

Industrial Court

ANNUAL REPORT
2009 - 2010



**INDUSTRIAL
COURT**

ANNUAL REPORT

2009/10

Industrial Court Annual Report 2009/10

This report on the activities of the Industrial Court for the period 1 April 2009 to 31 March 2010 was sent by the acting Chairman of the Industrial Court to the Department for Employment and Learning on 3 December 2010.

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Review of the year

Membership of the Court

Shortly after the period covered by this report the Chairman of the Industrial Court, Mr Eugene O'Loan, resigned from his position. As a result I have resumed the role of acting Chairman. I would like to thank Eugene for his valuable contribution to the work of the Court over the last two years and wish him all the best on behalf of myself and the members and staff of the Court.

Caseload

After a relatively quiet year in 2008/09, the Industrial Court received three new applications this year; two were recognition cases while the other concerned failure to disclose information, the first such application received by the Court since it was reconstituted in 2001. There was also an ongoing recognition case from the previous year at the start of the reporting period, *Unite and Dunbia (Northern Ireland)*, which resulted in a voluntary recognition agreement.

In the case of *the Union of Shop, Distributive and Allied Workers (USDAW) and North West Bookmakers Ltd (trading as "Ladbroke's")*, the union's proposed bargaining unit was the largest ever to be considered by the Industrial Court in terms of the number of locations where staff were employed, and one of the largest in terms of total employees within the bargaining unit. Having accepted the application, the panel instructed that a postal ballot should be conducted. An access agreement was agreed, under the auspices of the Labour Relations Agency. However, before the closing date for the return of ballots had passed, industrial action by Royal Mail staff resulted in a request from the Qualified Independent Person (QIP) to the Court to extend the date for the return of ballot papers to the QIP, to which the Court agreed.

The outcome of the ballot established that 99.1% of those voting had voted to support the proposal that the Union be recognised for the purpose of collective bargaining with the company. The number of votes supporting the proposal as a percentage of the bargaining unit was 46.6%. As all of the conditions under which the Court must issue a declaration in favour of recognition in accordance with paragraph 29(3) of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 were satisfied, the union was duly granted recognition by the Court on 16 September 2009.

In the case of *Unite the Union and Willowbrook Foods Ltd*, the application was accepted by the Court as having met all admissibility criteria. A confidential membership check was carried out by the case manager and a full hearing subsequently arranged. At the hearing both parties approached the Court and requested a period of adjournment to allow for a negotiated voluntary settlement, to which the Court agreed. However, before the adjournment period had elapsed,

the employer's representative informed the Court that the employer no longer wished to enter into a voluntary agreement with the union and so the hearing was rearranged.

At the rearranged hearing both parties were afforded an opportunity to present their case to the Court. The Court found that relations were quite poor between the employer and the union. The employer had a perception that the union had threatened its business and had been holding clandestine meetings with employees. The Court felt that this was not the case and that the employer's attitude was due to a lack of knowledge about trade unions and their role in industrial relations.

The hearing established that the majority of the workers in the bargaining unit were union members and, in the panel's experience, more workers were likely to become union members if the union was recognised. The Court felt that none of the three conditions in paragraph 22(4) of the Schedule were fulfilled and so, on 1 February 2010, the Court granted recognition to the union.

The Industrial Court received its first complaint of a failure to disclose information for collective bargaining purposes under Article 41 of the Industrial Relations (Northern Ireland) Order 1992. The complaint was referred to the Court by the Labour Relations Agency (LRA) and involved the Northern Ireland Public Service Alliance (NIPSA) and Magherafelt District Council. The referral stated that several conciliation meetings had taken place under the auspices of the LRA between the parties, but that the matter had remained unresolved.

The panel met with both parties at an informal hearing on 11 February 2010. The main purpose of the meeting was to help determine those matters which appeared, to the panel, to be relevant to the resolution of the complaint. There was one unusual issue which arose during the hearing regarding the possibility of the Court hearing evidence, at any subsequent full hearing, from officers of the LRA involved in the earlier conciliation meetings between the parties. The Court felt that such a matter would only arise if the employer sought to rely on any disclosure during the course of the conciliation process under Article 41 of the 1992 Order. As chairman of the panel hearing this case I wrote to both parties on 3 March 2010 and pointed out that, without prejudice to any such reliance, it appeared from the informal meeting that the employer was not intending to rely on any such disclosure and, as such, the issue of LRA officers giving evidence to the Court did not arise. I should add that the panel would have had to consider whether any reliance on disclosures made by either party in LRA conciliation processes would have been admissible.

At the subsequent full hearing on 30 March 2010 both parties initially asked for a short recess, then an adjournment, to allow for the implementation of a settlement agreed between them. The referral was formally withdrawn by NIPSA on 5 May 2010.

Legislative developments

There was one legislative development during the reporting period which has an impact on the work of the Industrial Court, the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (Northern Ireland) 2010. These Regulations modify the list of persons qualified for appointment to carry out a recognition or derecognition ballot arranged by the Court.

The Department for Employment and Learning's Employment Bill was one area of potential legislation with implications for the governance arrangements of the Court and was considered by the Court at its annual members' day.

Annual members' day

The annual members' day was held on 19th January 2010 in the Holiday Inn, Belfast. This annual event gives members a unique opportunity to meet and discuss the various cases the Court dealt with throughout the year; share experience and knowledge; undertake necessary training; and provide direction for the year ahead. This year the event gave members the opportunity to discuss details of proposed changes in the legislation under which the Court operates and also the appointment of new members to the Court.

As in previous years the opportunity was taken by the Industrial Court's Chairman, Mr Eugene O'Loan, to present the Court's annual report to the members of the Court and to officials from the Department for Employment and Learning.

Staffing

There was one change to the staffing of the secretariat during the reporting period, with the retirement in December 2009 of the Case Manager, Maria Cummins.

Although Maria was only with the secretariat for a short time, her work was greatly appreciated during what was a busy period for the Court. Maria will be missed, and I would like to take this opportunity on behalf of the Court and its staff to wish her all the best in her retirement.

The position of Case Manager has been very ably filled by Paul Cassidy, who has been with the secretariat as Head of Administration for a number of years.

I would, once again, wish to thank the officers of the secretariat for their excellent work during the course of the year.

Links with the Central Arbitration Committee

During the year the Industrial Court maintained its links with our sister body in Great Britain, the Central Arbitration Committee (CAC), and the Chairman and

members of the secretariat attended deputies' and members' meetings. The positive working relationship between the Court and the CAC continues to be an invaluable one and I extend my appreciation to the CAC and its staff for their consistent help and cooperation.

Your views

The Court is committed to continuing to provide a professional, effective and courteous service to its users. The feedback received from satisfaction surveys continues to be very positive, but we recognise that there can be no room for complacency and are constantly striving to improve the service. If you have any comments on the operation of the Court, please let us know. For more information, please see **page 20**.

Roles, objectives, targets and results

The Court's main role and corporate objectives are set out below. The following page sets out performance targets and measures and the degree to which these have been achieved. The single target not reached relates to the date of presentation of this report to the Department for Employment and Learning. Other targets were not only achieved but exceeded.

Main role

- ◆ Deal with statutory applications for recognition and derecognition of trade unions;
- ◆ Resolve disputes about the establishment and operation of employee information and consultation arrangements;
- ◆ Deal with statutory applications for disclosure of information for collective bargaining;
- ◆ Resolve disputes over the constitution of European Works Councils; and
- ◆ Provide voluntary arbitration.

Objectives

- ◆ To manage the statutory adjudication process dealing with trade union applications to the Industrial Court in an efficient, professional, fair and cost effective manner.
- ◆ To achieve outcomes which are practicable, fair, impartial and, where possible, voluntary.
- ◆ To provide a professional, courteous and helpful service to all who approach us. We aim to publish clear, accessible and up to date guidance and other information on our procedures and requirements and will answer enquiries concerning our work, although we do not offer legal advice.
- ◆ To provide an efficient service, and to supply assistance and decisions as rapidly as is consistent with good standards of accuracy and thoroughness, taking account of the wishes of the parties and the statutory timetables.
- ◆ To develop an Industrial Court secretariat with the skills, knowledge and experience to meet operational objectives.

Performance measures and targets (based on objectives)

Performance measure	Target	Achievement
Proportion of applications for which notice of receipt is given and responses sought within one working day	95%	100%
Proportion of written enquiries and complaints to receive a substantive reply within three working days (target: 90%) and the remainder to be acknowledged within three working days and a substantive reply within ten.	90%	100%
To produce and supply to the Department for Employment and Learning an Annual Report on the work of the Industrial Court in 2007-2008.	30/09/10	03/12/10

Membership of the Industrial Court 2009/10

Membership of the Court during the period 1 April 2009 to 31 March 2010 is recorded below.

Chairman

Mr Eugene O'Loan*

Deputy Chairman

Mr Barry Fitzpatrick

Members with experience as representatives of employers

Mr George McGrath

Retired Deputy Chief Executive, BT (NI)

Mr W F Irvine McKay

Retired Chartered Accountant and
Stockbroker

Mr Maurice Moroney

Retired Employment Relations
Manager, Ulster Bank Ltd

Members with experience as representatives of workers

Mr Joe Bowers

Retired Regional Officer, MSF

Mr Bob Gourley

Retired Regional Officer, USDAW

Ms Avril Hall-Callaghan

General Secretary, UTU

Mr Peter Williamson

Retired Irish Regional Secretary,
AMICUS

* Mr Eugene O'Loan resigned from the Industrial Court on 17 June 2010.

Annual Members' Day

The Industrial Court held its Annual Members' Day on 19th January 2010 in the Holiday Inn Hotel, Belfast.

This event provided members with an opportunity to meet and discuss the various cases the Court has dealt with throughout the year; share experience and knowledge; undertake necessary training; and provide direction for the year ahead. It also gave the Chairman and Deputy Chairman an opportunity to relay to members details of proposed changes in the legislation



Members of the Industrial Court and secretariat in discussion



From left to right: Alan Scott, Paul Lyons, Eugene O'Loan, Paul Cassidy, Barry Fitzpatrick, Alan Finlay

Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (Northern Ireland) 2010. This presentation provided an opportunity for detailed discussion amongst the members on Court policy and procedure.

The day also saw the Chairman present the 2008/09 Annual Report to the members of the Court and to Mr Tom Evans and Mr Conor Brady of the Department for Employment and Learning.

under which the Court operates and to discuss the appointment of new members to the Court.

As in previous years, during the morning the Chairman and Deputy Chairman gave an overview of the highlights of cases dealt with by the Court over the previous year. They also delivered informative presentations on the Department for Employment and Learning's Employment Bill, the Transnational Information and Consultation of Employees Regulations 1999 and the



Eugene O'Loan presents the Annual Report for 2008/09 to Tom Evans of the Department for Employment and Learning

Applications and case outcomes

The Industrial Court received the following applications in the named jurisdictions during the period 1 April 2009 to 31 March 2010.

Applications for recognition for collective bargaining purposes

PARTIES	CASE REF NO
USDAW and North West Bookmakers	IC41/2009
Unite the Union and Willowbrook Foods Ltd	IC42/2009

Referrals concerning failure to disclose information under Article 41 of the Industrial Relations (Northern Ireland) Order 1992

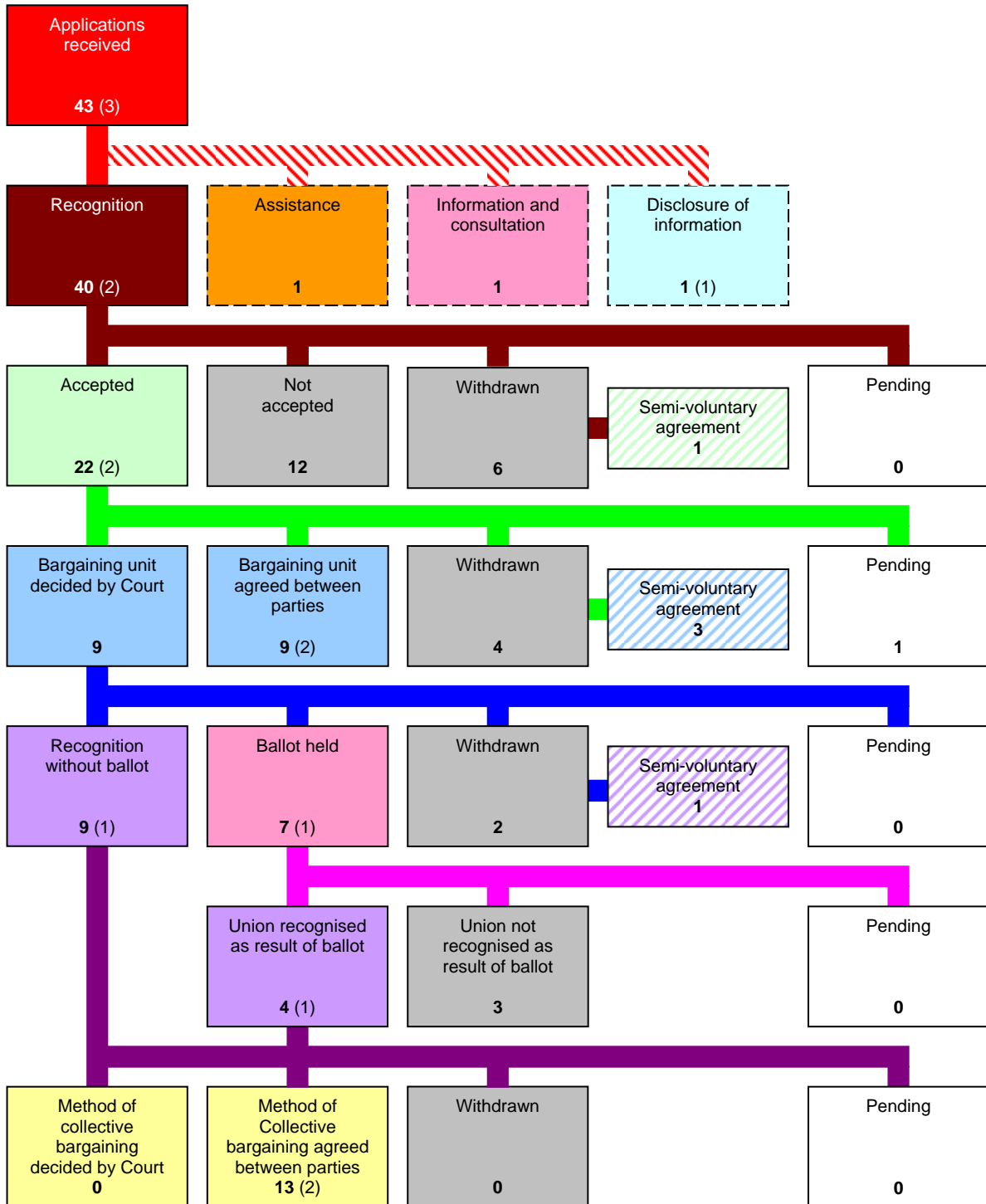
PARTIES	CASE REF NO
NIPSA and Magherafelt District Council	IC43/2010

The text of decisions relating to each application can be found on the Industrial Court's website: www.industrialcourt.gov.uk. Note that a decision may not necessarily be reached in the reporting year that the corresponding application was received.

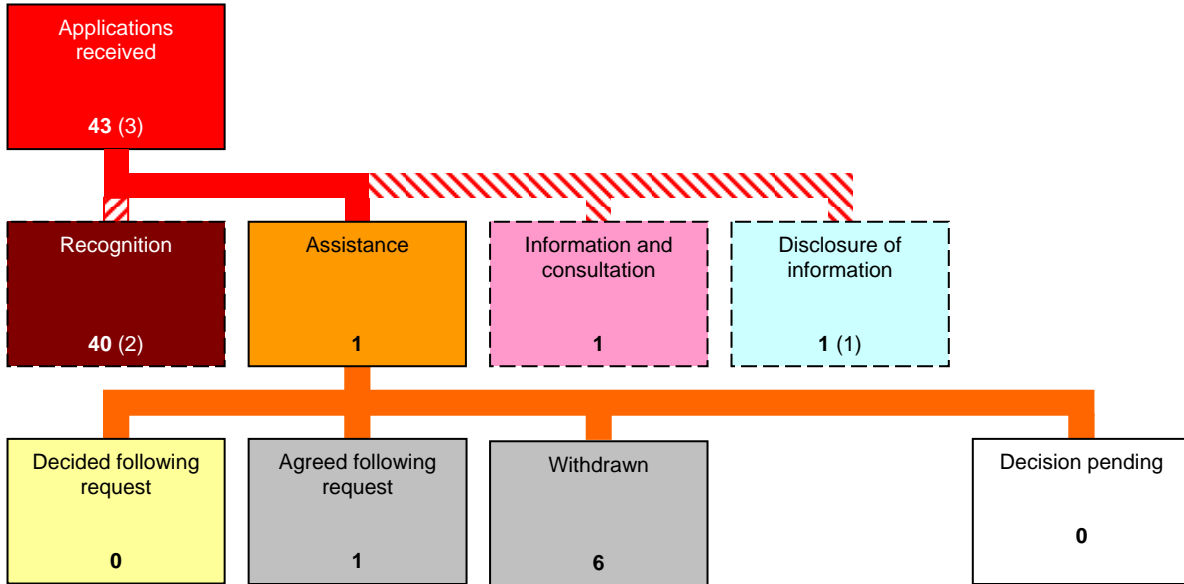
Accounts of each case may be found starting on **page 15**.

On the following pages are diagrams setting out the outcomes of all cases dealt with by the Industrial Court. Figures in brackets represent changes to total figures during the reporting year. Please note that Court records have been reviewed and that, as a result, the figures quoted do not in all instances tally with previously cited statistics.

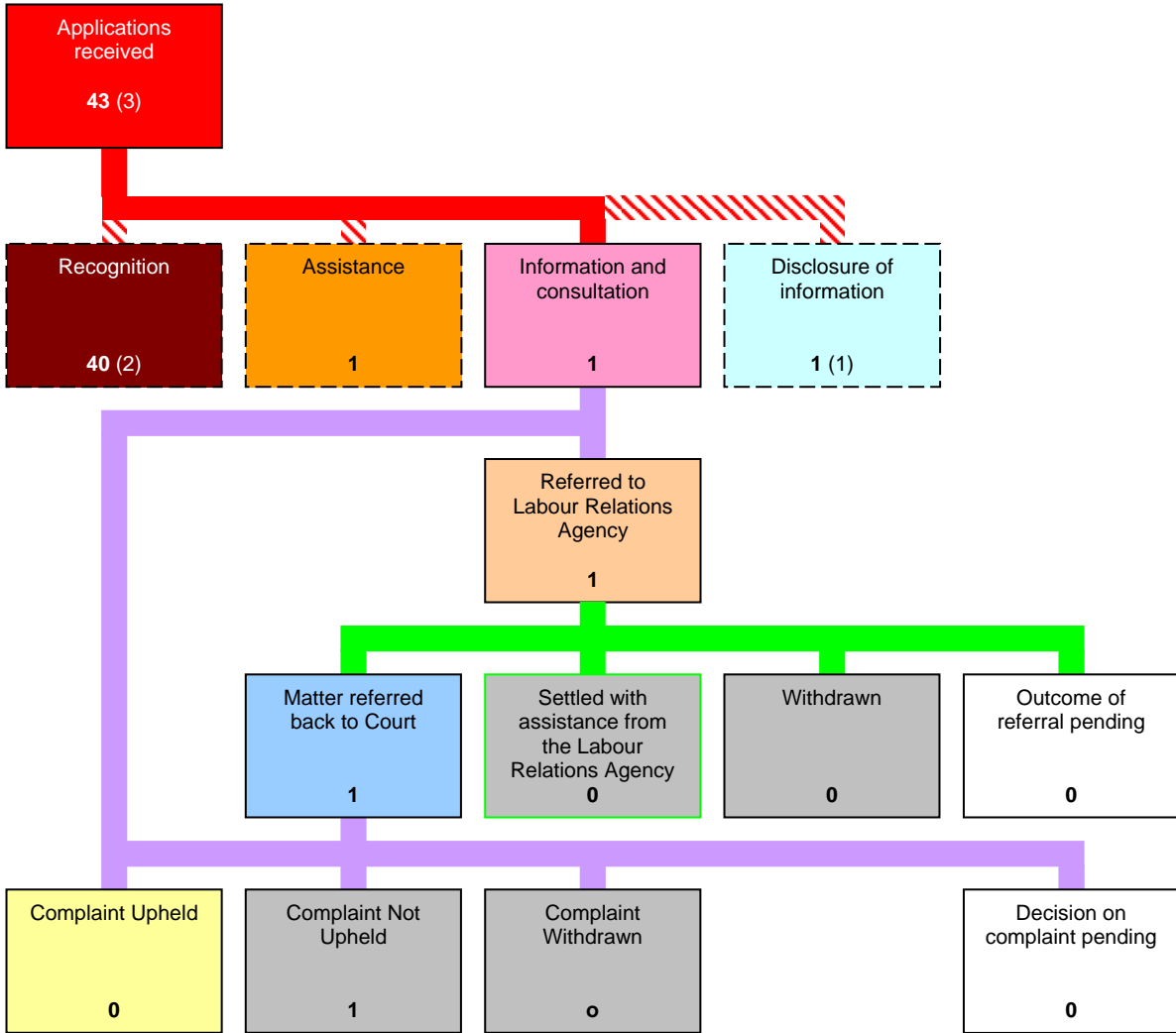
Applications for recognition



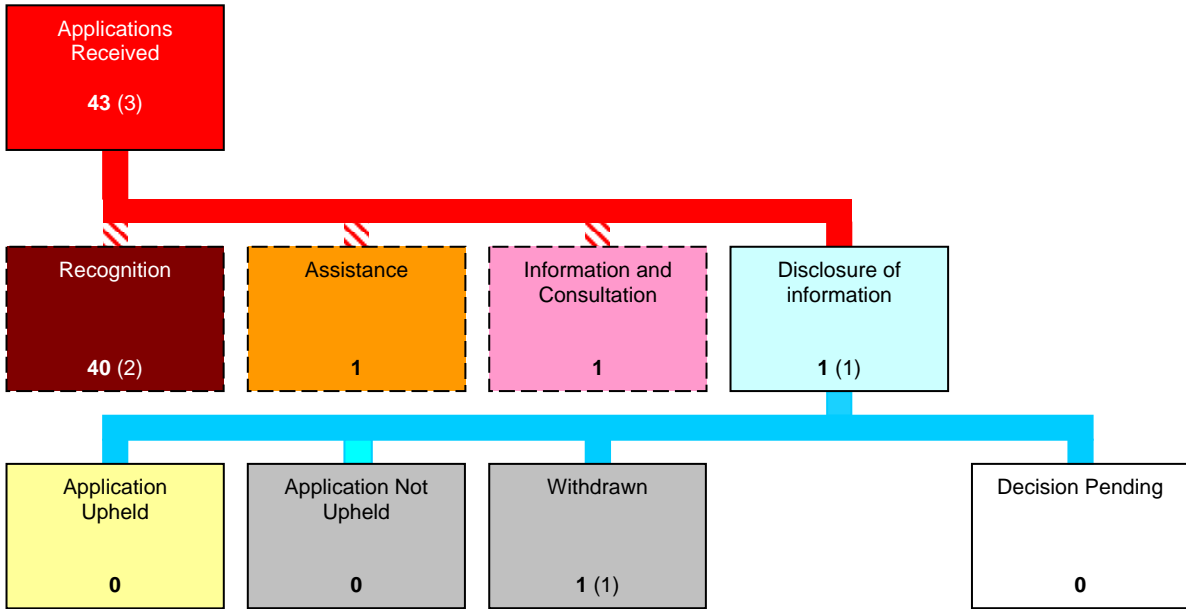
Applications for assistance



Information and consultation applications



Disclosure of information applications



Review of cases 2009/10

IC40/2008 – Unite the Union and Dunbia (Northern Ireland)

The Unite and Dunbia (Northern Ireland) case was ongoing at the start of the reporting period. The panel had decided to carry out a combined workplace and postal ballot and the ballot notice was to be displayed in English and five other languages, to reflect the varied ethnic background of the workforce.

A Qualified Independent Person was appointed to carry out the ballot on behalf of the Court but before the ballot could be held both parties informed the Court that a voluntary recognition agreement has been reached.

The Court subsequently acknowledged that, at the request of the union, no further action would be taken by the Court.

IC41/2009 – USDAW and Northwest Bookmakers Ltd

The Union of Shop, Distributive and Allied Workers (USDAW) submitted an application to the Industrial Court dated 7 May 2009 for recognition at North West Bookmakers (t/a Ladbrokes). The bargaining unit was described as, “*all staff employed by Ladbrokes in their betting shops in Northern Ireland, up to and including the job role/grade of shop manager*”. In order to assist the panel the Case Manager carried out a confidential membership/petition check. The Court was satisfied that the application was valid and admissible within the terms of Schedule 1A and duly accepted the application.

There was some dispute between the parties regarding the description of the bargaining unit but, after a period of negotiation, the parties agreed a suitable description, which was accepted by the panel. Written submissions were requested by the Court and, after they were received and considered by the panel, it was decided to conduct a postal ballot. A Qualified Independent Person (QIP) was duly appointed for this purpose. The QIP organised a postal ballot but, before the due return date had passed, industrial action by Royal Mail staff in London caused a backlog in the delivery of mail. The Court subsequently ordered the extension of the closing date for the ballot and the parties were notified.

The outcome of the ballot established that the majority of the workers voting, and at least 40% of the workers constituting the bargaining unit, supported the proposal that the union be recognised for the purpose of conducting collective bargaining in respect of the determined bargaining unit. Formal recognition was granted on 16 September 2009.

IC42/2009 – Unite the Union and Willowbrook Foods Ltd

The Court received an application from Unite the Union dated 7 July 2009 for recognition at Willowbrook Foods Ltd. The employer requested, and was granted, an extension to submit its response, which was then received by the Court on 23 July 2009. The bargaining unit was described as, “*all hourly paid operatives at the Killinchy and Newtownards plants of the company*”. The application was considered by a panel established to deal with the case and it was accepted on 24 July 2009.

The employer agreed with the union regarding the description; however there was disagreement over the total number of employees in the bargaining unit. The Court ordered that a membership check be carried out by the Case Manager. In order to assist in this process each party provided the Court with, amongst other requested items, a confidential list of workers/union members in the bargaining unit. A hearing was originally arranged for 19 November 2009, and subsequently rearranged for 1 December 2009 at the employer’s request, to consider the matter.

At the hearing the parties jointly requested an adjournment to allow negotiation towards reaching a voluntary settlement. The hearing was then adjourned by the Court and the parties were instructed to inform the Court on or before 12 January 2010 of the outcome of the negotiations. However in correspondence dated 7 January 2010 the employer’s representative informed the Court that the employer no longer wished to enter into a voluntary agreement with the union. The Court ordered the hearing to be reconvened on 26 January 2010.

At this hearing each party made a submission to the Court and, after considering the facts, the Court granted recognition to the union on 1 February 2010.

IC43/2009 – NIPSA and Magherafelt District Council

The Industrial Court received a referral from the Labour Relations Agency, dated 11 December 2009, regarding a complaint of a failure to disclose information for collective bargaining purposes under Article 41 of the Industrial Relations (NI) Order 1992. The complaint related to information that, it was alleged, had not been disclosed during collective discussions between the Northern Ireland Public Service Alliance (NIPSA) and Magherafelt District Council in relation to the closure of Greenvale Leisure Centre. The letter stated that several conciliation meetings had taken place but that the matter had remained unresolved.

A panel was established to consider the referral, the first of its kind to be received by the Industrial Court, and at a preliminary hearing on 22 December 2009 the panel agreed that the next step should be an informal hearing, arranged for 11 February 2010, between both parties and the panel. The purpose of this hearing was to help the panel determine the matters which appeared to be relevant to the resolution of the complaint.

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At the informal hearing both parties set out their positions before the panel. In turn, the panel set out the Court's role and provided information to the parties regarding its procedures. These points were subsequently set out clearly in a detailed background note issued to both parties by the Chairman on 3 March 2010. A date for hearing was fixed for 30 March 2010 and both parties were instructed to provide written statements to both the panel and the other party before the hearing.

At the hearing both parties asked the Court for a short recess to assist them in attempting to reach a voluntary agreement. The parties then requested an adjournment of the hearing, pending the implementation of a settlement agreed between the parties. This was granted by the Court.

NIPSA wrote to the Court on 5 May 2010 confirming that the terms of the agreement had now been provided to it by Magherafelt District Council and that the complaint should be withdrawn. The Council consented to this request and, as a result, the matter was formally withdrawn.

Resources

Membership of the Court

ROLE	NUMBER
Chairman and Deputy Chairman	2 ¹
Panel Members	7
TOTAL	9

Secretariat to the Court (part-time staff)

ROLE	NUMBER
Management/Operations	2 ²
Administration	2
TOTAL	4

Expenditure

COST RELATING TO	AMOUNT
Fees and expenses of Chairmen and Members	£20,299.28
Staff costs	£56,150.99
Other costs (including training, travel and accommodation)	£3,838.25
TOTAL	£80,288.52

¹ This figure is accurate as of 31 March 2010

² This figure is accurate as of 31 March 2010

Staff and contact details

Staff

Secretary Dr Alan Scott

Senior Case Manager Mr Paul Lyons

Case Manager Mr Paul Cassidy

Head of Administration Mr Paul Cassidy

Administrative Support Mr Alan Finlay

Contact Details

The Industrial Court
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Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

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E Mail: enquiries@industrialcourt.gov.uk

Website: www.industrialcourt.gov.uk

User satisfaction

The Industrial Court is committed to providing a professional, effective and courteous service to all of its users. If you are asked for your views on any aspect of the Court's service, we would appreciate your co-operation as this will help us to improve it in future. However, there is no need to wait until you are asked before getting in touch. All comments, complaints and suggestions are welcome; in particular, if you are dissatisfied with any aspect of our service, we would be very keen to hear from you so that we can rectify the matter. Contact details for the Court are provided on **page 19**.

If you cannot resolve your problem with the person who dealt with you originally, please ask to speak to the Secretary (contact details below) who will investigate your complaint.

Dr Alan Scott
Secretary
The Industrial Court
Room 213
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Telephone: 028 9025 7531

E Mail: Alan.Scott@delni.gov.uk

In the event of any complaint, we hope that you will let us try to put things right but if necessary you can write to your MLA, who can tell you how to have your complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman).



Industrial Court, Room 203, Adelaide House,
39-49 Adelaide Street, Belfast, BT2 8FD.

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