

Ask Acas - Trade Union Recognition

What is Acas?

Acas is an independent public body which seeks to:

- prevent or resolve disputes between employers and their workforces
- settle complaints about employees' rights
- provide impartial information and advice
- encourage people to work together effectively.

What is the Acas role in trade union recognition?

Acas can:

- give impartial and confidential information and advice on trade union recognition
- help resolve disputes over trade union recognition by voluntary means
- help resolve disputes when a union makes a claim for statutory trade union recognition
- assist with membership checks and ballots to help resolve trade union recognition issues
- assist employers and trade unions to draw up recognition and procedural agreements and work together to solve problems.

What is trade union recognition?

A trade union is "recognised" by an employer when it negotiates agreements with employers on pay and other terms and conditions of employment on behalf of a group of workers, defined as the 'bargaining unit'. This process is known as 'collective bargaining'.

A trade union may seek recognition in an organisation by **voluntary** or **statutory** means.

Voluntary trade union recognition

When a union uses voluntary means to get recognition, it will contact the employer without using any legal procedures. Acas can help if both parties agree.

Statutory trade union recognition

Where do unions apply?

- An independent trade union may make an application to the Central Arbitration Committee (CAC) for recognition in organisations that employ at least 21 workers.

What requirements have to be met before the CAC can consider an application from a trade union?

- The trade union must first have made a formal application to the organisation concerned.
- The CAC is unable to accept an application if, following the request, the employer suggests that Acas should become involved and the trade union refuses or does not respond.
- The union must have at least 10 per cent membership and be likely to attract majority support in a ballot.
- The CAC will not accept applications from competing trade unions.
- If a single joint application is made by the unions concerned they will need to show that:
 - they will cooperate with each other
 - if the employer wishes, they will enter into collective bargaining arrangements by which the unions act together on behalf of the workers in the relevant bargaining unit.

In what circumstances will the CAC grant recognition?

The trade union must show, either through a ballot, or through levels of membership, that it has the support of a majority of workers in the bargaining unit.

Where the CAC makes a declaration that a trade union should be recognised for collective bargaining purposes, the parties must then agree a bargaining procedure. If they cannot agree a procedure, the CAC will impose one.

What is the role of Acas in statutory recognition claims?

When a trade union makes a statutory claim for trade union recognition Acas is ready to conciliate, if both parties agree. Where the employer proposes to involve Acas, and the union refuses or fails to respond within 10 working days, the union cannot apply to the CAC. The Acas role is

separate from the statutory decision making role of the CAC and is entirely confidential.

What is conciliation?

It is a voluntary process of discussion and negotiation by which Acas helps parties in dispute to reach their own agreement. Acas conciliators have no power to impose, or even recommend, settlements.

What is the central arbitration committee (CAC)?

The CAC is a permanent independent body with statutory powers.

- It makes legally binding decisions on applications concerning the recognition and de-recognition of trade unions for collective bargaining purposes, where employers and trade unions cannot agree voluntarily.

See bottom 14 for the address and phone number of CAC.

What is a trade union?

An organisation of workers created to protect and advance the interests of its members by negotiating agreements with employers on pay and conditions of work. Unions may also provide legal advice, financial assistance, sickness benefits and education facilities.

What is an 'independent' trade union?

A trade union which is not under the domination or control of an employer and is independent from the employer financially. The Certification Officer maintains a list of trade unions and is responsible for determining whether a trade union or staff association is 'independent'. Unions which prove that they are 'independent' will be granted a certificate of independence by the Certification Office.

Only independent trade unions can make statutory claims for recognition.

What is an affiliated union?

Any independent trade union with membership in England and Wales may apply for affiliation to the TUC, and in Scotland to the Scottish TUC. Affiliated unions are entitled to send delegates to the TUC annual conference. Few unions of any size are unaffiliated. However, an independent trade union does not have to be affiliated to make a voluntary or statutory trade union recognition claim.

How are disputes settled between affiliated unions?

A TUC Code of Practice sets out principles governing relationships between unions. In the case of an inter-union dispute between affiliated unions

about trade union recognition, the TUC will examine the issue and aim to help the unions' to reach a voluntary settlement. If this is not possible, the TUC will make an award.

What is a bargaining unit?

A group of workers who are represented by the trade union. If there is a written recognition and negotiating agreement the agreement will normally define the bargaining unit. Such a description should describe the occupation and location of the workers covered by the agreement. So, for example, a negotiating agreement may describe the bargaining unit as 'Assembly workers, up to (but not including) the level of supervisor at the Fulchester site'.

Trade union recognition

How does a 'non-union' company differ from a company which recognises trade unions?

There is of course no such thing as a typical 'union' or 'non-union' company.

However, employers who do not recognise trade unions will usually:

- deal directly with workers who have employee relations problems. So, workers who have grievances will raise them directly with the managers concerned*
*Workers have the right to be accompanied by a colleague or by a trade union official if they have a grievance or if they are subject to disciplinary action. This right applies to all organisations – non union as well as union. (If you require further information please contact the Acas Helpline 08457 47 47 47).
- determine increases in pay or other terms and conditions of employment for a group of workers without negotiating with a trade union representative
- set up an employee or works council to inform and consult with workers. Such a body will not normally negotiate terms and conditions of employment or be 'independent' of the employer
- the Information and Consultation Directive establishes a framework for informing and consulting employees. It will be implemented in the UK in April 2005 and will apply initially to undertakings with 150 or more employees. More information can be found at www.dti.gov.uk/consultation/proposal.htm.

Employers who recognise trade unions:

- will negotiate with representatives of a trade union who act on behalf of their members to get improvements on pay and other terms and conditions of employment. This process is known as 'collective bargaining'
- will give representatives of the trade union paid time off to carry out their union duties
- may sign up to 'partnership' agreements which encourage a cooperative approach to employment relations. For example, a partnership agreement may involve assurances of job security in exchange for flexible working practices. In others it may set out new systems for consultation and representation and a joint commitment to a cooperative approach.

How can Acas help?

- Acas has many years experience of helping to resolve all kinds of industrial disputes, including those concerning pay and terms and conditions of employment, redundancy and discipline and dismissal. About 20 per cent of the disputes Acas deals with each year involve trade union recognition.
- Acas can provide confidential information and advice about many employment relations issues (including trade union recognition) and can help employers, employees and trade unions to work together to resolve problems away from the sometimes emotionally charged atmosphere of the negotiating table.
- Acas advisers can be contacted by calling the Acas Helpline 08457 47 47 47.

Does there need to be a dispute about trade union recognition before Acas becomes involved?

No. Acas can give advice and information on trade union recognition separately or jointly to either party.

What happens if there is a dispute about trade union recognition?

Either or both sides may approach Acas for help in resolving the dispute. Acas involvement is voluntary – Acas will conciliate if both parties to the dispute agree that we should become involved.

There is no set legal procedure for dealing with recognition issues which are put to Acas on a voluntary basis. It is up to the Acas conciliator to progress each case with the parties.

What happens where conciliation cannot resolve a dispute?

If the voluntary approach to settling the recognition dispute fails, the independent trade union may decide to make a statutory claim for recognition to the CAC. Before a union can make a statutory application for recognition to an employer, it must first make a valid request to the employer and give the employer 10 working days to respond.

How can Acas help determine union membership levels? (As part of an informal or voluntary recognition procedure.)

Trade unions are normally reluctant to reveal to the employer the names of workers who have joined a trade union. However, they will usually allow Acas to carry out an audit of union membership within the organisation. This will involve the employer giving Acas a list of workers in the proposed bargaining unit and the union providing evidence of membership. The Acas conciliator can then reveal to both sides how many trade union members there are within the proposed bargaining unit.

Where the bargaining unit is large, Acas will continue to provide full conciliation assistance but will suggest that an independent balloting agency be requested to carry out the membership audit, with the costs borne by the parties.

Before the membership audit, the parties will normally agree the action that should be followed after the results of the membership audit are announced. For example, the parties may agree that:

- the union will withdraw the request for recognition if membership levels are below a specified level
- evidence of a specified minority level of membership will trigger a secret ballot of workers on trade union recognition
- the union will be recognised without the need for a ballot if membership levels are shown to be over 50 per cent.

How can Acas help with a ballot on trade union recognition? (As part of an informal or voluntary recognition procedure.)

Where an employer and trade union agree that workers should take part in a secret ballot to determine whether the trade union should be recognised, Acas can help the parties to determine:

- the question to be asked on the ballot paper
- the rules about how the ballot should be conducted
- the action to be taken following the issue of the results of the ballot.

Acas conciliators can administer the ballot. However, where large numbers of employees are to be balloted, Acas will continue to provide conciliation but will suggest that a specialist independent balloting agency be requested to administer the ballot, with the costs borne by the parties.

How can Acas help the parties after the union has been recognised?

Acas can help the parties to draw up a recognition and procedural agreement and can help them to work together to resolve problems that may arise in the new relationship between management and unions.

Usually Acas will set up a joint working group comprised of employers and worker representatives. The Acas adviser will attend the meetings of the joint working group and act as a facilitator to help the group to develop the necessary procedures and arrangements to ensure an orderly relationship. This joint working approach, with the emphasis on joint problem solving, has the added advantage of fostering a cooperative style of employment relations from the outset.

Contacts

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www.cac.gov.uk

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