

Agreed or imposed? A study of employers' responses to statutory recognition applications.

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Editor's forward

The Warwick Papers in Industrial Relations series publishes the work of members of the Industrial Relations Research Unit and people associated with it. The papers may be of topical interest or require presentation outside the normal conventions of a journal article. A formal editorial process ensures that standards of quality and objectivity are maintained.

This paper is based on research undertaken for a dissertation submitted in part fulfilment of the requirements of the MA in Industrial Relations and Personnel Management at Warwick Business School. The author plans to undertake further analysis and interpretation of the data collected but it was felt that early publication of some key findings in this area of academic and policy interest would be valuable.

Jim Arrowsmith

Acknowledgements

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List of abbreviations

ACAS	Arbitration, Conciliation and Advisory Service.
AEEU	Now Amicus AEEU
BAEU	British Actors Equity Union (Now 'Equity'.)
BAJ	British Association of Journalists
BALPA	British Airline Pilots Association
BECTU	Broadcasting Entertainment Cinematographic and Theatre Union
CAC	Central Arbitration Committee
ERA	Employment Relations Act 1999
GMB	GMB – Britain's General Union
GPMU	Graphical Paper and Media Union
ISTC	ISTC – the community union
KFAT	National Union of Knitwear, Footwear and Apparel Trades
MSF	Now Amicus MSF
NATFHE	The University and College Lecturers' Union
NUJ	National Union of Journalists
POA	Prison Officers Association
T&GWU	Transport and General Workers Union
TUC	Trades Union Congress
UNIFI	UNIFI – the union for the finance sector in the UK
URTU	The United Road Transport Union
USDAW	Union of Shop, Distributive and Allied Workers

I. Introduction

The Employment Relations Act (ERA) 1999 fulfilled one of Labour's major electoral commitments by providing a statutory procedure through which a union can seek an enforceable award from an independent body (the Central Arbitration Committee) that an employer recognise it for collective bargaining. Statutory recognition is in respect of collective bargaining over pay, hours and holidays, and there is a requirement for the employer to inform the union about training plans. The procedure came into effect on 6th June 2000 (Dickens and Hall 2003:138-9).

A union needs a threshold membership of 10% of its proposed bargaining unit (the workers for whom it wishes to bargain) plus the majority of workers likely to support it, in order to have its application accepted by the CAC. The application will not be accepted where there is already a recognition agreement applying to workers in the proposed bargaining unit or where the employer has fewer than 21 workers. The new provisions encourage agreement between the parties at various stages, requiring the CAC to determine issues where agreement is not forthcoming. For example, the CAC will determine the appropriate bargaining unit (BU) where this is not agreed between the employer and union. It is required to pay particular regard to the need for the BU to be 'compatible with effective management' and avoid fragmentation. The CAC can declare the union recognised without holding a ballot if more than 50% of the workers in the bargaining unit are members of the union. It will not do this however if it considers a ballot would be in the interests of good industrial relations, or where there is evidence that employees do not want the union to conduct collective bargaining on their behalf. Where the CAC calls for a ballot, recognition will be granted if a majority of those voting, and at least 40% of the workers in the bargaining unit, vote in favour.

Following a declaration of recognition the parties are required to agree a method of bargaining and, if they do not, the CAC can impose a procedure which is legally binding unless the parties agree otherwise. Where one party does not abide by the procedure the other may apply to the courts for an order that the party act as required (specific performance). Failure to abide by an order for specific performance could (in theory) lead to quasi-criminal sanctions for contempt of court.

A union is obliged to give the employer 10 days notice of its intention to use the statutory procedure before making an application to the CAC. Once an application is made the union seeking recognition can withdraw it at any time before the CAC issues a declaration on the question of recognition. This provides three routes to recognition: the employer can enter into a voluntary agreement with the union (before application) or conclude a 'semi-voluntary' agreement (following application to CAC) rather than await the outcome of the CAC deliberations which may lead to 'statutory recognition' (recognition by declaration of the CAC). The terms 'semi-voluntary' and 'statutory' recognition, the two processes that are the focus of this paper are not in the ERA but are used informally at the CAC to distinguish cases in which the employer agreed to enter into collective bargaining after the union made an application to the CAC from cases where the CAC declared that the applicant union should be recognised by the employer.

At the time of the research (21 months following the introduction of this statutory trade union recognition mechanism) 175 recognition applications were made to the CAC. Of these, 34 resulted in statutory recognition: (20 following a ballot and 14 by declaration without a

ballot): 76 cases were withdrawn by trade unions prior to adjudication, (56 at the acceptance stage and 22 at the bargaining unit definition stage) with 29 of these withdrawals on the basis of semi-voluntary recognition, (11 at the acceptance stage and 18 cases at the stage of determining the bargaining unit) (CAC 2002:18). As at 31 July 2002 a total of 11,000 workers had been covered by applications to the CAC which resulted in recognition (Burton 2003:609). It was always expected that the existence of the procedure would encourage voluntary recognition agreements outside of its use (Gall 2000) and there has been a dramatic increase in the number of voluntary recognition agreements in the shadow of the statutory recognition provisions. The TUC estimated fifty new recognition deals a month (IRS 745:2002) and report at least five hundred in 2001 compared with one hundred and fifty in 2000 (Wood and Moore 2002:36) with associated requests to ACAS for assistance in settling recognition issues increasing by over eighty percent in 2001 to three hundred and eighty four cases (ACAS 2001).

A significant number of employers have therefore recognised that pursuing a voluntary route helps maintain control of the process and outcome (IDS 685:2000). This has encouraged employers to sign up to recognition agreements with which they are relatively comfortable before they are obliged to do so, possibly under arrangements they do not like (IRS 745:2002). Younson (2002) suggests that 'wise employers' understand that a voluntary agreement is not legally enforceable and avoids a potentially bitter and divisive recognition ballot campaign. Indeed statutorily-derived recognition is thought by some to be an unlikely harbinger of good industrial relations (IDS 685:2000). The TUC reported that almost one third of voluntary deals in 2001 were the result of an approach by the employer and most included pay, hours and holiday, the three areas covered by the statutory provisions (Taylor 2001). This would suggest that the new provisions are working much as the government intended and that the indirect impact of the Act in generating voluntary agreements in its shadow has been crucial for the unions (Wood et al 2001).

As the CAC Chairman has noted (Burton 2002:607), 'the statutory recognition procedure is based on the premise that voluntary agreements between employers and unions are the ideal...the statutory process acts as a backstop'. This paper focuses on the backstop, exploring cases which resulted in recognition of a union after application was made to the CAC. It looks at both semi-voluntary and statutory recognition cases and is interested in why some employers reached agreements and others did not, instead having recognition declared by the CAC. The paper provides insight into employers' attitudes and responses to union requests for recognition both before and during use of the procedure and following recognition. This is an area that has received little attention in academic literature to date which has been concerned more with union approaches, or the way in which the CAC has operated the statutory procedures (for example Gall 2000, Gall and McKay 2001, Wood et al 2001, Wood and Moore 2002). The aim of the research was to shed light on the reasons why employers differ in their resistance to attempts by trade unions to gain recognition under the statutory procedure; to explore how they respond to the union's use of the statutory procedure at different stages and to seek information on the content of recognition agreements and their effect in operation.

The next section explains the research design and method. Section III sets out the characteristics of employers involved in the cases examined and the numbers of workers in the bargaining units on behalf of whom recognition was sought. It details the employers' previous experience of union recognition and how terms and conditions of employment were handled. Section IV explores the employers' position at different stages in the statutory procedure, from when notice of a potential application to the CAC was given by the union. Particular attention is paid to identifying the factors influencing whether or not the employer responded favourably to the union or not, and how those employers concluding semi-voluntary agreements differed from those that ended up with statutory recognition declared by the CAC. In Section V the substance of union recognition agreements and recognition in

operation are considered, and information is provided on employers' assessment of the nature of industrial relations in the workplace following recognition. Finally, some concluding observations are made.

II. Research design and method

The research adopted both quantitative (questionnaire) and qualitative (interview) methods. The timeframe for research, although short, did allow the methods to be used sequentially with completed questionnaires being used to guide and shape the research questions for forthcoming interviews in an attempt to get a more detailed analysis of the issues raised. Scrutiny of completed recognition agreements was also planned, though in practice this proved unrealistic as relatively few agreements were provided by employers for a number of reasons, including the fact that they had yet to be formally signed-off by both parties.

Trade union applications for recognition and the outcomes of these cases are publicly recorded on the CAC website. At the time of the research design there were 69 recognition (31 'semi-voluntary' and 38 'statutory') outcomes recorded over the period from June 2000 to May 2002. The CAC wrote to all the employers and trade unions involved seeking permission to pass their contact details to the researcher. In respect of the semi-voluntary cases 20 employers (64%) consented, 6 declined (19%) and 5 failed to respond (16%). A positive response was received from trade union officials covering 29 cases (94%) with just 2 failing to reply. In respect of statutory recognition 21 employers consented (55%), 11 declined (29%) and 6 failed to respond (16%) while there were 38 consenting responses from trade union officials (100%). In certain trade unions where the handling of applications was most centralised (GPMU, ISTC and UNIFI in particular) some union officials were responsible for multiple recognition applications and therefore completed more than one research questionnaire. The total net sample frame of 108 was therefore comprised from the semi-voluntary recognition cases: employer 20 (64% of the population), union 29 (94%), and of the statutory recognition cases: employer 21 (55%), union 38 (100%).

In total 98 completed questionnaires were returned from the 108 issued (90.7%) with the breakdown shown in Table 1.

Table 1. Questionnaire response rates by employer and trade union categories

Recognition type	Respondent	Response	Sample	Response rate	Respondent	Response	Sample	Response rate
Semi-voluntary	Employer	17	20	85%	Trade union	26	29	90%
	Trade union							
Statutory	Employer	20	21	95%	Trade union	35	38	92%
	Trade union							

Four different questionnaires were used, one each for the employers and trade unions in both the semi-voluntary and statutory recognition situations. To allow comparison across the categories, questions were identical where possible and only varied to allow analysis of the different factors leading to each type of recognition. The questions put to trade unions reflected their position yet mirrored exactly where possible those asked of employers. Using questionnaires allowed data collection on a wide range of variables that had presented themselves as potentially significant factors in a literature review and during preliminary meetings with staff at the CAC. The questionnaires covered the situation pre, during and post

recognition and were issued to the person who had given consent via the CAC to be contacted by the researcher. In almost all cases this was the person (employer or union official) who had been directly involved in the recognition application process.

Matching union responses were received for each employer questionnaire in all but one case. An additional twenty-five union responses were received in cases where the employer did not participate. Therefore, from the 69 cases recorded by the CAC at this stage, the survey achieved a response rate of 71% representing 54.8% of employers and 83.3% unions in semi-voluntary cases plus 52.6% from employers and 92.1% from unions in statutory recognition cases. The high overall response rate would be expected to have a positive impact upon the validity of the research findings.

Employers who had completed questionnaires were approached with a view to follow-up interviews. For practical considerations interviewing was focussed on the three geographical areas where such cases were most prevalent: the North West of England, the Midlands and London. This approach allowed interviews across employment sectors, organisational size, geographical areas, management structures and different trade unions. Having received completed questionnaires from 37 employers, 14 were willing to be interviewed: six from the semi-voluntary group and eight from the statutory group (table 2). All but three of the interviews were conducted face-to-face with the remainder (all statutory cases) being conducted by telephone due to access problems in the short time available. The employers interviewed represented agreements with eight trade unions; Amicus AEEU, BAJ, GMB, GPMU, ISTC, T&GWU, UNIFI and USDAW. Interviewees were typically senior officers, HR directors or HR managers. All but one had been personally involved in the recognition process and had returned a completed questionnaire. Fourteen full-time trade union officials (four national and ten regional officers) agreed to be interviewed, five in relation to semi-voluntary cases, five in relation to statutory cases and four in relation to both. The participants represented ten unions; Amicus AEEU, Amicus MSF, BECTU, GMB, GPMU, KFAT, NATFHE, NUJ, T&GWU, and UNIFI. Eleven of these interviews were face to face and three by telephone, due again to the short time available. In eight instances both the employer representative and trade union official involved in the same case were interviewed separately and therefore 57% of the interviews concerned matching cases.

Table 2. Characteristics of interviewed employers

Pseudonym	Sector	Total Number of UK workers (approx)	BU size	Recognition type	Union interviewed also?	Interview Type
AutoCo	Manufacturing	100	45	Semi-voluntary	Yes	Face to face
BankCo	Financial services	50	24	Statutory	Yes	Telephone
BuildCo	Manufacturing	100	45	Semi-voluntary	Yes	Face to face
CrispCo	Manufacturing	400	263	Statutory	Yes	Face to face
DataCo	Other business services	650	595	Statutory	Yes	Face to face
FoodCo	Manufacturing	1000	1000	Semi-voluntary	No	Face to face

Table 2 (contd.)

Pseudonym	Sector	Total Number of UK workers (approx)	BU size	Recognition type	Union interviewed also?	Interview Type
FlightCo	Other business services	650	510	Semi-voluntary	No	Face to face
MediCo	Manufacturing	1000	171	Statutory	Yes	Face to face
MetalCo	Manufacturing	400	160	Semi-voluntary	No	Face to face
Newsprint Co	Other business services	2000	553	Statutory	No	Face to face
PartCo	Manufacturing	200	37	Semi-voluntary	No	Face to face
PrintCo	Manufacturing	5000+	50	Statutory	Yes	Telephone
PubCo	Transport / communication	5000+	133	Statutory	No	Telephone
TextileCo	Manufacturing	2000	196	Statutory	Yes	Face to Face

A semi-structured format was used for all face-to-face interviews, each lasting an average of around fifty minutes. Completed questionnaires were used as the starting point, and questions tailored to each specific case covering the period prior to the union recognition application, through the CAC process to the post-recognition phase. One question was put to all interviewees; whether or not the employer would have granted voluntary recognition in the absence of the new legal provisions. All face-to-face interviews were taped with permission and fully transcribed. The process of interviewing took place over a three-week period allowing data in the earlier interviews to be tested for similarities and differences in later interviews as advocated in grounded theory (Neuman 2000). This, together with an exploration of the specific social context in each case, allowed a number of significant issues to emerge during the process, which may not have occurred if a rigid structured interview approach had been adopted. The telephone interviews adopted a similar approach using some questions structured in advance, based on data contained in the interviewee's completed questionnaire. This ensured that all the relevant ground was covered and took on average thirty minutes with contemporaneous notes being made of all answers.

III. Characteristics of surveyed employers

We begin this section with a review of some of the key characteristics of the organisations covered in the research in the context of representativeness vis-à-vis cases submitted to the CAC, and more generally to employers as a whole via WERS 98 (Cully et al, 1999). The second part focuses on the nature of industrial relations in the firms prior to the current recognition.

Of the sectors covered by the research, both manufacturing and transport and communications are considerably over-represented when compared to WERS98 (Cully et al 1999) which records only 18% and 5% of workplaces with twenty five or more employees are in these

sectors (table 3). However, it should be noted that the statutory procedures apply only to employers with 21 or more workers. The CAC (2002) record that for the period to 31st March, 43% of applicants were in the manufacturing sector and 19% in transport and distribution suggesting that the sample surveyed is broadly in line with CAC applications generally.

Table 3. Characteristics of employers by employment sector

Sector	Number	% All employers	% Semi-voluntary	% Statutory
Manufacturing	22	(59.5)	(47.1)	(70)
Transport and communications	7	(18.9)	(29.4)	(10)
Wholesale and retail	1	(2.7)	(0.0)	(5)
Financial services	2	(5.4)	(5.9)	(5)
Education	1	(2.7)	(5.9)	(0)
Other business services	3	(8.1)	(5.9)	(10)
Hotels/restaurants	1	(2.7)	(5.9)	(0)
Total	37	(100)	(100)	(100)

It is perhaps more surprising that the age profile of the employing organisations is biased towards the higher end (table 4). There are a number of factors that may have brought this about. First, some employers reported bad experiences in the (often distant) past which they claimed affected management attitudes toward working with the union. Second, the sample included some employers that had formally de-recognised the union since 1980. Third it may be a consequence of the demographics of British industry given that 47% of workplaces have been in continuous operation for 25 or more years (Cully et al, 1999: 21). The sample is not directly comparable to WERS98 in that it is the age of the employing organisation, not the workplace, that was reported upon and it is possible that in some cases the workplace age was less than the employing organisation.

Table 4. Employing organisations by age

Age of employing organisation	All	(%)	Semi-voluntary	(%)	Statutory	(%)
Less than 5 years	0	(0)	0	(0)	0	(0)
6-10 years	4	(11)	0	(0)	4	(20)
11-20 years	8	(22)	6	(35)	2	(10)
21-40 years	9	(24)	5	(29)	4	(20)
40 + years	16	(43)	6	(35)	10	(50)

As would be expected, the sample contained a significantly lower percentage of public sector employers than is represented in the UK generally (28% in WERS98) reflecting the fact that the public sector generally is more highly unionised than the private sector. The overall percentage of overseas ownership at 27% was higher than the 19% found in WERS98 (table 5 overleaf).

Table 5. Employing organisation by ownership characteristics

Nature of ownership	All	(%)	Semi-voluntary	(%)	Statutory	(%)
Privately owned (Ltd)	22	(60)	11	(65)	11	(55)
Public ownership (Plc)	12	(32)	5	(29)	7	(35)
Public sector + other	3	(8)	1	(6)	2	(10)
British	27	(73)	12	(71)	15	(75)
U.S.	3	(8)	1	(6)	2	(10)
Other	7	(19)	4	(23)	3	(15)

In terms of size of employing organisation and bargaining unit, different patterns are observed depending on whether recognition was agreed or awarded by the CAC. The questionnaire used the size classifications adopted by WERS, though it should be noted 21 employees is the minimum requirement and therefore very small firms are outside the scope of the statutory provisions. The semi-voluntary group shows a more even distribution of employees by overall employer size (Fig 1.), with a tendency toward medium-sized employers and a peak in the 1000-2999 category. By contrast the statutory group involves more large employers (Fig 2.). Turning to bargaining units, there is a higher proportion of small bargaining units in cases where the CAC declared statutory recognition (Fig 4.) than where it was obtained by semi-voluntary agreement (Fig 3.). The statutory group BU sizes ranged from 25 to 760 with an average of 213. This compares to the CAC recorded average of 276 for all statutory cases to this point in time (including the largest of 4045 at Honda UK which did not participate in the present research). The semi-voluntary groups BU's range from 25 to 2,500 with an average of 419. No comparative data is available from the CAC on bargaining units in this category. The total number of employees covered by the 17 semi-voluntary agreements was 6933 with 4264 employees covered by the 20 statutory recognitions.

Figures 1 and 2: Total number of people employed in the UK by recognition type.

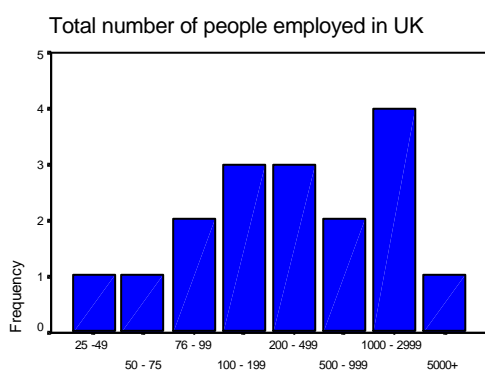


Fig 1. Semi-voluntary cases

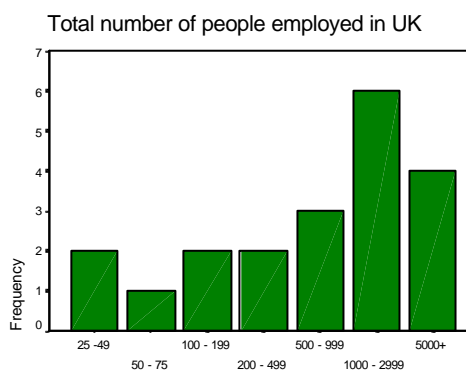


Fig 2. Statutory recognition cases

Figures 3 and 4: Number of workers in bargaining units by recognition type.

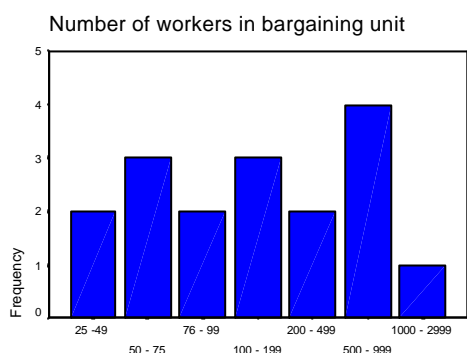


Fig 3. Semi-voluntary cases

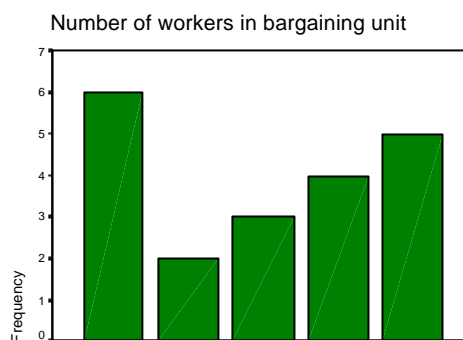


Fig 4. Statutory recognition cases

Determination of pay and conditions pre-recognition request

Less than one in five of the employers had previously recognised a trade union at the site in question (table 6.). Employers that recognised via CAC declaration were twice as likely to have done so than those in the semi-voluntary group. Both groups were equally likely, at just under a third, to have already recognised a union in some part of the employing organisation. Both were also equally likely to have been previously approached for recognition in the five years prior to June 2000, though in the case of the statutory group it was more likely to be the same union as that which was ultimately successful.

Table 6. Prior experience of union recognition

Factor	All	Semi-voluntary	Statutory
A trade union had previously been recognised at the site in question.	18.9%	11.8%	25.0%
Trade union was already recognised for collective bargaining in some part of the organisation	29.7%	29.4%	30.0%
Approached by the same union for recognition in 5 years up to June 2000.	21.6%	17.6%	25.0%
Approached by a different union for recognition in 5 years up to June 2000.	13.5%	17.6%	10.0%
Not approached by any union for recognition in the 5 years to June 2000.	64.9%	64.7%	65.0%

Employers were also asked to indicate how they handled issues relating to the pay and conditions of workers in the bargaining unit prior to union recognition. Respondents were asked to choose between three options; i) on a one-to-one basis with individual workers, ii) via a representative body (e.g. works council) or iii) decisions taken by management then communicated to workers. Employers were free to indicate more than one option if appropriate. The total sample of 37 indicated that decisions of management communicated to workers was the most common (24 responses) with 14 indicating some kind of representative body and 12 indicating that the issues were dealt with on a one-to-one basis (Figs 5 and 6). Some caution is urged regarding the number of representative bodies indicated as some

employers in the sample established such bodies only in response to formal approaches by the union, so these did not pre-date the union application to the CAC by very much.

Figures 5 and 6: Employers’ methods of handling of issues relating to worker pay and conditions prior to union recognition.

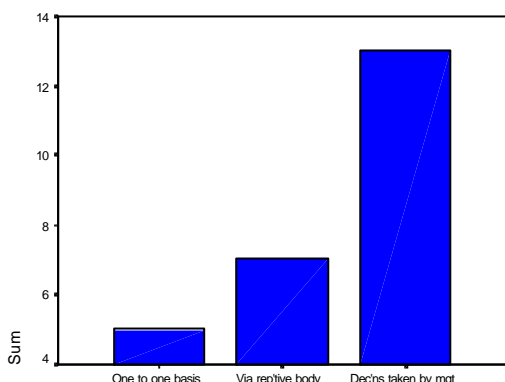


Fig 5. Semi-voluntary cases

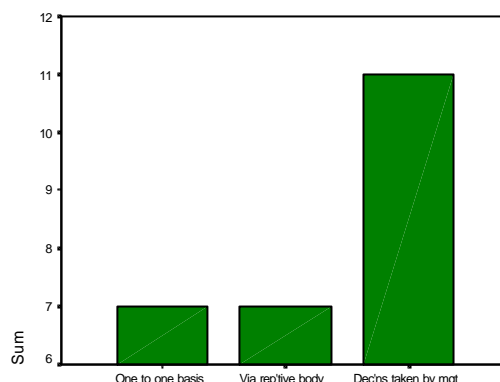


Fig 6. Statutory recognition cases

IV. Employer positions at different stages

What follows is an exploration of the employers’ position at different stages in the statutory recognition process. This includes the situation for employers prior to being formally approached by a union and the period following the recognition request. The factors influencing whether or not an employer agreed to semi-voluntary recognition are explored.

The recognition request

As illustrated in table 6 above, around 65% of the participating employers had not been approached by a trade union seeking recognition in the five years prior to the new legal provisions coming into place in June 2000. While some employers, particularly those that had been approached or had previously de-recognised were clearly expecting the union to make an approach, for others the union’s action in commencing a recruitment drive to build the required membership for a recognition bid was unexpected:

“The first thing we heard of it was when they camped out on our car park; two officials from the ISTC camped out distributing leaflets about joining. That was really the first we knew anything about it.” HR Manager MetalCo

Data from the trade union participants gives an insight into the most significant reasons why unions chose to pursue recognition for collective bargaining with the employer involved (table 7 overleaf).

Table 7. Trade union reasons for seeking recognition

Factor	All TU		Semi-voluntary		Statutory	
	No.	(%)	No.	(%)	No.	(%)
Request from current members in the workplace.	38	(62)	12	(46)	26	(74)
Overwhelming membership density – perceived easy win.	10	(16)	7	(27)	3	(9)
Union was already recognised in other parts of the organisation.	1	(2)	0	(0)	1	(3)
To prevent a possible application by another union.	1	(2)	0	(0)	1	(3)
Union concerns about employment conditions	10	(16)	6	(23)	4	(11)
Other	1	(2)	1	(4)	0	(0)
Total	61	100	26	100	35	100

Request from trade union members in the workplace was the most significant reason given for the union action in requesting recognition (table 7). In the statutory group this reason was given in almost three quarters of cases. Overwhelming membership density and union concerns about employment conditions were also significant factors, though more so for semi-voluntary cases than statutory. In a number of interviews with employers it became clear that there had been an event that triggered support for the union, which subsequently used this as a platform to seek recognition. These triggering events were generally related to pay, bonus payments or working practices. For example at BuildCo the employer increased the basic hourly rate but pegged overtime at time and a half of the old rate while at MediaCo it was proposed changes in employee contracts which would have the effect of limiting overtime capacity as well as affecting holiday arrangements that caused employees to seek support from the union.

Whether or not the union’s application was expected, employers typically sought information and assistance once the union had indicated that it would apply to the CAC under the statutory provisions. Employers in each group showed marked differences in the sources that were used with employers who eventually reached a semi-voluntary agreement being more likely than those who ended up with a statutory recognition to have used ACAS (65% compared to 45%) and less likely to have consulted a law firm (47% compared to 70%). The use of management consultants (associated in the U.S. with ‘union-busting’) was very low at 8% and all three instances resulted in semi-voluntary arrangements. Employers had sought advice from employer’s federations (such as the Engineering Employers Federation) in 3 (17.6%) semi-voluntary and 4 (20%) statutory cases.

Employer responses to trade union applications

As noted earlier, employers reached voluntary agreements with trade unions at different stages in the recognition procedure. The requirement that unions give notice to employers that they intend to apply to the CAC gives an opportunity to the employer to enter into discussion with a view to voluntary recognition. Employers in the sample were asked to indicate the main reason for not offering a voluntary agreement after it became aware that an application might be made to the CAC by the trade union. A summary of responses is given below in table 8.

Table 8. Employer reasons for not offering a voluntary recognition

Factor	All Employers		Semi-voluntary		Statutory	
	No.	(%)	No.	(%)	No.	(%)
Operational issues e.g. no time to reply	0	(0)	0	(0)	0	(0)
Saw no value in having a union e.g. added bureaucracy	12	(32)	4	(24)	8	(40)
Objections to unions on principle	2	(5)	1	(6)	1	(5)
Not convinced workers wanted a union	13	(35)	6	(35)	7	(35)
Thought it was the wrong union	1	(3)	0	(0)	1	(5)
Unsure of the legal position	0	(0)	0	(0)	0	(0)
Needed time to seek advice	2	(5)	2	(12)	0	(0)
Other	7	(19)	4	(23)	3	(15)
Total	37	100	17	100	20	100

The most significant reasons indicated were that employers were not convinced that their workers wanted a union and that the employer saw no value in having a union, though this was comparatively less of an issue for the semi-voluntary group. At interview a number of employers expressed the opinion that there was nothing for workers to gain from either being a union member or from the union gaining recognition:

“We did try to resist it because we felt at the time we were giving our employees everything that we could give them, so we didn’t see what the union could come in and do to help them any more.” Personnel Officer CrispCo

“DataCo are a very, very good employer to work for, the benefits that the workforce get here are very good; the salaries are good, they have twenty five days holiday, they have free health cover, they’ve got a superb final salary pension scheme and they’ve got complete flexitime, they’ve got home working, they’ve got every benefit under the sun. From DataCo’s point of view it was disappointing that there were some activists who managed to persuade 40% of the workforce that they could do better under a union, and it’s not going to happen.” HR Director DataCo.

No employer was hampered from responding by the time limit and none said they were unsure of the legal position. The issues categorised as ‘other’ included disputes over whether recognition already existed, where management resisted changing existing arrangements and where the union approached the CAC while apparently still negotiating with the employer. Significantly, and in contrast to some popular perceptions, objections to unions on principle was not indicated as a significant factor by employers. The attitudes of owners and senior managers towards unions had an influence on the approach that the employing organisation took towards the union’s recognition application in the first instance. Often these views were based on experiences from many years earlier:

“There is a feeling within the business that to bring a union in would be to take the business back 20 years in time to the days of the strikes of the late 70’s and 80’s.” H.R. Manager FoodCo.

“The (union) had a bad history with us, in fact going back to 1994 when the managing director first took over they started picketing the gate with leaflets, so the MD went to see what was going on and said they were on company property and this won’t do. I won’t say what the union guy told him to do, and after that he took a dislike to the (union) and associated that with their attitude and said ‘we’re not going to be able to work with them if that’s their attitude.’” Company Secretary AutoCo.

Although only one employer indicated that the principal objection was on the basis that the applicant union was the ‘wrong one’ a significant minority of employers (30%) in the sample indicated that they had consulted with another trade union regarding potential recognition around the time that the CAC process was initiated. Rather more of the employers who agreed semi-voluntary recognition (35%) attempted this than where the case ended in statutory recognition (25%). This would suggest that in some cases, where employers saw that recognition might be inevitable, they attempted to keep some control by influencing which union they would be working with, but the ability to exercise choice diminishes if left until the union indicates it will make a CAC application.

“We then tried to introduce the MSF into this company. They are a respectable union and we found them easy to deal with. They were a bit slow about doing anything about it and unfortunately the union then made an application to the CAC.” H.R. Manager MetalCo (semi-voluntary).

“We did get involved with the GMB because we looked at alternatives to USDAW. We didn’t feel they were the best representatives of our people if we were going to have to deal with a union...we did actually sign up with the GMB but it became clear than USDAW already had quite a few members in here by that point. The GMB pulled out basically” M.D. PartCo (semi-voluntary).

Where employers are able to reach an agreement with a ‘preferred union’ in time this may thwart an applicant union since the CAC cannot consider any application where a collective agreement is already in force recognising a union to conduct collective bargaining on behalf of any workers falling in the bargaining unit. For example, in the case of PartCo above, had the GMB not withdrawn, the applicant union may have been barred, as occurred in the case of Bausch and Lomb where the ISTC’s application for recognition was rejected as invalid by the CAC as a result of the employer signing an agreement with Amicus AEEU only 48 hours beforehand (TUR 1/8/00 ISTC and Bausch and Lomb (Award Plc)).

Semi-voluntary agreement or statutory recognition?

Once a trade union has made an application to the CAC for recognition with an employer it must satisfy a number of requirements in order for its application to proceed. The first stage is the ‘acceptance’ stage where the union must convince the CAC that it has more than a minimum of 10% membership in the proposed bargaining unit and that a majority of the workforce in the bargaining unit would be likely to support recognition of the trade union. It is common for the CAC to ask the parties to agree to a confidential membership check or check of any petition in support of the trade union to be undertaken by the CAC case manager. The case manager’s report is sent to the parties and to the CAC Panel deciding whether to accept the application (Burton 2003:608). It is at this point, when the employer understands the strength of support for the union, that recognition may be perceived as ‘inevitable’ by the employer. In some cases however the employer may argue for a bargaining unit other than that proposed by the union, where the extent of support for the union may be

less. Thus the second stage question of the appropriate bargaining unit may determine the likelihood of the declaration of recognition itself.

In the sample of 17 semi-voluntary recognitions 7 were settled at the pre-acceptance stage, that is to say after the CAC had received the union application but before it had decided whether or not the application was accepted. The 10 remaining applications were settled on a semi-voluntary basis after CAC acceptance but without having to go through a bargaining unit determination stage with the CAC.

Employers were asked to rank in order of significance the factors behind their decision whether or not to agree semi-voluntary recognition once the application had been lodged with the CAC. Three factors emerged as the most significant in the semi-voluntary group as illustrated in Figure 7; i) that the employer had no choice legally, ii) wanting to retain flexibility over the agreement and iii) that the outcome was inevitable. The no-choice and inevitability perceptions would appear to support the argument that the new provisions exert a wider ‘shadow’ effect. As Figure 8 indicates, the three most significant factors for the statutory group not going for a semi-voluntary agreement were: - i) that the potential value added by the trade union remained unclear, ii) that a ballot was wanted to legitimise any recognition and iii) that it wasn’t clear that workers wanted the applicant union.

Figures 7 and 8: factors behind employer’s decisions to take semi-voluntary or statutory routes to recognition – accumulated weighted rankings.

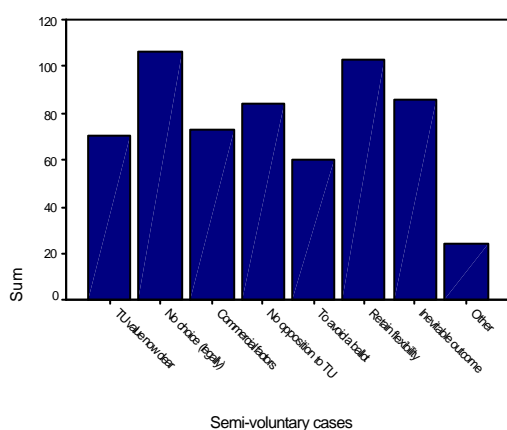


Fig 7.

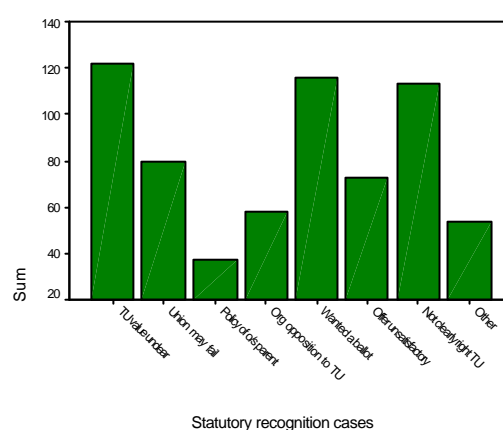
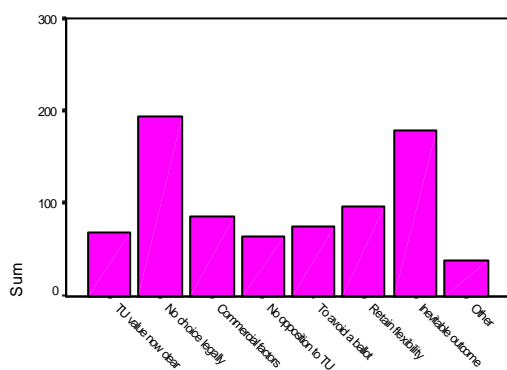


Fig 8.

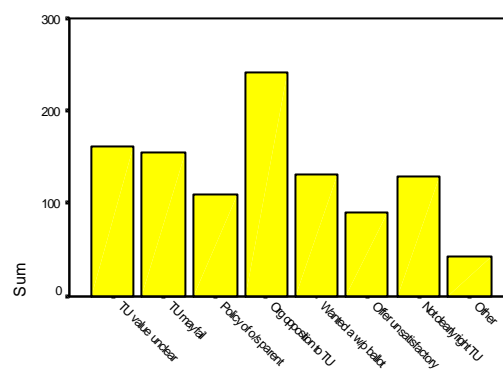
Trade unions generally shared the employers’ views of why semi-voluntary recognition was agreed (Figure 9 below) but the union perception of the factors influencing employers in the statutory group is markedly different as illustrated in Figure 10 (accumulated weighted rankings).

Figures 9 and 10: trade union perceptions of employer’s decisions to take semi-voluntary or statutory routes to recognition – accumulated weighted rankings.



T.U. semi-voluntary cases

Fig 9.



T.U. Statutory cases

Fig 10.

Employers were less inclined than the unions to accredit their decisions to organisational opposition to trade unions in general, they appear more likely instead to attribute their unwillingness to enter into semi-voluntary agreements to uncertainty over the value a union can add. This is recognised by unions in their responses, along with an acknowledgement that the union may fail to demonstrate sufficient support (at ballot or otherwise). However it is also significant that data provided by the unions on their membership at the time of the CAC application indicated that the unions generally had a greater membership density in the semi-voluntary than in the statutory cases, though employers were often not in a position to accurately estimate union membership and had a tendency to underestimate it or to believe that their workers could be influenced to maintain the status quo. This was the case even when, as in CrispCo and TextileCo, the employer had run in-house ballots which showed a clear majority in support of the union’s claim. The attitudes of employers at interview reflected the difference in perception between employers in the two groups concerning estimates of trade union support:

“It went to the CAC and they ruled in favour of the union and that was about the point when there wasn’t a lot of point in fighting this. We felt they probably had the numbers if the factory floor was treated as a unit, so we stopped resisting at that point.” General Manager BuildCo (Semi-voluntary agreement).

“We couldn’t come to a voluntary agreement, the union put it in writing that they were going down the statutory route, so of course the directors said ‘we’ll go down the statutory route then, we’ll oppose it on the grounds that they couldn’t get 50%’.” HR Manager TextileCo (Statutory recognition).

V. The content and nature of recognition

Where a semi-voluntary agreement has been reached or where the CAC issues a declaration granting recognition, the parties then have 30 days to negotiate and agree a bargaining procedure. The CAC sends to each party a copy of the statutory model for recognition and the specified method for collective bargaining as laid out in Statutory Instrument Order 2000. The Trade Union Recognition (Method of Collective Bargaining). If the parties fail to reach agreement, even with CAC assistance, the CAC will determine the method of bargaining procedure and has flexibility to depart from the specified method to the extent it thinks

appropriate. The specified method includes the setting up of a Joint Negotiating Body (JNB), time off for union representatives to prepare for and attend JNB meetings and facilities for union representatives such as meeting rooms and word-processing facilities. As noted earlier, recognition under the statute is for determination of pay, hours and holidays. The content of recognition agreements shows some significant differences between the two routes to recognition, as illustrated in Figures 11 and 12.

Figs 11 and 12: Matters included in recognition agreements as reported by employers.

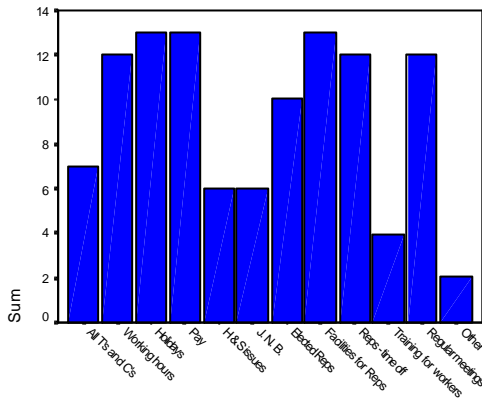


Fig 11. Semi-voluntary cases (n=17)

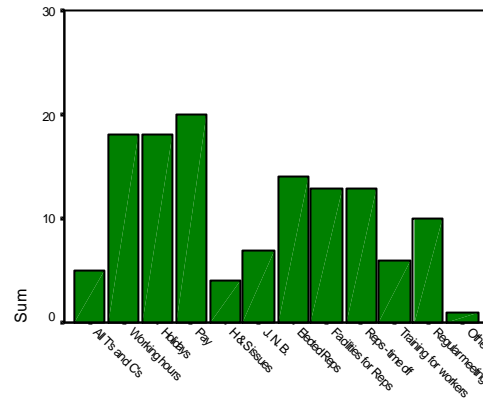


Fig 12. Statutory cases (n=20)

The survey results indicate that in semi-voluntary recognition it is more likely that all terms and conditions will be included, as are health and safety matters and regular union/management meetings when compared to statutory recognition cases. This suggests that employers who are compelled to recognise the union by CAC declaration continue their opposition into the agreement negotiation phase, though this is not always the case. It is also clear that in the majority of semi-voluntary cases the parties generally agree to the inclusion of more than the statutory minimum which is something of a paradox as they indicated that ‘retaining flexibility’ was a key factor in going down this route (Fig 7 above). There was however evidence of employers using the statutory minimum as a bargaining condition to granting semi-voluntary recognition:

“When the union put forward their proposal for the agreement they wanted it to cover everything. They wanted to negotiate on sick pay and all this, we kicked all that out, we just stuck to the basics. They didn’t like it, they pushed and pushed and in the end we said forget it, that’s what we are prepared to do.” MD PartCo (Semi-voluntary).

Around 50% of all the employers in the sample group said the statutory model for recognition provided a starting point in developing the final recognition agreement, though there were differences in the process by which the terms were negotiated, as shown in table 9 below:

Table 9. Methods of negotiating the recognition agreement.

Method	All Employers		Semi-voluntary		Statutory	
	No.	(%)	No.	(%)	No.	(%)
The trade union provided its standard format to which the employer agreed.	0	(0)	0	(0)	0	(0)
The trade union provided its standard agreement which was agreed after negotiation and amendment.	19	(51)	9	(53)	10	(50)
The employer proposed a format to the union which was agreed.	1	(3)	1	(6)	0	(0)
The employer proposed a format which was agreed after negotiation and some amendment.	14	(38)	4	(23)	10	(50)
Other	3	(8)	3	(18)	0	(0)
Total	37	(100)	17	(100)	20	(100)

No employer in the sample accepted a standard union proposal without negotiation and amendment. Employers in the statutory group were more likely than their counterparts to propose an agreement on their own terms in the first instance.

Recognition in operation

The statutory model sets an expectation of negotiation being launched within three months of recognition and that it will take place at least on an annual basis thereafter. Nearly three quarters (70%) of employers reported that they had conducted negotiations with the trade union since recognition. There was no difference according to whether recognition resulted from semi-voluntary agreement or statutory declaration. The significant minority who had not negotiated with the union since recognition can be accounted for by the fact that many of the recognitions in question were comparatively recent. In a few cases trade unions reported that employers were resisting reaching agreement on the method of bargaining, even to the extent of not negotiating the terms of the agreement following a CAC declaration in favour of recognition:

“The company agreed that we would simply attempt to negotiate an agreement but they’ve got not the slightest intention of doing so”. Regional Officer GPMU

The unions in these cases have the right to return to the CAC but are reluctant to do so due to a perceived weakness in its enforcement provisions.

Where negotiations had taken place since recognition there was a greater incidence of full-time union official being involved in statutory cases than where semi-voluntary recognition had been agreed (table 10 overleaf).

Table 10. Trade union participation in negotiation following recognition.

Who represented the union in the negotiations?	% of all negotiating	Semi-voluntary %	Statutory %
Workplace elected union representatives only	19.3	25.0	14.3
Full time union official not based at workplace only	23.1	25.0	21.4
Both	57.6	50.0	64.3

The expected frequency of meetings between workplace based union representatives and management representatives also gives an indication of the differing nature of the relationship according to the extent to which recognition was by agreement or imposed (table 11). In nearly 65% of semi-voluntary cases the employer expects to meet the workplace union representative either monthly or quarterly with less than 25% meeting only on request. This compares with just 20% meeting monthly or quarterly in the statutory group and with 55% meeting annually or on request only. This supports evidence provided from union representatives at interview that some employers deliberately undermine the potential for a good working relationship by having as little contact as possible with the union.

Table 11. Employer's expected frequency of management and trade union meetings.

Expected meeting frequency between union and management	All Employers		Semi-voluntary		Statutory	
	No.	%	No.	%	No.	%
Weekly	0	(0.0)	0	(0.0)	0	(0.0)
Monthly	7	(20.0)	6	(35.3)	1	(5.0)
Quarterly	8	(22.9)	5	(29.4)	3	(15.0)
Half-yearly	5	(14.3)	2	(11.8)	3	(15.0)
Annually	2	(5.7)	0	(0.0)	2	(10.0)
On request only	13	(37.1)	4	(23.5)	9	(45.0)

Employers were also asked to indicate the effect of trade union recognition on industrial relations in the workplace as far as the specific bargaining unit was concerned. The purpose of questioning in this area was to understand whether, as had been claimed, recognition under a statutory process was an unlikely harbinger of good industrial relations (IDS 685:2000). Given the degree of animosity in some instances prior to recognition the results were more positive than may have been anticipated (table 12).

Table 12. Effect of recognition on industrial relations in the workplace.

Effect on industrial relations in the workplace	All Employers		Semi - voluntary		Statutory	
	No.	(%)	No.	(%)	No.	(%)
Significantly worse	4	(10.8)	1	(5.9)	3	(15.0)
Slightly worse	6	(16.2)	3	(17.6)	3	(15.0)
About the same as before	22	(59.5)	10	(58.8)	12	(60.0)
Slightly improved	3	(8.1)	2	(11.8)	1	(5.0)
Significantly improved	1	(2.7)	1	(5.9)	0	(0.0)
Not given	1	(2.7)	0	(0)	1	(5.0)
Total	37	(100)	17	(100)	20	(100)

A minority of cases in both groups reported that industrial relations had got slightly or significantly worse. This was for a variety of reasons including the perceived inappropriate behaviour of shop stewards and occasions where the union was threatening industrial action over pay or other issues. Employers in some instances displayed a naïve handling of collective employee relations by failing to distinguish between consultation and negotiation with trade union employee representatives and the wider workforce. For example, at AutoCo the employer was able to introduce changes to working arrangements for all workers including non-union members on the strength of a ballot of union members alone. This proposed change had previously been rejected by the workforce prior to union recognition. The dissatisfaction this caused among the non-union workers was initially blamed on the union, though AutoCo acknowledged that the issue had, on hindsight, been mishandled by the management. At HealthCo concerns were raised about the possibility of ballots of union members alone determining outcomes for the whole workforce:

“ So we ended up in the crazy situation where 22 out of 85 had voted for it, which is only 25% of the workforce and the other 75% of the workforce are very much against it. For a while we had uproar over it...the mistake we made was that we thought they'd be involved in the vote in some way and they would take everybody, not realising that they were just going to take the union people and so what we should have done was consulted them at an early stage and now we've drawn up a procedure to do that in the future.” Company Secretary AutoCo.

“I'd say we're down to something like membership at about 40% now which is a substantial drop from where it was. Next time if we get to the pay round and we get 51% say they don't want to accept it, that means we've got around 80% of the workforce who, well maybe they would accept it, 20% saying they won't and we're in the position where the pay round has been rejected. I think at that point I would have some sort of unofficial vote with the rest of the people.” H.R. Manager HealthCo.

With a small minority suggesting that industrial relations had improved we are left with the conclusion that for most employers things had not changed very much. The comments of one interviewee however suggest that this should not necessarily be seen as an indication of good relations:

“Well it has always been adversarial, so it's still adversarial, nothing's really changed in the fact that the same group of union activists is still anti the company.”
H.R. Director DataCo

For a number of employers, particularly those who had operated a union free policy for many years, the CAC declaration was taken as a personal sleight. The CAC was thus also the target of blame for the perceived unfavourable outcome:

“As an organisation we felt that the CAC process was to facilitate the election of the trade union rather than properly arbitrate on the operation of a neutral procedure. I have heard similar comments from other employers. I suspect that CAC panels are staffed with 'Industrial Relations' specialists.” Questionnaire comment from employer – statutory recognition.

“The Panel ignored a request for a secret ballot, which was signed by 95% of members in the bargaining unit. The Company would have willingly embraced the union if the bargaining unit had voted in the majority, however the Panel chose to use the ballot taken in a pub.” Questionnaire comment from employer - statutory recognition case where a petition was organised by the union in a pub and presented to the CAC as evidence of support

“In all honesty he took it almost as a personal insult that he’d (M.D.) managed for 30 years and we had a good working relationship, and why were the unions now needed?” General Manager BuildCo (semi-voluntary).

A further indicator of the effect of recognition is provided by a question asking respondents how they would characterise the current relationship between themselves and the trade union in question. Three options were given; partnership/co-operation, mutual respect/different goals and adversarial/conflict. In some cases ‘partnership’ agreements were specifically sought by employers looking for terms that they could sell as beneficial to shareholders and employees as well as the union. In other instances however partnership arrangements were flatly rejected by employers:

“Of course what we didn’t want to have was the CAC type agreement, we wanted a partnership, so we then had to back-peddle fairly quickly and get some stuff in there that we wanted in there.” H.R. Manager FlightCo (Semi-voluntary recognition)

“They wanted a partnership, they were very aggrieved when we said no. They thought we were being really difficult and we pointed out to them, we said, we always fought any sort of agreement, why should we now go into any sort of partnership with you?” HR Director DataCo (Statutory recognition following ballot)

Twenty five percent of the employers indicated that their relationship with the union was adversarial (table 13). The percentage of adversarial relationships was higher in the statutory group of employers than in the semi-voluntary group; hardly surprising given the degree to which employers had often sought to exclude the union. More positive for all concerned was the high percentage of employers in both categories that described the relationship as either partnership/co-operation or mutual respect/different goals. These figures indicate that the statutory recognition process is not an automatic recipe for poor relationships between employer and union.

Table 13 Current relationship between employer and trade union.

Relationship	All Employers		Semi Voluntary		Statutory	
	No.	(%)	No.	(%)	No.	(%)
Partnership / co-operation	11	(30.6)	6	(35.3)	5	(26.3)
Mutual respect / different goals	16	(44.4)	8	(47.1)	8	(42.1)
Adversarial / conflict	9	(25.0)	3	(17.6)	6	(31.6)
Total	36	(100)	17	(100)	19	(100)

During interviews, employers gave various accounts of the value of having a recognised union that varied from highly positive through the ambivalent to the outright hostile:

Oh enormous benefits, the most obvious and noticeable thing is that all the heat has gone out of the employee relations climate...things are being solved at the lower levels of the organisation by sensible discussion.” H.R. Manager FoodCo. (Semi-voluntary agreement)

I think they’ve highlighted issues. I think there’s an acceptance here that while we thought we were very good with health and safety that we need to push it on a bit. That’s been highlighted by the union, which I think has got to be positive.” H.R. Manager HealthCo. (Statutory agreement)

“I think the staff are happier to be fair.” H.R. Manager BankCo. (Statutory agreement)

“We haven’t had regular meetings but in my mind it’s very little different to the works committee.” General Manager BuildCo. (Semi-voluntary agreement)

“They’ve been quite good at giving me an insight into what’s really happening out there, and ok, you can argue that if they tell you one thing, halve it and it’s probably nearer the truth.” H.R. Director NewsCo. (Statutory agreement)

“All I see is the irritation of having to negotiate each year on pay, hours and holiday. It will be an irritation to the Human Resources Department. I don’t see anything else changing.” H. R. Director DataCo. (Statutory agreement)

“Just another piece of red tape helping to strangle UK businesses”. M.D. PartCo (Semi-voluntary agreement)

In the seven cases where the employer had previously de-recognised a union in the bargaining unit, four employers described the current relationship as one of mutual respect/different goals, three described it as adversarial/conflict and none as a partnership. There was no clear link between the union involved and the eventual relationship. At each end of the spectrum, partnership relationships were reported by employers associated with recognition of the T&GWU, POA, ISTC, UNIFI and Amicus AEEU while adversarial relationships were associated with the T&GWU, GMB, Amicus AEEU and GPMU.

VI. Conclusion

As noted, just under 7000 employees are covered by semi-voluntary recognition agreements and statutory recognition awarded by the CAC in the cases examined in this research. But this is just the tip of the iceberg. Without question the new statutory provisions have had a positive impact for trade unions in terms of the number of new voluntary recognition agreements that are being signed outside the use of the CAC provisions. Although the research was not a direct test of a ‘shadow effect’, the findings appear to support the argument that a major impact of the ERA comes from the way it influences employers toward granting recognition without unions having to make full, or indeed any, recourse to the CAC. In the present research all twenty-six interviewees, both employer and union, confirmed that without the statutory provisions there would have been no prospect of recognition on a wholly voluntary basis. Employers had enjoyed a period of twenty years where they were able to exercise management prerogative without significant legal challenge from third parties such as trade unions. On the realisation that a recognition application was imminent they sought information and assistance from various sources including law firms on how to maintain their position and remain union free. They justified their opposition predominantly on the basis that unions would add no value or that they were not convinced their workers wanted union representation. At the same time such opposition is perceived by unions to be fuelled by organisational opposition to unions on principle. Under the threat of a statutory recognition claim some employers have responded using a number of well established union substitution or suppression techniques such as the setting up of works councils or threatening to move work to other non-unionised parts of the organisation. While these approaches were unsuccessful in the sample group, which consisted only of cases where recognition was secured, there is anecdotal evidence from union participants that they have been successful in those instances where the union has lost a CAC organised ballot.

Although the majority of employing organisations had been in operation for more than twenty years, less than one in five had previously recognised a union in the proposed bargaining unit and only a minority had any formal contact with a union prior to the change in recognition provisions. In many cases employers have been surprised that they had been targeted for a recognition campaign, though they could trace the origin of the campaign to a triggering event which had led to employee dissatisfaction. Some employers expressed negative views about unions in general, based on previous bad experiences or on the belief that recognising a union would lead to the industrial relations climate of the 1970's and 1980's.

There are a range of factors which lead employers in recognition claims either to resist or take the semi-voluntary route. These factors appear related to the employer's degree of objection to unions on principle and their desire to strategically use the ERA provisions as a negotiation tool. There were three main groups of employers identified in the research. Firstly, employers who do not hold anti-union views who tend to concede semi-voluntary agreements once support for the union becomes apparent and the result appears inevitable. For employers with a paternalistic management approach support for a union creates a sense of being let down by their workers. For other employers the ballot provisions have simply provided a legitimising mechanism that clears the air and allows negotiations to quickly progress. In some instances local management have taken this route to satisfy overseas owners, on the basis that they did what they could to resist, but UK law had to be obeyed. Secondly, some employers with a greater degree of antipathy toward the union tactically concede to a semi-voluntary arrangement as a means of maintaining greater control over the eventual content of the agreement. Finally, employers with the greatest antipathy challenged the union at every stage and continued until (and sometimes beyond) the declaration by the CAC that the union was recognised.

Employers on the whole however have not displayed overtly anti-union attitudes or behaviours to any great extent and most recognition agreements include more than the statutory minimum, even in cases where the employer has gone through the whole ballot procedure. However, anti-union attitudes may be cloaked by arguments that unions do not add any value or that the wrong union had made the application, and for some employers in the sample the prospect of recognising a union was never going to be acceptable. They did what they could to block the application at every turn and continued this stance post-recognition, though there was little to suggest that American-style 'union-busting' activities were considered as a serious option.

For a host of reasons relationships following recognition are somewhat mixed though in the main more cooperative than may have been anticipated. Employers who did not hold strongly anti-union attitudes were quick to acknowledge that following recognition a sense of puzzlement prevailed amongst the management over 'what was all the fuss about'. For those with strongly anti-union views however there was little prospect of any union being able to demonstrate 'the value that it could add'. The best indications of employer/union relations are found not in which union is involved but in the overall content of the recognition and in the frequency of union/management meetings. As both of these tend to be largely determined by the employer, they are in this sense primarily responsible for the quality of the relationship with the union.

All of the cases in this research were less than two years old, with many less than a year, and as such the relationship between the parties had often not been severely tested. It would be interesting to understand how the relationships between employers and trade unions develop over time, particularly as unions seek to bring their members the advantages they have promised. For the majority of cases studied here the effect of recognition appears to suggest that the pragmatic spirit of voluntarism, with a preference for agreed rather than legally imposed solutions (so long seen as an essential part of UK industrial relations landscape)

appears to have informed employer attitudes and behaviours; much no doubt as those drafting the legislative provisions would have hoped.

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