



**INDUSTRIAL  
COURT**

**ANNUAL REPORT**

**2014/15**

# Industrial Court Annual Report 2014/15

*This report on the activities of the Industrial Court for the period 1 April 2014 to 31 March 2015 was presented by the Acting Chairman of the Industrial Court to the Department for Employment and Learning on 22 June 2015.*

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# Acting Chairman's Review of the Year

## ***Caseload***

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The Court received eleven new recognition applications during the reporting period, eight from Unite the Union and three from SIPTU. One application was carried forward from 2013/14.

This is the most substantial caseload which the Court has experienced since its reconstitution in 2001 and a significant increase upon the caseload in recent years. A full description of the progress of these applications is set out on **page 14**.

## ***Membership of the Court***

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Membership of the Court is unchanged from 2013/14.

## ***Annual Members' Day***

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The Court held its annual Members' Day at the Ramada Encore Hotel on 2 April 2014. As in previous years, this was a welcome opportunity for members to discuss issues and developments relevant to their work within the Court.

More information on the event can be found starting on **page 7**.

## ***Staffing***

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There were no changes to the staffing of the Secretariat during the reporting period.

Full details of the Secretariat are set out on **page 40**.

## ***Links with partner organisations***

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The Court has continued to benefit from its close association with our sister body in Great Britain, the Central Arbitration Committee (CAC). During the year members of the Court's Secretariat attended the CAC Deputies' meeting to inform themselves about the latest developments in that organisation's work. The well established working relationship between the Court and the CAC continues to be of real value and I very much appreciate the continuing assistance and cooperation of the CAC and its staff.

## ***Your views***

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The Court is committed to maintaining a professional, efficient and user focused service. The feedback gathered through satisfaction surveys during the course of

the year has continued to be positive. We strive to maintain high standards, and welcome any and all comments on the operation of the Court. For more information on how to contact us, please see **page 41**.

# Roles, objectives, targets and results

The Court's 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.

## ***Role***

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

## ***Objectives***

- Manage the statutory adjudication process dealing with applications to the Industrial Court in an efficient, professional, fair and cost effective manner.
- Achieve outcomes which are practicable, fair, impartial and, where possible, voluntary.
- Provide a professional, courteous and helpful service to all who approach us.
- Publish clear, accessible and up to date guidance and other information on our procedures and requirements.
- Answer enquiries concerning our work (not including the provision of legal advice).

- 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.
- Maintain an Industrial Court Secretariat with the skills, knowledge and experience that are appropriate to meet operational objectives.

***Performance measures and targets (based on objectives)***

| <b>Performance measure</b>  | <b>Target</b> | <b>Achievement</b> |
|---|---------------|--------------------|
| <b>Proportion of applications for which notice of receipt is given and responses sought within one working day</b>                | <b>95%</b>    | <b>100%</b>        |
| <b>Proportion of written enquiries and complaints responded to within three working days.</b>                                     | <b>90%</b>    | <b>100%</b>        |
| <b>Delivery to the Department for Employment and Learning of an Annual Report on the work of the Industrial Court in 2013/14.</b> |               | <b>22/06/15</b>    |

# Membership of the Industrial Court 2014/15

Membership of the Court during the period 1 April 2014 to 31 March 2015 is recorded below.

## Acting Chairman

**Barry Fitzpatrick**

*Semi-retired Consultant*

## Members with experience as representatives of employers

**George McGrath**

*Retired Deputy Chief Executive,  
BT (NI)*

**Patrick Masterson**

*Retired European ER Director,  
Nortel*

## Members with experience as representatives of workers

**Robin Bell**

*Executive Committee Member,  
IBOA Finance Union; Pensions  
Board Trustee, AIB UK*

**Avril Hall-Callaghan**

*General Secretary, Ulster  
Teachers Union*

**Members with experience as representatives of employers**

**Patricia O’Callaghan**

*Retired Director of Head and Skeletal Services, Belfast Health and Social Care Trust  
Board Member of the Regulation and Quality Improvement Authority*

**Members with experience as representatives of workers**

**Barbara Martin**

*Chair of Health and Safety Committee, Irish Congress of Trade Unions*

**Pauline Shepherd**

*Interim Chief Executive for Extern and Extern Ireland*

**Peter Williamson**

*Retired Irish Regional Secretary, Amicus*

**Neal Willis**

*Retired Director of Corporate Services, Newtownabbey Borough Council.*

# Annual Members' Day

The Industrial Court held its annual Members' Day on 2 April 2014 in the Ramada Encore Hotel, Belfast.



consider and discuss a number of relevant issues and generated lively debate amongst both members and case managers.

By general agreement the event was a success, allowing members to exchange knowledge, renew working relationships and participate in essential learning with a view to maintaining the high standards of service that the work of the Court requires.

The event gave members the opportunity to share their experiences of the cases dealt with throughout the year and discuss a range of other matters of interest.

The day commenced in the morning with a useful workshop on the Court's statutory recognition process and was followed by another on information and consultation provisions.

The workshops afforded those attending the event the opportunity to



# Applications and case outcomes

The Industrial Court received the following applications in the named jurisdictions during the period 1 April 2014 to 31 March 2015.

## *Applications for recognition for collective bargaining purposes*

| <b>PARTIES</b>                                    | <b>CASE REF NO</b> |
|---|--------------------|
| Unite the Union and Radius Systems Limited        | IC 57/2014         |
| SIPTU and Brinks Ireland Limited                  | IC 58/2014         |
| Unite the Union and Aventas (Quinn Lite)          | IC 59/2014         |
| Unite the Union and Chain Reaction Cycles Limited | IC 60/2014         |
| Unite the Union and Aventas (Ex-Quinn Lite)       | IC 61/2014         |
| Unite the Union and Chain Reaction Cycles Ltd     | IC 62/2014         |
| Unite the Union and Moy Park                      | IC 63/2014         |
| Unite the Union and Andor Technology Ltd          | IC 64/2014         |
| SIPTU and All-Tex Recyclers                       | IC 65/2014         |
| SIPTU and All-Tex Recyclers                       | IC 66/2014         |
| Unite the Union and Severfield (NI) Ltd           | IC 67/2014         |
| Unite the Union and TES (NI) Ltd                  | IC 68/2014         |

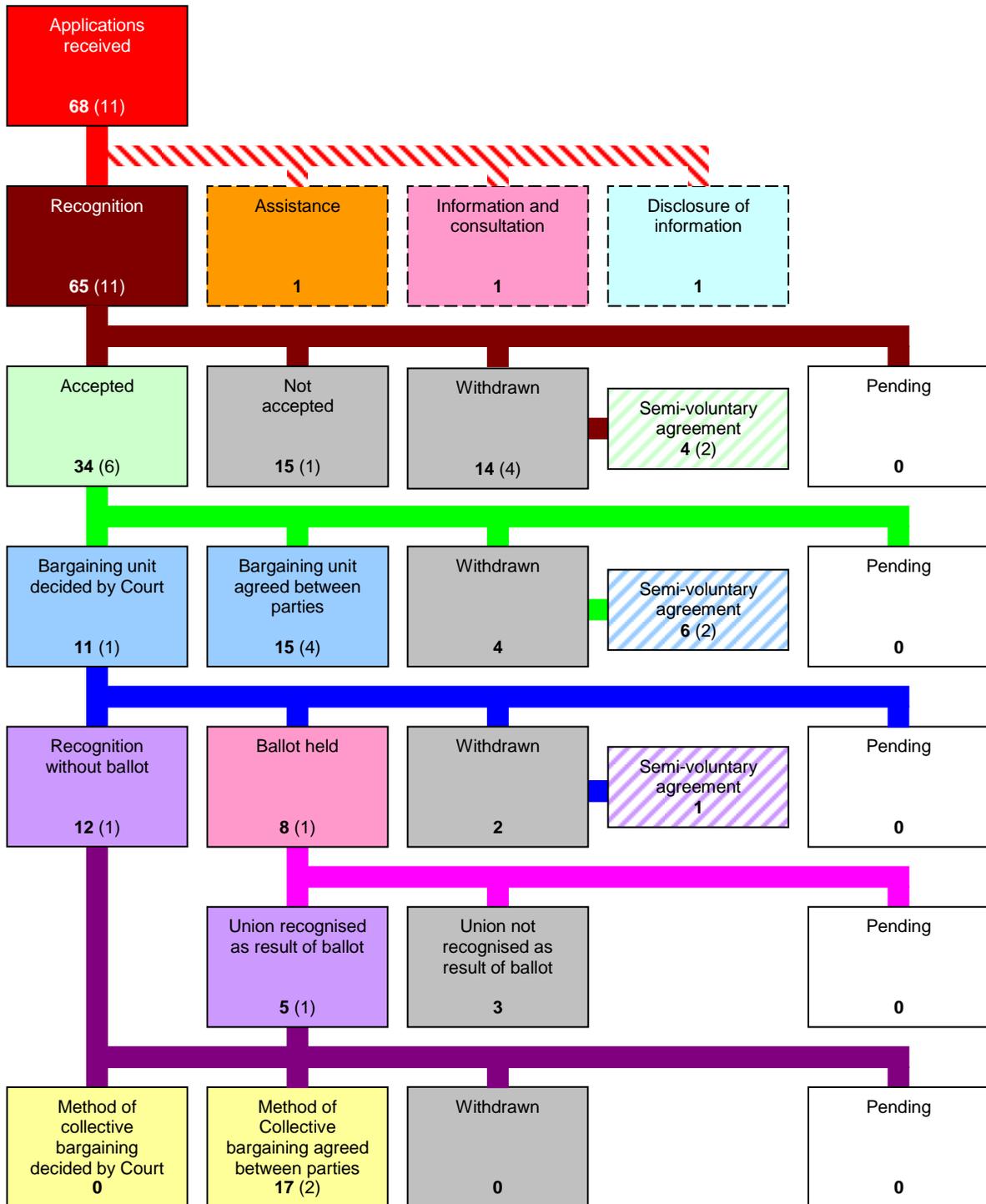
The text of decisions to date relating to each application can be found on the Industrial Court's website, [www.industrialcourt.gov.uk](http://www.industrialcourt.gov.uk). Note that a decision may

not necessarily be reached in the reporting year during which the corresponding application was received.

Accounts of each case may be found starting on **page 14**.

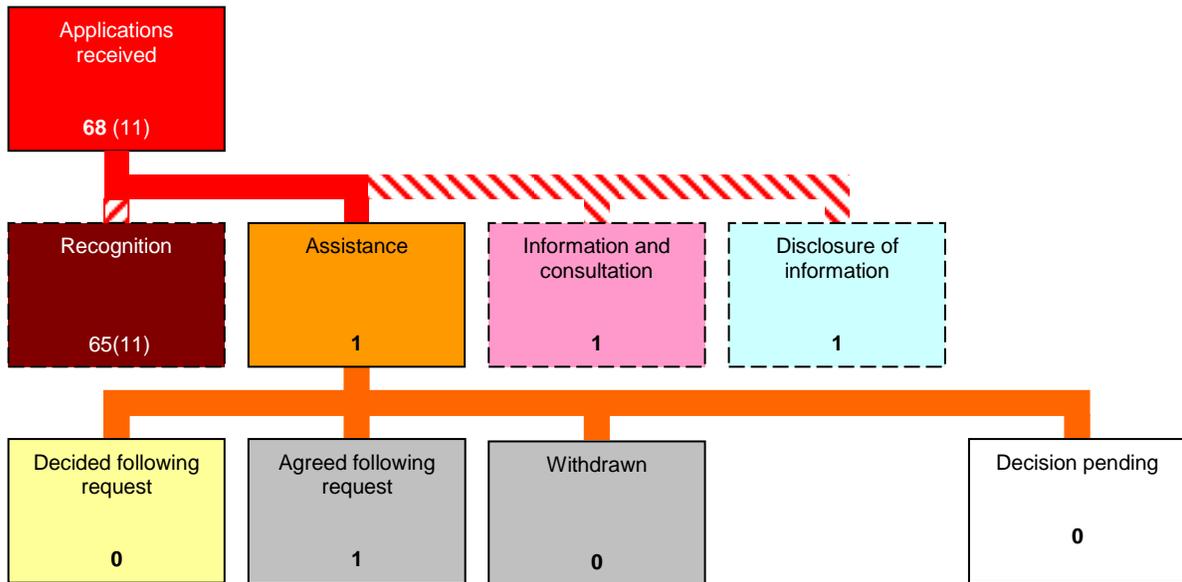
On the following pages are process maps setting out the outcomes of all cases dealt with by the Industrial Court. Figures in brackets represent changes to total figures during the reporting year and do not reflect subsequent developments.

# Applications for recognition

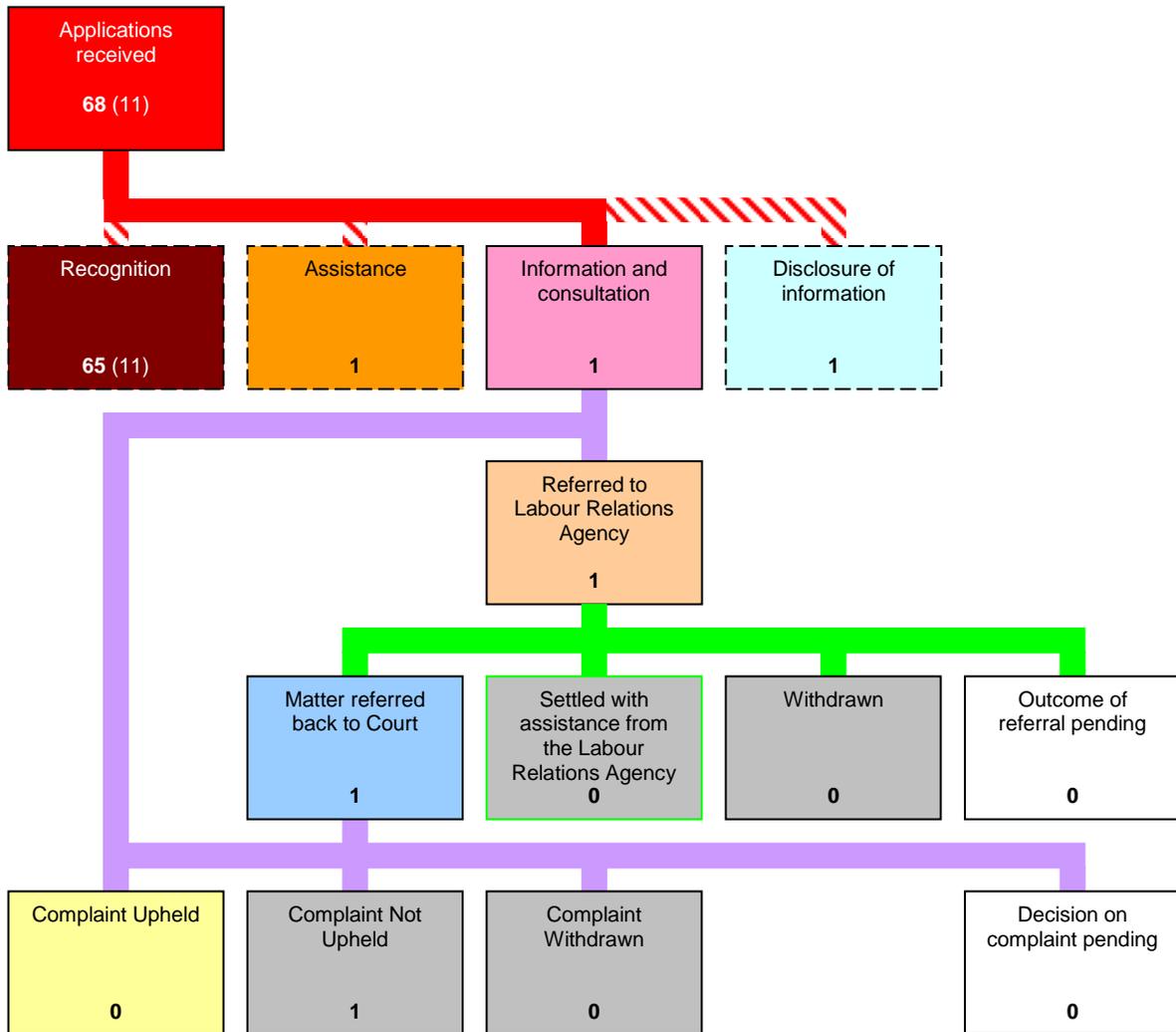


## Applications for assistance

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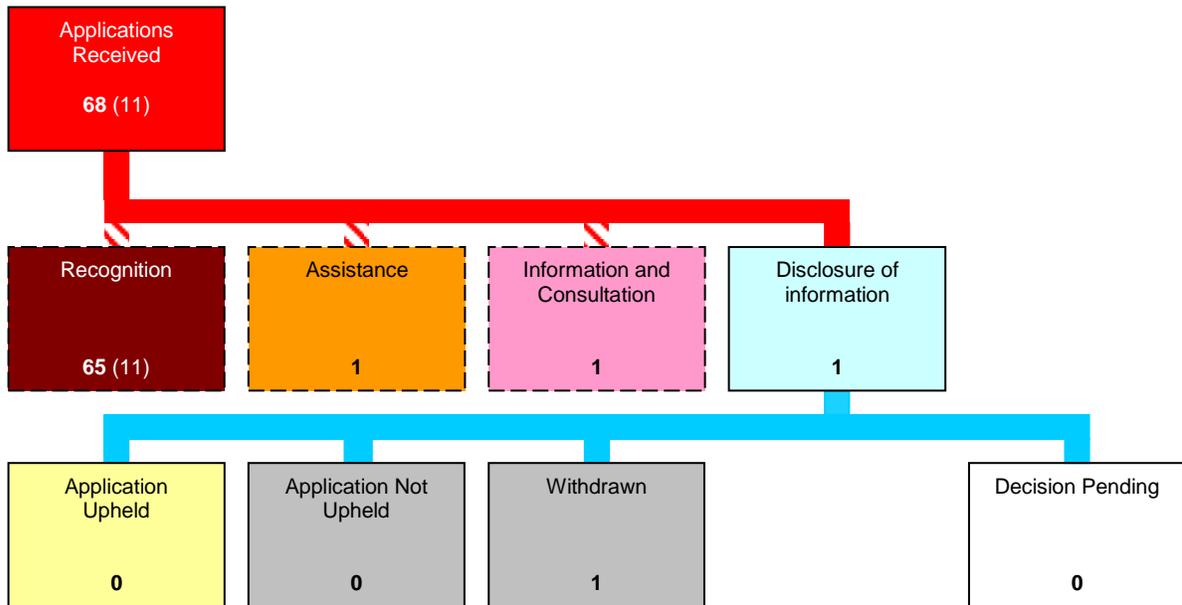


## Information and consultation applications



## Disclosure of information applications

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# Review of cases 2014/15

## ***IC 57/2014 – Unite the Union and Radius Systems***

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Unite the Union submitted an application to the Court on 24 February 2014, for recognition at Radius Systems Ltd, Halfpenny Valley Industrial Estate, Parkview Street, Portadown Road, Lurgan, BT66 8TP. The bargaining unit description was "All Production Operatives".

The application was copied to the Employer on 26 February 2014 and a completed response questionnaire was received on 5 March 2014.

In its application the Union stated that the total number of workers employed by the Employer was approximately 40; the number of workers in the bargaining unit was 21. It also stated that a membership check that had been organised and conducted by the LRA found that 18 out of 29 workers (62%) within the proposed bargaining unit were members of the Union.

The application was accompanied by a letter from the Union to the Employer dated 23 January 2014 which makes a formal request for recognition. This letter described the proposed bargaining unit as "All production operatives employed at the site of Radius Systems Ltd, Halfpenny Valley Industrial Estate, Parkview Street, Portadown Road, Lurgan, BT66 8TP".

The Employer's response to the application confirmed that it received the Union's originating letter on 23 January 2014 and that the Employer responded by letter on 6 February 2014. The Employer stated that it did not agree to the proposed bargaining unit, suggesting that a larger bargaining unit was required as there are two production sites.

The Employer stated that the Lurgan site employed 39 within its Operations function, 30 of whom are Production Operatives and that the Banbridge site employed 53 in its Operations function, 34 of whom are Production Operatives. The Employer also stated that, as the two sites were geographically close, Production Operatives flexed from one site to the other to meet production demands. Both Banbridge and Lurgan sites were managed by the same Management Team and both sets of employees were managed under the same terms and conditions of employment.

The Employer permitted the LRA to conduct a membership check on 11 February 2014. The result showed that 62% of the proposed bargaining unit were Union Members.

In order to assist the determination of the admissibility tests the Panel instructed the Case Manager to seek clarification on a number of issues.

In particular, the Panel sought clarification as to whether the approach by the Parties to the LRA came within the terms of paragraph 10(5) of the Schedule which provides:-

*“(5) The employer and the union (or unions) may request the Agency to assist in conducting negotiations.”*

*If the approach had been made for that purpose, an additional ‘second period’ of 20 working days would have been applied (by way of paragraph 10(7)) beyond the ‘first period’ of 10 working days between the day after the letter of request was received by the Employer and the earliest date on which the Union could make its Application.*

The following information was requested from the Parties:

- Confirmation that the involvement of the LRA, in the period between the Unions request for recognition and its application to the Court, was solely for the purposes of conducting a membership check and not to facilitate negotiations between the parties.
- In the letter from the LRA dated 14 February 2014 and included with the application the terms ‘agreed bargaining unit’ and ‘Shift Production Operatives’ were used. Clarification was sought from both Parties that they were content that the term ‘Shift Production Operatives’ was equal to ‘Production Operatives’ as stated on the application and that the ‘agreed bargaining unit’ was actually the proposed bargaining unit.
- Confirmation was sought that since the date of the LRA membership check, there had been no significant changes to the proposed bargaining unit.

Both Parties confirmed that LRA involvement was for the purposes of conducting a membership check and not to facilitate negotiations between the Parties. They also both confirmed that they were content that ‘Shift Production Operatives’ was equal to ‘Production Operatives’ and that the ‘agreed bargaining unit’ was the proposed bargaining unit.

The Employer confirmed that since the LRA membership check, Production Operatives at the Lurgan site had increased by 4. The Union confirmed membership of 23 workers. Based on all the figures available to the Case Manager, the percentage of Union membership within the bargaining unit was between 55% (18 of 33) and 69% (20 of 29).

The Panel met on 2 April 2014 and, on the basis that all admissibility criteria was met, accepted the application.

On 9 May 2014 the Chairman facilitated an informal meeting of the Parties in Belfast. This meeting gave the Parties an opportunity to state their case before the formal hearing.

The Parties during the appropriate period were unable to reach agreement. A Hearing to determine the bargaining unit was arranged for 27 June 2014 in Belfast. Prior to the Hearing written submissions were received from the Union and from the Employer’s legal representative.

After the Union's verbal submission at the Hearing, the Employer's representative asked the Court for an adjournment to allow it to gather evidence to support its counter argument.

The Panel considered this request and an adjournment was granted. Before leaving the Hearing, the Parties confirmed attendance at a Case Management Meeting on 7 July 2014 prior to the reconvened Hearing on 29 July 2014.

A formal note of the Hearing and Post Hearing meeting was prepared by the Case Manager and circulated to the Parties. The note formed the basis of the Case Management Meeting and also stated the evidence the Court wished to have available at or prior to the Case Management Meeting. This evidence was reviewed at the Case Management Meeting and further evidence was requested from the Employer.

At the reconvened hearing the parties initiated informal discussions. They jointly approached the Panel to request an extension to the appropriate period to allow their negotiations to continue. The Panel agreed to the extension. On 19 August the Court received confirmation that a semi-voluntary agreement had been reached and no further Court action was required.

### ***IC 58/2014 – SIPTU and Brinks Ireland Limited***

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SIPTU submitted an application to the Court on 28 April 2014, for recognition at Brinks (Ireland) Limited, 30 Duncrue Road, Belfast, BT3 9BP. The bargaining unit description was "All staff working for Brinks (Ireland) Ltd, 30 Duncrue Road, Belfast, BT3 9BP" and the location of the bargaining unit was described as "30 Duncrue Road, Belfast, BT3 9BP".

The application was copied to the Employer on 29 April and a completed response questionnaire was received 6 May 2014.

In its application the Union stated that the total number of workers employed by the Employer was approximately 55, the number of workers in the bargaining unit was approximately 55 and the number of union members in the bargaining unit was 34. The Union provided a list of members with names redacted.

The application was accompanied by a letter from the Union to the Employer dated 1 April 2014 (resent 9 April 2014 by recorded delivery) which made a formal request for recognition. This letter described the bargaining unit as "all staff working for Brinks (Ireland) Ltd, 30 Duncrue Road, Belfast, BT3 9BP".

The Employer's response to the application confirmed that it received the Union's originating letter, dated 3 April 2014, and that the Employer requested additional information from the Union in letters dated 9 April 2014 and 16 April 2014. The Employer stated that it did not agree to the proposed bargaining unit, suggesting that staff carried out a number a number of different roles, and were subject to different terms and conditions of employment, with some salaried and some hourly paid.

The Employer stated that the Union has provided a list of purported Union members and has not disclosed any evidence to suggest a majority of workers in the bargaining unit would support recognition. The Employer declared that a number of staff had left the company between 1 April 2014 and 25 April 2014. The date of the Union's redacted list was 25 April 2014 and the Employer believed it to contain workers who had left the company.

In order to assist in the determination of the admissibility tests in Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995, the Panel instructed the Case Manager to seek clarification on the make-up of the bargaining unit.

Each party was requested to provide the job titles of all those staff that they considered should be included in the proposed bargaining unit and the number of staff under each of these job titles.

The information, received from the Union on 14 May 2014 and from the Employer on 18 May 2014, was discussed by the Panel at a meeting on 23 May 2014. The Panel agreed that the information provided did not clearly identify the workers within the bargaining unit. It was agreed that the Chairman would host an informal meeting with the Parties on 20 June 2014 to obtain clarification.

At the informal meeting the Union clarified that by 'all staff' they meant 'all workers'. The Employer accepted that this was the Union's proposed bargaining unit.

Agreement was sought from the Panel to move to a membership check. The requested information was received from the Union and the Employer on 26 June 2014. Following a comparison of the lists it was found that 32 union members appeared on the employers list of 64 names which equated to 50% membership.

On 2 July 2014 the Union provided a partial petition with 42 signatures; 14 of these were non-union members. Added to the current membership, this resulted in a figure of 46 (72%) likely to support.

For the reasons detailed above, the Court was satisfied that all admissibility criteria had been met and the application was accepted on 4 July 2014.

The appropriate period was extended to 11 August 2014. On enquiring about progress from the parties, it was clear that no negotiations had taken place. The Chairman and Panel agreed that a bargaining unit hearing should be arranged.

The hearing was scheduled for 26 August 2014 with a preceding Case Management Meeting on 21 August 2014.

Both parties provided written submissions, which were discussed at the Case Management Meeting.

In follow up to the Case Management Meeting, the following information was requested –

## From the Employer

- Is the mentioned European Agreement a salary review plan or a recognised collective agreement?
- What are the job titles of the 13 workers the Employer feels should not be in the bargaining unit?
- How many of the 13 workers are part of the European Agreement?
- For those outside the European Agreement, how are their terms and conditions determined?
- Does the outcome of the European Agreement have an impact on the terms and conditions of non management?
- What level of authority do NI managers have to set the terms and conditions of hourly paid workers?
- Explain the respective role of managers and supervisors in the management structure.
- Clarification on the role of Brinks Rol in the Brinks NI operations
- Description of their alternative bargaining unit.
- More generally, the Employer should be prepared to give the Panel a clear description of its operations and the roles of various categories of workers in those operations.

## From the Union

- Examples, from this industry or others, where managers form a part of a wider bargaining arrangement.
- More generally, its evidence and perspectives on the issues raised with the Employer.

This information did not have to be submitted formally to the Court prior to the Hearing but should be available to all parties at the Hearing.

At the Hearing on 26 August, the Panel was satisfied that the Employer and the Union had reached agreement on an appropriate bargaining unit, namely, “All workers within the Duncrue Road site of Brinks (Ireland) Ltd with the exception of managerial, sales and general administrative staff being non-operational staff who are subject to the salary review plan or its equivalent, excluding senior controllers and controllers”.

As the agreed bargaining unit was different to the proposed bargaining unit, it was necessary to re-apply the validity tests in paragraphs 43-50 of Schedule 1A.

The Panel asked the Case Manager to gather more information to determine the exact number of workers within the bargaining unit on Tuesday 26 August. The fresh membership would establish the level of Union membership and determine whether a ballot should be held.

Results of the fresh membership check, carried out on 29 August 2014, showed that the Union had 29 members in the agreed bargaining unit, or 51.78% membership. Using these figures the Panel was satisfied that the Union did have a majority in the bargaining unit and that the validity tests were satisfied.

In accordance with paragraph 22(1)(b), the Panel was also satisfied that the majority of the workers in the bargaining unit are members of the Union. The Court must declare the Union to be recognised without a ballot unless one of the three qualifying conditions, as specified in paragraph 22(4) of the Schedule, are fulfilled:

- the Industrial Court is satisfied that a ballot should be held in the interests of good industrial relations;
- the Industrial Court has evidence, which it considers to be credible, from a significant number of the Union members within the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf;
- membership evidence is produced which leads the Industrial Court to conclude that there are doubts whether a significant number of the Union members within the bargaining unit want the Union to conduct collective evidence of their behalf.

If any of these conditions were fulfilled, then the Panel must arrange for the holding of a ballot.

Parties were requested to make any submissions on the above qualifying conditions by Tuesday 9 September.

On 3 September 2014 the Union advised the Court, “We have no additional submission to make on this issue, as we trust our previously submitted petition signed by 46 employees will address any concerns the Industrial Court may have in relation to the three remaining tests”.

On 9 September 2014 the Employer advised the Court “In the context of the issues raised in original submission, it is the company’s position that the staff turnover in our Belfast branch is substantial. The information from some staff members in the branch would also indicate that they do not want the Union to conduct collective bargaining on their behalf.

For those reasons, the company respectfully requests that the Court direct, in the interest of good industrial relations, a ballot across the relevant staff”.

The Panel considered the responses and on 15 September 2014 wrote to the Parties to advise that in the interest of good industrial relations it would be

appropriate to hold a ballot.

The Parties were advised that, under paragraph 24 of the Schedule, there was now a notification period of 10 working days, starting on 16 September 2014 and ending on Monday 29 September. The Panel would wait until the end of this notification period before arranging the ballot. If, during the notification period, the Court had been informed by the Union, or by the Union and the Employer jointly, that they do not wish the Court to arrange a ballot, no further action on this application would be taken. If it was not so informed by the end of the notification period, the Court would arrange a ballot.

If the parties were content for the ballot to proceed, the Court would decide on the form of the ballot, taking into account the submissions by both Parties on their preference, i.e., workplace, postal or combination of a workplace and postal ballot. Submissions on the nature of the ballot should be made within the notification period. The Court should also be informed if the translation of ballot papers would be required and for which languages.

The Parties were to use this initial notification period to agree in writing access arrangements for the Union during the ballot period, and send a copy of the access agreement to the Case Manager within the notification period.

The Senior Case Manager and Case Manager carried out a site visit on Monday 29 September 2014, at Brink's (Ireland) Ltd, Duncrue Road, Belfast. The purpose of the visit was to view the facilities available with a view to facilitating a workplace ballot to and providing an opportunity for the union to meet with employees prior to any ballot.

The Panel met on 2 October 2014 to discuss submissions received from the Parties and also the details of the site visit report. Both the Union, by e-mail on 29 September 2014, and the Employer, by e-mail on 30 September 2014, informed the Court that their preference would be for a postal ballot. Coupled with the site visit recommendations, the Panel decided that a postal ballot would be the most appropriate form of ballot.

The Panel instructed the Case Manager to obtain quotes from the approved list of Qualified Independent Persons (QIPs). Based solely on cost the Chairman agreed to the recruitment of the Involvement and Participation Association. The QIP was formally appointed on 9 October 2014, the ballot papers issued on 27 October 2014 and were returned by 6 November 2014.

The results of the ballot were with the Court on 7 November 2014 and a final Panel meeting was arranged for that day.

Results of the ballot showed

- 55 ballots were issued

- 44 ballots were returned (43 for recognition, 1 against recognition)
- 78% of bargaining unit voted for recognition

A declaration of recognition was issued on 7 November 2014.

On 16 December 2014 the Union provided the Court with a signed copy of their agreement with Brinks (Ireland) Ltd.

### ***IC 59/2014 – Unite the Union and Aventas (Quinn Lite)***

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On 13 May 2014 the Court received an application from Unite the Union in respect of Aventas (Quinn Lite). The Union reviewed its application and on 15 May 2014 informed the Court that they were withdrawing their application.

### ***IC 60/2014 – Unite the Union and Chain Reaction Cycles Ltd***

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The Court received an application from Unite the Union in respect of Chain Reaction Cycles on 27 May 2014. A completed Employer Response form was received on 6 June 2014.

The acceptance period was due to end on 11 June 2014 but due to availability of the Panel this period was extended to 12 June 2014.

The Panel met on 12 June 2014. It was concerned with inconsistencies between the various descriptions of the proposed bargaining unit.

The Panel was not convinced that it was appropriate to redefine the proposed bargaining unit in the Application Form as described in the original request for recognition.

The Panel was therefore minded, based on these two issues, to reject this application. Before a final decision was made, the Panel requested any comments by close of play on 19 June 2014.

On 18 June 2014, the Court received formal notification from the Union that the application had been withdrawn.

### ***IC 61/2014 – Unite the Union and Aventas (Ex- Quinn Lite)***

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Unite the Union submitted an application to the Court on 29 May 2014, for recognition at Aventas Group, Derrylin, Enniskillen, BT92 2AU. The bargaining unit description was “All hourly paid employees including appropriate supervisory staff and temporary workers in the entity formally known as ex Quinn Lite,

Derrylin. The bargaining unit does not include casual employees or managers within the staff grades.” The location of the bargaining unit was described as, “Derrylin, Enniskillen BT92”.

The application was copied to the Employer on 29 May 2014 and a completed response questionnaire was received 16 June 2014.

In its application the Union stated that the total number of workers employed by the Employer was approximately 700, the number of workers in the bargaining unit was approximately 24 and the number of union members in the bargaining unit was 18.

The application was accompanied by a letter from the Union to the Employer dated 15 May 2014 which makes a formal request for recognition. The letter described the bargaining unit in identical terms to the application.

The Employer’s response to the application confirmed that it had received the Union’s originating letter on 15 May 2014 and that the Employer did not respond. The Employer stated that it did not agree to the proposed bargaining unit, suggesting that a smaller bargaining unit would be more appropriate. The Employer stated that the supervisors employed in Quinn Lite formed part of the Quinn Lite management team and should not be considered as part of the bargaining unit.

The Employer stated that there were 29 workers employed by the company (formerly Quinn Lite) on the date of the Union’s request.

In order to assist in the determination of the admissibility tests, the Case Manager was instructed to carry out a membership check.

On 25 June 2014 the Union provided a completed Court template with the names, addresses and the work category as described in the proposed bargaining unit of 18 Union members. A membership list containing 18 names, addresses, membership numbers, job titles and dues paid was also provided along with a petition signed by 19 workers, 15 current members and 4 who were likely to support recognition.

On 26 June 2014 the Employer provided a completed Court template with the names, addresses and the work category as described in the proposed bargaining unit of 29 workers. Two workers were described as ‘not hourly paid’ and were therefore not part of the proposed bargaining unit.

A comparison of the names on the Union membership list with the list of workers provided by Employer showed 63% union membership and 78% likely to support.

Given that all admissibility and validity test had been met, the application was accepted.

The Parties met on 14 August 2014 to agree the bargaining unit. No agreement was reached. After seeking approval from the Panel the Case Manager was instructed to arrange a Hearing to determine the bargaining unit.

The Hearing was arranged for 8 September 2014. The Case Manager wrote to the Parties to outline what was expected of them at the Hearing.

At the Hearing, the parties agreed that the original description of the proposed bargaining unit required amendment as it inadvertently included two drivers who are covered by another agreement (IC 55/13).

The Court determined that the appropriate bargaining unit was “All hourly paid employees including appropriate supervisory staff and temporary workers in the entity formally known as Ex Quinn Lite, Derrylin. The bargaining unit does not include casual employees, management or drivers”.

As the agreed bargaining unit was different to the proposed bargaining unit in the application, the Panel instructed the Case Manager to apply the validity tests in paragraphs 43-50 of the Schedule, including the conduct of a membership test.

The Parties were asked to provide the information as it was on 8 September 2014.

On 11 September 2014 the Union provided the court with:

- a membership list containing 18 names, addresses, membership numbers and dues paid. All subscriptions were paid in the last month and all by Direct Debit. Job titles were also included on the list.
- a petition signed by 19 workers, 15 current members and 4 who are likely to support; this petition was the same as the one received by the Court on 25 June 2014.
- a note of a resignation received by the Union; the member’s name was still included on the list of members.
- a completed union application form for a new member dated 10 September 2014.

On 15 September 2014 the Employer provided a response to the Court with the following attached:

- a list of 26 workers with the names, addresses and work categories as described in the agreed bargaining unit.
- copy letters from 4 union members who wish to resign from the Union. One of these was dated 10 September.
- Copy letters from 2 workers, neither of whom are union members, who do not want union recognition.

A comparison of the lists determined 57.69% current membership and 65.38% likely to support.

On this basis, the validity tests were satisfied.

On the basis of the membership check and accompanying evidence from the Parties, the Panel met to decide on a declaration of recognition or the holding of a ballot. A declaration of recognition issued 25 September 2014.

On 10 November 2014 the Union provided the Court with a signed copy of the recognition agreement.

## ***IC 62/2014 – Unite the Union and Chain Reaction Cycles Ltd***

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The Court received an application from Unite the Union, on 4 September 2014, in respect of recognition at Chain Reaction Cycles Ltd, Kilbride Road, Doagh, Ballyclare, BT39 0EE. The location of the bargaining unit was described as “Castleview Warehouse, Carrickfergus, Whitepark Warehouse, Ballyclare; Kilbride Warehouse, Doagh”. The bargaining unit was described as “Warehouse operational team members, cooks, cleaners at the above mentioned sites. Excluding supervisors and team members at the above sites and excluding all workers at the Goods Inwards Warehouse Kilbride site”.

The application was copied to the Employer on 4 September 2014 and a completed response questionnaire was received by the Court on 11 September 2014.

In its application the Union stated that the total number of workers employed by the Employer was 450, the number of workers in the bargaining unit was 126 and the number of union members in the bargaining unit was 70.

The application was accompanied by a letter from the Union to the Employer which makes a formal request for recognition. While the letter was dated 24 July 2014, the Union stated in its application that the letter was received by the Employer on 18 August 2014. The letter described the bargaining unit in similar terms to the application.

The Union also stated in its application that it had a “recognition petition carried out across the three sites covering all shift patters”.

The Employer stated in its response that a copy of the letter of request was received, along with an unsigned and undated application, on 18 August 2014 and that the Employer then issued a letter of response to the Union on 19 August 2014 in which it asked the Union to consider 18 August 2014 as the start of the 10 day response period. The Employer claimed that for a number of reasons, a response from the Union was not received by appropriate until 3 September 2014 and therefore they did not have sufficient time to respond.

In its response the Employer stated that it had 522 employees on the day the Union’s written response was received and that there were 135 workers in the proposed bargaining unit. However the Employer also stated that it did not consider the proposed bargaining unit to be an appropriate bargaining unit.

In order to assist in the determination of the admissibility tests, a Panel meeting was convened on 15 September 2014.

Having reviewed the papers in this application, the Panel instructed the Case Manager to seek clarification that the letter of request had been received by the Employer at least 10 days before the date of the application.

The Case Manager received further information from the Parties, including proof of posting and receipt of the letter of 24 July 2014 from the Union. The Panel was therefore satisfied that the appropriate period had elapsed. The Case Manager was instructed to conduct a membership check.

On 22 September 2014 the Union provided a membership list containing 52 names, and including addresses membership numbers and dues paid. All subscriptions were paid up to date. A petition signed by 50 workers between 4 October 2014 and 21 October 2013.

On 22 September 2014 the Employer sent the Court a list of 133 workers including names, addresses, work categories and locations.

A comparison of the names and addresses on the Unions membership list with the list provided by the Employer showed, number of Union members in the bargaining unit 32% and the number likely to support recognition as 50%. The application was accepted.

During the 20 day period, on instruction from the Panel, the Case Manager asked for an update on progress from the Parties. She also restated the Chairman's offer to host an informal meeting. Both parties accepted the offer and a meeting was scheduled for 14 October 2014.

The Parties put their cases forward at the meeting and stated that, although agreement on the bargaining unit wasn't reached, negotiations had begun. At the end of the 20 day period, the Parties requested a one week extension to allow these negotiations to continue. This extension was granted.

At the end of the extended appropriate period, the Panel was advised that no agreement had been reached and therefore instructed the Case Manager to arrange a Hearing to determine the bargaining unit.

The Hearing was scheduled for 27 November 2014 with a Case Management Meeting prior to this on 20 November 2014. Both parties were requested to submit written submissions to the Court prior to the Case Management Meeting; these would then be discussed at that meeting.

On 14 November 2014 the Union's submission was received and circulated.

On the 18 November 2014 the Employer's submission was received and circulated.

Before meeting with the Panel on 20 November 2014, the Parties entered into negotiations and a semi voluntary agreement was reached. A signed copy of the agreement was provided to the Court. In this agreement the Union formally withdrew their application. A voluntary agreement was reached.

### ***IC 63/2014 – Unite the Union and Moy Park***

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Unite the Union submitted an application to the Court, received on 22 September 2014, for recognition at Moy Park, Raceview Road, Ballymena, BT 42 4HY. The

bargaining unit was described as "Hatchery workers including those carrying out maintenance functions and drivers working on the above site".

The application was copied to the Employer on 22 September 2014 and a completed response questionnaire was received by the Court on 29 September 2014.

In its application the Union stated that the total number of workers employed by the employer was 3,200, the number of workers in the bargaining unit was 31 and the number of union members in the bargaining unit was 21.

The application was accompanied by a letter from the Union to the Employer, dated 23 June 2014, which makes a formal request for recognition. This letter describes the proposed bargaining unit as "hatchery workers including those carrying out maintenance functions and drivers employed at your site".

The Employer's response to the application confirmed that it received the Union's originating letter on 23 June 2014 and that the Employer had attempted to arrange a meeting with the Union. The Employer stated that it did not agree to the proposed bargaining unit although no reason was provided.

The Employer stated that there were 4,719 workers employed by the company and 36 workers in the Union's proposed bargaining unit. The Employer also stated that an existing agreement was in force for this bargaining unit. A copy of the agreement was provided.

In order to assist with the admissibility tests, the Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership check.

A comparison of the names and National Insurance numbers on the Union membership list with the list of workers in the proposed bargaining unit supplied by the Employer, showed that of the 32 names provided by the Employer 20 were Union members. This equated to 62.5% membership.

The Panel also had to consider whether the evidence of a collective agreement between the Employer and another Union came within the terms of paragraph 35 of the Schedule, which states:-

*"(1) An application under paragraph 11 or 12 is not admissible if the Court is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit."*

The Panel met on 13 October 2014 to discuss acceptance of this case. On the issue of the existing collective agreement, the Panel requested a Hearing to consider evidence on this point. The hearing was scheduled for 4 November 2014 and was preceded by a Case Management Meeting on 27 October 2014.

Following on from discussions at the Case Management Meeting, the Panel agreed to extend the statutory deadline on acceptance. The reason for the extension was to allow the Parties, at their request, to engage in negotiations to explore the possibility of a semi-voluntary agreement prior to a formal Hearing.

The acceptance period was extended to 12 November 2014 and following a second request was further extended to 5 December 2014.

On 1 December 2014 the Court received formal notification that the parties had signed a semi-voluntary recognition agreement and that the Union was therefore withdrawing its application.

### **IC 64/2014 – Unite the Union and Andor Technology Ltd**

Unite the Union submitted an application to the Court, received on 16 October 2014, for recognition at Andor Technology, 7 Millennium Way, Springvale Business Park, Belfast, BT 12 7AL. The bargaining unit was described as “All Grade 1 permanent admin staff”.

The application was copied to the Employer on 17 October 2014, and a completed response questionnaire was received by the Court on 24 October 2014.

In its application the Union stated that the total number of workers employed by the employer was 260, the number of workers in the bargaining unit was 11 and the number of union members was 5.

The Employer’s response to the application confirmed that it had received the Union’s originating letter on 8 September 2014 and the Employer replied to the Union on 22 September 2014. The Court was supplied with a copy of this letter. The Employer stated that it did not agree to the proposed bargaining unit.

The Employer stated that there were 249 workers employed by the company and 12 workers in the proposed bargaining unit.

The Employer also disagreed with the Union’s estimate of membership stating that of the 5 of the 11 equates to 45% and not the 63% as stated in the Union’s application. The Employer further stated that in April 2014, an LRA check confirmed only 4 members. The Employer considered it unlikely that a majority would support Union recognition.

To assist in the determination of the admissibility tests, the Panel instructed the Case Manager to carry out a membership check. On 28 October 2014 the Union provided a membership list containing 6 names and a petition signed by 8 employees. On 29 October 2014 the Employer provided a list of 12 workers.

A comparison of the names and addresses from each list showed 50% current membership and 66% as those likely to support recognition.

Following a meeting of the Panel on 3 November 2014, it concluded that, on the basis of the admissibility criteria being met, the application was accepted.

On 3 November 2014 the Parties were notified that the application was accepted and that they had a 20 working day period to agree an appropriate bargaining unit. This period was due to end on 2 December 2014.

During the 20 day period, on instruction from the Panel, the Case Manager requested an update on negotiations. She also restated the Chairman’s offer of

hosting an informal meeting. The offer was accepted and an informal meeting was arranged for 28 November 2014.

Prior to the informal meeting, the Parties had an opportunity to meet independently and began negotiations. On 1 December the Union wrote to the Court requesting an extension. It stated that it had agreed to semi-voluntary recognition and requested the extension to enable a comprehensive settlement. The extension was granted; the new date for agreement was 16 December 2014. A further extension to 22 December 2014 was granted by the Panel.

On 23 December 2014, the Union confirmed “we have reached full agreement with Andor on recognition and therefore wish to formally withdraw our application”. The Employer and Panel were informed.

### ***IC 65/2014 – SIPTU and All-Tex Recyclers***

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On 30 October 2014, SIPTU submitted an application to the Court in respect of All-Tex Recyclers Ltd, 1 Ballycregagh Road, Cloughmills, Ballymena, BT44 9LB. However, the application was incomplete and could not be accepted. Notification of same issued to the Parties on 4 November 2014.

### ***IC 66/2014 – SIPTU and All-Tex Recyclers***

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SIPTU submitted an application to the Court on 4 November 2014, for recognition at All-Tex Recyclers Ltd, 1 Ballycreagagh Road, Coughmills, Ballymena, BT44 9LB. This address was also given as the location of the bargaining unit. The bargaining unit was described as “Team Leaders, Quality Controllers, Bailers, Drivers, Fork Truck Drivers and Textile Graders inc. Jumpers, Pre sort Kids, Shoes, Trousers, Underwear, Packing Cages, Ladies Tops, Production Operatives, Runners and Ladies.”

The application was copied to the Employer on 5 November 2014.

In its application the Union stated that the total number of workers employed by the employer was 150, the number of workers in the bargaining unit was 120 and the number of union members in the bargaining unit was 85.

The application was accompanied by a letter from the Union to the Employer, dated, 14 October 2014, which makes a formal request for recognition.

This letter described the proposed bargaining unit as:-

*“All staff working as Team Leaders, Quality Control, Bailers, Drivers, Fork Truck Drivers and Textile Graders. Our understanding is that the role of Textile Graders is subdivided into the following job titles;*

*Jumpers*

*Pre-sort kids*

*Trousers*

*Underwear*

*Packing Cages*

*Ladies Top  
Prod'n Operative  
Runners  
Ladies*

*However for the avoidance of doubt if there is any other recognised job roles under the “umbrella” title of Textile Graders then we are seeking they also be included in the bargaining unit”.*

In its description of the bargaining unit on the application the union does not include “*However for the avoidance of doubt if there is any other recognised job roles under the “umbrella” title of Textile Graders then we are seeking they also be included in the bargaining unit”.*

The Union also stated in its application that it had a “majority of the employees in membership within the bargaining unit”.

On 5 November, the Court received an e-mail from the Union advising that the formal letter of request, which was sent registered post to the Employer on 14 October 2014, was returned to their office.

The Union asked the Court to provide guidance on proceeding with their application.

This correspondence was circulated to the Panel and the Employer.

On 6 November the Court received correspondence from the Employer’s legal representative, raising concerns about the correspondence.

Having considered the correspondence from both the Union and the Employer the Chairman instructed the Case Manager to seek clarification from both Parties.

On 11 November 2014 the Employer provided a response to the Court’s request along with a completed Employer response form. In the cover letter and response to the Court’s request:

- it stated that the Employer believes that the bargaining unit defined in the letter of request , dated 14 October 2014, is not the same as that detailed on the application form with the reference to “any other recognised job roles under the umbrella of Textile Grader....”.

The Employer stated in its response to the Union’s application that a signed copy of the letter of request, dated 14 October, was not received. The first copy was received by the Employer on 29 October. A copy of the current complete application was received by the Employer on 4 November 2014.

In its response the Employer stated that, dependent on the date of the application, it had 153 employees on 14 October 2014 and that, on 29 October 2014, there were 137 workers in the proposed bargaining unit. However the Employer also stated that it did not consider the proposed bargaining unit to be an appropriate bargaining unit in that it believes that the proposed bargaining unit should not include Team Leaders or Drivers.

The Employer states that it has a petition of non support from 46 employees and questions the recruitment tactics of the Union.

At the Panel meeting on 12 November 2014 the panel considered receipt of the letter of request. Paragraph 5 of the Schedule states, “5. The request is not valid unless it is received by the employer”.

The Court has not encountered a previous situation in which a letter of request has been rejected by an Employer. It is advised that such a situation has not occurred with the equivalent body in Great Britain, the Central Arbitration Committee.

The Panel weighed up the explanations of the Union and the Employer and determined that the letter was ‘received’ within the meaning of paragraph 5.

At this meeting, the Panel also considered the consistency between the description of the proposed bargaining unit in the letter of request and in the application.

Paragraph 2(3) of the Schedule states:-

*“References to the proposed bargaining unit are to the bargaining unit proposed in the request for recognition”.*

In the ‘Guidance for parties’, paragraph 3.8 states, *“The definition of the bargaining unit in the application must mirror the description as set out in the union’s formal request to the employer unless a different bargaining unit has been agreed between the parties”.*

In the description of the proposed bargaining unit in the letter of request, the Union have included an ‘avoidance of doubt’ statement. Within the description in the application form, the Union have used ‘inc’ before the sub categories of Textile Graders.

The Panel agreed that the two descriptions were not materially different and it was clear that the same group of workers was being described in each document.

On this basis the Panel was content to progress the application and move to a membership check.

The acceptance period was extended to 27 November. The reason for the extension is to allow the Employer time to gather employee information for the membership check.

Parties were requested to return employee and member details to the Court by 21 November 2014.

On 17 November 2014 the Union provided a membership list containing 85 names, and included addresses and membership numbers. On 18 November the Union provided details of dues paid in the previous month, this list contained 84 names. A petition signed by 81 employees was also provided.

On 21 November 2014 the Employer provided a list of 125 workers including names, addresses and job titles.

Four workers with a job description “collection personnel” were included on the Employer list but could not be clearly linked to the Union’s proposed bargaining unit description. For the purpose of the membership check, these 4 workers were provisionally excluded.

A comparison of the two lists showed 56% union membership in the proposed bargaining unit.

For the reasons outlined above the Court was satisfied that the admissibility and validity test were satisfied and the application was accepted.

The Court was informed, by way of a signed agreement, dated 16 and 17 December 2014, under the auspices of the LRA, that the Parties had agreed a bargaining unit. The Employer had informed the Court, by way of a letter dated 17 December, that the Parties have also agreed to conduct a ballot, again under the auspices of the LRA. The Union has also responded, confirming that a bargaining unit has been agreed and that the agreed bargaining unit does not differ from the proposed bargaining unit. The Union has asked for the Court’s proceeding with the application to be ‘deferred’ until at least 13 January, when the Parties intend to meet again, under the auspices of the LRA.

By agreeing a bargaining unit, the Parties have effectively ended the ‘appropriate period’ under paragraph 18 of the Schedule. The appropriate period ran until 30 December, unless the Parties apply to the Court, under paragraph 18(4), to end it prematurely. There is no mechanism for the Court to end the period early, unless there is no prospect of agreement, under paragraph 18(3). There is however no possibility of extending this period beyond the end date, as the Court would have to give reasons relating to the prospects of agreement, which has already been reached.

From the point in time at which the Court is required to proceed with the application, this is one of the few stages in the statutory process where no time limit is set out.

The Court has been invited by the Union to adjourn or ‘defer’ proceeding with the application until at least 13 January, although the Court has been informed that a ballot, under the auspices of the LRA, might not occur until mid-February.

Given the mandatory nature of paragraph 21(3), there are only exceptional circumstances in which the next stage could be deferred. The Panel took account of paragraph 171, which states,

*“In exercising functions under this Schedule in any particular case the Court must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned.”*

The Union has sought this ‘deferment’ “pending a successful voluntary conclusion

of the matter”. In these circumstances, the Court was prepared to review the situation on 15 January 2015.

The Parties were invited to make a joint report to the Court by noon on 14 January 2015, setting out progress made towards a “successful voluntary conclusion” and a timetable for completion of a voluntary agreement. They were also invited, either jointly or separately, to provide reasons to the Court as to why the Court should not proceed with the next stage of the statutory procedures, as required by paragraph 20(3).

The Court was informed, by way of a signed agreement, dated 13 January 2015, under the auspices of the LRA, that the Parties had reached agreement on ballot terms and arrangements following collective conciliation. The Union, with the agreement of the Employer, has written to the Court to request an adjournment of its application to allow for the conclusion of the ballot and a 30 working day period to allow the Parties to agree a method of bargaining.

The Panel met on 15 January to consider this request. Given the mandatory nature of paragraph 21(3), there are only exceptional circumstances in which the next stage could be deferred. The Panel again took account of paragraph 171. After deliberation, the Court was minded not to proceed with the application until 23 March 2015. A formal letter to that effect was issued on 27 January 2015.

As no objections were received, formal notification that the Court would not proceed with the application until 23 March 2015 was issued to the Parties.

On 11 February 2015 the Court received a copy of the LRA ballot results. This showed 35.83% of those balloted were in favour of recognition. The agreement signed by the Parties on 13 January 2015 stated that, unless there was a majority of over 40% in favour of recognition, the Union would withdraw their application.

On 19 February 2015 the Union formally withdrew their application.

### ***IC 67/2014 – Unite the Union and Severfield (NI) Ltd***

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The Court received an application from Unite the Union on 12 November 2014, for recognition at Severfield (NI) Ltd, Main Street, Ballinamallard, Co Fermanagh, BT94 2FY. This address was the location of the bargaining unit. The bargaining unit was described as “Welders, Yardmen, Maintenance Operatives, Fabricators, Forklift Drivers, Storemen, Goods In Operatives, Machinists, Plate gatherers, Mechanics, Lorry Drivers, Paint Shop Operatives, Production Operatives, Charge Hands. Excluding following categories: Production Co-ordinators, Assistant Production Managers, Quality Managers, Production Managers, Welding Managers, Workshop Supervisors and all other Management Grades”.

In its application the Union stated that the total number of workers employed by the employer was 140, the number of workers in the bargaining unit was 125 and the number of union members in the bargaining unit was 71.

The application was accompanied by a letter from the Union to the Employer, dated 6 October 2014, which makes a formal request for recognition.

This letter describes the proposed bargaining unit as:-

“Welders, Yardmen, Maintenance Operatives, Fabricators, Forklift Drivers, Storemen, Goods In Operatives, Machinists, Plate Gatherers, Mechanics, Lorry Drivers, Paint Shop Operatives, Production Operatives, Charge Hands at the following site: Main Street, Ballinamallard, County Fermanagh, BT94 2FY. The proposed bargaining unit excludes the following categories: Production Co-ordinators, Assistant production Managers, Quality Managers, Production Managers, Welding Managers, Workshop Supervisors and all other Management Grades”.

The Union also stated in its application that it had a “recognition petition carried out with 108 signatures”.

The Employer stated in its response to the Union’s application that a signed copy of the letter of request, dated 6 October, was received. A copy of the application was received on 11 November 2014.

In its response the Employer stated that it had 280 employees and that there were 116 workers in the proposed bargaining unit.

The Employer stated that it did not dispute the proposed bargaining unit and would be happy to enter discussions through the LRA.

The Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership check.

On 1 December 2014 the Union provided the Case Manager with a list of 103 members and a petition with 109 signatures. The list provided by the Union had 23 workers with the job description “Steel Erectors”; these workers did not appear to be part of the proposed bargaining unit and were therefore provisionally excluded from the membership check. Four workers had addresses different to that provided by the Employer. The petition contained 22 duplicate entries.

On 21 November the Employer provided a list of 116 workers.

A comparison of the names and addresses provided showed, 59.89% membership and 76.72% likely to support recognition.

On 3 December 2014 the Employer wrote to the Court asking for “a stay” in proceedings to allow discussions with the Union. The Court also received a copy of a letter from the Employer to the Union asking them to agree to this approach.

On 3 December 2014 the Court received correspondence from the Union in which it stated that it did not agree to this approach proposed by the Employer. The Union considered that the Employer had had sufficient time, since receiving the

letter of request, to give consideration to a voluntary agreement. It stated that the Court should continue the acceptance stage.

The Panel met on 3 December 2014. As all admissibility criteria had been met the application was accepted and the Parties were notified.

The Parties were initially given until 7 January 2015 to agree the bargaining unit. Joint correspondence from the Parties requesting an extension to this period until 21 January 2015 was allowed. A further extension to 30 January 2015 was also agreed by the Panel.

On 6 February 2015 the Court was copied into an email containing signed recognition and facilities agreements. On 9 February 2015 the Court was advised by the Union that it was to take no further action in relation to this application. Formal notification of the semi-voluntary agreement issued to the Panel and the Parties on 10 February 2015.

### ***IC 68/2014 – Unite the Union and TES (NI) Ltd***

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The Court received an application on 12 December 2014 from Unite the Union in respect of TES (NI) Ltd, Kilcronagh Business Park, Cookstown, Co Tyrone, BT80 9HJ. This address is given as the location of the “office base” of the proposed bargaining unit. The bargaining unit was described as “Electricians, Fitters, ICI Technicians, Stores Technicians, Health and Safety Technicians: at the address given attached to the NI Water Service Contract”.

The application was copied to the Employer on 15 December 2014.

In its application the Union stated that the total number of workers employed by the Employer was 150, the number of workers in the bargaining unit was 45 and the number of union members in the bargaining unit was 27.

The application was accompanied by a letter from the Union to the Employer, dated 10 November 2014, which makes a formal request for recognition. The letter of request described the bargaining unit as “Electricians, Fitters, ICI Technicians, Stores Technicians, Health and Safety Technicians at the following site who are attached to the NI Water Service contract of which we believe there are 45: Kilcronagh Industrial Estate”.

The letter also set out some exclusions, which were not repeated in the description of the proposed bargaining unit in the application. However, these exclusions did not appear to alter the categories of workers included in the description.

The Union also stated in its application that it had a recognition petition still out with members and employees.

Also accompanying the application was a response from the Employer to the Union dated 20 November 2014 in which it states “TES (NI) Ltd do not wish to accept voluntary recognition of Unite”.

On 18 December 2014 the Employer's response was received by the Court. The Employer stated in its response to the Union's application that a signed copy of the letter of request was received on 10 November 2014. A copy of the application was received on 15 December 2014.

The Employer stated that it had 139 employees.

The Employer did not dispute the proposed bargaining unit, nor did it dispute the number of employees in the proposed bargaining unit.

The Employer stated that it has no employee requests for recognition and feels that "this is purely a speculative application by the Trade Union without any evidence to support it".

The Case Manager was instructed to conduct a membership check, with the parties asked to provide the information on employees and members to the Court by 7 January 2015.

On 6 January 2015 the Union provided a membership list containing 28 names, and including addresses and membership numbers and details of dues paid in the last month. A petition signed by 25 employees was also provided.

On 5 January 2015 the Employer provided a list of 45 workers including names, addresses and job titles.

A comparison of the 2 lists and the petition found that there was 57.77% membership and 64.44% likely to support.

The Panel was satisfied that the admissibility and validity test had been met and the application was accepted on 12 January 2015.

On 16 January 2015 the Court received a list of categories of workers, a list of workplaces and the number of workers in each category from the Employer.

During the appropriate period, the Case Manager requested an update on negotiations from the Parties. She also reminded them of the Chairman's offer to host and informal meeting. On 21 January 2015 the Employer informed the Court that the Parties had arranged a meeting of the parties to be hosted by the on 4 February 2015.

On 29 January 2015 the Union telephoned the Court to advise that, following a tender process, TES (NI) Ltd had not succeeded in retaining the NI Water contact, under which the workers in proposed bargaining unit operated. On 2 February 2015, the employer confirmed that the contract would not be renewed and that, on 7 March 2015, the proposed bargaining unit would transfer under TUPE to a new employer.

The Parties met with the LRA on 4 February 2015 with a view to agreeing the bargaining unit. On 9 February 2015 the Court requested an update on progress from the Parties.

On 10 February 2015 the employer wrote to the Court to confirm the meeting with the LRA. They advised that they 'accepted the Court's findings in regards to the

bargaining unit' and detailed changes to the categories of workers and numbers of workers within the union's proposed bargaining unit. They also confirmed in writing the loss of the contact and the fact that the workers would transfer under TUPE to their new employer, Grahams, on 7 March 2015. The Employer has reservations about signing the recognition agreement before the transfer is complete.

The Union, on 10 February 2015, replied to the Employer's letter. They state that the proposed bargaining unit is not in contention following the meeting with the LRA. The Union stated that the Court "could and should award full recognition for this group as no elements of disagreement exists". This would then transfer under TUPE.

Following instruction from the Panel, the Case Manager wrote to the parties on 11 February 2015 to clarify two issues and request confirmation of the agreed bargaining unit.

- The Court clarified that it has not made any finding in relation to the bargaining unit.
- The Court requested the parties confirm to the Panel the description of the agreed bargaining unit, detailing whether that differs from the union's proposed bargaining unit.
- The Court also clarified that the events, and prospective events, outlined by the employer, subject to the Panel's deliberations, did not necessarily alter the groups of workers in the bargaining unit at this point in time.

In order to facilitate decision-making at a Panel meeting on 16 February, a Case Manager's Report was issued on 12 February.

On 13 February the Court received notification from the Employer that it did not agree the description of the proposed bargaining unit and suggested the description of:

- *"Staff who are employed on the Northern Ireland Water C527- Provision of Technical Support Staff in the Area of Mechanical & Electrical (M&E) Services*
- *Electricians*
- *Fitters*
- *ICA Technicians*
- *Stores Technicians"*

The employer stated that there were a total of 42 employees employed to this contract.

On 13 February 2015, the Union's response re-stated that, based on the figures already provided to the Court, recognition should be granted.

On 16 February 2015 Union confirmed that it was content with the wording of the amended bargaining unit as provided by the Employer on 13 February 2015.

The Panel met on 16 February and formed the view that the appropriate period had ended on 10 February without agreement between the parties. The Panel also came to the view that it was minded to extend the decision period, under paragraph 20(2), within which it had to decide on an appropriate bargaining unit, until a date after the transfer date, namely 11 March 2015 and was also minded to invite the transferee Employer in this case to take over the position of the Employer in this application.

A Case Manager's Report was issued to the Parties on 17 February setting out the Court's reasoning on these provisional views.

The Employer responded, on 20 February 2015, indicating that it agreed that it was "advisable to invite the transferee Employer to take over the position of the Employer".

The Union responded, on 23 February, disputing the basis of the Panel's thinking and again inviting the Panel to either conduct the validity tests on the recently agreed bargaining unit or proceed to decide on the appropriate bargaining unit.

The Panel considered the Union response and came to the following conclusions:-

The 'appropriate period', under paragraph 18(2) of the Schedule, within which the parties could have reached agreement on the bargaining unit, ended on 10 February 2015. The Court was satisfied that no agreement was reached between the Parties during that period.

There was a meeting at the Labour Relations Agency on 4 February but anything said at that meeting remains confidential. The Employer did write to the Court on 10 February, including the phrase that it "accepted the Courts findings in regards to the bargaining unit". The Court made clear, in its letter to the Parties of 11 February, that the Court had not made any 'findings' on the bargaining unit. In its response of 10 February, the Employer also raised a number of issues around the Union's proposed bargaining unit.

The Panel was therefore satisfied that the Employer did not agree the Union's proposed bargaining unit in its correspondence of 10 February. This conclusion is supported by the Employer's correspondence of 13 February in which it stated that it did not agree the proposed bargaining unit and put forward an alternative bargaining unit. The Union did seek to agree this alternative bargaining unit on 13 February but this agreement was outside the 'appropriate period'.

In these circumstances, the Court was obliged to determine an appropriate bargaining unit under paragraph 19 of the Schedule. However, there remained a number of complications in relation to proceeding with this decision immediately before the date of transfer, 7 March. Even if a decision on the bargaining unit was

made before that date, there remained legal uncertainties about the implications of proceeding to the recognition stage and, possibly, issuing a declaration of recognition immediately before the date of transfer.

However, the principal complication with determining an appropriate bargaining unit at this stage was that the Employer has indicated that two categories of workers in the proposed bargaining unit would not be in the bargaining unit after the date of transfer, and indeed that, after the date of transfer, one category of workers, in the alternative bargaining unit suggested by the Employer and agreed by the Union, would not be in the bargaining unit.

The decision period within which the Panel ought to have reached a decision on the bargaining unit should have ended on 25 February. In these circumstances, the Panel was satisfied that it would be inappropriate to determine an appropriate bargaining unit on the basis of circumstances which would change within a matter of days of such a decision. On the other hand, it would also be inappropriate to determine a bargaining unit on the basis of the anticipated composition of the bargaining unit after the transfer without extending the decision period beyond the date of transfer.

In these circumstances, the Panel decided, taking into account its general duty under paragraph 171 of the Schedule, to extend the decision period to 11 March 2015. In line with the practice of the Central Arbitration Committee, the Court would invite the transferee Employer to take the place of the original Employer.

The decision period to determine an appropriate bargaining unit in this application was extended to 11 March 2015.

On 3 March 2015 the Case Manager wrote to all Parties outlining the way forward. The new Employer and Union were invited to an informal meeting with a view continuing the application. At the informal meeting on 24 March, the Parties entered into negotiations without the Court's involvement.

On the 24 March 2015 the Union wrote to the Court and formally withdrew its application.

# Resources

## *Membership of the Court*

| <b>ROLE</b>     | <b>NUMBER</b> |
|-----------------|---------------|
| Acting Chairman | 1             |
| Panel Members   | 9             |

## *Secretariat to the Court (part-time staff)*

| <b>PRIMARY ROLE</b> | <b>NUMBER</b> |
|---------------------|---------------|
| Management          | 1             |
| Operations          | 2             |
| Administration      | 1             |

## *Expenditure*

| <b>COST TYPE</b>                                     | <b>AMOUNT</b>     |
|--|-------------------|
| Fees and expenses of Chairmen and Members            | £30,216.99        |
| Staff  | £48,575.05        |
| Other (including training, travel and accommodation) | £4,869.25         |
| <b>TOTAL</b>   | <b>£83,661.29</b> |

# Staff and contact details

## *Staff*

| Role                                  | Name                 |
|---------------------------------------|----------------------|
| Secretary                             | Mrs Geraldine Lavery |
| Senior Case Manager                   | Mr Paul Lyons        |
| Case Manager / Head of Administration | Mrs Sarah Sheppard   |
| Administrative Support                | Mr Stephen Topping   |

## *Contact Details (temporary address)*

The Industrial Court  
Waterfront Plaza  
8 Laganbank Road  
Belfast  
BT1 3BS

**Telephone:** 028 9025 7599

**Fax:** 028 9025 7555

**E Mail:** [enquiries@industrialcourt.gov.uk](mailto:enquiries@industrialcourt.gov.uk)

**Website:** [www.industrialcourt.gov.uk](http://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 the previous page.

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.

Mrs Geraldine Lavery  
Secretary  
The Industrial Court  
Waterfront Plaza  
8 Laganbank Road  
Belfast  
BT1 3BS

**Telephone:** 028 9025 7855

**E Mail:** [geraldine.lavery@delni.gov.uk](mailto:geraldine.lavery@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).