

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

Prepared by Sonia McKay and Sian Moore (Working Lives Research Unit)
and Acas Research and Evaluation Section

This research study examines the role and impact of Acas in trade union recognition processes following the introduction of the Employment Relations Act 1999. It describes the perceptions and strategies of employers and trade unions at key stages of voluntary and statutory processes, and provides new data on post-recognition outcomes relating to collective bargaining, union-management relationships, and the role of workplace representatives.

Main Findings

- Acas plays three key roles in the resolution of recognition claims. Acas conciliators provide information and advice to employers on voluntary and statutory recognition processes and options available within this; they facilitate membership checks or ballots to verify support for recognition; and they conciliate disputes over bargaining units and union access to workers. Where the voluntary route to recognition is taken, employers ensure that similar 'tests' of support were used to those used in the statutory procedure.
- Where Acas provides training for managers and unions on their new roles under recognition, this has a positive impact on workplace relations. But most managers and representatives had not received training and this hindered the development of management-union relations, as well as reducing representatives' effectiveness and credibility with managers.
- Employers and workplace representatives were positive about the gains stemming from recognition in terms of improved worker voice, more formal channels of communication and representation, and more 'structured' workplace relations and policies.
- 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. There was also much evidence that Acas' involvement created the conditions for the development of positive relationships, and limited the potential for conflict both during and after the recognition process.

Aims and Research Methods

Since its inception in 1975, Acas has played a central role in settling claims for trade union recognition. The enactment of the Employment Relations Act 1999, which includes new procedures for recognition, has led to an increase in demand for Acas conciliation services in resolving recognition disputes.

In 2004, Acas commissioned research to examine the role played by Acas conciliators in recognition processes and to provide new data on post-recognition outcomes relating to employment relations, pay bargaining, and the role of union representatives in the workplace.

The research drew on nine case studies of organisations across Britain where Acas had played a role in resolving a recognition claim. Exploratory interviews with conciliators uncovered four categories of employer response to union claims for recognition and cases were selected from within these categories. The study involved 26 interviews with Acas conciliators, managers, and trade union full-time officials and workplace representatives, carried out in mid-2004.

The background leading to the recognition claim

The route taken by employers on receiving a claim for union recognition was influenced by three key factors: advice provided by external bodies such as employers' organisations; changes in company management, which often led to a change in management attitudes towards unionisation; and the values and attitudes of managers at different levels within the organisation.

The cases were evenly split between those where the union had been derecognised in the past but where some employees remained unionised, and the change in law provided the impetus for re-recognition; and those where there had been no previous recognition but where a small number of workplace-based union members recruited in the workplace and instigated a recognition claim. In only one case had managers attempted to deter a union activist from unionising the workforce.

In all of the cases, the union aimed to secure a voluntary recognition agreement and to avoid the statutory route if possible. Four cases did however eventually go through the statutory Conciliation and Arbitration Committee (CAC) process. In general, the unions approached the employer for recognition once they had majority membership, although in several cases they approached employers with less than 50 per cent membership, mainly because of difficulties recruiting and retaining members due to high labour turnover.

In around one half of cases, managers actively decided to avoid going down the statutory route. They did this in order to: avoid what could be a protracted legal procedure; protect workplace employment relations from what might be a conflictual process; and to retain some control over the recognition process and the content of the eventual agreement. Managers were insistent however that the majority of workers were in favour of union recognition, as indicated by ballot. 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.

In the remaining cases, the union referred the case to the CAC for determination of the recognition claim. In two cases the union believed the employer had no intention of concluding a voluntary agreement, leaving no alternative but the statutory route. In another two cases management had not been initially hostile to recognition and there had been attempts to conclude voluntary agreements. However, disagreement on the proposed bargaining unit meant that the union subsequently referred the case to the CAC.

The nature of Acas' involvement

The point at which Acas was approached in a recognition case influenced the nature of the conciliator's involvement. Acas played three key roles in recognition cases. The case studies indicated that these three roles – labelled information, instrumental, and conciliation roles – constitute 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 or of unionisation for the organisation, and setting out employers' options in what is often uncharted terrain. For unions, the value of Acas at this point was in supplying independent verification of the legal process to employers.

Where the conciliator was asked for assistance following an initial 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. High levels of satisfaction with these services were reported, with both parties valuing Acas' neutrality and professionalism. Employers ensured that the thresholds used to determine majority support for recognition within these voluntary processes mirrored those set out in the statutory procedures.

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 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.

Formulating agreements

Most union officers and activists made it clear that they saw it as their job to negotiate the terms of the procedure agreement, which establishes the scope and structure of union representation and the range of issues over which collective bargaining takes place. Unions were reluctant to involve Acas in this stage of the recognition process, perhaps because they perceived that their credibility with the employer and their membership related to their negotiating skills.

In several cases where Acas conciliators were invited to assist or advise on the drawing up of a procedure agreement, their role involved providing examples of procedure agreements and facilitating talks leading to the conclusion of an agreement. There was evidence that conciliators' involvement may assist the parties to conclude a procedure agreement more speedily than would have been the case otherwise, and employers with no previous experience of union dealings particularly welcomed such assistance.

In most of the cases the scope of bargaining was limited to pay, hours and holidays, again reflecting the statutory procedures. Unions did not generally challenge this restriction, but believed that the scope of bargaining would broaden as their relationship with management established itself. Indeed, following recognition, there was active bargaining over a wide range of issues, even in cases where the procedure agreement limited bargaining to pay, hours and holidays.

Post-recognition outcomes

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, as well as their credibility with managers.

However where joint training had been delivered by Acas, 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.

Formal and informal lines of communication between union representatives and managers had been established and representatives genuinely felt that they had influence over workplace policies and that their views were taken into account. Active pay bargaining by workplace representatives was taking place in almost all cases, along with bargaining over a wider range of issues. Representatives were generally satisfied with the level of support and assistance they received from management and the wider union.

For representatives the benefits of recognition were perceived not just in terms of material gains, but in terms of greater 'voice' and security in the workplace, and an appreciation that more formal procedures placed limits on management prerogative.

On the whole, employers were also positive about the gains stemming from recognition. They too emphasised benefits stemming from more 'structured' workplace relations and policies, improved workplace morale resulting from greater employee voice, and more formal channels of communication and representation. Several managers expressed concerns about representation for non-union employees, which in some cases had led them to establish dual channels of representation.

What 'added value' does Acas bring to recognition processes?

Positive perceptions of the benefit of involving Acas in the recognition process were evident even where the parties resorted to the CAC, and where recognition was not agreed. In most of the case studies, employers and union officers had little or no contact prior to the recognition claim. Yet despite this, relationships improved through the process of resolving the recognition claim, particularly where management had initially been apprehensive about recognition. This was due to conciliators' skills in establishing rapport and a relationship of trust with both parties, allowing them to promote dialogue.

Acas was perceived as a neutral body and this impartiality was valued by both parties. The characteristics of conciliators particularly valued by the parties were their ability to offer independent advice and support and the breadth of their experience in dealing with recognition claims and employment relations matters more generally. Without assistance from Acas, most parties felt that the process would have been more drawn out and potentially more conflictual. 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 union-management relationships, and limited the potential for conflict both during and after the recognition process.

Conclusions

The case studies profiled in this research yield rich insights into recognition processes and outcomes, and highlight the important role of Acas as information-provider, facilitator of membership checks and ballots, and conciliator of disputes arising throughout the process. Conciliators also play a crucial function in bringing unions and employers together and encouraging dialogue, a process which provides a foundation for positive ongoing relationships.

This research summary summarises the findings of Acas' Research Report 03/05. For a full copy of this report, please visit <http://www.acas.org.uk/index.aspx?articleid=405>