

Industrial Court

Statutory
Recognition

Guidelines for the
Suitable Independent
Person



August 2006

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INTRODUCTION

- 1.1 Under Schedule 1A to the Trade Union and Labour Relations (NI) Order 1995 (enacted in the Employment Relations (NI) Order 1999 and amended in the Employment Relations (NI) Order 2004) trade unions may apply to the Industrial Court (the Court) for the legal right to be recognised by an employer for collective bargaining over pay, hours and holidays, in respect of a group of workers in a particular bargaining unit. The Industrial Court is a Tribunal Non-Departmental Public Body with statutory powers. The acting Chairman is Mr Barry Fitzpatrick. It has been given statutory responsibility to adjudicate in disputes over trade union recognition. Where this cannot be agreed voluntarily the Court's approach is informal and seeks to be problem-solving in line with its general duty under Paragraph 171 of the Schedule to 'have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace'. The Court's role with regard to trade union recognition forms the majority of its work. (For further information on this or the Court's other statutory duties please refer to the website at www.industrialcourt.gov.uk).
- 1.2 Determinations are made by a Panel of three Court Members and a Case Manager is appointed to assist each Panel. There are four stages to the statutory process:
- Acceptance;
 - Determination of the bargaining unit;
 - Whether to hold (and if so the conduct of) a ballot; and
 - Method of collective bargaining.

This guide outlines the process for the appointment of a suitable independent person (SIP), once an application for recognition has been accepted by the Panel, and what that role entails.

The Appointment of Suitable Independent Persons (SIP) on Recognition Applications

- 1.3 With effect from 24 July 2005 where an application is accepted by the Court, the union has the right under paragraph 19C of Schedule 1A to request the facility to communicate with the workers in the bargaining unit. The purpose of this is to give the union access to the relevant workers in the bargaining unit as soon as the union's claim has passed the initial stage and been accepted by the Court. For the union to gain access to this facility it must apply in writing to the Court, asking it to appoint a SIP. The Panel appoints a SIP to handle communications from the union to the relevant workers in the bargaining unit. The Panel selects the SIP from the bodies specified in the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (NI) 2004.
- 1.4 The Panel will appoint the SIP as soon as possible after the union's request. The respective roles of the SIP and the Court are set out at paragraphs 4.1 to 5.5.

1.5 Once the SIP has been appointed, its responsibility is to send the workers in the bargaining unit any information supplied to it by the union. The SIP will charge the union for this service. The union can continue to use this service until one of the following occurs:

- a) the union withdraws its application;
- b) the Court finds the application invalid;
- c) the union is declared recognised without a ballot (automatic recognition); or
- d) the Court informs the union of the name of the balloting organisation and the ballot arrangements. (The appointment of the QIP is a separate exercise but there is no bar to the SIP organisation subsequently being appointed by the Court to fulfil the QIP role).

The period from the date of the SIP's appointment to the first of the events above is referred to as the initial period and it is only within this period that the SIP facility can be used by the union. The Court will inform the SIP when the initial period, and therefore its duties, ends.

CONTACT DETAILS FOR THE INDUSTRIAL COURT

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Secretary:	Brian Patterson
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STATEMENT OF PURPOSE

- 2.1** The purpose of these guidelines is to:
- a) set out the process for appointing a SIP including the means by which the relevant organisations may provide estimates of costs to the Court in advance of appointments; and
 - b) set out the respective roles of the SIP and of the Court in recognition applications.
- 2.2** The guidelines apply to all the organisations named in the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (NI) 2004.
- 2.3** Following the principles laid down in this guide should help to ensure the smooth operation of the SIP procedure. The guidelines may be reviewed from time to time by the Court.
- 2.4** The Guidelines do not commit the Court to offer any business to any of the organisations concerned, or to create a contractual relationship between the Court and the SIP.
- 2.5** The requirements of the SIP are set out in full at Schedule 1A of the Trade Union and Labour Relations (NI) Order 1995, as amended in paragraphs 19(C) and 25(7)(a). The provisions of the Order as summarised in these guidelines are intended as a practical guide and should not be relied on as a definitive statement of the law.

DUTIES OF THE EMPLOYER

- 6.1** To co-operate in connection with providing information to the Court that will enable the SIP to fulfil its role.
- 6.2** To give the Court, within 10 working days starting with the day after being informed of the SIP's name and date of appointment, the names and addresses of all those working in the union's proposed bargaining unit. The Court will then pass these on to the appointed SIP. The employer also has the duty to give the Court the names and addresses of any workers joining or leaving the bargaining unit, as soon as is reasonably practical. If the bargaining unit changes as the result of an agreement between the parties or a Court decision, the employer must provide a list of the names and addresses of the workers in the changed bargaining unit. The Court expects that employers will take steps to ensure, as far as possible, that the names and addresses supplied are accurate.
- 6.3** If the Panel decide that the employer has failed to perform any of the duties above, they can order the employer to remedy the failure within a set timescale. If the employer does fail to comply with the order from the Court, providing the initial period has not yet ended, the Court will issue a notice to both parties confirming there has been a failure to comply with the remedial order. This order will spell out the consequences including that it may issue a declaration that the union is recognised.

TREATMENT OF SIP COSTS UNDER THE PROVISIONS OF SCHEDULE 1A

- 7.1** The costs incurred by the SIP are to be paid by the union. Where there is a joint application for recognition, the unions can decide between themselves how to apportion the costs or they can share them equally.
- 7.2** The SIP will send to the union an invoice stating the costs for its services.
- 7.3** The SIP's invoice for costs must be settled by the union in full within 15 working days (starting with the day after receipt of the bill).
- 7.4** In the event of the non-payment of the bill, the SIP is entitled to apply to the county court for an order enforcing payment (see paragraphs 7.6 to 7.9 below).
- 7.5** The costs of the SIP are limited to those costs wholly, exclusively and necessarily incurred in connection with the services of the SIP, such reasonable amount as the SIP charges for their services, and such other costs as the union (or unions) agree.

Right of the parties to appeal against costs

- 7.6** The union may appeal against the SIP's invoice for costs. The Case Manager will send a copy of the SIP's initial costs estimate to the union at the time of the SIPs appointment so that the union is aware of the expected costs. SIPs are asked to keep the union and the Court updated with any changes to the costs so that challenges to the final invoice are minimised.
- 7.7** Any appeal by a union against the SIP's invoice for costs must be made to an Industrial Tribunal within 4 weeks starting with the day after receipt of the SIP's invoice. Whilst there is an outstanding appeal the invoice issued by the SIP will not be enforceable.
- 7.8** The Industrial Tribunal will dismiss the appeal unless it is satisfied that:-
- a) The amount specified in the invoice as being the SIP's costs is too great, or
 - b) The share of the cost to be met by the appellant (where there is more than one union) is too great.
- 7.9** If the Tribunal allows the appeal it will amend the invoice and the amended invoice will be the amount to be paid by the union to the SIP.



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