided. For access arrangements to work satisfactorily, the employer and the union should behave responsibly, and give due consideration to the requirements of the other party throughout the access period. For example, neither the union nor the employer should seek to disrupt or interfere with meetings being held by the other party. So, if the union is holding a meeting, the employer should avoid the scheduling of other conflicting meetings or events which would draw workers away from the union's meeting. *Unless reasonable in the circumstances, the employer must not offer inducements to workers not to attend access meetings (paragraph 19J(4), Schedule A1).* For example, where an access meeting is held towards the end of the working day, the employer should not tell workers that they could go home early if they do not attend the union's meeting. However, unforeseen events may arise - an urgent order, for example - where the employer may need to require workers not to attend an access meeting, paying them overtime, or some other

additional payment or fringe benefit, for any extra work involved. The offer of additional pay for extra work in such circumstances may be reasonable. Where such exceptional events occur, the employer should explain the position to the union as soon as practicable, and offer alternative but comparable access arrangements for the workers involved.

69. Where it is practicable to hold meetings or surgeries at the workplace, including digital meetings, the employer should provide appropriate accommodation, fit for the purpose, which should include adequate heating and lighting. In turn, the union should ensure that business costs and business disruption are minimised. Unions should be aware of the needs of the employer to maintain the production process, and / or to maintain a level of service, and to ensure safety and security at all times.

# Section F – Responsible campaigning and unfair practices

70. This Section of the Code provides guidance on those standards of behaviour which are likely to prevent undue influence or other unfair practices from occurring. In places, it also refers to behaviour which, if pursued, may constitute an unfair practice. However, given the range of possible behaviours involved, it is unrealistic for the Code to identify every circumstance which might give rise to undue influence or other unfair practice. In any event, as Section G discusses, it is the task of the Central Arbitration Committee to judge whether an unfair practice has been committed, basing its judgment on the particular facts of a case.

## Responsible Campaigning

71. The recognition and derecognition processes, including ballots, concern important, and sometimes complex, issues. It may help workers to receive information from the employer and the union setting out their views on the implications of recognition and non-recognition. Parties are not required to undertake any campaigning activity during the recognition process. Indeed, a party might choose to desist from campaigning altogether because it wishes to avoid unnecessary acrimony or because it sees an advantage in employment or membership relations terms in leaving the issue to the workers to decide. This Code should not therefore be read as discouraging such behaviour. That said, there will be other cases where one party or both parties will wish to campaign and such activity can benefit the recognition or derecognition process in helping the workers make informed decisions. But active campaigning needs to be responsible or it can lead to the use of unfair practices which distort the recognition process, increase workplace friction and can sour employment relations. Additionally, the above should also be considered in an application under *Part III of Schedule A1* (changes affecting the bargaining unit).

72. Campaigning can expose sharp divisions of opinion, and ill-judged activity can damage trust and long-term employment relations. Parties should therefore discuss with each other at an early stage how they would wish campaigning to be undertaken. This discussion could take place at the same time the parties seek to reach an access agreement or the terms of an access agreement are decided by the CAC. There are advantages in parties exchanging information about their approach to campaigning, indicating for example those persons or organisations which are likely to undertake the activity on their behalf. Prior discussion should focus in particular on the standards of conduct expected of campaigners to minimise the risk of intimidation occurring. One way to structure such joint discussions might be for the parties to discuss how they think the

guidance in this section of the Code could best be applied to their particular situation. Where they agree standards of conduct, parties should take steps to ensure that those who campaign on their behalf are fully aware of them.

## What are unfair practices?

73. *Parties must refrain from using unfair practices in relation to applications for recognition, derecognition or relating to changes affecting the bargaining unit. A party uses an unfair practice if, with a view to influencing the outcome of the application, the party does any of the following (paragraph 19M, with similar provisions at paragraphs 81G and 116H, Schedule A1):*

*(a) dismisses, or threatens to dismiss, a worker;*

*(b) takes, or threatens to take, disciplinary action against a worker;*

*(c) subjects, or threatens to subject, a worker to any other detriment;*

*(d) offers to pay money, or give money's worth, to a relevant worker in return for the worker's agreement to vote in a particular way, or to abstain from voting, in a relevant ballot;*

*(e) makes an outcome-specific offer to a relevant worker;*

*(f) coerces, or attempts to coerce, a relevant worker to disclose-*

*i. whether the worker intends to vote, or to abstain from voting, in any relevant ballot, or;*

*ii. how the worker intends to vote, or has voted, in any relevant ballot;*

*(g) uses, or attempts to use, undue influence on a relevant worker.*

74. *An "outcome-specific" offer is an offer to pay money or give money's worth which is conditional on the issuing by the CAC of a declaration that the union is entitled to be recognised or is not entitled to be recognised, and such an offer is not conditional on anything which is done or occurs as a result of the declaration in question (see, for example, paragraph 19M(4) of Schedule A1).* Thus, for example, an offer by either a union or an employer to pay each worker £100, provided a ballot does (or does not) result in recognition would be categorised as an unfair practice. In contrast, an undertaking by a union to secure an increase of £1,000 in the annual pay of workers through the collective bargaining process following a vote for recognition would not be captured because the offer clearly depends on other circumstances – in this case, the negotiation of a collective agreement – which may follow from recognition being awarded.

75. It is important to note that an unfair practice falling under *sub-paragraphs a-c and g* above (and potentially also *d and e* above) is not limited to the ballot phase and may take place earlier in the application process. For example, an employer could discipline, or threaten to discipline, dismiss or impose a detriment on a worker for attending a union meeting, encouraging their colleagues to support union recognition or distributing union information prior to any ballot taking place.

76. Another example of subjecting or threatening to subject a worker to any other detriment may be threatening to give a worker a lower performance mark or a worse promotional assessment if the worker supports recognition or non-recognition.

77. The statute refers to the term "money's worth" when defining an unfair offer to a worker. The term covers the making of non-cash offers to workers. Such non-cash offers usually involve the provision of goods and services, for which workers would otherwise need to pay if they procured the goods or services for themselves. Most fringe benefits - say, a better company car, subsidised health insurance or free legal services - would normally fall into this category. In addition, offers to provide additional paid holiday or other paid leave are likely to constitute "money's worth". Of course, providing such "money's worth" for permissible reasons - for example, as a normal inducement to join a union or as a typical bonus for meeting a work target – would not be categorised as an unfair practice.

78. Unfair practices can also involve the taking of disciplinary action against workers, where such disciplinary action has the purpose of influencing the outcome of the application. This unfair practice is not limited just to disciplinary action taken against workers entitled to vote in a ballot. It is possible that an unfair practice could be committed if, say, disciplinary action were taken against a union activist involved in the union's campaign who was not entitled to vote in the ballot. Equally, the employer is not prevented from taking any disciplinary action or other forms of everyday management decisions just because a relevant application process is underway. There may be sound grounds for the employer to discipline a worker, which are unconnected with the relevant application process. Likewise, it is possible that a worker's campaigning activity – say, the use of threatening behaviour against other workers or the unauthorised use of work time for campaigning - may itself give rise to disciplinary action which would not constitute an unfair practice. When contemplating disciplinary action, the employer should in addition take note of the guidance provided in the *Acas Code of Practice on Disciplinary and Grievance Procedures*, especially its advice on the disciplining of union officials. The key issue for management to consider

when taking management action is whether the intention of that action is to disrupt or influence the relevant application process. If it is a normal management action unconnected to the relevant application process, it will not be an unfair practice.

79. The statutory list of unfair practices highlights actions to bribe, pressurise or exert other undue influence on workers to vote in particular ways or not to vote at all. Such conduct, especially the exertion of undue influence, can take many forms. At one extreme, undue influence may take the obvious form of actual or threatened physical violence against workers, union officials or the employer or managers, including posting threatening or intimidatory messages on social media. It may also take other, and more subtle, forms of behaviour to influence the outcome of the ballot. For example, the introduction of higher pay or better conditions during the recognition process may constitute undue influence if this is not the normal time for reviewing pay and there is not some other pressing reason unconnected with the recognition process for raising pay. Another example of undue influence would be where the employer suddenly changes shift patterns prior to a union meeting with the worker without a good management reason to do so, with a view to complicating attendance at the union meeting.,

## Who should campaign?

80. Sometimes, a party might employ or hire a paid consultant to assist its campaigning work. The employer and the union are usually responsible for the actions of those whom they authorise or hire to campaign on their behalf. They should therefore take steps to brief their representatives or agents accordingly in advance of undertaking such activity. The briefing should not be limited to just the messages or information which the union or employer wish to convey. It should also provide clear advice to representatives or agents on the behavioural standards expected of them and the need to avoid actions which could constitute an unfair practice.

81. Transparency is an important feature of normal campaigning activity and reduces the risk that a worker might be unduly influenced through subterfuge or misrepresentation. So, those authorised by the employer or a union to campaign on their behalf should take steps to inform the workers involved that they are so authorised and are therefore acting under instruction or at the behest of the party involved. Where there is reason to believe that workers do not understand their role, supervisors and line managers who undertake such work on behalf of the employer should state that they are acting in that capacity when communicating campaign messages to the workforce. In similar circumstances,

union members who act as officials of the union or who are otherwise authorised to represent the union in its campaigning work should also explain their role when speaking to other workers in their capacity as campaigners.

82. Consultants who are hired by a party to campaign are acting as agents of the party involved. If their behaviour constitutes an unfair practice, then the party who hired their services is also committing an unfair practice where the party expressly or by implication authorised the behaviour. A failure by a party to repudiate and correct misconduct by a consultant can often be taken as implying that such conduct is authorised. Parties should therefore monitor the activities of the consultants they hire. Where outside consultants are used by either party, and undertake active campaigning by speaking to the workforce, then they should inform the workers that they have been hired by that party. They should also take steps to inform the workers accurately about the general purpose of their engagement. Whilst there is no need to divulge commercial confidences or to detail the precise contractual remit, if a consultant has been hired to advance the case of the union or the employer in the campaign then that essential fact should be divulged promptly to the workforce when the consultant is communicating with them. It follows that consultants should not present themselves as independent or impartial third parties when undertaking their campaigning work.

83. The employer and the union should also dissociate themselves from material containing personal attacks or allegations which is circulated on an anonymous basis. The party whose case appears to be favoured by the anonymous material should usually repudiate it, informing all workers in the bargaining unit accordingly.

## What are the main forms of campaigning?

84. All campaigning involves communication with workers in the bargaining unit. Sometimes, that communication can take the form of face to-face discussion with a worker or workers. Such encounters can perform useful functions as many workers may feel nervous about asking questions at mass meetings and small-scale gatherings may encourage more open debate. Section D therefore refers to the option for unions to access the workforce by holding “surgeries” which individual workers or small groups of workers can attend if they wish. That said, the employer or the union should take particular care when handling one-to-one meetings or encounters with small groups, because a worker may feel more vulnerable in those situations and undue influence may arise if a worker feels threatened as a result. Workers should not normally be required to attend small meetings organised by either the employer or the union for campaigning

purposes, and they should not be threatened with sanctions if they fail to attend. Workers who voluntarily attend should be informed that they are under no obligation to answer any direct questions which are put to them. In particular, they should not be required or requested to disclose the way they have voted, their voting intentions, or whether they support or oppose the application being made.

85. Most small or one-to-one meetings occur at the place of work. But a party might also try to arrange similar encounters outside the workplace to canvass opinion by visiting a worker's home, by arranging a digital meeting / communication or by ringing them. When undertaking such activity, unions should note that neither the CAC nor the Suitable Independent Person (SIP) it may employ to handle communications with relevant workers nor the Qualified Independent Person (QIP) it employs to run the ballot will disclose to the union the names, addresses or other information of the workers involved (the roles of the SIP and QIP are set out at paragraphs 106 and 107 of this Code). Whereas canvassing at a worker's home may be an acceptable practice, reflecting perhaps restricted access at work, considerable care needs to be taken by the party involved to avoid possible intimidation, however unintended, which could give rise to undue influence. A party should always seek and obtain a worker's permission in advance before visiting them at home. In particular, the number of people visiting a worker's home to campaign or canvass, even where prior permission is obtained, should be limited to one or, perhaps, two people. If a worker does not wish to open or continue a discussion with the campaigners, then that wish should be completely respected. A failure to leave a worker's home on request would almost certainly be seen as an intimidatory practice. Also, if a worker indicates they do not wish to be revisited at home, or rung again by telephone (or similar online communication), then that wish should always be respected.

86. The holding of one or two face-to-face meetings, either on site or off it, may not in itself be perceived as placing unwelcome pressure on the worker involved. Indeed, a worker might request further meetings to cover the issues fully or to follow up a discussion. However, the frequency of meetings, or frequent requests to attend meetings, can be perceived as potentially threatening by some workers. There may come a point where persistent approaches to workers will be construed as harassment. Parties should therefore be aware that the intensity of their campaigning activity could give rise to an unfair practice claim.

87. Campaigning can also be undertaken by circulating information by e-mails, videos or other media including social media platforms. There is nothing intrinsically wrong with communication of that nature. That said, the content of such communications can still intimidate, threaten or unduly influence workers,

and care should therefore be taken to avoid such effects when drafting written communication or producing videos. Care also should be taken when communicating and responding on social media, as comments can be posted in haste only to be regretted later.

## How should campaigners put across their message?

88. Campaigning is inherently a partisan activity. Each party is therefore unlikely to put across completely balanced communications to the workforce and may make their arguments supporting or opposing the relevant application clearly and robustly. However, parties are encouraged to be careful and measured in their activities and language. Also, by listening to both sides, the relevant workers will be able to question and evaluate the material presented to them.

89. Campaigning should focus on the issues at stake. These will mostly concern the workplace, the performance of the union or the running of the employer's business. Sometimes, it will be legitimate to focus on the work behaviours and previous work histories of key individuals. For example, it may be pertinent to refer to the way a proprietor or a senior manager has responded to workplace grievances in the past or to the way a key union official has handled negotiations elsewhere. But campaigning about the personal lives or personal characteristics of senior managers or union leaders adds nothing beneficial to the discussion of the issues and should be avoided. Personalised attacks and the denigration of individuals may also harm the long-term health of employment relations.

90. Parties, especially the employer, should take particular care if they discuss job losses or the relocation of business activity. Such statements can be seen as directly threatening the livelihoods of the workers involved, and can give rise to undue influence by implicitly threatening to harm the workers concerned. It is a fine line, therefore, to distinguish between fair comment about job prospects and intimidatory behaviour designed primarily to scare the workers to vote against recognition. In general, references to job prospects are more likely to constitute fair comment if they can be clearly linked to the future economic performance of the employer with or without union recognition, and are expressed in measured terms. Unsubstantiated assertions on this particularly sensitive issue should therefore be avoided. So, it might be fair comment to argue that the employer's business may run less successfully if recognition is awarded, and employment may be less secure as a result, because pay levels would rise or work would be organised less flexibly. On the other hand, statements that the employer will make redundancies or relocate simply because a union is recognised should be avoided.

91. Part of a party's normal campaigning is to engage with the arguments put forward by others. That can be helpful and can assist workers in understanding the issues at stake. Each party will therefore try to obtain the campaigning literature of the other party to enable them to discuss the points raised. This should not normally present a problem as literature tends to be widely available either on websites, notice boards or elsewhere. Indeed, parties may often find it mutually advantageous to exchange these materials.

92. Campaigning meetings should be treated as far as possible as private affairs. Meetings or other campaigning activities which occur off-site are generally not covered by the access provisions, but the privacy of those gatherings should be respected. A party should not infiltrate meetings or use other covert methods to monitor another party's campaign. It is also likely to constitute an intimidatory practice for parties to photograph, record or otherwise place workers under surveillance without permission whilst they are undertaking campaigning or attending campaigning events off-site, unless such activity takes place at a location (for example, the entrance to a workplace) where surveillance equipment normally operates for other legitimate reasons. Parties should also not penalise workers, or threaten to penalise them, if they attend or take part in those off-site activities.

# Section G – Resolving disputes

## Intervention by the CAC

### Access

93. Disputes may arise between the parties during the access period about a failure to comply with the access agreements. If these disputes cannot be resolved, the employer or union may ask the CAC to decide whether the other party has failed to perform their statutory duties in relation to access.

*94. If the CAC is satisfied that the employer has failed to perform one or more of its duties, namely:*

*a) to comply with the access agreement*

*b) to refrain from making any offer to any or all of the workers constituting the bargaining unit which (i) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union and the workers constituting the bargaining unit and (ii) is not reasonable in the circumstances;*

*c) to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that they (i) attended or took part in any relevant meeting between the union and the workers constituting the bargaining unit, or (ii) indicated their intention to attend or take part in such a meeting; (for (a) – (c), see for example paragraph 19J, Schedule A1)*

and the application is still in progress, *the CAC may order the defaulting party to take such steps to remedy the failure as the CAC considers reasonable, and within a time that the CAC considers reasonable (see for example paragraph 19K, Schedule A1).*

*95. If the employer fails to comply with the CAC's order within the time specified, and the application is still in progress and the bargaining unit has been agreed or determined the CAC may issue a declaration that the union is recognised, or that the union is not derecognised (see for example Schedule A1, paragraph 19K ). In the case of an application for derecognition brought by workers, and the employer is the party that has failed to comply with the CAC's order, the CAC may order the employer to refrain from any campaigning (paragraph 116E(4), Schedule A1). In the case of an application under Part III in relation to changes to the bargaining unit, if the party that has failed to comply is the employer, then the CAC could issue a declaration that the union is recognised as entitled to conduct collective bargaining on behalf of the new unit (paragraph 81E(4), Schedule A1).*

*96. If the party that has failed to comply with any of the duties imposed by the CAC is the trade union and fails to comply with the CAC's issued remedy, then the CAC may issue a declaration that the union is not entitled to be recognised or that it should be derecognised (see paragraphs 19K and 116E(5), Schedule A1) . In the case of an application under Part III in relation to the bargaining unit, if the party that has failed to comply is the trade union, then the CAC could ultimately issue a declaration that the union is not entitled to be recognised (see paragraph 81E(5), Schedule A1).*

## Unfair Practices

97. Complaints may also surface that a party has committed an unfair practice during the application process, including the balloting period. *Such complaints may be referred by the employer or the union to the CAC to adjudicate, though any complaints must be made before the ballot when the application is still live or within the first 5 working days either after the date of the ballot or, if votes are cast in the ballot on more than one day, the last of those days (paragraph 19N, Schedule A1).* Where time permits, it is good practice for the parties to try to resolve complaints locally in the first instance. It is also good practice, where a complaint arises, to make this as soon as possible and not wait for the deadlines referred to above.

*98. The CAC will decide that a complaint of unfair practice is well-founded if it is established that the party complained against used an unfair practice (see for example paragraph 19N(4), Schedule A1).*

*99. Where it considers a complaint is well-founded, the CAC must issue a declaration to that effect, and it may:*

- *issue a remedial order to the party concerned to take such action as it specifies and within a timetable it specifies to mitigate the effect of the unfair practice, and /or*
- *give notice to the parties that it intends to hold a fresh secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf (and thereby replace any which may have been contaminated by the unfair practice) (paragraph 19O, Schedule A1).*

*100. Where a party either (i) fails to comply with a remedial order or (ii) has committed a second unfair practice or (iii) has committed an unfair practice involving the use of violence or the dismissal of a union official, the CAC may take other sanctions against that party. Where that party is the union, the CAC may declare that the union is not entitled to be recognised. Where that party is*

*the employer, the CAC may declare that the union is entitled to be recognised with the bargaining unit having been agreed or determined by the CAC (paragraph 19P, Schedule A1).*

*101.* In the case of an application for derecognition there are other sanctions which may be applied by the CAC. For example, in an application for derecognition that has been made by workers, *if the employer commits an unfair practice, the CAC will be able to order the employer to refrain from further campaigning during that worker derecognition application (paragraph 116K(4), Schedule A1). Paragraph 116L of Schedule A1 provides that should the employer not comply with the CAC's order, a worker and / or the union can enforce obedience to the order in the same way as an order of the county court, or in Scotland, as an order of the sheriff.*

## Minor disputes

102. Some disputes about access may be minor by nature. For example, the employer may be aggrieved that an access meeting has over-run somewhat. Or a union might have cause to complain if it regards the meeting room provided by the employer as being too small to accommodate everyone in comfort. In such cases, both parties should avoid taking hasty action which might prejudice the implementation of other access arrangements. The parties should generally avoid taking minor complaints about access to the CAC as a first course of action.

103. Instead, the parties should make every effort to resolve the dispute between themselves. They should make full use of any mechanism to resolve such disputes which they may have established in the access agreement, and consider the use of Acas's conciliation services. It would generally be good practice if both the employer and the union nominated a person to act as their lead contact if disagreements or questions arose about the implementation of access arrangements.

104. The parties should ensure that disputes are swiftly resolved. The parties should endeavour to inform each other immediately if a dispute arises, and should seek to resolve any disputes as a matter of priority, preferably within one working day of their occurrence.

105. It is also good practice to follow similar procedures in cases where there are complaints about a person's conduct whilst campaigning. For example, some complaints will be based on a misunderstanding which can be resolved quickly between the parties. And in cases where minor offence has been caused as a result of a careless or unintended remark, then the matter may be simply

remedied by the issuing of an apology. Regular and early communication between the parties about any poor behaviour by individual campaigners may also ensure that senior figures on the union and employer sides can prevent repetitions of such behaviour and thereby ensure that unnecessary disputes are avoided.

## The Suitable Independent Person (SIP) and the Qualified Independent Person (QIP)

106. The prime duties of the SIP are to

- receive information from the CAC in relation to the names and home addresses of all workers in the bargaining unit;
- distribute information from the union to the workers' home addresses; and
- protect confidentiality by ensuring that the personal information of the workers is not shared improperly with the union or the employer.

107. The prime duties of the QIP are to ensure that:

- the names and addresses of the workers comprising the balloting constituency are accurate;
- the ballot is conducted properly and in secret; and
- the CAC is promptly informed of the ballot result.

108. It is not the function of the SIP or the QIP to adjudicate disputes about access or unfair practices. That is the CAC's role.

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