

Research Paper

The role of Acas in trade union recognition claims
under the Employment Relations Act 1999

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The views expressed in this report are those of the authors, and do not reflect the views of the Acas Council.

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EXECUTIVE SUMMARY

This report describes the findings of a study which examined the role and impact Acas in trade union recognition processes, following the introduction of Schedule A1 of the Employment Relations Act 1999 in June 2000. The study - carried out by the Working Lives Research Institute for Acas - was qualitative and based upon nine case studies of recognition cases conducted between May and August 2004, involving interviews with employer representatives, full-time union officers and workplace union representatives, as well as the Acas conciliators who dealt with each case. The study highlights the important contribution Acas makes in resolving recognition claims. Key findings from the research are as follows:

Union and employer strategies in recognition claims

- Recognition claims are generated from within the workplace by individual union members who have a personal or family history of union membership, but not necessarily activism;
- Union recognition strategy centred on building union membership and support in the proposed bargaining unit prior to submitting a claim, in order to meet the threshold for recognition without a ballot in statutory cases (that is, over 50 per cent membership of the bargaining unit);
- The case studies demonstrate employer pragmatism in the context of a change in the law. In all cases, employers were opposed to union recognition and the prospect of recognition would not have been entertained had the statutory recognition procedure not been in place.
- The decision as to whether to use the statutory or voluntary route to recognition was based upon both employer and union calculations of membership and support within the bargaining unit. Once an employer was convinced of genuine support they were generally not prepared to pursue the statutory route. This reflected a desire to avoid a protracted legal procedure, retain control over the process and avoid disrupting workplace relations.

The nature of Acas' involvement in recognition

- The introduction of a procedure for statutory recognition has expanded Acas' role in the resolution of recognition claims. This is firstly because the statutory procedure sets out a specific conciliation function for Acas and secondly because the substantial increase in voluntary recognition claims has generated greater demand for Acas' services;
- In each case, Acas played one or more of three key roles in the recognition process. These roles represent different elements of a conciliator's function, and conciliators may use them separately, or together, throughout the different phases of the resolution process:

- An *information* role, providing an independent and informed perspective on recognition law when dealing with employers. Conciliators described the implications of a failure to agree and of unionisation for the organisation, and set out employers' options in what was essentially uncharted terrain. For union officers, the value of Acas was in supplying independent verification of the legal process to employers;
- An *instrumental* role. This involved conducting trade union membership checks of the workers in the bargaining unit, or running ballots of workers in the bargaining unit to ascertain support for recognition. Both functions were methods of voluntarily resolving the recognition claim and took place outside of the statutory recognition process;
- A *conciliation* role in which Acas conciliators facilitated discussion between the parties, generally over the boundaries of the bargaining unit for which recognition was claimed, but also in disputes over union access to employees in ballots ordered by the Central Arbitration Committee (CAC), the body that oversees the statutory recognition procedure. Acas conciliators were particularly likely to play a conciliation role where Acas became involved in the case following a CAC application;

The influence of the statutory recognition procedure

- The introduction of the statutory process appears to have influenced the voluntary recognition processes used. This is seen in employers' concern that voluntary recognition, like statutory recognition processes, be based upon verified majority membership or support for collective bargaining; and also in the application of the threshold required in statutory ballots to voluntary ballots. The legal process may lead the parties to expect that a 'standard method' for progressing a voluntary claim will be used where Acas is involved; that is, membership checks and ballots similar to those conducted by the CAC;
- Where there was disagreement between the parties over the definition of the bargaining unit, the potential for voluntary resolution was sometimes reduced by the union's knowledge that the CAC could arbitrate a resolution. In some cases this led to unions holding out for a binding settlement.

The procedure agreement

- Acas conciliators involved in the resolution of recognition claims were not automatically involved in assisting the parties to develop a bargaining procedure or recognition agreement. In most of the case studies employers and unions developed procedures without Acas' assistance;
- Although employers appreciated advice on the content of recognition agreements, union officers were more reluctant to involve Acas when the agreement was under discussion, and saw it as their job to negotiate the

terms of the agreement. Where Acas was invited to assist in the formation of an agreement, conciliators provided 'model' or anonymised procedure agreements, advice on the practicalities of agreements, and reassurance to employers with little experience of union dealings. In doing so, Acas expedited the conclusion of procedure agreements;

- Most of the recognition agreements negotiated in the case studies limited the scope of bargaining to pay, hours and holidays, reflecting the minimum that the parties are obliged to bargain over following statutory recognition. Unions did not resist this restriction because they believed that the bargaining relationship would develop into one that was broader in scope once a relationship was established.

Post-recognition activity and training

- Recognition led to active bargaining by workplace representatives on pay and a range of non-pay issues, as well as more informal involvement of workplace representatives in day-to-day decision-making;
- Acas' role may vary following the conclusion of procedure agreements. In one case study Acas had subsequently been involved in conciliation over pay, but in a number of others recognition had not long been established. The case studies demonstrated a willingness by both parties to use Acas in the future and a desire for continuity in follow-on support, on the basis that they had established trust in a conciliator;
- Managers in most case studies and union representatives in around half of the cases had received no training following recognition. This lack of training hindered the development of management-union relations and reduced representatives' effectiveness in carrying out their roles, and their credibility with managers;
- In two case studies, Acas had successfully provided joint training for management and union officers and representatives after they had concluded a recognition agreement. Where there had been joint training delivered by Acas, post-recognition, this was valued by both management and the union and was found to have a positive impact on workplace relations;
- The case studies suggest that in cases where there was no such training, both parties would have welcomed and benefited from it. There is the potential for Acas to play a larger role post-recognition and, in particular, for the extension and promotion of its joint training services.

Recognition outcomes

- From the perspective of workplace representatives, the gains brought by recognition were not seen just in terms of improvements in pay and conditions. The benefits of recognition for unions were expressed in terms of employee voice and security in the workplace and an appreciation that more formal procedures placed limits on management prerogative. Representatives genuinely felt that they had influence over workplace policies and that their views were taken into account;

- Managers appreciated the introduction of clearer procedures and structures, and improved workplace morale resulting from greater employee voice. While most valued more formal channels of communication and representation, some expressed concerns about an absence of representation for non-union employees – leading some to establish dual channels of representation.

The skills of the conciliator

- Both employers and trade unions expressed high levels of satisfaction with Acas' role in recognition. Acas conciliators were overwhelmingly seen as neutral, and for the parties, Acas' impartiality was a highly valued quality. Conciliators promoted the voluntary resolution of recognition claims, encouraging the use of the voluntary recognition process where that was parties' preferred route;
- The parties valued conciliators' experience and authority in the area of employment relations, and conciliators' inter-personal skills meant they were seen as approachable. These skills were important in helping build relationships between unions and employers who had little previous contact with one another, in a context of considerable potential for mistrust. Relationships between the parties improved through the process of resolving recognition claims, particularly where management had initially been apprehensive about recognition;
- The parties expressed a preference for more 'proactive' conciliator involvement in recognition claims with conciliators being more assertive in seeking to influence the parties;
- The case studies demonstrated that Acas' involvement added value to process of resolving recognition claims, even where cases eventually went to the CAC and even where recognition was not agreed. In some of the case study organisations, there was a belief that the parties may have resorted to the statutory procedure without Acas' assistance, and there was much evidence of Acas having expedited the recognition process. Above all, respondents reported that conciliators had set in place the conditions for positive future relationships between the parties, thus providing the basis for productive employment relationships, post-recognition.

1. BACKGROUND

This chapter provides an overview of Acas' role in the conciliation of union recognition claims, both before and since the introduction of the statutory recognition procedure. It describes the increased incidence of voluntary agreements and use of Acas conciliation services in recognition cases. It looks at the usage of the statutory procedure and the outcomes of both statutory and voluntary recognition processes, in terms of the nature of procedural agreements and employer-union relations.

1.1 Acas' historic role in recognition

'Collective bargaining demands recognition, that is, a readiness on behalf of employers to conclude collective agreements with a representative trade union or unions'. (Flanders 1970: 178)

The Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 1992) defines "recognition" as 'the recognition of the union by an employer ... to any extent, for the purpose of collective bargaining' (Department of Trade and Industry 1999). In practice, recognition has been the means by which employers and trade unions jointly regulate a range of issues related to terms and conditions of employment. It has also provided a formal structure of representation within which these negotiations take place.

Historically, Acas – as an independent public body - has played a key role in assisting employers and trade unions in the development of agreements for union recognition for collective bargaining over terms and conditions. As Wood (2000:124) notes, the role of the State in the recognition arena was first cemented in the 1968 Donovan Commission's acceptance of a proposal that there be "a permanent public authority empowered to hear recognition disputes and to make recommendations for their settlement". Initially that role was performed by the Commission on Industrial Relations which was established in 1969 and abolished in 1974. Acas was then established in 1975 with a remit to: promote collective bargaining; to provide conciliation, mediation and arbitration services; and to operate a statutory union recognition procedure.

The statutory recognition procedure was eventually abandoned five years after its inception, following a number of successful judicial review applications by employers challenging Acas' use of its statutory discretionary powers. However, in the period when there was no statutory support for recognition, assistance to the parties in the voluntary resolution of claims concerning recognition continued to play an important role in Acas' collective conciliation activity, with recognition cases comprising over 10 per cent of collective conciliation activity in every year until 1993 (Goodman 2000).

The Trade Union and Labour Relations (Consolidation) Act 1992 set out Acas' duty (as stated above, relating to the promotion of collective bargaining etc) as it consolidated existing laws, including the Act passed to establish Acas in 1975. In 1993 the Trade Union Reform and Employment Rights Act amended Acas' terms

of reference within the TULR(C)A 1992, removing the duty to promote collective bargaining and leaving the duty of "the improvement of industrial relations, in particular by exercising its functions in relation to the settlement of trade disputes"¹.

Latterly, the Employment Relations Act, enacted in 1999, provides that the general duty of Acas should be "to promote the improvement of industrial relations", repealing the emphasis given by the TULR(C)A 1992 to Acas' functions by removing the specific reference to the settlement of trade disputes.

1.2 Voluntary agreements on recognition

In 2000, under the provisions contained in the 1999 Employment Relations Act (ERA), the government once again introduced a statutory framework for recognition². The government's intention was that the statute should be used as a last resort, its existence encouraging the conclusion of voluntary agreements: that is, those in which the coverage and content of the agreement is entirely in the hands of those negotiating the agreement. Acas' role in conciliating on recognition claims was thereby reinforced. Acas's internal guidance described an expectation that, as in the past, voluntary conciliation would remain the main means of providing assistance in resolving recognition disputes, and that this service would continue to be available to the parties outside of the statutory procedure. Indeed, there remain cogent reasons why employers might prefer to go down the voluntary route. As Wood (2000) notes, they have an incentive not to go right through the statutory procedure since a protracted recognition dispute might sour any bargaining relationship eventually established. Furthermore, even if opposed to the recognition claim, an employer may accept the inevitability of recognition and prefer to retain control over the process rather than concede the initiative to the union or a third party. Additionally, by entering into a voluntary agreement, the parties not only retain control over its content but may have more flexibility over the bargaining processes used.

In its Consultative Document on the Review of the Employment Relations Act published in February 2003, the Department of Trade and Industry (DTI) reported an increase in voluntary recognition agreements to support its claim that "the procedure is overall working well" (Department of Trade and Industry 2003). The evidence of an increased number of voluntary agreements is provided by TUC/LRD surveys conducted since 1995 (see for example Trades Union Congress 2004). In the 1990s the number of agreements recorded was never above 100 a year, whereas between November 2000 and October 2001, 443 voluntary agreements were recorded. Between November 2001 and October 2002 there were 282 new deals; in 2003, although the numbers had fallen, 137 were reported.

1.2.1 Acas' involvement in voluntary recognition

Acas guidance documents define conciliation as "A voluntary process for helping employers, workers and their representatives resolve differences and employment

¹ Recognition is included in the statutory definition of a trade dispute - see Trade Union and Labour Relations (Consolidation) Act 1992, Section 218(g).

² Appendix 1 provides a schematic showing the key steps in the recognition process under the Employment Relations Act 1999.

matters, including recognition". Wood (2000) notes that Acas has a mediating and conciliating role in recognition disputes and may be involved both before and after the parties enter the statutory procedure, either at the instigation of the parties or of the Central Arbitration Committee (CAC), the body that oversees the statutory recognition procedure. While a case is with the CAC, Acas' role must take account of the fact that, whatever the outcome, the parties must return to the CAC either to withdraw or continue the statutory process. Progress made through Acas' involvement may have no standing if the parties do not agree to withdraw from the statutory procedure. The Acas booklet *Ask Acas: Trade Union Recognition* points out that there is no set legal procedure for dealing with recognition issues which are put to Acas on a voluntary basis, but it is up to the Acas conciliator to progress each case with the parties. Acas' functions are described as:

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

More specifically, Acas conciliators may be involved in:

- Facilitating agreement on the bargaining unit of the workers to be covered by any recognition agreement;
- Establishing the thresholds in any membership check or ballot upon which recognition of the union will be based;
- Performing a check of worker and member details to establish the level of union membership within the bargaining unit;
- Checking names on employee petitions used by trade unions as proof of employee support for recognition;
- Running a ballot of workers within the agreed bargaining unit to establish the level of support for recognition.

Table 1 shows that the number of recognition cases Acas has been involved in has doubled since 1999. From 1997 there has been a steady increase, with 211 cases recorded in 2000, 339 in 2001 and 330 in 2002. As a proportion of the total conciliation caseload, recognition cases peaked in 2001, at 26 per cent of all collective conciliation cases. From 2002 onwards, the number of recognition cases has declined, to 236 in the 2004/2005 year.

Acas records also show an increase in the proportion of Acas cases where recognition was achieved, from 21 per cent in 1992 to 70 per cent in 2000 and 66 per cent in 2001, dropping slightly to 57 per cent in 2002. Table 1 shows that the proportion of cases leading to 'full recognition' also rose from one third in 1999 to a peak of around two thirds (65 per cent) in 2000. 'Full recognition' refers to recognition for collective bargaining, while 'partial recognition' refers to recognition for something short of this, usually consultative or representational rights.

Table 1: Recognition cases involving Acas 1997-2005

	No. Recognition Cases	% Total Collective Conciliation Cases	% Recognition Achieved
1997	102	9.0	49 (29% full, 20% part)
1998	131	11.0	48 (33% full, 15% part)
1999	148	14.0	49 (33% full, 16% part)
2000	211	17.7	70 (65% full, 5% part)
2001	339	26.0	66 (60% full, 6% part)
2002	330	25.0	57 (50% full, 7% part)
2003/2004	236	19.0	Data not available
2004/2005	234	22.0	Data not available

Source: Acas

[1997 – 2002 figures for period January to December; 2003/2004 and 2004/2005 figures for period April to end March)

Acas data indicates that most of its work in recognition processes takes place in small to medium-sized private sector organisations. In the period September 1999 to end 2002, almost half of the establishments in which Acas had involvement in recognition disputes had between 50 and 199 employees, with another 30 per cent having between 200 and 999. In terms of the sectors in which Acas has the greatest involvement in recognition work, publishing, food manufacture and other machinery manufacture account for the largest share of cases.

Over the period 1998 to end 2002, Acas conciliation staff handled a total of 1,159 completed recognition cases, of which 696 (60 per cent) resulted in agreements. Gall (2004) estimates that a total of 2,050 recognition agreements were negotiated between 1998 and 2002, although this data may not capture all voluntary agreements, and may exclude some with Acas involvement. Thus, at a very rough estimate, it is possible that around one third of all agreements settled between 1998 and 2002 involved Acas in some capacity. Further, Heery's (2005) survey of union officers employed by 19 trade unions showed that of 378 recognition campaigns in which they had been involved, Acas was involved in conciliation in just under one third (30 per cent).

Between June 2000 and May 2003, Acas staff ran 215 membership ballots and 251 membership checks, and in some instances both ballots and checks were used in the same recognition cases. Around one third of each took place in Acas Scotland. Aside from Acas Scotland and Wales, all other Acas regions conducted a greater number of membership checks than ballots.

A further area of Acas' work is that of 'workplace projects', in which Acas advisers work with employer and employee representatives to assist them in improving workplace relationships, managing change, or revising or developing new policies, procedures, or structures³. Table 2 shows that the number and percentage of completed Acas advisory projects that dealt with collective bargaining arrangements increased by around one third from 1999 to 2001. The figures, however, may include some workplace projects aimed at improving existing, long-standing collective bargaining arrangements, and not just new collective bargaining arrangements that may emerge from recognition.

Table 2: Completed advisory/workplace projects relating to Collective Bargaining Arrangements

<i>Year</i>	<i>Number of completed workplace projects relating to collective bargaining</i>	<i>% completed collective bargaining projects as a proportion of all projects</i>
1998	88	15
1999	96	19
2000	118	20
2001	159	29
2002	124	27
2003/2004	88	25
2004/2005	64	17

Source: Acas

[1997 – 2002 figures for period January to December; 2003/2004 and 2004/2005 figures for period April to end March)

1.3 The Statutory Recognition Procedure

The Employment Relations Act 1999 introduced a new statutory recognition procedure, which came into force in June 2000. It provides a mechanism for achieving trade union recognition where a majority of the workforce is in favour. An application for recognition to the CAC needs to meet a number of conditions before the CAC panel can accept it. Three significant factors determine whether the CAC will accept an application:

- Whether the union has 10 per cent or more of the proposed bargaining unit in membership;

³ Prior to October 2004, Acas workplace projects were named 'Advisory projects'. For a description of Acas' advisory project function, see Purcell (2000).

- Whether there is an existing collective agreement covering some or all of the bargaining unit;
- Whether the CAC believes from the evidence presented that a majority of the bargaining unit would be likely to favour recognition.

The statutory procedure begins at the point when a union officer submits a formal written request to the employer for recognition under Schedule A1. The employer has 10 days to respond to the union. If it does not accept the request but agrees to negotiate, the employer has a further 20 days to agree recognition before the union can refer the application to the CAC. In many cases a voluntary agreement may be reached without the application being actually referred to the CAC.

Once an application is accepted, the union and employer have 20 working days to agree the bargaining unit. If they fail to do so, the CAC determines the bargaining unit and reassesses the above key factors in relation to the bargaining unit (if the bargaining unit decided by the CAC is not that proposed by the union). If the application remains accepted but the union does not have a majority of the bargaining unit in membership, the CAC will order a ballot. If a majority of the bargaining unit are union members the CAC may make an award of statutory recognition. However, the CAC may order a ballot even though the union has a majority if any of three conditions is satisfied:

- It is in the interests of good industrial relations;
- A significant number of union members in the bargaining unit inform the CAC that they do not want recognition;
- Membership evidence leads the CAC to doubt whether a significant number want recognition.

In a ballot, a majority of those voting - but also 40 per cent of those eligible to vote - must favour recognition for collective bargaining. Following a declaration of recognition, the parties must agree a method of conducting collective bargaining; if they fail to do so the CAC may assist or impose a bargaining method following a statutory model.

Even after the application has been referred to the CAC, the union may withdraw it at any stage prior to the CAC ordering a ballot or declaring recognition. In these circumstances if an agreement is concluded, it is formally known as an 'agreement for recognition'. Such agreement is made in consequence of an application under Schedule A1, provided that the application was still being processed when the agreement was made. Such agreements, sometimes referred to as 'semi-voluntary' agreements, have a specific legal status. Where the parties have concluded such an agreement, but have then been unable to agree on a procedure for bargaining, they can seek CAC assistance, and ultimately, the CAC can impose a legally binding bargaining method.

1.3.1 Use of the statutory procedure

CAC records show that by the end of May 2004, unions had gained an award of recognition through the statutory process in 96 of the 372 cases submitted to the CAC. A further 98 applications were withdrawn before a CAC decision on acceptance could be made. It is probable that most of these were withdrawn for technical reasons (and in some cases resubmitted), although a small number may have resulted in a recognition agreement. In a further 62 cases the application

had been withdrawn following acceptance or after the bargaining unit had been agreed or determined. Although the CAC has no comprehensive data on this, it is likely that a proportion of these resulted in 'semi-voluntary' agreements.

Recognition ballots held under the procedure are an area of uncertainty for unions. CAC figures indicate that in the first three years following the introduction of the statutory procedure, unions lost a third of ballots ordered by the CAC. This is despite the fact that the union either had a majority of the bargaining unit in membership on application or had at least convinced the CAC that a majority was likely to support recognition.

1.3.2 Acas and statutory recognition

Acas' involvement in the recognition process is explicitly set out in Schedule A1 of the Employment Relations Act 1999, which deals with collective bargaining and recognition. Under Schedule A1, an employer may voluntarily approach Acas for assistance where a union seeks recognition. However the CAC cannot accept an application if, following the request for recognition, the employer suggests Acas become involved and the trade union refuses or does not respond. Both the application form, and the form that employers are required to complete following a request for recognition, ask if the employer has proposed Acas assistance.

Following the application, the CAC may suggest Acas involvement in brokering agreement between the parties, or the parties may request Acas assistance in negotiations. Acas figures show that between June 2000 and May 2003, Acas was requested to conciliate following the triggering of the Schedule A1 procedure where a trade union had written to an employer, in 132 cases. In 112 of these 132 cases, conciliation had been completed by May 2003. In 63 of these 112 cases (around half), recognition had been achieved by the union.

1.4 Recognition outcomes: bargaining and employment relationships

Following an award of statutory recognition, the parties are obliged to bargain only on the 'core issues' of pay hours and holidays, although they may agree to broaden the scope of bargaining. CAC data shows that, in the period up to May 2004, of the 96 statutory awards for recognition, in the majority of cases (60 in all) the parties had agreed a method of bargaining. In 28 cases the method of bargaining had yet to be determined. In eight cases the parties had not been able to reach agreement and as a result the CAC had imposed a legally binding bargaining method.

Recent research (McKay *et al* 2005 forthcoming) demonstrated that in the majority (77 per cent) of agreements where the CAC had made a statutory award, bargaining reflected the statutory model in being formally confined to the core issues of pay, hours and holidays. Further research (Moore *et al* 2004) showed that the scope of bargaining – in terms of the range of issues subject to negotiation – was wider in voluntary agreements. This may reflect the more constructive nature of industrial relations between the parties in cases where recognition has been concluded outside the statutory procedure, or, the incentive provided by voluntary agreement for greater flexibility over bargaining. Case

studies undertaken as part of this research showed that where recognition had been agreed, active bargaining - and in particular pay bargaining - was common.

Poole's research (2003) confirms this. Poole notes that the statutory model sets an expectation of negotiations being initiated within three months of the formal award of recognition, occurring at least on an annual basis thereafter. Nearly three quarters of the employers Poole studied reported that they had conducted negotiations with the trade union since recognition, with the bulk of the remainder having settled recognition only very recently.

In terms of the effect of statutory recognition on employment relations at the workplace, Poole's research showed that over half of all employers felt that there had been no change in the nature of employment relationships. In the minority of cases where relations had worsened, this was due to: "perceived inappropriate behaviour of shop stewards"; because employers failed to distinguish between consultation and negotiation; or employer concerns about ballots of union members alone determining outcomes for the whole workforce. For some employers who had operated a union-free policy for many years, the CAC declaration was taken as a personal slight, and the CAC was the target of blame for recognition.

In contrast, where recognition has been obtained through voluntary agreement, parties are more likely to perceive the industrial relations environment as having improved. Moore *et al's* (2004) case studies of voluntary recognition suggest that recognition had in most cases provided a catalyst for better employment relationships. In some, recognition had emerged from a background of poor industrial relations, possibly provoked by a particular grievance. Although managers were more cautious in their estimates of the benefits of recognition than trade union interviewees, they appreciated the benefit of more formal employee representation. And for the workers involved, the benefits of recognition were not just based upon material gains defined by the scope of collective bargaining, but also in terms of a 'voice' in workplace decision-making, perceived dignity in the workplace, and in improvements in day-to-day workplace issues.

1.5 Summary

From its establishment in 1975, Acas has performed a key role in the resolution of trade union recognition claims. For most of this period its involvement took the form of conciliation in cases of voluntary recognition (save for a short period in the late 1970s). However the introduction of a new procedure for statutory recognition in 2000 has expanded Acas' role. This has occurred for two reasons. First, the statutory procedure sets out a specific conciliation function for Acas. Second, the number of voluntary recognition claims substantially increased in the shadow of the new law, leading to a growth in demand for Acas services. Figures show, however, that Acas conciliators have been involved in relatively fewer cases after an application to the CAC is triggered. And the research summarised in this section suggests key differences in the outcomes of statutory and voluntary recognition processes, in terms of both the scope of agreements and employment relations outcomes. Following sections will profile the role of conciliation within these processes.

2. RESEARCH OBJECTIVES AND DESIGN

This chapter sets out the research methodology upon which this study is based. It explains the background to the research, the research objectives and design, and findings from exploratory research conducted by Acas. It describes the range of employer responses to recognition claims which formed the basis of case study selection, and explores the limitations of the selection strategy. Finally it outlines the negotiation of research access, the conduct of the fieldwork, and analysis of the data.

2.1 Background, research objectives, and research design

In 2004, Acas commissioned the Working Lives Research Institute to conduct a research project to examine the nature, role and impact of Acas in the process of developing new recognition agreements in the wake of the Employment Relations Act 1999, as perceived and experienced by Acas conciliators and advisers, employers and trade union representatives. The introduction of the statutory recognition procedure implied a key role for Acas. However despite substantial growth in demand for Acas services in this area since its introduction, there had been little published research relating to Acas' role. The study thus aimed to address this gap in the research literature by investigating a range of aspects of Acas' involvement in the recognition arena in Britain.

The purpose of the research was to collect information about the role of Acas conciliators in recognition cases, based upon the expectations and experiences of both employers and trade union representatives and officers, and their perceptions of the benefits of Acas conciliation. Acas had little information about the outcome of recognition cases and ongoing employment relationships once Acas' involvement had ended, and the research also aimed to redress this.

The more detailed aims of the research included:

- To gain an understanding of the characteristics and scope of Acas' involvement in recognition processes;
- To capture the experiences of Acas staff with regard to the impact of the statutory recognition legislation and other factors leading to recognition, and the workplace dynamics in handling recognition issues;
- To collect feedback from Acas customers on perceptions of the quality and value of the service provided by Acas;
- To gain an understanding of the parties' perceptions of the process of gaining recognition (both voluntary and statutory options), and of potential changes in employment relations or other workplace performance measures, following the recognition process.

The research design was qualitative and based upon case studies of individual recognition cases. Qualitative research does not claim to be statistically representative. Rather, case studies demonstrate variability and capture a range of behaviours and outcomes. This method was felt to be conducive to capturing in-depth data relating to factors underlying recognition, the motivations of the parties and the specific role of Acas. In particular it was able to demonstrate how the legal context, and legal change, may play out the behaviour of the parties.

2.2 Findings from exploratory research

A strategy for selecting a purposive sample of recognition cases arose out of a series of exploratory face-to-face interviews conducted by Acas Research and Evaluation staff with five senior Acas collective conciliators from Acas Scotland, and Acas' Northern, Northwest and Eastern regions between November 2003 and February 2004. These conciliators were chosen on the basis of Acas management records of recognition caseload characteristics. Each conciliator had handled a significant number of cases. Exploratory interviews discussed: trends in case characteristics since 1999, relating to employer and trade union strategies, as well as the sector, location, ownership structure and size of organisations targeted for recognition; trends in demand for specific Acas functions within recognition processes; and the nature of conciliators' dealings with employer and trade union parties during the recognition process.

Conciliators described their involvement in recognition cases. Most commonly, they were active in: providing advice to employers on the detail of the statutory and voluntary recognition processes; carrying out checks to determine the level of union membership; and conducting ballots to determine the level of support for recognition among the workforce. Interviews further indicated that conciliators played other 'intermediary' roles, including conciliating between the parties and brokering agreement around: the composition and boundaries of bargaining units; trade union access to employees prior to ballots; and the scope or coverage of recognition agreements. Alongside this, conciliators liaised informally between the parties throughout the process, by telephone, to seek resolution of the claim. In a small number of cases they performed these functions at the request of the CAC.

Conciliators also outlined a number of functions they may carry out after recognition has been agreed:

- Providing the parties with 'model' recognition agreements;
- Assisting employers by checking template recognition agreements provided by unions and explaining their contents;
- Assisting the parties in drawing up recognition agreements;
- In a small proportion of cases, providing post-recognition diagnostic workshops, training, advice, and assistance in establishing bargaining and consultative structures.

2.3 The case study selection strategy

According to the conciliators interviewed as part of the exploratory research, the vast majority of recognition agreements concluded since the ERA are settled voluntarily by the parties without Acas involvement. Almost all recognition cases conciliators became involved in were those where problems or conflict had occurred, or where the potential for conflict was evident. Conciliators illustrated the four main employer responses to recognition claims they encountered. These formed the basis of case study selection and are described below:

- *Voluntary pragmatic*: The employer is pragmatic about the prospect of a successful union recognition claim, and once employee support for the union becomes apparent will agree to concede recognition on the basis of majority support and will attempt to get the best out of it. Acas will

generally be used to conduct a voluntary ballot in order to ensure that all those in the bargaining unit are allowed 'a say', and to verify trade union claims of support.

- *Voluntary reluctant:* The employer is opposed to recognition, but will concede where there is majority support, on the basis that the union goes through a 'de facto' CAC process. In these circumstances Acas may run a membership check, and will often conduct a ballot. If successful the employer may insist on a 'shadow' agreement reflecting the statutory model of collective bargaining.
- *Legal reluctant:* The employer is not in favour of recognition, but may be resigned to it and may insist that the union go through the CAC process to verify support. Acas may also be involved at some stage of the CAC process. If successful, the employer may insist on a 'shadow' agreement reflecting the statutory model of collective bargaining.
- *Legal resistant:* The employer is openly resistant to recognition and may insist that the case goes through the CAC process. The employer may also challenge the union at every stage of the process, aiming to persuade the CAC to order a ballot, or may use delaying tactics or engage a lawyer to advise on how to defeat the union. In these cases Acas may act as an adjunct of the CAC, conciliating over the bargaining unit or facilitating an access agreement prior to the ballot.

The main objective in selecting case studies was to examine both demand for specific Acas roles and functions within the recognition process, and to explore whether Acas' role differed according to involvement in voluntary, or, semi-voluntary/statutory recognition processes. Each, in turn, is determined by employer and trade union recognition strategies, of which employer strategies – such as those highlighted in the categories above – appeared to be most influential.

Thus rather than attempting to select a random sample of recognition cases or attempting to sample by organisational characteristics such as industry sector, geographical location, or employee size, the above four categories were used as the starting point for selecting case studies which reflected each of the categories. It was anticipated that other categories of recognition cases would emerge in the course of the research.

Accordingly, conciliators interviewed during the exploratory research phase were asked to provide details of recognition cases which had entailed a high degree of conciliator involvement, in a variety of different capacities, which they judged to be of considerable research interest, and which conformed to one of the four categories.

In addition, Acas Research and Evaluation staff sent an e-mail message to all Acas conciliation staff, asking them to suggest cases for research that fell within each of the four categories. From this, a list of around 30 cases emerged. Some of these cases met the initial criteria for study but on further investigation were rejected for the following reasons:

- Most commonly, key individuals involved in the process – Human Resources Managers and full-time trade union officers – had left the company or union for employment elsewhere in the period following the recognition process, and could not be contacted;

- The recognition case was still in progress, or Acas was currently involved in the workplace concerned, in some capacity;
- The establishment had closed down in the period following Acas involvement;
- An initial attempt at recognition had failed and the union was seeking re-recognition. These cases were discounted due to the sensitivities involved, and the high likelihood that the parties would not agree to be interviewed;
- Key individuals declined to be interviewed: for example, in cases where recognition agreements drawn up following Acas involvement were not adhered to by the parties and recognition had 'withered on the vine'.

The initial aim was to select at least two cases from each of the four categories. Exploratory interviews indicated that the vast majority of the cases in which conciliators were involved were those that took place within voluntary processes, and that conciliator involvement in cases involving the CAC ('legal reluctant' and 'legal resistant') was limited. Moreover, the latter cases were usually characterised by conflict or oppositional stances on the part of either or both parties. In such cases, conciliators were reluctant to contact the parties, seeking their involvement in the research, as they doubted that they would consent to be interviewed. Conciliators were further concerned that the research might 're-open old wounds' and perhaps harm their relationships with the parties, in particular their strong regional trade union networks (discussed later).

2.4 Profile of selected cases

The final distribution of cases selected for study reflected these factors, with one case falling within each of the 'legal reluctant' and 'legal resistant' categories; two in the 'voluntary reluctant' category; and five in the 'voluntary pragmatic' grouping. Within each of the two latter categories, cases were chosen to explore different factors driving demand for a variety of Acas services.

Nine case studies were conducted in all. The regional distribution of the nine cases was as follows: North East (1); Yorkshire and the Humber (3); North West (1); South East (1) and East of England (3). In terms of industrial classification, five of the cases were in the manufacturing sector (one in rubber and plastic products manufacture; another in paper and paper products and the other three in 'other' manufacturing); three were in newspaper publishing, and one in transport. The case studies reflected the nature of post-ERA recognition agreements more broadly, in terms of industrial classification. The CAC records that manufacturing comprises around half of applications, with printing/publishing and transport/communications "featuring strongly" (Central Arbitration Committee 2004). DTI research (Department of Trade and Industry 2003) likewise shows that new voluntary recognitions were largely in the transport and manufacturing sectors, particularly printing and publishing, and food, beverages and tobacco sub-sectors.

In terms of employee size, the case study establishments were slightly larger than those reflected in the broader distribution of Acas recognition cases (most of which were in workplaces of between 50 and 99 employees). Of the case studies, one workplace employed between 50 and 99 employees; seven employed between 200 and 999 employees; and one employed over 1,000 employees. Looking at the number of workers in the bargaining unit which was the subject of the recognition claim, in six of the case studies there were between 100 and 200

workers; in two it was between 50 and 99, and in one case, under 50 workers. This reflects broader trends (see TUC 2004). In all but three of the case studies the recognition claim was based upon a single site, again reflecting wider trends.

Three of the case studies covered claims for recognition covering professional occupations, and the remaining six for groups of manual workers. Again, this is broadly in line with trends identified in the LRD/TUC (TUC 2004) and CAC research findings, which showed that manual workers were much more likely than other occupational groups to be covered by new recognition agreements.

The nine case studies were represented by six different trade unions, with one union represented in three cases and another in two. Research on both statutory and voluntary recognition shows that a small number of unions have been responsible for the majority of claims and agreements. These unions were represented amongst the case studies. And as with the vast majority of statutory and voluntary recognition cases, in all of the case studies the union was granted sole recognition for the bargaining unit.

2.5 Limitations of the selection strategy

Certain limitations inherent in the case study selection strategy became apparent during the research. The most prominent of these was the potential for 'self-selection' of cases, with the possibility that the group of cases selected may be biased in favour of those where the recognition process involved relatively little conflict or dissatisfaction with Acas' services. It might be expected that the parties involved in these cases would be more likely to consent to involvement in the research than those where the recognition process was problematic or confrontational. In this respect, the case studies selected may not be representative of the majority of cases involving Acas, particularly where a claim has been lodged by one party, and received reluctantly by another party (the employer) who may not want an on-going relationship.

Thus the sensitivities inherent in recognition processes, most prominently the potential for conflict and the somewhat precarious position of the Acas conciliator within this, had an impact on the selection of cases. This was reflected in the proportion of cases chosen in which the employer was not opposed to unionisation or overtly hostile to trade unions. As stated earlier, many of those cases initially considered for research purposes in which conflict had occurred were screened out by conciliators, as conciliators anticipated that researchers would be unable to gain access to employers who might be reluctant to admit to obstructive behaviour. As a result, the cases selected for study are to some extent biased towards those where the outcome of the recognition process was more positive. This in turn reflects the difficulties involved in conducting research into processes of collective dispute.

In addition, as discussed earlier, the cases selected did not represent a random sample. In part, this was because they were drawn from five regional areas in which the largest proportions of all Acas recognition cases occurred, on the basis that a greater spread of potential cases would be identified within these areas. It should also be noted that the nine case studies reflected the involvement of only four Acas conciliators. This may mean that users' experiences and perceptions of

Acas are based on contact with a somewhat narrow 'slice' of Acas officers, although the report also reports the findings of exploratory interviews with several other conciliators.

2.6 Negotiating research access, conducting fieldwork, and data analysis

Given the sensitivities often involved in recognition cases, and because conciliators had established relationships with parties to the cases, it was decided that conciliators were best placed to contact the parties to request their involvement in the research programme. In each of the cases, conciliators telephoned the trade union full-time officer and company manager with principal involvement in the recognition process. Conciliators explained the purpose of the research and level of involvement required of interviewees, and sought researcher permission to interview lead trade union workplace representatives, where they existed. Once permission to interview all three interviewees in each case was granted, the research contractors contacted them to arrange interviews. The fieldwork was carried out between May and August 2004. Interviews were conducted with:

- The Acas conciliator or adviser involved in the Acas intervention;
- The principal manager/s involved in the recognition process, with responsibility for employment relations in the period following recognition claims or agreements;
- The trade union full-time officer involved in the recognition process;
- The lead union representative in the workplace following the recognition process.

A total of 26 interviews were conducted in the course of the research. The research involved four interviews with managing directors; five with Human Resources Managers and one with a management consultant who dealt with one establishment's personnel issues. Ten full-time union officers were interviewed and six interviews were conducted with eight trade union workplace representatives. Four Acas conciliators were interviewed. All interviews were carried out by the report authors. They were semi-structured with topic guides drawn up in collaboration with Acas Research and Evaluation staff and reviewed after initial interviews. Topic guides covered the key issues, but were flexible and allowed exploration of emerging themes.

Interviews lasted between one and a half and two hours, and were conducted at the workplace. They were recorded on mini-disk with the respondents' permission and verbatim transcriptions made. Data in the verbatim transcripts was summarised under the key research issues to form a standard analytical framework. This allowed for comparisons between the case studies whilst retaining the narrative integrity.

In addition to the interview data, documentation from the recognition cases was collected during the course of the interviews. This included company annual reports; agreements outlining the arrangements for voluntary ballots; declarations of membership checks and ballots; and the text of recognition agreements. This data was used to clarify and confirm respondent recall.

2.7 Report structure and coverage

Chapter Three looks at factors leading to Acas' involvement in recognition, including union and employer strategies, the use of the statutory or voluntary process and routes into Acas. Chapter Four examines the nature of Acas' involvement and identifies the roles played by the Acas conciliator in the resolution of recognition claims. Next, chapter Five describes Acas' participation in the negotiation of procedure agreements and the scope of such agreements. Acas' involvement after recognition, along with bargaining outcomes and relationships, and the parties' evaluation of recognition in the period following the process, are explored in Chapter Six. Chapter Seven then evaluates the strategies and techniques used by conciliators in resolving recognition claims, and the value that Acas brings to the process. Chapter Eight offers some conclusions. Finally, Appendix 2 provides short case study write-ups of each of the anonymised case studies.

3. FACTORS LEADING TO ACAS' INVOLVEMENT IN RECOGNITION

This chapter identifies union and employer strategies in pursuing and responding to recognition claims and the factors influencing the use of the statutory or voluntary route. Details of the particular case studies are also set out in Appendix 2. The chapter examines the parties' previous experience of Acas services and assesses at what point and how, conciliators became involved in the recognition process. The chapter sets out a number of key research findings. These include:

- Initial employer responses to unionisation may change during the recognition process and this may reflect: union tactics; external advice or parent company policies; changes in ownership or management; and the attitude of individual managers themselves;
- Union claims for recognition are generated from within the workplace, often by a small number of activists who have some personal or family history of trade unionism;
- The case studies demonstrate a pragmatic response to unionisation by employers in the context of the change in the law. While all were opposed to recognition, in only one case did an employer transform opposition into mobilisation against union claims for recognition within the workplace. The use of the statutory route was based upon employer and union calculations of demonstrable support for recognition in the workplace;
- Union officers involved in the case studies generally had an established relationship with the Acas conciliator involved in the recognition claim.

3.1 Employer responses to recognition claims

The employer's initial response to unionisation - as characterised by conciliators interviewed in this study - was not necessarily reflected in their recognition strategies over time. Case study interviews revealed that the four categories of response which formed the basis for case study selection only captured employer strategy at the point when the union had succeeded in recruiting a majority in the

bargaining unit and the employer calculates whether or not a CAC application would have a chance of success. This may reflect a process of rationalisation which tempers employers' initial hostility to unionisation and propensity to resist recognition attempts. Other factors may also condition the organisational response during the process. These include: external advice; changes in ownership or management; and the attitude of individual managers themselves. These factors are discussed below.

3.1.1 External advice

In only two of the nine case studies, the employer received external advice on union recognition. In one, the company's solicitors were a large firm renowned for advising employers on how to avoid recognition. However the company's decision to take a more pragmatic approach indicated that if advice of this nature was given, it probably had little effect on the case. In another, the establishment used the employers' organisation of which they were members to advise them. This was the only case where an Acas conciliator dealt with an external advisor who the union officer felt played a "key role" in obstructing the claim for recognition. In the same case, the conciliator had been involved in a conference with senior US executives of the company, who he thought might also have taken legal advice on how to avoid unionisation.

3.1.2 Changes in ownership or management

The TUC/LRD surveys (see TUC 2004) note that a proportion of new recognition agreements occur in organisations where changes in ownership and/or management are evident. In three of the case studies a change of ownership or management led to a change in the employer's initial response to unionisation:

- In one, unionisation coincided with the transformation of the company from a privately-owned venture with an owner-manager who was perceived as 'anti-union' to a public limited company with a seemingly more pragmatic management.
- In a second case study in the newspaper industry, derecognition had occurred prior to the establishment being brought into the new parent company. This new company had a long tradition of recognising unions and of good relationships with the union, even during the 1980s when union-management relationships throughout the newspaper industry were fraught. The new parent company also had a Head of Human Resources who, according to a union officer "understood unions".
- In the third case, the Human Resources Manager had previous experience of working with unions in the steel industry and appeared to be more open to the union when it first approached the establishment than was the Managing Director. The Human Resources Manager described the Managing Director as "very anti, very polarised" who refused to deal with the union. Once again, the company's position changed with the appointment of a new Managing Director.

3.1.3 Management attitudes and responses to recognition claims

With one exception, the case studies did not portray an organised union avoidance strategy by employers. This may be due to the method of case selection used, with those employers intent on union obstruction less likely to offer their organisation as a subject of research. Even in the one case chosen because it represented characteristics assigned to 'legal resistant' recognition cases, the Human Resources Manager was herself not hostile to unions. Indeed, in a number of the case studies, the managers involved in the discussions on recognition did not necessarily reflect the views of the Managing Directors or parent companies⁴. In one case study the Managing Director was opposed to recognition, but the Human Resources Manager conceded:

"My personal view was no issue because I have always worked in unionised companies until I joined this group so, no feelings either way. I think that the business didn't see an awful lot of benefits for the business. ... there is a generation of younger management that have never worked with trade unions and I think that was one of the difficulties. We've had to do some training and education for them to understand what the process is and what the rights of the trade union are."

In only one of the case studies did the Acas conciliator consider that relations between the employer and trade union parties became openly acrimonious during the process, and in this case the conciliator described the employer as 'neutral' on recognition at the start of the process. Furthermore the union officer in this case conceded that whilst the company "didn't particularly want a trade union involved, they didn't particularly do anything to try and prevent us either".

In seven of the nine cases the management representative involved in the meetings did not have the power to make final decisions on union recognition, as these were the prerogative of management at higher levels. One conciliator suggested that where the employer representative did not have authority, this made the conciliation process more difficult:

"It does make life difficult; I mean that applies to any conciliation where you know full well that the people who are in the room with you are not the decision makers. It's far and away easier to deal with the Managing Director and know that the person you're sitting opposite can say yes or no to this."

3.2 Union tactics and behaviours in recognition claims

Trade union strategies and tactics also influenced the progress and tenor of recognition processes. The increase in the number of recognition agreements since 1998 has taken place in the context of a renewed commitment to organising and recruitment by UK unions. The case studies show that recognition claims originated in workplace campaigns often motivated by a small number of activists. Union activists and officers generally aimed to build majority

⁴ Again, 'self-selection' in the case studies may play a role: managers who were not themselves hostile to trade unions may have been more willing to participate in the research. Additionally, the fact that these managers were not hostile to trade unions may have facilitated initial Acas involvement.

membership in the workplace before approaching employers for recognition, and to use the voluntary rather than statutory route. The individual characteristics of union officers, however, also served to influence the recognition process used⁵.

In terms of the background to recognition claims, the case studies fell into two categories. Firstly in four cases there had previously been union recognition and the union had sustained a level of membership following derecognition. Union organisation in the workplace had declined following derecognition, but the prospect of re-recognition following the change in the law encouraged activists to rebuild membership. Three of the four cases covered journalists in the newspaper industry, and here, union organisation based around the 'professional' character of their trade union encouraged continued membership. In the remaining five case studies there had been no previous recognition and unionisation was the result of activists recruiting in the workplace.

For the union involved in three of the case studies, there was a campaign at national level to secure recognition and re-recognition in the newspaper industry. Yet although a number of the unions in the case studies were engaged in targeted organising initiatives directed by paid union officers at national and local level, in only one case study was unionisation the indirect result of a targeted campaign. Here union organisers unsuccessfully leafleted another workplace on the same industrial estate, but were directed towards the workplace which was the subject of the case study. Organisers leafleted outside the gates and then began to hold meetings in a local pub. An activist emerged who then recruited inside the workplace. With this exception, in all the other case studies it was workplace activists who contacted a union officer to progress recognition.

In a number of cases the full-time officer was brought in to accompany (or effectively represent) workers in disciplinary cases, and activists reported that this was effective in legitimising the union and encouraging membership. A workplace representative described this process:

"When one or two people saw that somebody was being disciplined and thought, 'They've had it, they're up the road', I said 'Hang on, let's get a union rep in there'. And then that person was given a written warning and not disciplined. And one or two people said, 'Hang on, there might be something in joining this union'".

3.2.1 Workplace representatives' experience of pre-recognition organising

Without exception, recognition campaigns in the case studies were motivated by a very small group of activists, and in four cases effectively by a single activist. In each case, the key activist or activists had either a personal or a family history of trade union membership (although not necessarily activism). This was particularly crucial in workplaces with no previous history of trade unionism. One activist commented, "It's a workforce that's got no tradition. I come from a mining background where it's instilled, it's part of it". Another activist recalled how he built up membership over a six-month period through 'persistence, propaganda, organisation and a lot of donkey work', to a point where the union considered it could submit a claim for recognition:

⁵ Further detail of the specific union organising approaches used in each case study organisation can be found in Appendix 2 (Case Summaries).

"I thought we had been going too long without any sort of union back up at all, a lot of people being hard done by in the past, disciplinary-wise. ... So it was at that time I sort of grew up. I think it's in the blood for me really, it's a family tradition".

In most of the case studies, prior to the recognition claim, management and trade union activists did not have a working relationship. The case studies indicate that either the employer was largely unaware of union membership prior to the approach from the union, or, as in three cases, workplace union representatives were already representing (or accompanying) individuals in grievances and disciplinaries and thus were accepted by the employer. In most of the cases, management did nothing to actively deter union membership. However, in one case an activist did feel vulnerable:

"People felt intimidated. People felt intimidated if they had joined the union that perhaps they wouldn't progress or something like that. It was very alienating at first, very hostile. They (managers) used to search my locker and search my pinny - things like that ... give me really bad jobs. I've had just about everything thrown at me, sarcastic comments, everything like that, I basically got all the crap because they knew it was me that instigated it all."

In another case recognition occurred after a change in ownership. The workplace representative had been a union activist in a previous job, and had joined the company prior to the change in ownership. He described how he was received by the former management:

"I got this job with [the company] and a manager actually whispered in my ear, 'Do not even think about bringing a union in here or you will be sacked'. At the time there was a two year time-slot before you got any employment rights so I had to keep my head down during that time. And then [the new company] took over and I thought, 'Right, now we're dealing with a large organisation so we'd need to get organised', so I started recruiting. I was sticking my neck out a long, long way really."

In those case studies in the newspaper sector where there had previously been recognition, some sort of workplace union organisation remained and there were union representatives in place who became involved in the re-recognition process. In two of these cases the chapel or union workplace organisation actively participated in discussions on the proposed bargaining unit with management. In most of the other cases however, the activists were not formally designated as workplace union representatives, and a full-time officer dealt with the recognition process.

3.2.2 Acas conciliators' experience of dealing with union full-time officers

Acas conciliators reported little variation in tactics or approaches to targeting recognition amongst unions who involved Acas in recognition, although one conciliator made the point that some unions were reluctant to involve Acas. In terms of union behaviours during recognition claim processes, conciliators felt that the individual characteristics of union officers often made a difference to the progress of a recognition case. For example, one conciliator felt that the fact that a union officer in one case study was particularly personable contributed to the smooth running of the case. Open-mindedness and a lack of dogma were seen as traits conducive to resolution. It was important that officers were prepared to be

open to testing support for recognition, rather than appearing defensive on this issue. A conciliator noted of one officer:

"The behaviour was like a courtship and that's how he behaves. He wants recognition and he knows there's a fear and there are some concerns, [so] he's willing to do what he needs to do to address those and to be reassuring."

In a contrasting case, the conciliator reported that relations soured between the union and an employer who was initially open to a voluntary agreement when the union officer wrote a letter to the employer accusing him of being less than honest about the composition of the bargaining unit.

Patience was also seen as a virtue. One conciliator identified a continuum, at one end of which were union officers who became impatient and sometimes "anxious and threatening". In such cases, Acas might be brought in to attempt to repair the situation. At the other end of the continuum were officers who "are charming, they are relaxed, they do work to a timetable but their behaviour is more encouraging and despite reservations, businesses will sit down".

Case study selection was based largely on four categories of employer response to recognition claims. However, as the following sections report, union strategies could be just as influential in determining the routes that recognition claims took throughout the process.

3.3 Factors influencing the use of the voluntary or statutory route

3.3.1 Union pursuit of statutory or voluntary recognition agreements

In all of the cases, union officers reported that in the first instance the union aimed to secure a voluntary recognition agreement and to avoid the statutory route if possible. As one noted, "the voluntary approach works far better". Indeed, in exploratory interviews, Acas conciliators reported the widespread practice of unions sending formal letters under Schedule A1 in order to prompt employers to enter into voluntary discussions. Union officers also stated that they would use the statutory procedure if necessary and this is borne out in three of the case studies. One full-time officer reported, "If we didn't get any joy with Acas we would have gone to the CAC; that's the policy of the union".

Wood *et al* (2003) suggest that unions' general approach to recognition is to build membership at workplace level, rather than relying on approaches to employers regardless of membership or support (sometimes known as 'organising the employer'). This is confirmed by the cases in this study. In five cases the union had over 50 per cent of the bargaining unit in membership when they approached the employer for recognition. Here the union's approach in recruiting was to meet the statutory threshold upon which the CAC could order recognition without a ballot. In one case the union had also carried out a survey of non-members and was confident of wider support.

In the four other case studies the union had less than 50 per cent of the bargaining unit in membership. In one the union gauged that it had over 40 per cent. In another the full-time union officer reported that he always tried to get to around 50 per cent membership before he considered approaching the company

for recognition, but in this case labour turnover meant this was not possible and the union felt it had sufficient support amongst the workforce. In another case where there was high turnover of staff the union approached the company knowing it had over ten per cent membership but not anything like 50 per cent. The company nevertheless engaged in discussions. In a fourth case the union appeared to be prepared to approach the employer at an early stage to gauge their reaction. However, when the officer thought that the union had a majority of the bargaining unit in membership, he subsequently realised that the union had underestimated the size of the bargaining unit.

3.3.2 Use of the voluntary route to recognition

Voluntary agreements were concluded in five of the case study establishments, and in the remaining four cases the claim was referred to the CAC for determination. In four cases the statutory route was never considered as an option by management. The interviews with managers suggest this reflected a concern to:

- Avoid what could be a protracted legal procedure;
- Protect workplace employment relations from what might be a conflictual process; and
- Retain some control over the process.

As one employer representative explained:

"Once we'd established (that) around a third of the people in the bargaining unit were union members, my view was 'Well, that's a significant number, we're not going to turn a blind eye, we're going to work with the union'. We could have said, 'Oh no, it's going to be a forced recognition claim, we're going to go to the CAC' but we just felt that that wasn't the way to get into any relationship, having to be forced to do something."

In another such case the Human Resources Manager recalled, "I think everybody was agreed that the voluntary route was the one of least pain, that everybody sits round and talks and gets it done". However, this company would probably not have recognised the union if the statutory recognition legislation had not been enacted. The union approached the establishment in December 1999 and the Managing Director responded that he would be happy to recognise the union once legislation was operative and relevant membership criteria established. The Human Resources Manager described their response as:

"Apprehensive ... we all wondered what was going to happen ... we tried to delay it of course as much as possible but eventually recognised that that's what they wanted."

Although not in favour of recognition, unions were recognised elsewhere in the parent company and there was no ideological opposition to unions. Once management was convinced that there was majority support for collective bargaining amongst the workforce it felt that recognition was 'inevitable' and thus for the company, voluntary resolution represented the 'route of least hassle'.

In a third case the conciliator characterised the company as "very pragmatic". This was a case where voluntary resolution came about after a change in

ownership. The Managing Director stated that initially the company opposed recognition because they did not think it would add any value to the business and because they did not believe it was what the majority of the workforce wanted. He described how he had warned union members that recognition may not change the nature of management decisions made:

"We were happy enough to say, 'If you really do want it (recognition) then okay, we will. We have got other businesses which are unionised, we are not resisting it, we are not difficult people, we don't see that it will make a huge deal of difference to what we do, it may cause us a bit more time in arguing because you might take it to several other stages'. What we (management) will do at the end of the day is probably what we would have done in the first place'."

Once again management in this case did not see the point of taking the legal route once it was demonstrated to them that the recognition claim reflected the genuine feeling of individual workers. Unions had recently been recognised voluntarily at another site and the manager said it would have been unreasonable to deny the claim at the site in question. He knew that there was legal backing and did not want to "raise test cases". The Managing Director expressed the view that to have campaigned more rigorously against recognition may have been counterproductive in reinforcing support for the union; he predicted that recognition would have little impact on the workforce and considered that workers at the other site in the organisation where there had been recognition were already disillusioned. The union officer's perspective was that this employer was opposed to recognition, but was realistic and not so opposed as to mount 'a big anti-union campaign':

"When they knew the numbers, when it reached the stage where, without naming names we gave them the numbers, there was almost like a 'Well, that's it then'."

The union representative felt the employer was:

"... a bit apprehensive, because a lot of the management had never come across a union before. They didn't know how they were going to adjust."

In several case study establishments which were part of larger multi-site organisations, recognition processes at other sites had an influence on the decision to pursue the voluntary route. In one case, the establishment was part of a large national media group which had already conceded voluntary recognition agreements in a number of its titles, on the basis of a national understanding that there should be either a ballot or a membership check conducted by Acas. In a second contrasting case study, although it was never alluded to by the Managing Director, the decision to take the voluntary route was perceived by the conciliator to be influenced by the experience of having recognition imposed by the CAC without a ballot in another part of the business. Although this part of the business was separately managed and the Managing Director had no involvement with the previous claim, the Acas officer considered:

"The business said 'Enough is enough. We have got a business to run; we've become too distracted in keeping the unions out. Let's make the most of it (recognition)'. (The Managing Director) took a more pragmatic view. I don't think he's naturally that way, but I think because of the

experience elsewhere in the business they felt that was the only way that they could cut their losses."

The union officer involved in this case felt that during the process management were "never *aggressively* hostile, they're just *obstructively* hostile". Yet, here there was a perception (possibly arising from the company's experience of the CAC procedure) that the voluntary route was preferable because the company could require a voluntary ballot of the bargaining unit (that is, a ballot not held within the statutory process), whereas the statutory process could impose recognition without a ballot. The Managing Director, in insisting on a voluntary ballot, argued, "Staff should have a view. Why should half the staff have all this imposed on them?" The union officer was more cynical:

"I think they wanted the flexibility of a voluntary agreement rather than something imposed by the CAC. Again, I suspect, because they have an eye to the future when they think they might be able to unpick it or do more with it than perhaps one that was imposed."

Another employer similarly insisted that recognition be based upon the verified wishes of a majority in the bargaining unit through a ballot, and expressed a concern about the views of non-union members:

"There was a presumption that we would take it on the nod. And we said 'No we won't'. Partly because Acas and the union can be frequently right about the numbers, but if they are not right there is a significant penalty for those people. What we preferred was that it was the genuine feeling of the individuals."

In two cases the employers' commitment to the voluntary route was tested when the union initiated a CAC application. In one this was following a misunderstanding over the threshold required in the voluntary ballot. The union wrote a formal letter to the company under Schedule A1, but, once the issue was resolved, the application was not referred to the CAC. In another case, the union also wrote formally to the company, triggering the statutory process. This resulted in an immediate concession on the bargaining unit from the employer.

As with the cases above, the use of the voluntary process and the preparedness of the union to threaten the statutory procedure were based upon employer and union confidence in union membership and support in the proposed bargaining unit, and a calculation that the CAC would likely support the union's proposed bargaining unit and would grant recognition without a ballot, or would order a ballot which the union was likely to win. In none of these cases did the employer feel that there was any advantage to be gained in allowing the CAC rather than Acas to test support for recognition. Neither were they prepared to undermine support for the union in the workplace in an attempt to defeat the application during the CAC process, and in doing so, risk the longer-term stability of workplace relations. These cases appear to demonstrate the role of the law in influencing the course of the recognition process. As one union officer stated, "There is no doubt the statutory issues have changed employers' mindsets."

3.3.3 Use of statutory routes to recognition

In four of the nine case studies the union went beyond just writing a formal letter to the CAC requesting recognition (as in the two cases mentioned above) and referred the case to the CAC for it to determine the recognition claim. In two of these four cases, the union believed the employer had no intention of concluding a voluntary agreement, leaving no alternative but the statutory route.

In one such case the Human Resources Manager noted, "The US (parent) company does not want to work with trade unions", but preferred representation via works councils, which it had established at all its UK sites. The union officer felt that UK management had "a clear mandate from the company to do whatever they could to avoid recognition". Here the company's attitude to unions was reflected in its strategy on recognition: the employer had always intended to pursue the statutory route and considered Acas' role to be predominantly that of 'messenger'. The company refused to meet with the union and failed to respond to the union's formal letter under the procedure requesting recognition. The union then referred the matter to the CAC. The union informed the CAC that the company had held a series of briefing sessions with workers, creating an environment that was perceived by the workforce as hostile to union recognition, as managers suggested that if the union gained recognition, the site would be shut down. The CAC ordered a ballot of the bargaining unit which, despite having a majority of 53 per cent in membership on application, the union lost. The union officer concluded:

"The (employees) were convinced that a vote for the union was against their own best interests and they were convinced that it would lead to a premature closing of the site. The site is on a lease which is due to expire and that's what people were concerned about, they felt if the union got there they would just cancel the lease and move somewhere else."

Another case which went to the CAC was less conflictual, but illustrates how closely entwined the voluntary and statutory routes can be. The union submitted a CAC application, but the deadline for acceptance was extended to allow time for voluntary agreement and Acas was brought in to undertake a voluntary membership check, which indicated 26 per cent membership. The Human Resources Manager recalled:

"This was one of the reasons why initially we wouldn't go for a voluntary agreement because it was quite a small and insignificant number."

The Managing Director rejected the union's claim and the union went back to the CAC. A subsequent CAC membership check verified that union members constituted 28 per cent of the bargaining unit, with 46 per cent signing a petition in support of recognition. The CAC then ordered a ballot and statutory recognition was awarded after 59 per cent of the bargaining unit voted in favour. The company did not conduct a vigorous campaign against recognition in the ballot, and the result indicates that, unlike in the previous CAC case, support for recognition is often greater than the level of union membership. However, the apparent fragility of union membership revealed in the voluntary membership check encouraged the employer to allow the union to pursue a statutory solution.

In the two other cases that became CAC applications, management had not been initially overtly hostile to recognition and there had been attempts to conclude voluntary agreements. In one of these the union representative reported, "I

never thought it was a 'them and us' situation". The Managing Director had not been in favour of a previous derecognition, which had been ordered by the parent company. He was not seen as hostile to recognition and the union had the right to represent employees on an individual basis prior to re-recognition. However, disagreement on the proposed bargaining unit meant that the union subsequently referred the case to the CAC. The CAC determined the bargaining unit and awarded statutory recognition without a ballot.

And in a final case, discussions again broke down over the composition of the bargaining unit and the union referred the case to the CAC. The CAC determined the bargaining unit in favour of the union and ordered recognition on the basis that a membership check had shown that 63 per cent were union members.

Looking back at the categories of employer response used as the basis of case selection, these cases could be said to have moved from 'voluntary pragmatic' to, perhaps, a new category of 'legal by default', although this does not adequately reflect the principal role of the union. In both cases the union calculated that it had a better chance of achieving recognition through the statutory procedure, and initiated the CAC process. The categories developed for case study selection reflect the perception of the conciliator at one point in time, generally the point at which he or she was involved in the process. Some cases moved between categories over the course of the recognition process, and this reflected union tactics as much as employer resolve.

3.4 The parties' previous experience of Acas

The chapter now turns to Acas' involvement in the resolution of recognition claims, beginning by establishing the context for intervention: the extent to which the parties had previously used Acas services, their satisfaction with such services and perceptions of Acas as an organisation. The data indicates that exposure to and use of Acas services varied widely among those in the case studies.

3.4.1 Previous use of Acas services

In five of the nine cases, the organisation had no previous relationship with Acas, although in four of these five, individual managers did have prior experience of Acas services. In one case the Human Resources Manager had used Acas when working for a previous employer and in her current role had attended an Acas Employers' Forum. In another case, the Managing Director had used Acas' dispute resolution services when working for another organisation. A management consultant, engaged to provide personnel services and handle the recognition claim in one case study, had experience of Acas in individual cases in other organisations. A final management interviewee, a Managing Director, had no previous experience of working with Acas and his knowledge of the service was limited to what he had read in the press; however, the Human Resources Manager of the parent company had a long history of involvement with Acas.

In four other cases the organisation itself was not new to Acas, although in one, involvement was related to resolution of an individual dispute rather than collective matters, with Acas involved in providing advice on settlements in tribunal cases. In a second, the conciliator involved in recognition had conciliated

over pay in a separately managed business within the company. In the other two case studies there had been more extensive involvement. In one, Acas had been used to train the existing company works council and to assist in drawing up selection procedures for redundancy. In the other the Human Resources Manager used the telephone advice line, and the conciliator who was to become involved in the recognition claim had previously provided support for the development of an absence management system. This case was the only one, however, where the employer had an existing relationship with the Acas conciliator who subsequently became involved in their recognition case.

The case studies suggest that recognition may be bringing a number of new employers to Acas, although this may be facilitated by previous management experience. Where there was previous organisational or managerial experience of Acas, this was often of individual conciliation. Thus, the recognition process has the potential to encourage use of Acas collective conciliation, workplace project, or training services among new customers.

3.4.2 Trade union experience of Acas

All of the union full-time officers involved in the case studies had extensive dealings with Acas, and all but one had worked with Acas conciliators on previous recognition cases. Union officers involved in the case studies reported that when approaching employers they generally indicated they would be happy to involve Acas, and some automatically informed Acas when they approached an employer for recognition. One union officer representing the newspaper sector reported that it was the policy of the union nationally to involve Acas in recognition cases, however some employers would not involve Acas, which "made things difficult" for the union. An officer from another trade union estimated that Acas had been involved in between 50 and 60 per cent of the recognition cases he had dealt with, and another could not think of any voluntary recognition cases he had dealt with where Acas had not been involved. A union officer who had used Acas many times stated, "I wouldn't go without it". In one variation, the officer stated that if the union had the large majority of workers in membership they would:

"... write to the company to request a meeting to talk about it. Anything less than the majority, we would always look to involve Acas".

In all but one of the case studies the union officer had an established relationship with the Acas conciliator involved in the recognition claim. This is in line with previous research emphasising the importance Acas conciliators place on developing contacts with full-time officials (Molloy and Lewis 2002). In the one exception, a national union officer based in London dealt with a case in another region, and this appeared to preclude the sort of relationship which develops through frequent full-time officer contact with locally-based conciliators. The fact that conciliators generally had established relationships with union officers involved in recognition cases, but not employers, meant there was an initial difference in relationships between conciliators and the parties in recognition cases, and was something that conciliators had to address (this is discussed in later sections).

Workplace-based union activists or representatives were less likely to have previous experience of Acas than full-time officers. One activist was aware of Acas conciliation services from working for a previous employer. During the

campaign for recognition at his current employer he had made use of the Acas Telephone Helpline for information on unlawful deductions in pay and also when he felt he was being victimised for union activity in the workplace. In these cases he used Acas to provide advice and confirm union information. Another had used the Acas website as a source of information. In only two of the case studies were union activists involved in meetings between the parties during the recognition process, and in the other cases they had no contact with the conciliator before the recognition claim was resolved.

3.5 Prior perceptions of Acas and its services

Employer and trade union interviewees were asked to describe their perceptions of Acas' service and image prior to Acas conciliators' involvement in the recognition process. Where employers had used Acas before, their experiences had left a positive impression. As one management interviewee stated, "In the past, in other businesses I have found them (Acas) very, very helpful". Another Managing Director saw Acas as the obvious organisation to approach following the recognition claim, remarking, "Acas is a recognised body that you probably go to. It's the one you first think of". A trade union officer concurred:

"It's a free service, recognised throughout the country by trade unions and employers. They are independent. They'll give you impartial advice."

The interviews suggested that for others, perceptions of Acas were based upon images of dispute resolution in conflictual situations. One employer representative who was very complimentary also commented:

"I wouldn't know about them if I hadn't used them. I don't think their profile is very high. People see them as a government body and only tend to hear about them when there are high profile disputes like the fire service."

The union workplace representatives interviewed generally had no direct experience of Acas; their image of Acas was often derived from the media and again was of dispute resolution. For one union activist Acas was "a go-between between management and union ... an arbitrator", for another, "as a point for conciliation, that it had a good reputation for resolving disputes and was a respected organisation and effective."

The case studies reflect previous research demonstrating high levels of satisfaction with Acas services (Molloy *et al* 2003). However, where there is no experience of Acas, the perception is that it is predominantly if not wholly associated with high profile employment disputes. This perception could discourage the use of Acas in situations where parties are committed to a more consensual approach to resolution of the claim.

3.6 Employer and trade union approaches to Acas

The Acas conciliators interviewed reported that the invitation to Acas to become involved in a recognition case often came from the employer. This may reflect the statutory procedure, since the CAC cannot accept an application if a union has rejected the employer's suggestion that Acas become involved. However, the approach by the employer may also be on the suggestion of the union officer. Moreover, existing relationships between conciliators and union officers meant that often the conciliator had already been alerted that the union was to make an approach for recognition. For example, in one case study it appeared that the union officer had informed the Acas conciliator that he intended to approach the company and the conciliator suggested that he copy the letter to Acas in the expectation that they may be able to help. The Human Resources Manager remembered that the company had an initial meeting with Acas before the parties met together:

"Everybody was quite green around the ears and we wanted to do it properly. We could have gone to solicitors and paid an awful lot of money for probably very partial advice. And our views are that Acas would do it for free and impartially and everybody would be protected and fairly treated. And that's why we went down the Acas route, because at that time solicitors were clamouring for the business."

In all of the case studies, the employer was agreeable to Acas involvement, and union policies relating to the automatic involvement of Acas were prevalent. For example, one union officer reported that he always suggested Acas involvement, because if the case did become a CAC application it provided evidence to the CAC that every attempt had been made to resolve the issue voluntarily.

In only one case study did a conciliator report that a union officer appeared to question Acas' role in discussions on recognition. Here the consultant engaged by the company proposed Acas involvement. He contacted the conciliator, who met with all parties involved in this case, and agreed to do a membership check. However the union officer appeared to feel that since the parties were not in dispute, they could resolve the matter without recourse to Acas.

3.6.1 Approaches to and from Acas conciliators, and conciliators' techniques

In some recognition cases the employer and union met together first and then jointly approached Acas. In such cases Acas was invited in for a specific purpose or purposes. As one union officer reported, "Sometimes we offer Acas to come along and verify the membership, which speeds it up a bit". Indeed in five of the case studies, the parties had already met by the time Acas became involved and the conciliator was asked specifically to facilitate a membership check or ballot.

Reflecting on recognition in general, one Acas conciliator reported that union officers sometimes asked conciliators to approach companies if employers were not responsive to the recognition claim. Although this conciliator was clear that Acas could only become involved at the behest of both parties, he stated:

"I would certainly feel obliged to perhaps write to the company, or telephone. Bearing in mind that we tend to be aiming at Managing Director level, it's quite often better to write and explain about our role and about the recognition legislation and say 'I would be happy to visit you and talk it through'."

The exploratory interviews with Acas conciliators also suggest a proactive role, although these may indicate cases where the employer is more hostile than the case studies upon which this research is based. Conciliators in one Acas region reported that they had an informal agreement with certain trade union officers that when the union approaches an employer for recognition, union officers copy the correspondence to Acas. The conciliators then write to the employer asking if they can come and explain trade union recognition and the role Acas might play. If the employer does not respond or responds negatively, the conciliators will follow up with a telephone call, and if there is further reluctance, they may ask them if they intend to go through the CAC process.

Over the years the conciliators interviewed had developed established modes of operating in recognition cases. In most cases, they would talk to one party first (most commonly over the phone) or occasionally meet with one side in advance, usually to offer some initial information. However, at the stage at which both parties become involved in the process, the conciliator would use one of two models, dependent on their understanding of the nature of the parties' relationship at the time. One model keeps the parties separate and then brings them together at the end of the day. The other encourages face-to-face dialogue between the parties, in the same room. In the case studies where the employer was not overly hostile to the recognition claim, the conciliator's technique was to bring the parties together early in the process. Where there was an unresolved issue, or an issue emerged (for example over the definition of the bargaining unit), the more commonly used technique was to have an initial period when the conciliator might see the parties separately and convey their views back and forward during half-day or day-long meetings, perhaps only bringing them together when there was agreement on the way forward. Conciliation tended to take this form in the cases in which conciliators were called in to assist after a CAC application had been accepted.

The point at which Acas was approached in a recognition case appeared to influence the nature of the conciliator's subsequent involvement. Where the approach was from an employer, Acas' initial role was often one of information – briefing the employer about the statutory procedure. Where the conciliator was invited in following a meeting between the parties, Acas appeared to play a more instrumental role, facilitating a membership check or ballot. Where the case was already moving through the statutory procedure, the role was generally one of conciliation. These roles are explored further in Chapter Four.

3.7 Summary

This chapter shows that the route of the recognition claim was the result of calculations by both employers and unions as to the possible risks of resorting to the law. For unions, this was based upon perceptions of worker support for the union and the strength or fragility of that support. For employers, it was based on the cost to the organisation of involvement in a legal process which might have

long-term implications for industrial relations. Acas' involvement was facilitated either by the employer, or by a joint approach from both parties, but there was also evidence of a more proactive approach by conciliators. The point in the process at which the conciliator was approached appears to define their role in the process. The next chapter explores how far the factors leading to Acas' involvement influenced the nature of the conciliator's role.

4. THE NATURE OF ACAS' INVOLVEMENT

This chapter looks at the nature of Acas' involvement in the resolution of recognition claims. The case study evidence suggests three identifiable roles: firstly, an information role; secondly, an instrumental role, providing facilities for verifying union membership and support for recognition (e.g. assistance with membership checks or voluntary ballots); and, thirdly, a conciliation role, in particular where bargaining units were contested.⁶ All three roles may be used by conciliators interchangeably throughout recognition processes. This chapter sets out a number of key research findings including:

- For employers, Acas plays an important role in providing information on the statutory procedure and setting out an employer's options in uncharted terrain. For unions, the value of Acas is in supplying independent verification of the legal process to employers;
- Conciliators saw themselves as (and were perceived by the parties as) encouraging the voluntary resolution of recognition claims, rather than promoting the use of the voluntary over the statutory route;
- Conciliators played a second key role in facilitating membership checks and voluntary ballots. High levels of satisfaction with these services were reported, with both parties valuing Acas' neutrality and professionalism;
- Although such services have always been provided by Acas, there is evidence that the statutory procedure has encouraged a standard method for progressing a voluntary recognition claim where Acas is involved, with voluntary resolution reflecting the thresholds upon which majority support for recognition in statutory cases is determined;
- The effectiveness of Acas' conciliation role, particularly over the scope of bargaining units, is influenced by the existence of the statutory procedure: if the employer will not concede, the union may calculate that the CAC will impose a binding settlement in its favour.
- The duration of Acas involvement in case study recognition processes ranged from two months to a year. The median was three months, and in only two cases did conciliator involvement exceed six months. Along with contact with the parties through telephone calls and e-mails up to the point when recognition was agreed, on average, Acas conciliators were involved in around three meetings with the parties per case. Where Acas assisted the parties in formulating a procedure agreement, an additional two to three meetings were held.

⁶ It should be noted that, as detailed in section 2.5 on the limitations of the selection strategy, recognition cases involving Acas which were confrontational in nature may be under-represented in the case studies chosen for study. This in turn may reduce the amount of data available on Acas' 'conciliation' role, and lead to over-representation of data relating to conciliators' role in facilitating employee membership checks and ballots.

4.1 Acas' information role

The case studies suggest that the provision of information is a key aspect of Acas' role in recognition, but serves different purposes for the parties. Since information is provided in the context of a law designed to encourage voluntary resolution, the role of conciliators may be perceived as extending beyond information to encouraging the parties to resolve recognition claims through the voluntary route. This section explores these issues.

Where employers were open to voluntary recognition, Acas' initial role was to provide basic information on an area which may have been completely new to them. In these cases conciliators met with the employer before they had met with the union, in order to outline the procedure. As one management representative put it, "I don't think anyone knew how the statute worked. But [the conciliator] was very good at explaining". In another case the Managing Director commented on the nature of Acas guidance provided:

"You're dealing with the subject of union recognition: what does the law say? What does it mean? And what decisions does that present to an employer or a business? What different avenues do you have?"

One Acas conciliator described his initial role as:

"Generally speaking, a 20-minute run-down on what the procedure looks like, how it operates, what the bargaining unit is, what happens if they can't agree on a bargaining unit, what happens once the bargaining unit is agreed, ballots and 'What if we get an order for recognition, what do we have to do then?'. It's the whole procedure."

Employers also sought information on the implications of unionisation for the organisation. One Managing Director arranged for the conciliator to brief managers, as most had little or no understanding of how a unionised environment would work. In another case, where managers again had little knowledge of unionism, the conciliator suggested that they invite the union to speak to them:

"I didn't sell the union, it's not my job ... and I was almost devil's advocate. I said to them, 'It's [the union officer's] job to sell the union and himself, so the first thing you need to do is invite him in or go and meet him'. Because employers used to have a misplaced view that if you invited them (unions) over the threshold you'd almost recognised them, which is nonsense."

The conciliator in this case set out the implications of recognition for the company in terms of procedures and facilities, but also the value a union might add to the business in terms of consultative mechanisms:

"I said, 'If you press me about the benefits, it's about talking to the few not the many, better use of management time, you'll have people who are properly trained as representatives and so on'."

Conciliators may also aim to provide some assurance for employers in what is uncertain terrain. In this case the conciliator felt that part of his role was to reassure the employer about unionisation:

"Reassurance – I always see that as the big thing: not 'It's okay if you recognise a union', but 'it's not just happening to you'. The law says if they (the union) have the support they can have it (recognition), so it's public policy. There are lots of recognition agreements about, even within a stone's throw of here ... Reassurance about 'It's not the end of the world'."

For unions, Acas fulfilled a different role. Most of the union officers had been through the voluntary or statutory recognition process before and, since they had access to professional legal advice within their unions, had no need of Acas in this capacity. Rather, unions used Acas as an independent source of information on the statutory process that would verify what they were saying to employers. As one officer put it:

"If I go in to negotiate with a hostile employer, they don't tend to believe me when I say things, whereas it's useful when the Acas officer is there to say 'Well that's actually right', or 'What they are suggesting, you know, this is the way to do it'. And the employer seems to pay a bit more attention to them than they would to me."

An employer interviewee agreed with this perspective, stating, "I think the company wanted some independent verification of something they probably already knew". However, one union officer suggested that this role of independent verification does not always work in the case of hostile employers.

4.1.1 Promoting the voluntary route

The main responsibility of the Acas conciliator is to promote or assist the parties to agree a way forward, regardless of whether or not this would result in an agreement on recognition; to achieve what one Acas officer in the exploratory interviews described as "voluntary resolution" as opposed to reaching a "voluntary agreement".

Since the recognition legislation aims to encourage the parties to use the statutory route as a last resort, how far did Acas conciliators see it as their task to promote the voluntary route? In most cases the union officer did not report asking for or being offered advice on the statutory route from conciliators because they generally had previous experience or access to internal union advice. Some did, however, expect Acas conciliators to advise employers of the merits of voluntary agreement. In general, conciliators would simply provide information to employers on all options, voluntary and statutory. One conciliator, for example, reported that he did not offer employers advice as to which route to go down, but would, as part of a discussion on the statutory and voluntary routes, set out the benefits of following the voluntary process:

"I guess on the basis of what I say to them they are likely to take a view that voluntary is better. If they're honest, they have a good idea about how many members there are. If the writing's on the wall, the things I say are; you're more in control, you drive the agenda in terms of what's the bargaining unit, where are the constituency groups, what's the test of acceptability. And then the drafting process, what can you live with as an employer in terms of the words in that recognition agreement and what

they mean to the business... they're much more in control of that process... I think though because of the way I put the information they are likely to get the impression that voluntary is better."

In a second case study in which he was involved, this conciliator recalled describing to the employer how the voluntary process could potentially be quicker than the statutory process:

"I probably said in advance 'If it goes to the CAC you will be distracted by the process for probably six months because it can take that long'. And I said, 'You know, doing it this way, you can put it behind you in three months if things go to plan'."

How far did employers feel that the conciliator was steering them towards the voluntary route? In general conciliators were seen to promote the voluntary resolution of a recognition claim rather than the voluntary route to recognition. In one case study, the Human Resources Manager did not believe the conciliator promoted a particular route. He remembered that he "pointed out the pros and cons and it was fairly obvious, I think, that you don't want to go that (the statutory) route". However, in a case dealt with by a second conciliator where the employer was already committed to using the statutory process, the Human Resources Manager perceived that the conciliator was promoting a voluntary agreement on the basis that it might be better for industrial relations:

"We were happy for his help, although I have to say, it was very much, 'I think you should enter into a voluntary agreement'."

4.2 Acas as facilitator of membership checks and ballots

In all but two of the case studies Acas conciliators took on a more instrumental role, facilitating a union membership check and/or a voluntary ballot. Historically, Acas has always provided these facilities as part of their approach to handling recognition claims, as employers have always required some evidence of an appetite for union recognition among the workforce before agreeing to recognition. However, Acas operational guidance on the conduct of membership checks and ballots was updated in 2000 in light of the ERA (1999) and the Data Protection Act 1998. The updated guidance includes revised policy on the size of membership checks and ballots that Acas will undertake. Acas will run ballots where the bargaining unit contains less than 250 employees, and will run membership checks for up to 250 claimed members in the bargaining unit. External bodies may be used by employers and unions to conduct ballots and checks where bargaining units contain more than 250 employees or claimed union members. An amendment to section 210 of the Trade Union and Labour Relations (Consolidation) Act 1992 which was introduced under the Employment Relations Act 2004 and came into force in April 2005, gives Acas legal powers to request specific information concerning both the workforce and union membership in connection with membership checks and ballots.

The deciding factor in union recognition claims is very often the level of support for collective bargaining amongst the workers in the bargaining unit. Acas guidelines state that verification of the level of union membership and/or a ballot to discover the wishes of employees are methods of resolving the claim. In some

of the cases, conciliators suggested a membership check or ballot during meetings with the parties; in others the employer and union had already met and the conciliator was specifically invited in to undertake this function. But one conciliator reported that employers may be unconvinced that workers were in favour of union recognition for collective bargaining:

"Very often the employer's attitude is, 'As long as I'm satisfied that it's what my people want. And I've been around asking them and I don't think they want that at all', and you say 'Well perhaps they're not all that willing to discuss their union affiliations or otherwise with you. Have you thought about that, and what about us doing some sort of check or ballot?'. And very often the employer will bite on that."

As noted previously, Acas has always used membership checks and ballots to verify support for recognition. In the past the parties themselves would have to agree how to interpret the outcome. While this is still true, the introduction of the law may have influenced voluntary procedures in relation to the statutory thresholds. This is borne out by the case studies, where employers ensured that arrangements reflected the statutory tests, particularly in the thresholds used in ballots. For example, in one case the conciliator reported that the employer insisted on every test that the CAC would apply and held both a membership check and ballot:

"The test for the CAC is 10 per cent of the bargaining unit. It's such a small number it's almost not worth doing it, but if it satisfies the sensitivities then it's something worth doing."

Another conciliator said:

"If it's a ballot we would tell the parties what the CAC tests are and usually the parties will say 'We'll go for the same tests in a voluntary ballot as they would apply in a statutory one'. But it's not uncommon for employers to say 'We're looking for a majority in a ballot', and unions, depending upon their level of confidence, will quite often go with that."

The legislation may lead the parties to expect a standard method for progressing a voluntary recognition claim where Acas is involved. As one Human Resources Manager put it, because the law sets out "a very clear way" of determining a claim, the expectation is that there would be a similar standard procedure in voluntary recognition claims.

The impact of the law is also suggested by employers' concern that voluntary recognition, like statutory, be based upon majority support for collective bargaining. Stated opposition to recognition by managers was often on the basis that the desire for recognition did not represent the majority wishes of the workforce; or, even where there was a majority in union membership, that the majority did not genuinely want the union to conduct collective bargaining on their behalf.

In all cases where Acas conducted ballots or checks, the parties concurred that the strength of Acas' role in facilitating the different elements of the process was its perceived independence. As one union officer stated:

"The strength of the membership check is that it's totally independent and confidential. ... Acas have got the name where it is trusted by the members and the company, so that's the strength... if I said it was Joe Bloggs, the independent scrutineer down the road, doing it, my members would say they're not too sure about that."

The perception of neutrality was shared equally by unions and employers; as one Human Resources Manager said of the ballot, "They were completely impartial and they did it instantly. You just accept it". In another, the expectation of efficiency was met, and the Managing Director commented, "I guess we expected it to be of that quality and it was, it was good". In none of the case studies did the parties indicate that there any other body which could have provided the service, and Acas was used as a matter of course.

4.2.1 Membership checks

In the case of voluntary agreements the employer may concede recognition on the basis of a membership check only, or the employer may require (as in some CAC cases) both a membership check and a ballot. Acas operational guidelines state that an independent membership check 'avoids the necessity of disclosing individuals' details to the employer'. In five of the case studies Acas facilitated a membership check. In two of these, recognition was conceded on the basis of a voluntary membership check only. Of these, one was conceded on the basis of just over 50 per cent membership, and in the other on the basis of 33 per cent membership. In a third case, recognition was conceded on the basis of a voluntary membership check and ballot conducted by Acas, applying CAC tests.

In two further case studies, however, the membership check conducted by Acas did not prove sufficient for the employer to concede recognition voluntarily, and the cases then became CAC applications. In one, the Managing Director declined the request for recognition based on the information produced by the membership check, leaving the union to decide whether to pursue the matter via the CAC, which it did. In the other case an Acas membership check showed that only 32 per cent were in membership. The union then referred the case to the CAC, who determined a new bargaining unit in favour of the union, and ordered recognition on the basis of a subsequent membership check showing that membership of the new bargaining unit was 63 per cent.

4.2.2 Voluntary ballots

In three of the five case studies which did not go on to the CAC, the conciliator organised a voluntary ballot of the bargaining unit to assess the level of support for collective bargaining. Acas operational guidance states that the basis of the ballot, including how results are to be assessed and implemented, should be agreed with the parties, " ... preferably at a joint meeting chaired by Acas at which all parties are represented". Conciliators are advised that arrangements should be noted and notified to the parties in writing.

A primary consideration is whether the parties are going to apply the statutory threshold, that is, a vote in favour from a majority of those voting and 40 per cent of those in the bargaining unit, rather than a straight majority of those voting, as is the case in public elections. In one of the case studies the conciliator

recalled that the union accepted the employer's proposal for a voluntary ballot and the only issue was to clarify what would represent 'success' in terms of the union being recognised. The employer initially proposed 75 per cent, but following a separate meeting with the conciliator he agreed to apply the statutory threshold. A postal ballot produced a majority for recognition. In a second case, a voluntary ballot resulted in the union achieving a similar majority of over 70 per cent, and a recognition agreement was concluded soon after.

The necessity to be absolutely clear about the threshold for recognition was demonstrated in one company where the ballot had to be delayed when there was confusion as to what the threshold was. The managing director believed that the parties had agreed that the union had to secure a vote in favour of 50 per cent or more of those in the bargaining unit, whilst the local union representatives, who in this case were involved in the discussions, assumed that the statutory test would apply, and the conciliator was certain that as a matter of course he would have made the statutory requirement clear. The confusion meant that the ballot could not go ahead as planned and this delay particularly frustrated the union officer who had not been able to attend the meeting where the decision was made. He subsequently submitted the formal letter asking for recognition under Schedule A1. Following the intervention of the conciliator, the Managing Director conceded that the ballot would be run in the same way as a CAC ballot. The parties agreed a workplace ballot. When the ballot was held, the union achieved a majority of 85 per cent.

4.3 Acas as conciliator

The third role emerging from the case studies was that of conciliation.⁷ Acas guidelines state that Acas conciliation is available throughout a Schedule 1 reference, and possible entry points for Acas involvement include:

- Following the initial application, if the employer agrees to negotiate with the union, they have 20 days to negotiate about the bargaining unit and whether the union should be recognised, and either party may request Acas' assistance;
- During the four week period following acceptance of an application in which the CAC has a role in assisting the parties to reach agreement on the bargaining unit, the parties may agree to Acas' assistance;
- If CAC attempts to broker agreement on the bargaining unit have failed and the CAC has determined the unit, the position of one or both parties may change with regard to reaching a voluntary settlement. This could lead to a request for Acas' assistance;
- If the CAC decides to order a ballot on recognition or de-recognition, the process needs to have regard to the DTI Code of Practice on Access to Workers During Recognition and Derecognition Ballots. The Code advises that where the parties cannot agree arrangements for access, they may ask Acas to conciliate. The code suggests that Acas conciliation services may also assist the parties where disputes arise over implementation of the access agreement;
- Once the CAC has issued a declaration giving recognition to the union(s), the parties have a period of 30 days in which to negotiate and agree a bargaining procedure. Acas can assist at this stage.

⁷ See section 3.6.1 for a discussion of the conciliation techniques used by conciliators.

As with CAC cases more broadly, in the case studies the definition of the bargaining unit was the key area of dispute between the parties and was the subject of disagreement in five cases. For one conciliator, the process of promoting resolution on the bargaining unit was akin to traditional conciliation over pay disputes:

"The process is, you start with a claim and an offer. The union is saying 'We think the bargaining unit is x' and the company is saying 'We think it's y'. So the first stage is to sit down, usually with the parties separately, and to say 'Okay, what's your view on the bargaining unit, why do you think it should be that, what's your understanding of what the other party is saying about what the bargaining unit should be and what do you understand of their logic for that?' The same conversation with both really, and spot the difference, the gap."

In two cases, despite Acas conciliation, no agreement over the bargaining unit could be reached and the union subsequently referred the case to the CAC. In both cases the CAC determined the bargaining unit largely according to the union's proposal. For example, in one case the employer wanted the bargaining unit to cover all employees, whilst the union wanted a smaller bargaining unit, covering the grades where it already had majority membership. The employer agreed to give the union the opportunity to recruit among the other grades, yet union efforts to recruit members were unsuccessful. Acas was asked to conciliate and further meetings took place. However management was reluctant to set up collective bargaining for one small group only and suggested the establishment of a works committee with guaranteed trade union representation. The union officer did not agree to this and reported that union members were becoming frustrated with the lack of progress. At this point he sent the company a formal written request under Schedule A1 seeking recognition in respect of the smaller bargaining group only. The application was referred to the CAC, which subsequently ruled in favour of the union's proposal and ordered recognition without a ballot.

In the other case that went to the CAC, the fact that the union side twice altered its position regarding the size of the proposed bargaining unit made the process fraught and created particular difficulties for the conciliator, who described any agreement between the parties as "like a slippery bar of soap". Initially the conciliator appeared to have promoted agreement between the parties, but a subsequent meeting of union members then decided to alter the definition of the bargaining unit a second time. At this point the union representative reported that the conciliator conceded that the voluntary process might have been exhausted. Nevertheless the union officer recognised that the conciliator encouraged dialogue where possible, stating, "He tried to get us to talk to each other ... he did shuttle diplomacy a bit".

In a third case Acas was brought in to conciliate on the bargaining unit once an application had been submitted to the CAC. Once again management wanted a wider bargaining unit including more grades. The conciliator reported that detailed discussions took place on the roles and responsibilities, payment method and terms and conditions of all posts in the disputed grade. Through this process agreement was reached on a bargaining unit which differed from that originally proposed by the union, and details were recorded and signed by the parties.

4.3.1 Conciliating on access arrangements

The statutory procedure is supported by a DTI Code of Practice on Access to Workers during Recognition and Derecognition Ballots (Department of Trade and Industry 2000) which sets out what might constitute reasonable access for unions to workers prior to a recognition ballot. It encourages the employer to allow the union one meeting of at least 30 minutes every 10 days of the access period and to allow the union to hold 'surgeries' in working hours where workers have an opportunity to meet with the union on an individual basis. In three of the case studies where ballots were conducted, Acas conciliators played a role in securing access for the union, and in these cases it was based on a joint approach by the union and employer. One conciliator suggested that the Code of Practice for statutory ballots might influence the voluntary process:

"The company doesn't have to do anything, this is a voluntary process; but once you've got that far and you say - because you know the union official's going to say it anyway - 'If it was CAC standards there is this equal access provision. How are you going to play it?' Mostly they'll go for 'We'll arrange for you (the union) to come in and talk to the shifts' or 'We'll have you in for a day and people can come and talk to you at lunch time or a tea break, but we're going to take the opportunity to talk as well'. Or there's that third option - it's only a gentleman's agreement - 'We'll agree the joint statement, people know what's going on in the business, we'll just confirm it and say that the company has been approached, and needs to be satisfied that there is sufficient support, so please take the opportunity to express your view using the ballot'."

Acas officers may also be involved in conciliating over trade union access to employees prior to a statutory ballot, as in one of the case studies. One conciliator likened negotiations on access to negotiations around the boundaries of the bargaining unit. He stated that the union usually "want the moon" and everything the Code of Practice on access provides for, in terms of mass meetings with the bargaining unit and surgeries, whilst the employer is keen to ensure minimum disruption. However, in most cases the parties were prepared to compromise. He described his technique:

"There's plenty of room for manoeuvre... the approach would be separate meetings to start with, and then when they've got the basis of an agreement I would have got them together at that stage. The nitty gritty of that (agreement) would be thrashed out face-to-face, with me in the chair."

4.4 Summary

Acas conciliators play three key roles in the process of resolving recognition claims. These might be envisaged as different parts or elements of the conciliation function, which conciliators may move between. First, conciliators inform employers of the legal procedure or, in the eyes of the union, provide independent verification of the process. Conciliators generally pointed out to the parties the consequences of a failure to agree; they outlined the range of options open to employers; and in some cases described the implications of unionisation for the organisation. Conciliators explored, with the parties, what was achievable

without resorting to the law: that is, how to test the strengths and weaknesses of the claim outside of the law, but in the light of the statutory criteria. In all but two cases, employers were prepared to resolve the claim voluntarily if it could be verified that support for recognition met with the statutory criteria. Conciliators were thus supporting voluntary resolution of claims, rather than actively promoting the voluntary route.

In all cases, the perceived independence of Acas was integral to the conciliators' second key role, the facilitation of membership checks, voluntary ballots and agreements over access. Here the case studies testify to the influence of the statutory tests in some elements of the process, particularly in the thresholds for voluntary ballots. However none of the case studies were identical in the route they took and the influence of the law was not pervasive. In one case the parties appeared unaffected by the statutory criteria, reflecting practice in voluntary resolution of claims prior to the ERA.

Acas' third role was conciliation, generally over bargaining units. This is more akin to Acas' traditional role as a third party conveying offers and counter offers between parties (Dix 2000). Where such conciliation occurred within the statutory framework this was successful. However in two other cases of conciliation within the voluntary process, resolution did not occur. This was due to the union resorting to the statutory procedure when the employer would not concede to their proposed bargaining unit. Here, the potential to make a formal application to the CAC may have influenced the potential for voluntary resolution.

5. FORMULATING THE PROCEDURE AGREEMENT

This chapter focuses on processes and outcomes following voluntary agreement to recognise the union, or following a statutory award of recognition. It explores the process of formulating a procedure for bargaining; identifies the extent of Acas' involvement in the development of procedure agreements; and looks at the scope of these agreements. In this chapter key findings include:

- The fact that Acas has been involved in conciliation prior to agreement on recognition does not imply that its involvement will necessarily continue to the negotiation of a procedure agreement;
- Where the Acas conciliator has been invited by the parties to assist or advise on the drawing up of a procedure agreement, the conciliator's role often involves providing examples of procedure agreements and facilitating talks leading to the conclusion of an agreement;
- The involvement of a conciliator may assist the parties to conclude a procedure agreement more speedily than would have been the case without Acas;
- In most of the case studies where recognition was agreed, the scope of bargaining was formally limited to pay, hours and holidays. Unions did not generally challenge this restriction, but believed that the scope of bargaining would broaden as the relationship between the parties established itself.

5.1 Concluding the procedure agreement

Once there is agreement to recognise a union the parties need to consider whether they wish to formalise the nature and scope of trade union

representation of the workforce. They may wish to: consider whether there will be single (union-only) or dual channels for representation; establish representative structures and machinery; and set out what facilities will be available to workplace trade union representatives. Discussions on these arrangements can be aided by conciliation or conducted without third party intervention.

Moore *et al* (2004) found that voluntary recognition has, in the vast majority of cases, led to formal written agreements providing for collective bargaining. A procedure agreement establishes the scope and depth of representation and indicates a desire to bargain and to develop a working relationship. By signing a procedure agreement, each side sets down the ground rules for the relationship. However, it is clear that recognition is a dynamic relationship and that bargaining outcomes and subsequent relations cannot be assumed from the content of written agreements. Moore *et al* found that even where employers had limited the scope of bargaining in a procedure agreement, once a relationship between the parties had developed, bargaining could sometimes extend beyond the terms of the actual agreement. Conversely, the authors' research on the outcome of statutory awards by the CAC illustrates that the conclusion of an agreement or the imposition of the statutory method does not necessarily guarantee meaningful bargaining.

In all eight of the cases where recognition had been achieved, agreement had been reached in the three years prior to the study and the relationship was still relatively new. In six of the cases, a procedure agreement was in place, while in another two, agreements had not yet been concluded at the time of the research. In one case this was partly due to time constraints on the part of the Human Resources Manager and the union officer. In the second case there had been two issues upon which the parties had initially not been able to agree. However, the agreement was in draft form and it was anticipated that it would shortly be concluded.

The case studies suggest that where a recognition agreement was concluded voluntarily, or once the CAC process was exhausted, there was no set formula for whether or not there would be continued contact between the Acas conciliation officer and the parties. In most cases the parties progressed their relationship without assistance from Acas. This no doubt reflected the wishes of the parties who, having agreed recognition, may want to explore and develop their relationship without third party assistance.

5.1.1 Attitudes towards Acas' involvement in formulating procedure agreements

Union officers were sometimes reluctant to encourage Acas' involvement in the formulation of the procedure agreement. This desire to control the process without further assistance may in part be related to officers' perception that their credibility, both with the employer and with their membership, related to their negotiating skills. Although focusing on collective conciliation over issues other than recognition, Molloy *et al* (2003) note that union officers believed that their credibility with their members was undermined if they had recourse to Acas too readily. Union officers who took part in this study made it clear that they saw it as their job to negotiate the terms of the procedure agreement and, along with some workplace union representatives, were cautious about third party involvement in this stage of the recognition process.

For the parties, negotiations on the procedure agreement may take place in the knowledge that there is recourse to Acas should problems arise. In two of the case studies the parties had not yet concluded a formal procedural agreement, even though in one, negotiations on the annual pay settlement had already taken place. In this case there were two outstanding issues yet to be settled in the negotiation of the agreement, over the right for all grades to take industrial action and consultation on redundancies. At the time of the interview Acas intervention had not been ruled out, despite the expressed desire of the union representatives to resolve the issues themselves. A union officer commented:

"We don't think that we can't overcome them [the difficulties] ourselves, it's just that it has taken a bit of time. We know that Acas is there, and that if the time comes, then that is an option we have. But we think that if we can work it out ourselves then that will bolster our credibility as a union."

5.1.2 Acas' role in providing information on the content of agreements

When the parties come to draw up a procedure agreement, they rarely start with a blank piece of paper. In many cases, once the employer has agreed to recognition, the union provides a model agreement. More rarely, the employer provides a model or draft agreement.

Acas conciliators may be asked to provide advice on the content of a procedure agreement. At one company the Human Resources Manager expressed a view that the conciliator "could have been more proactive", in terms of providing more information about voluntary agreements and explaining the pros and cons of including various clauses in such agreements. Drawing upon their wider experience of recognition, some conciliators said that they did provide a type of 'model' agreement, culled or put together from previous agreements known to the conciliator, or they offered anonymised copies of existing agreements. In two of the case studies the employer was provided with such agreements. Another conciliator made it clear that while he did not believe it was the job of Acas to provide 'model' agreements, if asked, he supplied anonymised agreements to the parties to give them the opportunity to compare their content.

While examples of procedure agreements were welcomed by employers, particularly where they had limited or no experience of union recognition, the case studies suggested that the parties could view the agreement proffered by Acas as a model agreement and could invest in it an authority it did not possess. At one of the case study companies, for example, the conciliator had offered copies of anonymised agreements that he had intended as being used only for purposes of comparison. However, the employer had gained the impression that what was being offered was an Acas-approved model. In another case the conciliator had offered what the employer referred to as "some model agreements" and much of their content was included in the subsequent procedure agreement. According to the conciliator, these had not been 'model' agreements, but were anonymised copies of agreements that had been concluded elsewhere.

The exploratory interviews with Acas conciliators indicated that conciliators assisted the parties in other ways. Conciliators in one region, for example, would

set up joint working parties of management and employee representatives to draw up the procedure agreement, during which conciliators provided a "set menu" in terms of subject matter to be included or discounted from agreements.

5.1.3 Facilitating early resolution of procedure agreements

In two of the eight cases where recognition had been agreed, the Acas conciliator had provided copies of procedure agreements, but had also been involved in talks leading to the conclusion of the procedure agreement itself. This involvement appears to have facilitated the earlier resolution of agreements. According to the Human Resources Manager at one company, discussions had begun with the union's model – "a huge, verbose agreement". Representatives of both parties then sat down around the table "kicking the lumps out and re-wording it". The Acas conciliator, who attended these discussions, advised on how different proposals might work:

"I sat in the meeting and they went through paragraph by paragraph. Where they wanted clarification and it was useful for me to provide that rather than the union, that's what I did. Where they weren't sure whether that was appropriate and they wanted a point of view on it, then I could offer that and say 'Well, this is what other companies do'. All I did was brief the company to say, 'You've got to constantly ask yourself, will this be something that suits the business, can the business sustain this type of arrangement?'"

According to the HR manager, the conciliator involved in this process was "very good at telling either party that you're stepping outside the bounds of sensibility when you're wrong".

In another case where recognition had been ordered by the CAC the employer resumed contact with the conciliator, and here the conciliator's role was to provide the employer with reassurance on the procedural agreement. In this case the union had provided a model agreement and the employer asked the conciliator to go through it and verify that it was a standard or typical agreement. The conciliator provided the employer with some examples of agreements for comparison and suggested that the company drafted its own agreement and then compared it to the union's model. Having satisfied the company that the union's model was not atypical, he sat down with both parties together to go through the company's draft; 'the union put its two pennyworth in and we came up with something that they were happy with'.

While the case studies above indicate how conciliator involvement may expedite the process of formulating a procedure agreement, without Acas' involvement, delays may occur. In another case study the parties had concluded the procedure agreement without Acas' involvement. As the union officer in this case commented: "We try not to get them [conciliators] involved unless there are problems". Yet in the course of these negotiations a dispute occurred relating to the incorporation of a 'status quo' clause that would have meant that neither party could impose change without prior agreement. Although a compromise arrangement was eventually reached, it took the parties more than a year to get agreement on a bargaining procedure. It is possible that had Acas been involved, the matter might have been resolved more speedily.

5.2 The content of agreements

Research cited earlier indicates that legislation on statutory recognition appears to be influencing the content of agreements, with the majority of statutory agreements, and a proportion of voluntary agreements, limiting bargaining to pay, hours and holidays. Likewise, one Acas conciliator reported that employers were inclined to say that just because the agreement was voluntary, it did not mean that it needed to go beyond pay, hours and holidays. As he pointed out, in these cases there was no point in the union applying to the CAC:

"... because they are not going to get more than that anyway. And are the employees really going to be prepared to put their cross in the box for industrial action just because they'll talk about this and this and this, but not something else?"

Where a recognition agreement had been concluded or was in the process of conclusion (in eight of the nine cases) it was likely to cover pay, hours and holidays only. Of the agreements where coverage had already been agreed, five were confined to pay, hours and holidays, consistent with the CAC model. In two agreements, bargaining was defined in more general terms as covering 'pay and conditions'. In one case where the agreement had not yet been concluded, but where it had been agreed that the scope would be pay, hours and holidays, the Managing Director pointed out that the company would see no reason to go beyond this, in the absence of a change to the law. This had not been challenged by the workplace representatives who felt that, in the first year of recognition, they did not want the relationship with the company to start off on a negative footing:

"We are trying to foster good relations with the company and it's got to be taken one step at a time. We can't rush in and demand everything at once, so we are keen to develop this relationship. We can suggest other things later on."

More generally, there was little evidence of union attempts to broaden the content of the agreement beyond pay, hours and holidays. As one union officer commented, "That's what the company want it to be and it's very difficult for us to get anything else really". In another it was the Human Resources Manager who noted, "The union was not too concerned about it", because when they got into discussions it was clear that "this (agreement) covered more or less everything they were interested in". One reason for union officers' acceptance of a narrow range of negotiating issues was that they recognised that there is likely to be what one conciliator referred to as "drift". In other words, although the agreement at the beginning has strictly defined borders in terms of the scope of issues to be negotiated, as relationships develop it becomes clear that there are grey areas. A conciliator, during the exploratory interviews, noted:

"Initially employers are not particularly positive about moving beyond pay, hours and holidays, they like to test it. Employers are reasonably relaxed about the fact that unions want to maximise scope, but always want the words in the agreement to indicate the boundaries."

This was borne out by the case study interviews. At one newspaper company the workplace representative, despite having a pay, hours and holidays agreement, stated, "It's one of those cases where management would be disappointed if I didn't raise an issue which wasn't possibly seen as pay, hours and holidays".

5.3 Summary

This chapter explored the scope of Acas conciliators' involvement in the process of developing a procedure agreement on recognition. There was evidence of some variability between case studies. Acas' involvement in the resolution of a recognition claim did not always lead to conciliators assisting the parties to develop a bargaining procedure. Although employers with no previous experience of union dealings welcomed such assistance, union officers were more reluctant to involve Acas. Conciliators were active in providing the parties with other agreements for purposes of comparison, and in several cases they conciliated during meetings to develop agreements. There was some evidence from the cases that the intervention of an Acas conciliator may expedite the conclusion of an agreement and provide reassurance to employers with limited experience of unions.

6. POST-RECOGNITION OUTCOMES

This chapter explores employer-trade union relationships following the recognition process and development of a procedure agreement, focussing in particular upon the nature of bargaining, bargaining outcomes and the role of workplace representatives. It demonstrates that while Acas may play a less prominent role following the settlement of a recognition claim, there are two areas where its influence may continue. The first is in relation to training managers and representatives in methods of joint working and negotiation skills. The intervention of Acas in respect of training was found to have a positive impact on workplace relations. The other concerns collective conciliation, where Acas was recognised as a body capable of assisting the parties to resolve subsequent disputes that might occur. The chapter sets out a number of key findings including:

- Following recognition, there was active bargaining over a range of issues, even in those cases where the procedure agreement limits bargaining to pay, hours and holidays;
- In half of the case studies, union representatives had received no training, following recognition. This affected both their ability to carry out their new roles, and management-union relations in the workplace;
- Where there had been joint training delivered by Acas, post-recognition, this was valued by both management and the union. The case studies suggest that in cases where there was no such training, both parties would have welcomed and benefited from it;
- Formal and informal lines of communication between union representatives and managers had been established and union representatives genuinely felt that they had influenced employer policy in the workplace and that their views were taken into account;
- For union representatives the benefits of recognition are perceived not just in terms of material gains, but in terms of collective representation and security at work.

6.1 Provision of training following recognition

It might be anticipated that parties to newly negotiated recognition agreements would perceive a need for early training in the new skills and responsibilities

required of them under recognition. However Moore *et al* (2004) found that a lack of union-provided training for union representatives in workplaces with new agreements had hindered the development of effective relations in the workplace. There are similar findings from the Acas case studies.

In all of the workplaces where recognition had been agreed, between three and seven workplace representatives were in place, and in most cases representatives had been appointed rather than elected. This suggests that recognition had led to union workplace organisation. Yet in half of the case studies, despite the agreement having been concluded sometimes more than a year earlier, workplace representatives had still not received training from the union. In some cases it was not a problem of lack of training opportunities provided by the union, or even employer resistance to worker representatives taking time off for training. In fact the reverse was the case, and employers were keen that representatives should be trained. Rather, the jobs that the individual representatives did (for example, long-distance lorry driving and journalism) made it difficult to arrange training in working time. Other reasons given were pressures on time in and outside of work, unavailability of courses, or the unwillingness of the representative to take part in training.

The union full-time officer in one case favoured a programme of training for workplace representatives, however, none had taken place and his reluctance to organise it related to a fear that he might be pushing the representatives at a faster pace than they were comfortable with. He felt that it was "difficult to get shop stewards as it is" and that placing extra demands on shop stewards for training might deter new recruits. This may be another reason why representatives in other cases had not received union-organised training.

The lack or inadequacy of training was a concern for some representatives. One representative commented "It would be fair to say that we have been learning as we have gone along". At another company the lead representative had been a union activist previously but was concerned about the lack of experience and training for the three other representatives. One representative in a further case study had been on a local bargaining course but felt that there should have been some follow-up training as there was "such a lot to go through in such a short period of time." In a third case the representative noted that although there had been training it was "at quite a late stage really".

Whatever the reasons, the case studies suggest that the absence of training could impact negatively on management-union relationships. For example, one representative noted that prior to training, he believed that the only way he could express his views with management was through anger and shouting. It was only after he had attended a negotiating skills course that he was able to develop more constructive dialogue and build more productive relationships with management. In another case the representative felt that he did not have sufficient expertise to bargain in the first year of negotiations. Likewise, a Human Resources Manager said that he felt that representatives were not sufficiently equipped to represent individual members or to conduct bargaining, and that this affected the outcomes for the union:

"My view on the union is that they must do more training, they really must, and we've not refused training either. I think it's the impetus to do it or to give up their own time to go off and train, I just wish they would get some good training."

In terms of training for *management* representatives, the picture was not much different. Although some managers had previous experience of dealing with unions, others had little in the way of formal training relating to operating in a newly-recognised workplace. The exception was one case where the Human Resources Manager had herself organised some internal training sessions for members of the management team, as "a significant number of them had never worked in a unionised environment".

6.1.1 Acas' provision of training following recognition

Acas' reputation as an independent organisation, trusted by both employers and trade unions, puts it in a good position to provide joint employer and union representative training following recognition. In two case studies, Acas conciliators organised workplace meetings attended by management and union representatives soon after recognition agreements had been concluded. A conciliator in one case described how he facilitated a training seminar for union representatives and managers to enable them to "better understand the working relationships they can jointly expect under the terms of the voluntary agreement". This 'diagnostic workshop' involved six stewards, the union officer and the management team. This conciliator was a strong proponent of post-recognition joint training. He believed it was important to have some sort of forum "where we get together managers and the newly appointed shop stewards in the same room for the day and go through the issues". He described such meetings as "An event that marks the start of a new relationship, where everybody involved realises that there is a new direction that has got to be taken".

At another of the case study organisations Acas conciliators had provided joint training of workplace representatives and managers. This involved a day-long meeting with the parties at which they examined their roles and responsibilities under recognition. The workplace representatives said that the training showed "what was expected of managers, what was expected of the union officials and how they could do their business without confrontation and conflict".

The case studies suggest that there was interest in joint training among both trade union and management representatives. One exception was a case where workplace representatives reported that they had favoured the Acas conciliators' suggestion that they engage in joint training, but the company was not in agreement. In another case, a Managing Director stated that he would not have been opposed to joint training on negotiation techniques or skills. However, this had not been raised by the conciliation officer as the claim had gone to the CAC after the parties failed to agree on the bargaining unit, and there was no further contact with the conciliator. In another case, the Human Resources Manager was very committed to joint training and was keen for Acas to provide this, but time constraints meant that it had not yet been organised.

6.2 Negotiating pay and conditions

The case studies suggest that once the method of bargaining has been established, the Acas conciliator does not necessarily have any ongoing involvement in the case, unless the parties seek training or further advice, or are

in dispute and require conciliation, mediation, or arbitration. In only one case study had an Acas conciliator been called back to conciliate in pay negotiations, when the parties failed to agree a pay settlement, and the involvement of the Acas conciliator had led to a settlement acceptable to both sides. In another case the union had considered a request for Acas assistance but at that point the employer agreed a settlement. Of the eight cases that had concluded a recognition agreement, in three there had been no pay award since the date of the agreement. This was either because the anniversary date had not yet been reached, or because the company was unable to increase pay, due to financial constraints. Pay negotiations had produced a range of outcomes, details of which are set out in Appendix 3. In summary, the cases demonstrate that recognition had led to active bargaining over pay, particularly in cases where the agreement was more than 12 months old.

Where there had been pay negotiations, in some instances the employers had expressly valued the union involvement. For example, one Human Resources Manager felt it was "good for the workforce" to see that it was not just management that decided the pay deal. From the workplace representative's point of view as well, without the union "We would have got [a] zero [per cent pay increase]". In another case however, the management position was less positive, with managers believing that the union role had been to depress salaries for good performers in favour of an across-the-board increase. From the perspective of the union officer, however, union involvement had made a difference, giving workers the opportunity to participate in a debate about their terms and conditions.

In addition to the negotiations that had taken place on pay, there had been active bargaining on a wide range of issues since recognition including: Bonus payments (EastNewsco, Packco); holidays (Plastico); shift working (Bedco); smoking policy (Bedco, Plastico); noise regulations (Plastico); canteens and rest rooms (Plastico); sickness absence policy and pay (Refrigco and EastNewsco); expenses (SouthNewsco); pay banding (SouthNewsco); and working hours (Refrigco).

6.2.1 Negotiating machinery and communication

The case studies suggest that while in most cases the parties actively establish negotiating machinery, there may be reasons why this does not happen, and the absence of a negotiating process may not necessarily be an indicator of poor relationships between the parties. Although the statutory system provides for the establishment of a joint negotiating body under the 'specified procedure', in only half (four) of the case studies (including cases that had gone through the CAC) had one been set up. However even though no formal machinery for negotiation had been established in other cases, formal pay negotiations had taken place through regular meetings. In most of the cases, workplace representatives stated that both pay negotiation and informal meetings with management took place as and when necessary, sometimes on a daily basis, to tackle issues as they arose. They also reported that one outcome of recognition was the establishment of formalised union representation in health and safety matters.

6.3 The role of workplace representatives

It was common for the workplace union representatives (or at least the lead representative) in the case studies to have had some link with a union in the past. In only one case had none of the representatives been union members prior to the recognition campaign. In two of the case studies the workplace representative had been a shop steward in the case study workplace in the past, and in a third, the representative had been a union member prior to union derecognition. In other cases, representatives and employees had been active in other unions in previous jobs, and most representatives also had a family background in trade unions. Where they had previously been union members, representatives' membership had been relatively long-standing, both in other organisations they had worked for and in their current jobs. For example one activist had joined the union but had "kept his head down" for two years before starting to campaign for recognition. In another case, the representative had been a union member for seven years prior to achieving recognition, and in another the representative had held membership for 12 years.

Most representatives were positive about their new role. As one commented, "I think we have quite a lot of influence ... managers like to have us on board". In formal terms, representative-management dealings tended to focus on pay negotiations, and the examples of pay settlements in Appendix 3 demonstrate active negotiation by representatives over pay and conditions. Some representatives were however uncertain about the extent of their influence over pay:

"I'm not sure. You don't know whether the company has a set amount ... I think we do [have some influence]. Before the union was here, if they'd offered two per cent, that's what everyone would have got. So we have an influence, but whether we're stretching them as far as we can, I don't know".

Another representative expressed a similar frustration that decisions on issues such as pay were taken by parent companies:

"I still don't feel we've got it right because when we came round to wage negotiations time, I'm still not dealing with the level of management that I should be. I'm trying to get payment for bank holidays and they've said 'We can't give you that because you have to look at the effect on the whole company' and I said 'That's unfair because you haven't got recognition for the whole company. Now we either negotiate here as a bargaining unit on our own or you look to the whole company' - I would prefer a national one (recognition agreement) obviously."

Representatives often perceived that their influence was felt at a more informal level, particularly over day-to-day workplace issues and in discussions over the introduction of workplace policies. More than one mentioned consultations on smoking and on drug and drink procedures or on matters such as bank holiday working, or "the state of the canteen, the state of the toilet and mundane stuff". One representative reported discussions on the timing of holidays:

"They tried to go onto a permanent shutdown for the holidays, but we fought against that and we changed our right to have holidays when we want to as well."

Many representatives stressed their representative role at both an individual and collective level, and in particular in providing a 'voice' in the workplace (discussed further in section 6.6). For example, one representative reported that employee morale had been "very low" prior to recognition and was still "low", which he said was partly due to low wages. However, morale had improved due to the presence of new representative structures:

"It's still low now, but they have someone to vent their opinions through with shop stewards being there. And they know that we will try and put [their opinions] across to the management as best we can."

Following recognition, representatives reported that they were now able to represent members individually in an environment where procedures were more formalised and there were greater restraints on management prerogative. Several examples related to representatives enforcing correct management use of disciplinary procedures, which had led to a reduction in the number of disciplinary cases in some workplaces.

6.3.1 Employer and union support for representatives

Most of the representatives had access to basic facilities, such as a telephone, fax machine, and computer, and three had been given an office, although not for their sole use. In terms of time off to undertake trade union duties, this was not always specified in recognition agreements, and in most cases depended on what the union was able to agree informally with managers following conclusion of the agreement. Most representatives reported they were allowed 'reasonable' time off for union duties. In one case the representative was allowed two hours per week to hold open surgeries. In other cases the arrangements were flexible; for example one representative said, "As long as I tell my foreman that I am going to do something, they are okay".

In terms of support from their union, most representatives were satisfied with the level of contact that full-time officers maintained with them. One commented, however, that his members felt the officer should visit the workplace more frequently, although the officer was "generally on the end of a phone if we need him". In another case, the full-time union officer made sure that there was a workplace representatives' meeting every month, and every three months he would attend the meeting to give representatives support. In most cases, as the representatives gained more experience, the full-time officer would reduce the number of visits, although most were likely to attend the annual pay negotiations. In two cases, disciplinary matters were still being handled by the full-time officer. In the remaining cases, workplace representatives represented members in the first instance in disciplinary and grievance cases, with full-time officers brought in at a later stage.

However, a union officer in one case described how employees had had their expectations of recognition raised to "silly levels". As a result, some members had become disillusioned following recognition when no immediate changes had occurred. He suggested that new union members may not understand how workplace unions work and feel let down if the union officer is not constantly in attendance.

6.3.2 *Union membership levels*

Following recognition, union membership levels had been maintained in most cases, and in two cases had increased to levels of 70 and 90 per cent membership in the bargaining unit. In most cases this was due to ongoing recruitment by workplace union representatives. One representative noted that workers were joining because “they can see the benefits of having a voice”. In two cases, union membership had declined slightly due to staff turnover, although representatives were engaged in ongoing recruitment efforts. And in another two case studies, membership had stayed at the same level. In two cases management gave the union some support for recruitment. In one, union application forms were included in the introductory pack for newly appointed workers and new staff were introduced to the shop steward; in another, management gave the workplace representative a list of new staff. In general, where recruitment was taking place it was more likely to be confined to the bargaining unit for which recognition had been obtained. There was little evidence of unions using the recognition agreement to recruit in other areas of the company, although in one case the representative did aspire to negotiating an extension of recognition to other sites.

6.4 New arrangements for consultation and communication

To what extent did the conclusion of recognition result in the creation of new channels for representation? The case studies indicated an employer preference for separate information and consultation bodies alongside new recognition arrangements. In a number of cases the continuation or establishment of such bodies was due to employers’ concerns about employee representation for non-union employees.

Dual channels for employee representation emerged either through employers retaining a representative body that was in place prior to recognition, alongside the new union representative structure; or following recognition, through employers establishing a consultative body covering non-unionised employees and non-negotiated issues (alongside the representative body for the recognised bargaining unit). The fact that most of the recognition agreements were limited to pay, hours and holidays perhaps favoured the establishment of secondary channels of communication or consultation, as some employers were unwilling to formally negotiate with the union beyond the core issues.

In four cases the existing works council or consultative committee continued to exist side-by-side with the new negotiating structure. In one of these cases there had been a works council that, according to the Human Resources Manager, was “falling apart” because the only issue individuals had wanted to discuss was pay. The council had continued to exist following recognition, although with a more defined role as a communications and consultation body. In another case, an existing consultative committee continued to deal with all non-pay matters. In some cases the union was not supportive of the continuation of non-union information and consultation bodies, with workplace representatives suspicious that they might be used to sideline the union. A union representative in one case, however, expressed the view that the existing works council was ‘impotent’, and could not see it having any impact upon union recognition.

In two further cases the company was endeavouring to set up separate consultative committees alongside recently concluded recognition agreements in order to provide all employees (not just union members) with the right to be consulted. In some of the case studies union representatives were also either members of non-union staff forums, or had arrangements to meet formally with the forums' representatives. There was however a high degree of demarcation of roles between union structures and consultation forums. In one case, management wanted the union to assume membership of the forum following recognition, but the union objected and agreed they would sit on it as observers only. In another case there were meetings between union and non-union representatives prior to each meeting of the forum. And in a final case in which the staff forum took account of everything except pay and conditions, union representatives agreed to liaise with the forum, but would not meet with them over negotiated issues.

6.5 Post-recognition union-management relationships

Given that one party in the employment relationship may have been unwilling to accept recognition imposed on them by another, it is perhaps unsurprising that the conclusion of a recognition agreement did not necessarily result in an immediate improvement in management-union relations. At one company, for example, the union officer said that while he would not describe management and the union as having a bad relationship, "There's still a lot of suspicion there with management".

In other cases, once the agreement was established, relationships could begin to develop and the parties felt there was the basis for good relations. However in some cases where there had been hostility or distrust prior to the conclusion of the recognition agreement, it might take time to overcome this. In one, relationships between the union officer and management had deteriorated over a misunderstanding over the ballot threshold. However, once recognition was agreed management were keen to deal with the local representatives, with whom there had always been a good relationship. The union officer in this case felt that relationships were improving.

At another company, the Human Resources Manager described the relationship as "probably more constructive" than prior to recognition, although from his perspective relations had been friendly from the start. The union officer felt that the management position had "softened" over time and the conciliator felt that respect and trust had developed between the parties. In another case the workplace representative reported that they got on well with management, although he was more concerned about how the parent company would respond to the union, "Because we realise that the decisions are not made in this office".

At another company union officials were more cautious in their appraisals of post recognition relationships. The relationship was more cordial, despite a claim having gone to the CAC and recognition being awarded on the basis of the bargaining unit sought by the union. The union officer suggested that management perceptions of the union had changed:

"As time goes on it will be a very good relationship. There's no intention from the trade union to adversely affect the business. I think that the company now understand that the trade union don't want to ruin its business or make demands from them that can't be met."

Similarly a union officer in a second recognition case perceived that relationships had improved as management began to appreciate that there could be benefits from recognition:

"I think there is starting to be a relationship there. I think the company are now beginning to see that there is something in it for them, for their industrial relations and staff retention."

In another case the union representative expressed the view that recognition had changed employees' views of management:

"I think it's made the shop floor see how human the managers are, by us talking and them understanding where the shop floor come from. It is a bit more relaxed, you can go up and talk to them (managers). Now they tend to involve everyone on the shop floor rather than just tell the few that they think need to know."

The union representative in a further case study reported that recognition had led to an improvement in employee morale because the union was able to provide "rumour control". In this case, a rumour that office staff were going to get a large bonus had led to dissatisfaction amongst shopfloor staff, and the union representative was able to confront management and quickly ascertain that it was not true.

6.6 Perceived positive and negative effects of recognition

From the union perspective, both workplace representatives and full-time officers described recognition as having brought important new gains, although often not the improvements to terms and conditions that might have been anticipated. From their perspective the main perceived positive impacts of recognition were:

- Workers and representatives felt their views were being taken account of;
- Workers had better access to information to exercise their statutory rights;
- There were procedures that management would abide by;
- There was a greater feeling of security in the workplace.

Representatives believed that recognition had given workers greater 'voice' in the workplace. As one commented, "They get a voice; they get a chance to put across what they feel rather than just being told what they can have." Likewise, a second representative described how managers benefited from greater worker input:

"If a thing is not workable, they [management] rely on us [the union] to tell them, which before recognition they had no way of knowing, they just sort of did it and hoped for the best. But now because of union recognition, they have actually got people saying 'Well that can't work' or 'It's unworkable'."

For representatives there was a feeling that recognition had challenged management prerogative in the workplace, in some cases as a result of enforced adherence to procedures. For example one workplace representative pointed out that "Management realise they can't just impose things any more, they can't just go 'Oh yes we are going to do this today and that is it'". He felt that workers also benefited from greater access to information on their rights. For example, on the issue of time off for dependent care he noted, "If we didn't have the union involved then a lot of people would not understand what it was about [and therefore not be able to assert their statutory rights]". And the existence of and adherence to formal procedures (in particular, disciplinary procedures) appears to have led to a feeling that there was greater security in the workforce. This was mentioned by several representatives, one of whom commented:

"I think it has given people that sort of umbrella. Some sort of security knowing they can't come in one day and be told that they've been sacked for something trivial. I feel that the average Joe Bloggs on the shop floor does have a voice now and it has to be listened to."

From the employer's perspective, there were also positive outcomes. One Human Resources manager thought that workplace relations seemed more structured, and that because of the new representative structure she was probably dealing with fewer people. She, like representatives, also recognised that workers "feel now that they've got a voice". However initially she had to deal with more grievances. In her view this was because individuals who previously might not have felt confident about pursuing a grievance on their own now had the union to back them up.

Enhancements in worker "voice" were emphasised in an additional case where recognition had come as a result of a CAC award. Recognition brought unexpected advantages for the employer, who noted that recognition "has helped provide a conduit for the [workers] to raise issues and concerns". This was particularly important in relation to the Working Time Regulations 1998 where, as a result of getting a recognition agreement, the company was able to secure agreement from the union on working hours. The employer said that having the union "has helped to defuse negativity from the staff".

And as with union representatives, employers highlighted the positive impact of recognition in improving workplace policies and processes. One Managing Director felt that there had been positive gains in terms of a new payment system that had been implemented following recognition, stating:

"The changes we have made in progress through the bandings have been formalised in a way that [was] not transparent enough before we got involved with them [the union] ... they [the staff] know where they stand because there is a formal appraisal process to go through and they would be able to appeal against it."

In another case the Human Resources Manager thought that recognition had had a positive effect on workplace health and safety, saying, "It's ensured that management train everybody in the working practices". The union itself was considered helpful on health and safety issues because it could inform its nominated representatives on the need for safe work practices. The workplace representative also shared the view that recognition had made the workplace safer.

Even in the one case where recognition had not occurred there were recognised gains. The company had introduced a number of key changes following the recognition claim. These included setting up a new consultative committee, enhancing terms and conditions, setting up a legal helpline for all staff and providing monthly financial information to the consultative committee. The Human Resources Manager also noted that managers now consulted employees more.

In not every case was the assessment so positive. In one case the Human Resources Manager felt that recognition had slowed down some processes, had added time-related costs and had "probably been more negative for the business than positive". Another Human Resources Manager was more neutral about the outcomes and said that while employee relations had not got worse, neither had they improved. More generally, he was disappointed with progress since recognition. He stated:

"I was hoping that this was going to be a great thing, and I thought [staff] could have had so much more, and had the stewards had the training and known what they could ask for... I think some of the time they don't even know what their rights are."

This quote reflects a wider dissatisfaction with union representation. In this case the respondent said in retrospect he would have organised early joint training for union representatives and managers. Management in another case study stated there was still no effective representation in place, and another manager complained that the quality of the workplace representatives had not been addressed. This reflects the conclusions on the inadequacy of post-recognition training rehearsed above.

6.7 Summary

This chapter has focused on bargaining and workplace relationships following the negotiation of recognition agreements. It shows that there are training issues that have not been adequately addressed by unions and management. However, in some cases Acas had successfully provided joint training and the case studies suggest a latent demand for this service to be more widespread, following recognition. In terms of the bargaining agenda, in most of the case studies active pay bargaining was a definable outcome of trade union recognition, and in the majority of cases there was evidence of active bargaining over a range of other issues. There had been Acas conciliation to resolve bargaining issues in only one case; in most cases there had been no further Acas involvement following recognition. The benefits of recognition for unions were expressed in terms of employee voice and security in the workplace and an appreciation that more formal procedures placed some limits on management prerogative. Employers also valued more formal channels of communication and representation, but expressed concerns about representation for non-union employees, which had in some cases led to dual channels of representation.

7. WHAT ADDED VALUE DOES ACAS BRING TO THE PROCESS?

This chapter looks at strategies and techniques used by conciliators in resolving recognition claims, and evaluates whether Acas' involvement provides any 'added value' in the process of resolving claims, where there is now a legal alternative. It explores the parties' perceptions of Acas assistance and assesses whether Acas services could be improved in this area. Key findings highlighted in this chapter are:

- Acas is perceived as a neutral body by the parties to trade union recognition and this the most valuable quality that it brings to the process;
- Acas conciliators were trusted by both parties and were therefore well placed to bring them together and encourage dialogue;
- Other characteristics of Acas conciliators particularly valued by the parties were conciliators' ability to offer independent advice and support, and the breadth of their experience;
- Without assistance from Acas, most parties felt that the process would have been more drawn out and potentially more conflictual.

7.1 Promoting resolution

As noted earlier, the main responsibility of the Acas conciliator is to assist the parties in reaching voluntary resolution of recognition claims. Acas' role is to help resolve disputes by helping the parties to reach agreement, rather than for the conciliator to impose a settlement (Wood *et al*, 2002). One conciliator noted that prior to the introduction of the statutory procedure, the only thing that Acas could do was to try to get the parties to talk to one another, and as far as he was concerned, this remained the primary objective. In cases where the employer is not prepared to concede a voluntary recognition agreement, the role of the conciliation officer may be challenging. For regardless of the outcome of the claim, the objective must be to ensure that day-to-day workplace relationships are not destroyed through a process that could foster hostility and animosity.

The case studies provide numerous examples of employers and unions viewing the outcomes of the process positively, even though there had been differences or difficulties between them. In one case where the employer was opposed to recognition and the union lost a CAC ballot, the presence of the conciliation officer was still valued by the parties. As the employer's position was (and remained throughout the process) one of implacable opposition to recognition, this was a genuine achievement. At the end of the process the Human Resources Manager described the company as being "very satisfied with the conciliation process".

Where the parties are divided, resolution may depend entirely on the skills of the conciliation officer. In a second case, the employer was determined to go down the statutory route, but the union officer confirmed how important Acas had been in promoting a positive relationship between the parties and successfully encouraging the employer to reach agreement. In this case the conciliator played an important role by verifying impartially that one party's interpretation of the law was correct. This obviated the need for both sides to refer the issue backwards and forwards to legal advisers, which expedited the process. Thus while there were times when the parties felt that overall, the pace of progress was slow (described below), they may have been unaware of the advantages that Acas' involvement could bring in speeding up some aspects of the process.

7.1.1 Perceptions of Acas' neutrality within the context of statutory recognition

All of the cases of recognition upon which this study is based were concluded following the introduction of the Employment Relations Act 1999. The existence of the statutory scheme conditions the expectations of both parties. For unions, where they have majority membership or support, discussions on the conclusion of a voluntary agreement occur in the knowledge that there is an alternative statutory route. A full-time union officer described the process as a "non-statutory, statutory framework", and he perceived Acas as "part of the government, (which) means that it (Acas) is effectively reinforcing, both to our members - who need the confidence - and to the management, that this is a statutory thing and if they don't do it, there's a law that makes them do it". For employers too, the presence of legislation influences their response to claims for recognition.

It is important that Acas conciliators are seen to be neutral in relation to recognition. Since a key role of conciliators is that of building awareness among the parties of the costs of pursuing the legal route, the parties may perceive Acas as representing public policy and equate this with encouraging a voluntary recognition agreement. This could lead the employer to question the conciliator's neutrality. It is therefore a testament to the expertise of conciliators that the majority of all interviewees - including a greater number of employer interviewees than union interviewees - perceived Acas conciliators as neutral. Of the nine case studies, there was only one employer who had felt that Acas might have been biased towards the union position. This employer stated:

"I thought they (Acas) would have been a little bit more impartial, it was almost like 'Well, this is what it is' and I think it was a little bit leaning definitely towards the unions."

Union officers valued the role conciliators played in providing neutral verification of the legal process and in a number of the case studies this was sufficient to promote resolution. As one stated:

"We feel that the employers would rather not have recognition at all. So getting in somebody from a government department, which is part of the process that gets us recognition, puts it on an equal footing. And it means that both the company and our members, who are sometimes cautious about these things, realise that this is something we've got a right to do and in a way the government is supporting them in their right to do it."

Another union officer reported:

"I don't think there have been any [recognition claims] where we managed to achieve [agreement] on a voluntary basis without the company being told of what their legal position is by the official from Acas and pointing out the reality of the situation, what will inevitably happen, if they just choose to ignore it."

However, a third union officer stated that in his experience some employers (in the newspaper sector) were "very reluctant to use Acas" because, "I guess in some cases they feel that Acas represents a structure that they are hostile to,

regarding legislation on recognition". He went on to add, "I, of course, have a different view. I think Acas is too conciliatory when it comes to employer concerns about the process".

7.1.2 Building trust and rapport

Research into conciliation in individual employment rights cases has described how the job of the Acas conciliator is to promote a relationship of trust with both employer and employee representative parties in circumstances where there may be mistrust between the parties (Dix 2000). The issue of trust is fundamental to the effective working of a conciliation service. The parties need to feel that whatever their differences, the conciliator will treat them equally without favour and will honestly convey their views to the other party. The case studies established that where the parties had previous experience of using Acas, they already had a high level of trust in the Service. In some cases the fact that Acas was an independent advisory body was itself sufficient to establish trust, even where a party had not used the service before.

Compared with other 'types' of collective conciliation cases (for example those centring on pay disputes), in recognition cases it is less likely there will have been any contact between the employer and Acas prior to the submission of the recognition claim. The case studies indicate, however, that prior contact between Acas conciliators and union officers is fairly common. Thus trust has to be established, not only in an environment where there may be mistrust, but where the relationships between the conciliator and each party differ.

The case study data indicated that, particularly where there was no existing established relationship, trust sometimes emerged from the development of a good rapport between the parties. Some conciliators stressed how important the use of humour was in breaking down differences and hostilities. One commented:

"I like to think I make the parties feel comfortable. And although it's a serious business I never lose a sense of humour in the situation. And I think I might have broken down some of the frostiness by comments that have made people feel at ease."

Another similarly noted he had "a heavy dependence on humour". Previous studies of Acas conciliation have noted the importance of humour as an "ice breaker" (Dix 2000).

Most of those involved in the case studies claimed that there was a rapport between themselves and the conciliation officer. However, building a good rapport was not the same as giving one party the idea that the conciliator was acting for, or favouring them. The measure of success of the conciliation officer was the extent to which they were able to establish rapport without creating an impression of being one-sided. For example, in one case the union officer was clear that there was a rapport between him and the Acas officer, but stated: "I don't think that means that he is more helpful to me than he is to the other side".

There was, however, potential for existing relationships between conciliators and union officers to affect the employer's attitude to the process. For example, one Human Resources Manager said he did feel that the relationship between the conciliator and the union officer was "a bit cosy". In that case, while they had never made their established relationship a secret, the Human Resources

Manager said "it was never explained explicitly" and he just accepted that was the reality of the situation. In another case the union officer said that he had to try not to call the conciliator by his first name at the initial meetings, to avoid giving the impression that the relationship between the parties was biased towards the union. Another employer stated that he was aware of an established relationship between the conciliator and the union officer, but this had not prevented the establishment of good rapport between him and the conciliator. Despite this, it may be good practice for the parties formally, at the start of any conciliation on trade union recognition, to set out any previous dealings they have had with one another, to encourage transparency.

7.1.3 Bringing the parties together and encouraging dialogue

In most of the case studies, although the employer may have previously rejected a written approach from the union officer, the parties involved in discussions generally had no previous relationship, outside of some union officers providing individual representation prior to recognition. Despite this, in general, relationships between the parties improved through the process of resolving the recognition claim, particularly where management had initially been apprehensive about recognition. In many of the case studies, relationships between the parties were amicable from the point at which they entered into discussions over the union claim for recognition, and did not change significantly throughout the process⁸.

Conciliators played a key role in building positive working relationships between the parties by encouraging dialogue and 'jointness'. The case studies highlight techniques that individual conciliators have developed to assist in the process. One such example is encouraging the parties to issue joint statements to the workforce on their progress during the recognition process. This can be a particularly useful tactic in getting the parties to view themselves as being part of a co-operative relationship. As well as providing a message to the workforce that dialogue is taking place, the joint statements keep management and staff aware of the pace of progress and the stages reached.

Inevitably in some of the case studies, one or other of the parties expressed frustration. From the employers' point of view, frustration might arise if it appeared that the union was 'moving the goalposts' in the course of negotiations. In the two cases that began with voluntary discussions but resulted in CAC applications, relationships soured: in both cases this was because of disputes over the bargaining unit. In the first, management was frustrated when the union changed its proposed bargaining unit after failing to recruit members across the company. Management at the second responded similarly when the union redefined its proposed bargaining unit on at least two occasions.

And in some cases there was a suspicion that one side (most commonly the employer) was scheduling successive meetings to create delays. Thus, in

⁸ This may be because, at the point at which the parties eventually met face-to-face, management had expressed an intention to resolve the issue voluntarily and were seemingly committed to a constructive relationship. As noted earlier, there may also be an element of self-selection in the case studies: in most, the union officer and conciliator were dealing with managers who were not overtly hostile to unions.

encouraging dialogue, the conciliator may be viewed as a willing assistant in attempts to slow down the process. One union officer noted that in other cases he had dealt with, "Some employers use Acas as another delaying tactic. If you're not careful you can have meeting after meeting". Another union officer similarly felt that the employer had used Acas to slow down the process, although interestingly the employer in this case also expressed frustration at the slow pace of proceedings.

Indeed, one of the skills of the conciliator is to proceed at a pace that both parties feel comfortable with. While the union may want to reach a conclusion as quickly as possible, the employer may want to proceed with greater caution. The role of the conciliator is to balance these two perspectives.

All those interviewed were asked their views on the pace at which the recognition process proceeded. One conciliator made the point that conciliators are only able to move at the pace that either or both of the parties allow them to. In one case where the company was hostile to the recognition claim, he noted that the process "proceeded at a pace largely dictated by the company". In another, the conciliator felt that the pace was being dictated by union procedures, as the full-time officer had to consult with the union branch locally at each stage of negotiations. This resulted in the employer "getting rather frustrated that [the conciliator] couldn't move things along". However, in general, conciliators were more likely to believe that unions had a greater interest in speeding up the process. As one conciliator stated, "The unions are impatient for success because they want to move on to the next recognition [claim]". In addition union officers may fear that the lengthier the process, the more likely it is that the recognition campaign will lose momentum and support in the workplace (Moore, 2004).

Finally, one union officer who was dissatisfied with the pace felt the conciliator did not do anything to speed up the process and that somehow he should have, although it was not clear what measures he would have wanted the conciliator to take. Another union officer also viewed the pace as slow, but this was of less importance. His main concern was to ensure that the case did not get tied up in a CAC claim. In his view, a slow pace with a successful conclusion was preferable.

7.2 The characteristics and techniques of the conciliator

The conciliators interviewed were all highly experienced officers, with most having been in the service of Acas almost since its inception. As a result, they exhibited a breadth of knowledge and skills which proved particularly important in dealing with parties such as employers who had not previously used Acas services and who had not recognised unions in the past. The officers were seen by the parties as having a 'gravitas' that stemmed from their years of experience in the field, and which instilled parties' trust in the conciliation process itself. This sense of gravitas meant that senior managers willingly received and acted upon advice given to them by conciliators. It was also linked to parties' perceptions that conciliators were impartial in stance, which was integral to Acas' role in providing information and explaining or confirming the parties' understanding of the law.

Interview data confirmed that the most valued characteristics of the conciliators were:

- *The ability to offer independent and impartial advice and support.* As a Human Resources manager said: "We felt like we got some support, and somebody that had obviously had experience of going through the process". Another Human Resources manager emphasised the "tact and impartiality" of conciliators, describing it as "a technique that they have in making you feel that you're getting impartial advice or that you're reaching decisions on your own, without their help. They're good at it. Worth every penny".
- *Their authority.* The conciliators' knowledge of the process was considered more important for employers since it was less likely that employers would have experience of recognition claims or knowledge of the statutory process and what voluntary agreement might mean. Again and again the parties stressed both the value of conciliators' knowledge of how the law operated, but also their sensitivity to the parties' particular needs and motivations. One workplace representative commented:

"[The conciliator] could tell immediately that there was a problem and ... he was anticipating what we were thinking and what the employers would think. [The conciliator] is a very experienced operator who knew the business, who knew what his role was."

- *The breadth of conciliators' experience.* All of the conciliators in the case studies had been in their jobs for many years. This meant that they had wide experience of involvement in recognition cases from which to draw. As one management representative commented:

"The Acas conciliator helped tremendously, using his experience. He had a good steer on the issues. The way that he asked open-ended questions was good. He was able to take the heat out of situations. His maturity and experience were important."

- *Flexibility.* One conciliator admitted, "You've got to be a bit of a chameleon. You've got to blend in and be everything to everybody if you can. If it means using different language [you do]".
- *An approachable personality.* A union officer noted:

"I would say the biggest asset is [the conciliator's] personality. He's got a nice approachable way about him. And I think that was his strength ... He removed some of the fear barriers".

7.2.1 Perceptions of conciliators' modus operandi

Previous studies of Acas conciliators in individual employment rights disputes have identified their styles as either 'proactive' or 'reactive' (Lewis and Legard 1998). Dix developed this model further, identifying a conciliation style that is 'reactive-proactive', a "continuum describing the extent to which conciliators are active and persistent in initiating and responding to contact with the parties" (Dix 2000:112). Studies have also found that there is an overwhelming preference among the parties for the proactive approach, which is felt to be more useful in producing a settlement (Molloy *et al*, 2003).

This study sought information from the parties and the conciliator on perceptions of the conciliator's approach in the recognition claim. All the conciliators described themselves as being 'proactive' in their approach to conciliation. However, this perception was not necessarily shared by all the employers and trade unionists interviewed, inferring that perceptions of what constitutes 'proactive' assistance may vary across the parties. In some cases, employers and trade unions would have favoured what they saw as a more proactive role than that which they had experienced. For example, the conciliator in one case described himself as "... fairly proactive ... I don't agree that the conciliator is just the message taker and I think he has a valid input [into the process]". However, from the employer's perspective, the same conciliator was "... a very reasonable man, but he perhaps ought to have been able to say to us or to say to the union, 'Look, let's stop faffing around with this, clearly they're not going to give on that unless you are prepared to do something here'".

Most of those surveyed saw the primary role of Acas as providing advice and information, confirming the stages of the recognition procedure and, in some cases, confirming that what one party was saying was correct. Some conciliators limited their role to these functions, with one describing himself as "a sounding board". For one union representative the conciliator was "a channel between the two parties". However, there were occasions when the conciliator's role became more interventionist. A Human Resources Manager noted that initially:

"The conciliator acted as messenger in the bargaining unit discussions, in setting the scene. [However] when he found we were getting nowhere then he could become very proactive and play a more interventionist role."

At the same time, however, this manager stated that she would have liked the conciliator to be *more* proactive, which she defined as being able to take steps to speed up the process. In general, where the conciliator did adopt a more proactive role where the process appeared to have reached an impasse, the parties welcomed that role.

As described earlier, conciliators in recognition cases use two models of operating, depending on the circumstances of the case: face-to-face dialogue with all parties in the same room; and dealing with each party separately. Molloy *et al* (2003) have suggested that separating the parties could create suspicion about what is happening when the conciliator is with the other party. Certainly, conciliators in this study also recognised that while in certain cases there may be no alternative but to see the parties separately, where it could be achieved, there was value in bringing both sides together. In the case studies there were conflicting views among the parties about the value of separating them during the conciliation process. Although most did not object to the technique, a Human Resources Manager and union officer in one case saw it as slowing down the process. The latter noted, "It would have been better if we'd have been in the same room and then had adjournments".

In another case, the fact that there were adjournments created anxiety, at least in the mind of the workplace representative attending his first conciliation meeting. From his perspective, the decision to separate into different rooms seemed to imply that there were divisions between the parties:

" ... just reinforcing the fact there's two sides here. We started off having a lovely chat, and then there was an issue at one point, and we adjourned to discuss that and then suddenly it was two rooms, two groups."

7.3 Views on what may have happened without Acas' involvement

All of the participants were asked to speculate on what they thought would have happened if Acas had not been involved in the recognition process. In general their views can be summarised as follows. They believed that without Acas,

- The process would have been more hostile or obstructive;
- While the same outcome might have been achieved, it would have taken longer;
- The case was more likely to have gone through the statutory process;
- It was less likely that the conditions would have been created for the development of future positive relationships.

In general, both employer and union respondents shared the view of one of the conciliators in one case, that if Acas had not been involved, "There would have been even more blood on the carpet than there was". The Human Resources Manager in this case also believed that it would have resulted in the case going to the CAC, with "a lot of hard feelings". From the union officer's perspective, the process would have been longer without Acas, even though, in his view, the union would still have achieved recognition. Likewise, in another case a union officer believed that without Acas conciliation the company would have been "more hostile or more obstructive or blinkered". It is notable that, given concerns about the pace of the Acas process, some individuals who thought the Acas process too slow also believed the alternative would have been even more drawn out without Acas.

Some respondents postulated that without Acas involvement, their recognition claim might have gone to the CAC. Two union respondents expressed the view that a CAC application might have potentially resulted in a shorter process. CAC figures show that where cases had resulted in a CAC declaration the median case took 19.3 calendar weeks, or a little under four and a half months to complete (DTI 2003:paragraph 2.74). As cited earlier, median Acas involvement was around three months⁹. Although not strictly comparable, these figures suggest that Acas involvement is more likely to expedite the process.

Where Acas conciliation allows the parties to avoid the CAC, this may in turn result in a stronger, more positive foundation for future relationships. One union officer accepted that, even where his claim had gone to the CAC, relationships might have been less harmonious following resolution of the recognition claim if Acas had not been involved in the capacity of facilitating joint meetings:

"The involvement of Acas and the dragging on as it did, both sides got to know each other a little better. And certainly after the decision [of the

⁹ The CAC figures measure the case from the date of application to the declaration and do not take into account any attempt to resolve the claim (which might involve Acas) prior to the application. The Acas figures may include involvement in the establishment of a procedural agreement after a declaration of recognition and in some cases measure Acas involvement before, during and/or after a CAC application.

CAC, who awarded recognition] there was no falling out with us, in that we have no problems whatsoever, and that is probably due to the fact that we met so many times."

In summary, without Acas involvement those interviewed agreed that most of the cases would likely have taken longer to resolve and that more cases might have resulted in CAC applications. Moreover, post-recognition relationships may have been more conflictual.

7.4 Ways in which the Acas service might be improved

Case study participants were asked to indicate whether there was anything that the conciliator and Acas might have done better, which might improve the service provided by Acas. In general, there was overall satisfaction with the service. This did not mean that the parties were always satisfied with the outcome, but they accepted that there were issues that conciliation could not resolve. In one case where the employer was determined not to recognise the union, the union official noted, "I think with that particular company, you could have had Moses there and it wouldn't have made a difference really".

Where interviewees suggested ways in which the Acas service might be improved, these were often particular to the case. For example, one union officer felt that the conciliator could have referred the employer to previous CAC judgements raising similar issues as in this case (despite the fact that CAC decisions do not establish precedence).

One Human Resources Manager had given considerable thought to how the service could be improved. Starting from an overall position of being pleased with the service offered, he nevertheless felt it was "quite limited", although he was aware of the limitations on Acas' resources. He suggested that Acas might provide more documentary guidance materials. In particular he would have found it useful to have been presented with a diagram, showing the different directions the claim could take, depending on numbers, membership support and so forth. Other employer interviewees also stated a need for more information on the content of procedure agreements. Additionally, most workplace union representatives had little previous experience or knowledge of Acas, and the comments of one suggested a need for more information and explanation of Acas' role:

"Something which we did find during negotiations is that neither side was absolutely clear as to what Acas would do or whether what they decided was binding, or whether it was just a suggestion, a proposal that either side could accept or not".

A general issue that did emerge was that of continuity in follow-on support. In some cases the establishment of trust between the parties and the conciliator led to an ongoing relationship. This meant that the parties felt able to contact the conciliator about any issue or problem that arose following resolution of the recognition claim. Other studies of collective conciliation (for example Molloy *et al* 2003) have found that where the parties have had a satisfactory conciliation experience, they are keen to seek assistance from the same conciliator again. However, while Acas conciliators in some regions undertake both conciliation and

workplace project work, with one exception, the conciliators interviewed in the course of this research did conciliation work only. This meant that their relationship with the employer was less likely to continue beyond resolution of the recognition issue, outside of future issues requiring Acas collective conciliation, (for example, resolution of pay bargaining disputes). A number of employer and union respondents said that they would have liked the conciliator to have actively promoted joint post-recognition training (which is largely carried out by Acas advisers, rather than conciliators). One conciliator made the point that, particularly in the eyes of the parties, "There is something to be said for continuity, particularly where, as a result of recognition, there is a kind of follow on 'What do we do now?'"

All participants in the study stated that they would use Acas' conciliation services again in future, and some employers had considered using Acas for training. A Human Resources Manager said that their organisation would use the service for information needs because:

"It's free and you can just lift the phone ... you get reliable and accurate advice and you can't always get that even from a solicitor, and some of the things you require are legal advice."

There was no discernible difference in attitudes towards Acas between trade union officers or workplace representatives and employer respondents, with all being equally positive. Nor was there any difference in their response according to their stance towards recognition. An employer in a case where recognition had been opposed and where the union had lost in its claim at the CAC was as positive in her recommendation of Acas "for any company where the union seeks recognition" as employers in cases where recognition had been agreed. Additionally, the union full-time officer in the case lost at the CAC was also positive about the benefits of Acas involvement, and was, at the time of the interview, involved in negotiations on two other recognition agreements where Acas was involved.

7.5 Summary

The case studies highlight the 'added value' of Acas' involvement in the process of resolving recognition claims. Positive perceptions of the benefit of involving Acas were evident even where the parties resorted to the CAC, and where recognition was not agreed. In the cases where there was voluntary resolution there was a belief that Acas expedited the process and, in some, that the case would have been referred to the statutory process without Acas' assistance. Above all, the respondents felt that Acas' involvement created the conditions for the development of positive relationships between the parties and limited the potential for conflict both during and after the recognition process.

8. CONCLUSIONS

The role of Acas conciliators in recognition claims has traditionally been one of assisting the parties to come to a resolution, regardless of whether or not this resulted in the conclusion of an agreement for recognition. The Employment Relations Act introduced a statutory scheme providing for recognition where a majority of the bargaining unit supports this, but established a public policy favouring voluntarism. As under the previous regime, Acas conciliators maintain a neutral stance, emphasising their commitment to supporting both parties in the dispute. Particularly for those employers and trade union representatives who had not previously used Acas, conciliators were seen as having authority and 'gravitas', whilst generating trust and remaining approachable.

Historically, Acas conciliators have facilitated voluntary membership checks and ballots as part of the conciliation of recognition claims. It is possible that widespread confidence in the performance of this role influenced legislators when establishing a statutory method of resolving claims and that the statutory procedure thus mirrored existing voluntary practice. At the same time, the introduction of the statutory procedure appears to have influenced the voluntary process, at least in relation to ballot thresholds. The influence of the law may also be evident in employers' requirement that recognition be based upon verified majority support for collective bargaining and insistence on the statutory tests. However, as some of the case studies demonstrate, employers may also prefer a voluntary ballot because the statutory process can impose recognition without a ballot. This may lead them to feel that, without a ballot, recognition is being imposed on non-union members without their voice being heard.

The point at which Acas was approached in a recognition case appeared to influence the nature of the conciliator's subsequent involvement. Acas played three key roles in recognition cases. The case studies indicated that these three roles - information, instrumental, and conciliation - might be envisaged as different parts or elements of the conciliation function which conciliators move between and use interchangeably or simultaneously throughout the recognition process. Where the approach to Acas was from an employer, Acas' initial role was often one of providing information on the statutory procedure, describing the implications of a failure to agree and of unionisation for the organisation, and setting out employers' options in what is often uncharted terrain. For unions, the value of Acas was in supplying independent verification of the legal process to employers.

Where the conciliator was asked for assistance following a meeting between the parties, Acas played an instrumental role, facilitating a membership check or ballot, and securing joint agreement from employers and unions over union access to workers prior to ballots. Conciliators' third key role was that of conciliating between the parties, most commonly where the scope of the bargaining unit was contested, and in relation to access arrangements for trade unions prior to ballots. While conciliation within the statutory framework was successful in reaching resolution, in several cases of conciliation within the voluntary framework, resolution was not reached. This was due to unions resorting to the statutory procedure when the employer would not concede to their proposed bargaining unit. Here, the potential to make a formal application to the CAC may have limited the potential for voluntary resolution.

While Acas conciliators assisted the parties to resolve recognition, they were less likely to play any subsequent role. The extent of conciliator involvement over time varied between case studies, but in most cases, conciliators did not assist in the

conclusion of bargaining procedures. The research did however demonstrate the potential for further Acas support and a desire by some parties for continuity in follow-up. In particular the research exposed the gap in the provision of training received by management and employee representatives following recognition: a niche that Acas is able to fill, as a provider of joint training. Where joint training *had* taken place, it paved the way for a new more effective relationship between representatives and managers.

The research concludes that where the parties did reach agreement on recognition, either voluntarily or following an application to the CAC, there was active bargaining on pay and on a range of other issues. Trade union representatives reported that employees in newly recognised workplaces had a greater sense of security in the workplace and felt that their new 'voice' in workplace matters was the most important outcome of recognition. Both employers and unions reported that recognition had led to more formal channels of communication and representation and improved industrial relations.

Finally, the study illustrated the ways in which Acas conciliation adds value to the process of resolving recognition claims. In the view of the parties, without Acas' participation, the process would have taken longer and in some cases would have gone down the statutory route. However, where Acas was seen to have made a real difference was in creating the conditions for positive relationships between parties who had no established relationship, and where there was much potential for mistrust and hostility. Conciliators promoted dialogue and developed trust between the parties. Interviewees believed that without Acas assistance, the process could have been potentially more conflictual, and they felt that the involvement of the conciliator made the process smoother and more orderly.

APPENDICES

Appendix 1: Key steps in the recognition process

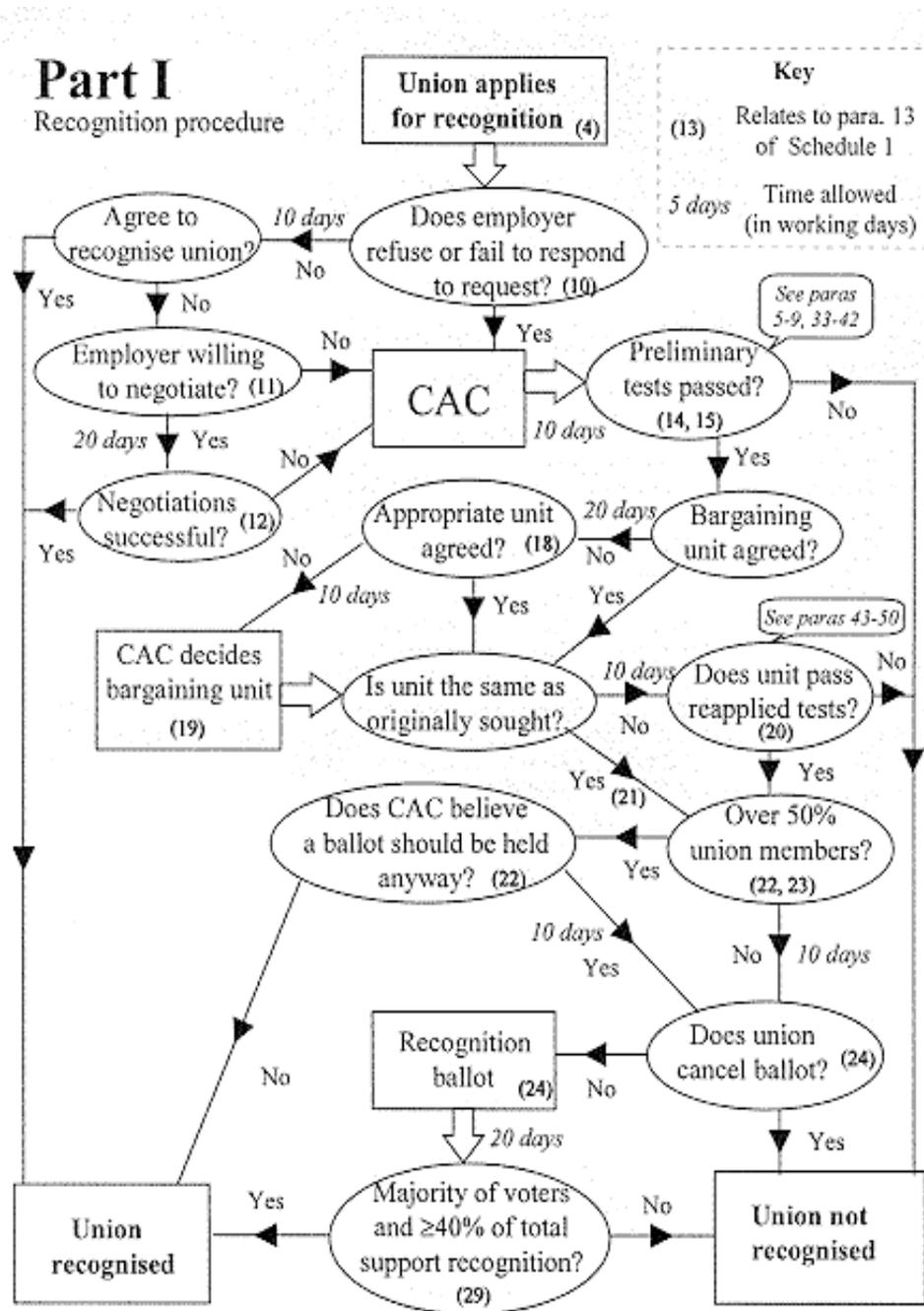


Figure 1: Statutory recognition procedure

Source: Explanatory Notes to the Employment Relations Act 1999. HMSO London

Appendix 2: Case Summaries

1. Toolco

This company manufactures precision circular saw blades. It has 85 employees at one site, of which 74 were in a proposed bargaining unit which was to cover all employees excluding managers. Originally a small independent engineering company, in 1988 it was taken over by a large US-owned company. There are also three other sites owned by the same parent company in the UK, none of which recognises a union. The US parent company is hostile to unions and refuses to recognise them. Its preference is for works councils and these have been established in all of its current UK facilities. Toolco had recognised two unions up until 1988 prior to the takeover, one of which was the union that made the recognition claim upon which this case study is based. The union had retained some of its membership throughout the period since derecognition and was reasonably confident that it would win statutory recognition, since it had recruited a majority of the workforce. However, the company mounted a strong campaign to resist recognition that was not overtly hostile, but which nevertheless suggested that the future of the workplace would be in jeopardy should recognition be achieved.

The union submitted an application to the CAC for recognition covering weekly paid workers and monthly paid technicians/maintenance employees. Once the application was accepted by the CAC, Acas was brought in to conciliate a dispute over the bargaining unit. The CAC then ordered a ballot under the statutory procedure, and the Acas conciliator was again called in to chair a meeting to agree access arrangements. Acas-facilitated conciliation meetings were attended by the union, the employer and the employers' association. The Acas conciliator also provided senior US executives of the company with information throughout the process.

The CAC determined that 53 per cent of the bargaining unit were in membership. The parties then agreed a slightly different bargaining unit of 78 workers and a further membership check found 42 per cent in membership. A ballot was then held and 31 per cent of the bargaining unit voted in favour of recognition. Since the union lost the ballot for recognition at the CAC there has been no further union relationship with the company. The company did, however, bring in a new consultation procedure and improved employment terms during the recognition process. It has also set up a new consultation forum. The company believes there are still members of the union in the workplace but it has no knowledge of how many there are.

2. Bedco

Bedco is a manufacturer of beds, bed bases and mattresses. The company employs 260 workers on site, with just over 200 in the bargaining unit. It is part of a much larger UK group which owns a number of companies in the bedding sector, some of which recognise trade unions. The parent company had been the subject of a dispute involving derecognition in the 1980s. At Bedco itself there had been no previous recognition agreement, and the bargaining unit on which the recognition claim centred covered hourly paid production and ancillary workers based on one site. Prior to recognition the company had a consultative forum with elected representatives, which it retained following recognition.

The recognition claim was the result of a union recruitment drive in which two activists built the membership up over a two-year period. The union reported that this was a gradual process because of high labour turnover. The union considered

that its profile in the company increased because the union officer was involved in representing members on an individual basis, but also in threatening to take legal action against the company for unlawful deductions in wages. The union approached the company a number of times for recognition and then submitted an application to the CAC. The deadline for acceptance was extended to allow time for a voluntary agreement and Acas was brought in to undertake a membership check which indicated 26 per cent membership. A petition showed 40 per cent support for recognition. On this basis the employer rejected the union's claim and Acas' involvement with the company ceased. The union then went back to the CAC and a second application was accepted on the basis of 28 per cent membership and a petition in support, of 46 per cent of employees. The bargaining unit was agreed and a ballot ordered in which the union secured a majority of 59 per cent of those entitled to vote. Recognition was declared, and an agreement signed four months later.

3. Refrigco

Refrigco is a manufacturer of refrigeration equipment for the commercial catering market, employing 400 employees in the UK. It is part of a large UK-based group. The recognition claim at Refrigco covered 150 production workers at two manufacturing sites in close proximity in the East of England.

Refrigco was founded in 1980 as a privately owned company. It was purchased by another (parent) company in 1998 and became a public limited company. There is recognition at a number of the older, established manufacturing sites within the parent group. While the previous owner-manager had been perceived as hostile towards trade unions, the change in ownership appeared to have encouraged unionisation, and the union reported that a number of workers who had been union members in the past had made contact with the union officer when he was leafleting a nearby workplace. Following this, the union began organising meetings in a local workers' club, where the union officer offered advice on employment issues. The Human Resources Manager also reported that the company was expanding and engaging staff who had worked at another unionised refrigeration manufacturer in the same town, so Refrigco was taking on workers with a union background.

The union approached the company for recognition in November 1999. The company responded that although it was prepared to recognise, it wanted to wait until the legislation was in place. The company insisted on applying the CAC tests and the Acas conciliator undertook a voluntary membership check and ballot. The union achieved a substantial majority in ballots at both sites. A recognition agreement was concluded in January 2001, as was a 'Partnership Agreement' based on the six Trades Union Congress partnership principles.

4. Eastnewsco

Eastnewsco is a group of titles, including daily and evening newspapers and magazines, within a large media group active in regional newspaper and magazine publishing, contract printing and internet communications. It employs a total of 2,800 employees across England. It began as a family owned business 150 years ago and is now a privately owned company, although family interest remains. The titles, which are the subject of the case study, employ 560 employees, largely based at the company's headquarters. The bargaining unit covers around 150 journalists and a further 60 editorial staff.

Management withdrew union recognition across the business in the 1990s, introducing individual contracts and setting up a consultative forum with elected representation. However, the unions maintained membership and the current

journalists' union father of the chapel (senior steward) continued to represent members in individual grievance and disciplinary cases. In the late 1990s he and a group of existing union members become involved in re-forming an active union branch and in 2000, following a change in Managing Director, the union approached the company for recognition for journalists. In 2001 the print union secured re-recognition through the CAC for workers employed at a print centre within the business. In 2002 Acas became involved in the second recognition claim for journalists, but misunderstandings between the parties meant it did not conduct a voluntary ballot until the end of 2003. Although the union secured a large majority, at the time of the research the parties had not been able to conclude a written recognition agreement, and were still in the process of negotiations to develop an agreement. They had, however, negotiated an annual pay settlement. An existing consultative forum has been retained.

5. Wareco

The company is a family owned warehousing and delivery firm whose main clients are a large retailer and a brewery. It was set up in 1988 and its Managing Director is the original founder. The company employs around 130 employees, who all work from one site.

The company had never recognised a union prior to the approach from a drivers' union, which began recruiting members in a leafleting campaign. In terms of annual pay determination, prior to recognition the company determined what it would offer employees without consulting them.

The company preferred an in-house consultation body to union recognition but did not put any barriers in the way of the union's attempts to recruit. Once the formal application for recognition had been presented, the union was given access to the workplace to see whether it could recruit additional members. The company employs a management consultant who handles many of its personnel matters and the consultant also made no attempts to block the union's recruitment activities.

During the recognition process, the relationship between the union and the company went through a difficult patch because the union initially thought that the workforce was much smaller than it was and had assumed that it had already recruited a majority. When the employer pointed out that the workforce was in fact more than twice the size envisaged by the union, the union thought the company was being untruthful and was attempting to block the application. The union then attempted to gain a voluntary recognition deal purely for the driving staff (where the bulk of its membership was located). The company opposed this since, in its view, if there was going to be recognition it should be for the whole workforce.

The union subsequently submitted an application to the CAC for recognition for the drivers' group alone. The CAC determined the bargaining unit in favour of the union (48 drivers and mates) and ordered recognition without a ballot on the basis that a membership check showed that membership of the bargaining unit was 63 per cent. The union then went back to the company and managed to conclude an agreement that covered the entire workforce, not just those identified in the bargaining unit submitted to the CAC. The union claims that union membership has increased since recognition.

6. Packco

Packco is a manufacturer of packaging, supplying plastic films mainly to the food and medical industries. It is part of an Australian multi-packaging parent company, operating in 29 countries and employing 23,000. It has seven manufacturing plants in the UK and there is union recognition at a number of these, including one site where a voluntary recognition agreement had been concluded recently. Packco is based in the East of England and has around 120 employees. There had been manufacturing on the site for over 30 years when, in 2002, Packco bought it. The company had a works council which has continued since recognition.

There had been no previous recognition at the site, but it appears there were some existing union members and there had been an unsuccessful recruitment campaign by one union. A second union launched a campaign and recruitment was pretty rapid, encouraged by the union officer coming in to represent individuals in disciplinary cases. The union approached the company for recognition for less than 100 production workers at the end of 2002. Management initially resisted recognition on the basis that it added no value to the business and that it did not believe it reflected the wishes of the majority of the workforce. However, it was pragmatic and prepared to test support. A voluntary ballot was carried out in May 2003 and the union achieved a majority of over 70 per cent. A recognition agreement was concluded in April 2003.

7. Plastico

This is a building plastics company, mainly making patio doors and window frames. The company has 700 employees in four plants spread throughout one UK region. It is owned by a parent company which is a public limited company. The recognition claim covered 180 weekly paid staff in one location.

The union had been targeting the company for recognition for some time and already had some members and active workplace activists prior to its formal approach for recognition. However a change in the company policy towards recognition was prompted by the appointment of a new managing director who was more open to the union's claim, and a Human Resources Manager who had experience of working in a unionised workplace.

The Human Resources Manager sought the assistance of Acas to provide the Board of Directors with impartial information on recognition law and to verify the union's claim. Acas conducted a membership check, and although this did not indicate a majority for the union, the company felt that there was a sufficient degree of membership to justify recognition. Although recognition was formally agreed, a procedure agreement had not yet been concluded at the time of research, mainly due to the unavailability of the parties to meet due to work pressures. However, the union had appointed four workplace representatives who met frequently with local management.

8. SouthNewsco

SouthNewsco is a newspaper publishing company which is part of a UK owned newspaper group that recognises unions in other associated companies. The company was taken over by the existing parent group in the early 1980s. The union seeking recognition had formerly been recognised, but was then derecognised prior to the takeover by the parent group. There are around 500 employees, mainly in one location, but with offices at five other sites. It was the arrival of new and younger members of staff that had prompted the recognition claim. They had not previously been union members and had not been in the industry during the period of de-recognition in the late 1980s. The company was

not hostile to union recognition and sought Acas' assistance in carrying out a membership check, during which an issue emerged as to whether some managers should be included in the bargaining unit.

Once it had been established that a majority of employees were members, the parties went on to conclude an agreement without Acas' involvement. However, the agreement took more than a year to conclude because there were differences in opinion as to what it should contain. In particular, the union wanted to include a status quo clause (where proposed changes to terms and conditions, or work organisation, are deferred until domestic disputes procedures are exhausted) and the employer did not. A senior Human Resources Manager for the parent group was involved in the negotiations. Since then there has been some negotiation, mainly over pay and expenses.

9. NorthNewsco

This newspaper publishing company has around 400 employees. They are mainly based at one location in the North of England, although they do have other offices in the region. The company publishes daily and weekly newspapers, an advertiser series, and a free paper. The bargaining unit at the centre of the recognition claim consists of around 110 employees (mainly journalists) on one site, of whom around 60 per cent are union members.

The company is part of a large newspaper group, with an ultimate parent based in the USA. Until the mid 1990s the company had recognised the union and was the last of the group's UK sites to derecognise unions. During the period of derecognition the union maintained a presence in the company and relations between the Managing Director and union members were good.

Following the passage of the Employment Relations Act 1999, the union formally approached the company for recognition. The Managing Director was not opposed to the claim. He had previously been a union member and had once been active in the union. The union full-time officer had also previously been a journalist.

The parties called in Acas to undertake a membership check but also because they disagreed over a small number of individuals who the union wanted to include in the bargaining unit. Since the parties were unable to agree - in part because the union changed its definition of who should be in the bargaining unit on more than one occasion - an application was submitted to the CAC. The union argued for the inclusion of some specialist staff and the company's position was that they were not journalists and should not be in the bargaining unit.

The CAC ruled largely in favour of the union claim and included all of the workers it had identified within the bargaining unit. It ordered recognition without a ballot on the basis of majority membership. In the period following, a formal method of bargaining had been concluded between the parties and a negotiating structure established.

Appendix 3: Pay negotiation outcomes

- SouthNewsco: the company was in negotiation with the union at the date of the interview. The union had claimed a five per cent pay increase and an improvement in expenses allowances. The company had responded with a three per cent offer, and an offer to increase expenses payments.
- Bedco: there had been pay negotiations resulting in a 2.5 per cent increase in 2003 and two per cent increase in 2004.
- Refrigco: when interviewed the representatives were in negotiation on the third year of annual pay negotiations. At the time of the interview union members had voted to reject a second pay offer and it was possible that Acas might become involved and/or that the union would ballot for industrial action. In 2003 they had achieved a 5.1 per cent increase. The Acas conciliation officer had been involved in these negotiations, and his role (according to the Human Resources Manager) was to, "Come in and bang the two heads together and say, 'Look *you're* asking too much, and perhaps *you're* not quite offering enough'". These exchanges took place in a traditional conciliation setting, with each party in separate rooms.
- EastNewsco: the parties had settled a 2.9 per cent increase in the last pay round. According to the workplace representatives, at a certain stage of deadlock in the pay negotiations they had talked about bringing in Acas. This had caused a change in the employer's attitude and they had been able to break the deadlock and conclude an agreement.
- Packco: the 2003 claim was settled at around 2.4 per cent. According to the Human Resources Manager, "They [the union] had a reasonable amount of influence on matters outside the pay claim, like the bonus scheme".
- Wareco: while the company's financial situation made a pay increase difficult, workplace representatives were able to negotiate on Bank Holiday payments. The union full-time official stated, "I'm looking at other ways of getting something out of the company, this Bank Holiday thing is one way".

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