

# Industrial Court

ANNUAL REPORT  
2011 - 2012



**INDUSTRIAL  
COURT**

**ANNUAL REPORT**

**2011/12**

# Industrial Court Annual Report 2011/12

*This report on the activities of the Industrial Court for the period 1 April 2011 to 31 March 2012 was sent by the Acting Chairman of the Industrial Court to the Department for Employment and Learning on 22 October 2012.*

## ***Table of contents***

---

Table of contents .....	3
<b>Review of the year .....</b>	<b>1</b>
Caseload .....	1
Legislative developments .....	3
Membership of the Court .....	3
Training .....	3
Staffing .....	4
Links with partner organisations .....	4
Your views .....	4
<b>Roles, objectives, targets and results .....</b>	<b>5</b>
Role .....	5
Objectives .....	5
Performance measures and targets (based on objectives) .....	6
<b>Membership of the Industrial Court 2011/12 .....</b>	<b>7</b>
<b>Profiles of new members .....</b>	<b>9</b>
<b>Training and induction .....</b>	<b>11</b>
<b>Applications and case outcomes .....</b>	<b>13</b>
Applications for recognition for collective bargaining purposes .....	13
Applications for recognition .....	14
Applications for assistance .....	15
Information and consultation applications .....	16
Disclosure of information applications .....	17
<b>Review of cases 2011/12 .....</b>	<b>18</b>
IC45/2011 – Unite the Union and Evron Foods Ltd .....	18
IC46/2011 – Unite the Union and Windermere Supported Living Service .....	19
IC47/2011 – Unite the Union and Finning Cat .....	19
IC48/2012 – Unite the Union and Qualitrol Instruments .....	20
<b>Resources .....</b>	<b>21</b>
Membership of the Court .....	21
Secretariat to the Court (part-time staff) .....	21
Expenditure .....	21
<b>Staff and contact details .....</b>	<b>22</b>
Staff .....	22
Contact Details .....	22
<b>User satisfaction .....</b>	<b>23</b>



# Review of the year

2011/12 was fairly typical year for the Industrial Court in terms of caseload, with recognition cases again being the focus of our work. The year has seen the welcome appointment of six new members of the Court and a highly productive induction and training event which has ensured that all are fully prepared to sit on a panel as and when required. Unfortunately, the year has also seen the sad passing of one of the Court's longest serving members.

## ***Caseload***

---

The Court received three recognition applications during the reporting period (1 April 2011 to 31 March 2012). The last of these was lodged on 30 March 2012 and therefore was ongoing at the end of the period. In addition, a further recognition application, lodged with the Court during the previous reporting year, continued into this period. All of the applications received by the Court during the reporting period were submitted by the same union, Unite the Union.

In the case of *Unite the Union and Evron Foods Ltd*, after the Panel had accepted the application, the parties were unable to reach agreement on an appropriate bargaining unit and so a full hearing was arranged. The Court was required to decide the appropriate bargaining unit and take into account the need for the unit to be compatible with effective management. The Court also had to consider various other matters listed in Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995, in so far as they did not conflict with that need. However the Panel was also aware of the judicial review judgment of the English Court of Appeal in *Regina (Kwik-Fit (GB) Ltd) v Central Arbitration Committee*, in which it was declared that the decision for the Panel to make is whether the proposed bargaining unit was *an* appropriate bargaining unit and not whether it was necessarily the *more* appropriate or *most* appropriate bargaining unit.

At the hearing the Panel heard oral submissions from each party, considered their written submissions and questioned the parties on various aspects of their case. The employer's proposed bargaining

unit included 19 engineers excluded from the union's proposed bargaining unit, as well as four other workers also excluded from the union's bargaining unit. The union maintained that it did not want to include the engineers in the bargaining unit but was prepared to accept the four other workers.

The Panel felt that the union's proposed bargaining unit was an appropriate bargaining unit and that it was not incompatible with effective management. In particular, the Panel considered that the characteristics of workers falling within the proposed bargaining unit were different from the characteristics of other workers of the employer who might have been included in the bargaining unit and that it was typical in the food industry for production workers to be in a separate bargaining unit to that of engineers and other workers. The Panel considered the employer's suggested bargaining unit and also the union's offer to include four excluded workers in the bargaining unit. It was felt that whilst both possible bargaining units would reduce the likelihood of fragmentation of the bargaining units, the Panel remained satisfied that the proposed bargaining unit was an appropriate one.

The Court subsequently granted recognition to Unite the Union without the need for a ballot after the Panel was satisfied that a majority of workers in the bargaining unit were members of the union.

In the case of *Unite the Union and Windermere Supported Living Service*, the application was inadmissible after the Panel felt that it was not possible to ascertain whether members of the union constituted at least 10% of the workers constituting the relevant bargaining unit. The Panel felt that the description of the proposed bargaining unit in the letter of request, and in the application form, was too imprecise for an assessment to be undertaken.

In the case of *Unite the Union and Finning Cat*, the employer indicated in its response that it was willing to meet with the union to consider a possible bargaining unit and recognition agreement. The parties subsequently reached an agreement between themselves and the Court took no further action.

For further details of these cases, see the review starting on **page 18**.

## ***Legislative developments***

---

The Agency Workers Regulations (Northern Ireland) 2011, which came into operation on 5th December 2011, inserted new definitions in respect of agency worker and temporary work agency into existing legislation governing the work of the Court.

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

---

It is with regret that I report the sad passing of Mr Bob Gourley on 26 January 2012. Bob, a member of the Court since 1996, brought a wealth of wisdom and experience to his role, taking on a significant number of cases particularly in the last few years as a result of the connections of other trade union members of the Court with the applicant union. Bob is greatly missed by all his colleagues on the Court and in the Secretariat.

On a happier note, I am pleased to report the appointment by the Minister for Employment and Learning, Dr Stephen Farry MLA, of six new members to the Court. Profiles of the new members can be found starting on **page 9**.

I am also pleased to report that the Court has reached agreement with the Department for Employment and Learning on revised terms of appointment of members of the Court and other appointment matters. Broadly speaking, the terms of appointment of members of the Court coincide with those of our equivalent body in Great Britain, the Central Arbitration Committee (CAC).

## ***Training***

---

Given the significant renewal of the Court's membership this year, a more substantial training event than the normal annual members' day was required. I am pleased to report that the event, held from 8 to 9 February at the Dunadry Hotel in County Antrim, was a success; it has undoubtedly provided a very firm foundation for the work of the Court going forward. More information on the event can be found starting on **page 11**.

## ***Staffing***

---

There have been no changes during the reporting period to the staffing of the Secretariat, details of which are set out on **page 22**. Once again, I would like to thank the officers of the Secretariat for their continuing work to support the smooth running of the Court over the course of the year.

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

---

The Court has continued to benefit from its close association with the CAC in Great Britain. During the year, as has become normal practice, members of the Secretariat attended CAC deputies' and members' meetings. In addition the CAC's Chief Executive, Simon Gouldstone, very kindly led a number of informative sessions during the Court's induction and training event in February. This was proof positive of the value of this continuing relationship.

I am also pleased to report that the year saw work progressed with our colleagues at the Labour Relations Agency (LRA) to draw up a Memorandum of Understanding and associated Protocol between our respective organisations. These documents, once finalised, will provide clarity and transparency on how we work together to maximise opportunities for resolving matters, where possible, without the need for formal Court decisions.

## ***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 positive but there can be no room for complacency and we are constantly striving to maintain an efficient, user focused service. If you have any comments on the operation of the Court, please let us know. For more information, please see **page 23**.

# 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. Delivery of the Court's annual report for 2010/11 was delayed to coincide with the members' induction and training event in February 2012.

## ***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 (but not providing 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 2010/11.</b>	<b>30/09/11</b>	<b>09/02/12</b>

# Membership of the Industrial Court 2011/12

Membership of the Court during the period 1 April 2011 to 31 March 2012 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)*

**Maurice Moroney**

*Retired Employment Relations Manager, Ulster Bank Ltd*

**Patrick Masterson\***

*Retired European ER Director, Nortel*

**Patricia O'Callaghan\***

*Retired Director of Head and Skeletal Services, Belfast Health and Social Care Trust*

**Pauline Shepherd\***

*Interim Chief Executive for Extern and Extern Ireland*

### Members with experience as representatives of workers

**Robin Bell\***

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

**Joe Bowers**

*Retired Regional Officer, Manufacturing, Science and Finance*

**Bob Gourley<sup>+</sup>**

*Retired Regional Officer, Union of Shop, Distributive and Allied Workers*

**Avril Hall-Callaghan**

*General Secretary, Ulster Teachers Union*

**Barbara Martin\***

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

\* Appointed on 1 December 2011.

<sup>+</sup> Bob sadly passed away on 26 January 2012.

**Members with experience as  
representatives of employers**

**Neal Willis\***

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

**Members with experience as  
representatives of workers**

**Peter Williamson**

*Retired Irish Regional Secretary,  
Amicus*

# Profiles of new members



*Robin Bell*

## **Robin Bell**

Robin is a member of the Executive Committee of IBOA, the Finance Union. He is also a trustee of the Pensions Board of AIB UK.

## **Barbara Martin**

Barbara, formerly a UK member of the European Community Luxembourg health and safety committee, is the Chair of the Irish Congress of Trade Unions' Health and Safety Committee.



*Barbara Martin*



*Patrick Masterson*

## **Patrick Masterson**

Now retired, Patrick is an employee relations consultant. He was previously European ER Director with Nortel.

### **Patricia O'Callaghan**

Patricia, a registered nurse, was Director of Nursing and Clinical Effectiveness at Green Park Health Care Trust, then Director of Head and Skeletal Services, Belfast Health and Social Care Trust. Now retired, she is currently Vice Chair of the Holy Innocents Children's Hospital Charity.



*Patricia O'Callaghan*



*Pauline Shephard*

### **Pauline Shephard**

Pauline is the interim Chief Executive for Extern and Extern Ireland. She is an HR consultant, coach and mediator.

### **Neal Willis**

Neal recently retired as Director of Corporate Services at Newtownabbey Borough Council. Previously he was Regional Manpower Services Manager with the NI Housing Executive and a Conciliation Officer with the LRA. He is now an independent consultant in HR and strategic and business planning.



*Neal Willis*

# Training and induction

With the appointment of six new members this year's annual meeting was, understandably, a much more substantial event than has been required in recent years. The two day programme provided comprehensive induction for new members and an opportunity for existing members to review key aspects of their work.



The event, held at the Dunadry Hotel in Co Antrim from 8 to 9 February, opened with an overview of the work of the Court provided by the Acting Chairman, Barry Fitzpatrick. This session covered the Court's history and statutory basis, the role of the Secretariat, and relationships with the CAC and the LRA. The session was informed by instructive talks from Penny Holloway, the LRA's Director of Conciliation and Arbitration, and Simon Gouldstone, CAC Chief Executive.



*Members of the Industrial Court pictured at the annual members event*



*Secretariat and Acting Chairman (from left): Alan Finlay, Paul Cassidy, Paul Lyons, Barry Fitzpatrick, Alan Scott*

Three subsequent training sessions (one on 8 and two on 9 February) each took the form of an initial presentation by the Acting Chairman; discussion of a specially prepared case study by members working in three small groups; and feedback led by Simon Gouldstone, who drew upon his extensive knowledge of

CAC cases to stimulate debate. The first of these sessions dealt with the acceptance stage in recognition cases, the next with the bargaining unit stage and the third with ballots and recognition. A fourth presentation based session considered the remaining jurisdictions within the remit of the Court. The event concluded with a formal meeting of members to discuss issues of interest to the Court.

In light of the sad death of Bob Gourley, members who had served alongside him took the opportunity to pay tribute to their late colleague. On a happier note, members were pleased to welcome back recently retired member Mr Irvine McKay, who graciously gave of his time to contribute his extensive experience to the event.

By general agreement the event was a success, allowing existing and new members to share experiences, to establish solid working relationships, and to acquire or renew essential learning that will ensure the maintenance of the high standards of work required by the Court.

# Applications and case outcomes

The Industrial Court received the following applications in the named jurisdictions during the period 1 April 2011 to 31 March 2012.

## ***Applications for recognition for collective bargaining purposes***

<b>PARTIES</b>	<b>CASE REF NO</b>
<b>Unite the Union and Windermere Supported Living Service</b>	<b>IC46/2011</b>
<b>Unite the Union and Finning Cat</b>	<b>IC47/2011</b>
<b>Unite the Union and Qualitrol Instruments</b>	<b>IC48/2012</b>

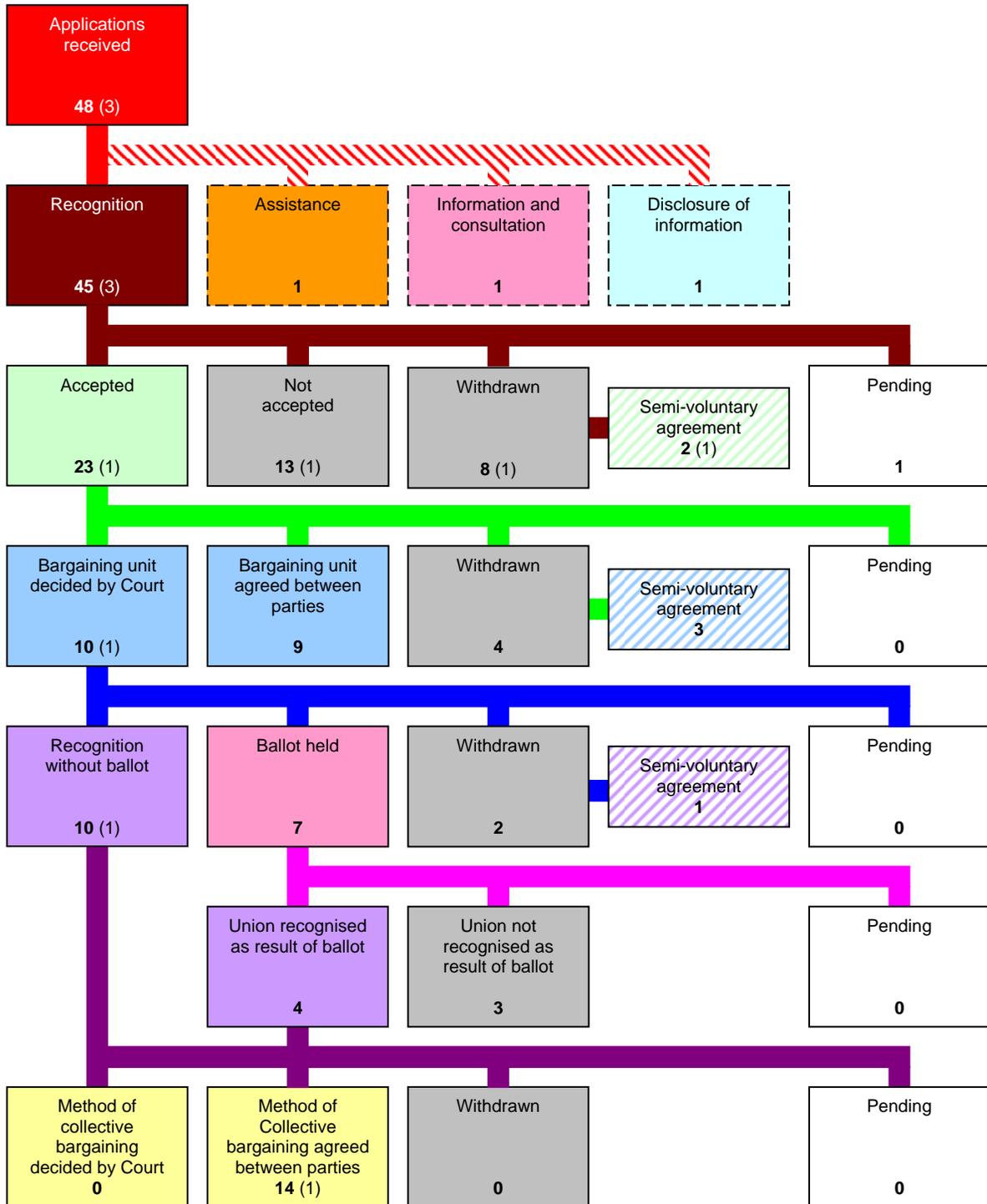
In addition, an application by Unite the Union in respect of Evron Foods Ltd was ongoing from the previous reporting year.

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 18**.

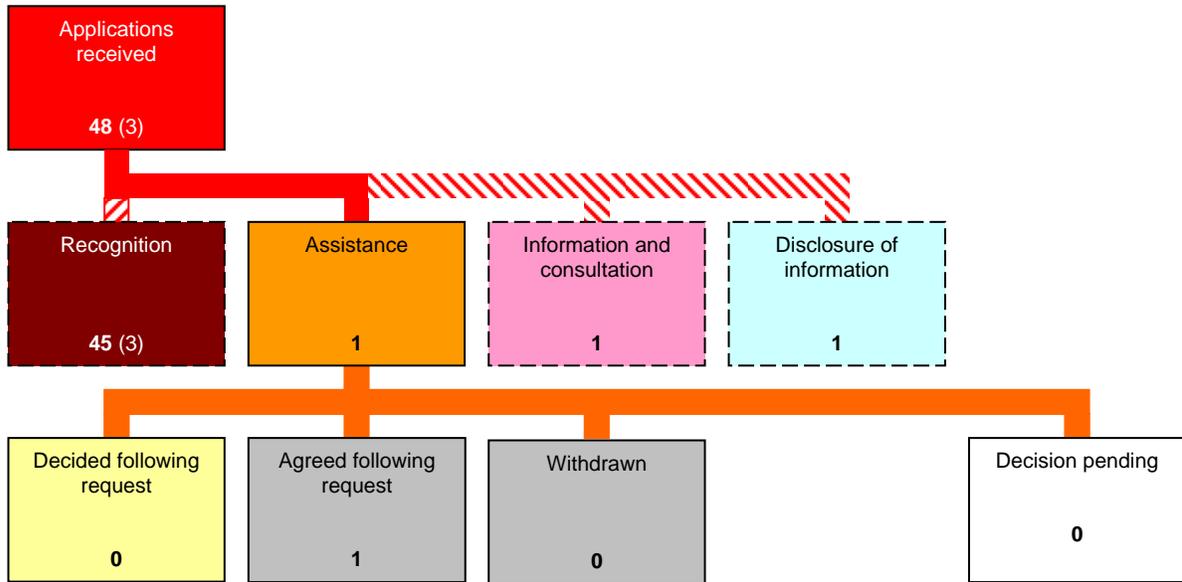
On the following pages are process maps setting out the outcomes of all cases dealt with by the Industrial Court. Figures in brackets represent changes to total figures during the reporting year and do not reflect subsequent developments. Note that some of the changes to the charts relate to the *Unite the Union and Evron Foods* application begun during the previous reporting year.

# Applications for recognition

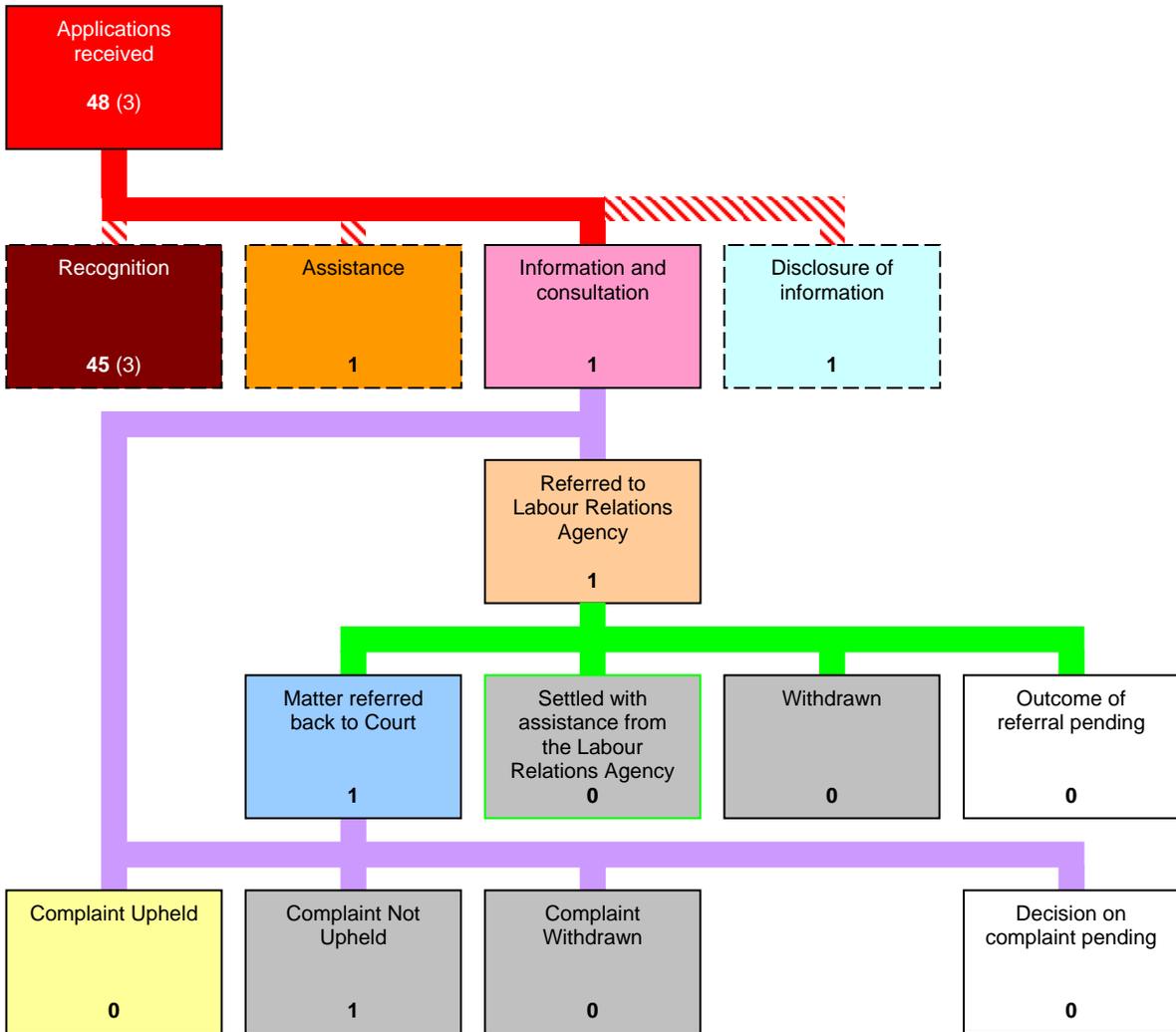


## Applications for assistance

---

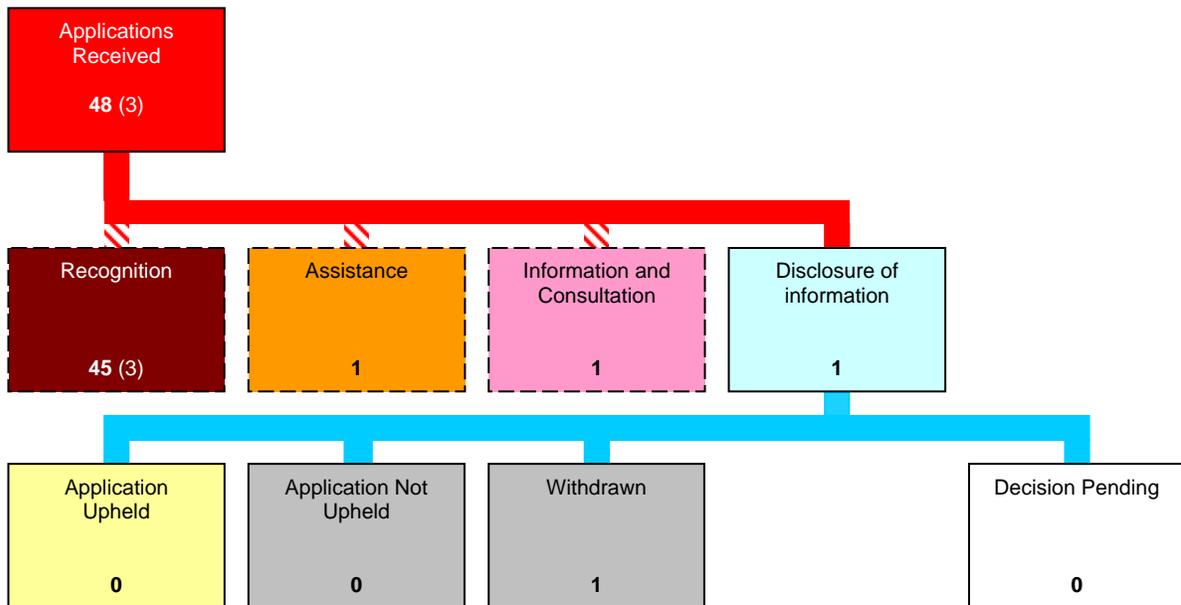


## Information and consultation applications



## Disclosure of information applications

---



# Review of cases 2011/12

## ***IC45/2011 – Unite the Union and Evron Foods Ltd***

---

Unite the Union submitted an application to the Industrial Court on 7 March 2011. The application was for recognition at Evron Foods Limited, Carn Industrial Estate, Portadown, BT63 5WD and was a repeat of a previous application (IC44/2010, which was withdrawn by the union before the Panel reached a decision on acceptance). The bargaining unit was described as “Despatch Operatives, Production Operatives, Team Leaders, Store Persons” and the location was “Portadown Plant”. The application was copied to the employer on 9 March 2011 and a completed response questionnaire was received on 16 March 2011.

The panel which had considered the previous application was reappointed to consider this application. A membership check was carried out on 4 April 2011 and from the results the Panel concluded that the application met all of the admissibility and validity tests and was thus accepted by the Court on 14 April 2011.

The Panel held an informal meeting with representatives of both parties on 19 May 2011, to assist the parties in agreeing an appropriate bargaining unit. However the parties were unable to reach agreement; so a hearing was arranged for 20 July 2011, where the Panel considered written evidence and verbal submissions from the parties. The Panel concluded that the union’s proposed bargaining unit was an appropriate bargaining unit.

The Court conducted a further membership check on 2 August 2011, to test the level of union membership in the bargaining unit. The Panel was satisfied that a majority of workers in the bargaining unit were members of the union and that, in the interests of good relations, a ballot was not required. The Court granted recognition to the union on 24 August 2011.

### ***IC46/2011 – Unite the Union and Windermere Supported Living Service***

---

Unite the Union submitted an application to the Court on 5 September 2011 for recognition at Windermere Supported Living Service, Lisburn. The application appeared to contain one clerical error and one administrative error, which would have hampered the Court in applying the admissibility and validity tests. The Case Manager contacted the union and pointed out these errors in the application. The union withdrew the application on 6 September 2011 and subsequently submitted a further application for recognition at Windermere Supported Living Service, Lisburn, on 14 October 2011. The proposed bargaining unit was given as “the majority of senior support and support workers in the Windermere supported living service.” The application was copied to the employer and a response was received on 25 October 2011.

A Panel was convened to consider the matter and met on 28 October 2011. It concluded that the application was not admissible under paragraph 36(1)(a) of Schedule 1A, since it was not possible to ascertain whether members of the union constituted at least 10% of the workers constituting the relevant bargaining unit. The Panel also doubted whether the union’s original letter of request to the employer was valid, for the same reason.

### ***IC47/2011 – Unite the Union and Finning Cat***

---

Unite the Union submitted an application to the Industrial Court on 28 November 2011 for recognition at Finning Cat, Blaris Industrial Estate, Altona Road, Lisburn. The proposed bargaining unit was described as “service technicians” and the location was “Finning Cat, Altona Industrial Estate, Lisburn”. The application was copied to the employer and a response received on 6 December 2011.

In its response the employer indicated a willingness to meet with the union with a view to agreeing a prospective bargaining unit and scope/form that a recognition agreement might take. The union agreed with this request and both parties subsequently requested the Court to extend its deadline to consider the application. The Court twice extended its deadlines at the request of the parties to facilitate meetings between them. On 16 January 2012 both parties informed

the Court that agreement had been reached and that no further action should be taken by the Court.

### ***IC48/2012 – Unite the Union and Qualitrol Instruments***

---

Unite the Union submitted an application, dated 30 March 2012, for recognition at Qualitrol Instruments, 15 Wildflower Way, Belfast, BT12 6TA. As the application was not received by the Court until 2 April 2012, in the next reporting period, the application will be detailed in the next annual report.

# Resources

## *Membership of the Court*

<b>ROLE</b>	<b>NUMBER</b>
Acting Chairman	1
Panel Members	12*

## *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	£30,503.76
Staff	£29,850.00
Other (including training, travel and accommodation)	£ 3,571.75
<b>TOTAL</b>	<b>£63,925.51</b>

---

\* Six new panel members were appointed on 1 December 2011. A serving panel member, Mr Bob Gourley, passed away on 26 January 2012.

# Staff and contact details

## *Staff*

<b>Role</b>	<b>Name</b>
<b>Secretary</b>	<b>Dr Alan Scott</b>
<b>Senior Case Manager</b>	<b>Mr Paul Lyons</b>
<b>Case Manager / Head of Administration</b>	<b>Mr Paul Cassidy</b>
<b>Administrative Support</b>	<b>Mr Alan Finlay</b>

## *Contact Details*

The Industrial Court  
Room 203  
Adelaide House  
39-49 Adelaide Street  
BELFAST  
BT2 8FD

**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.

Dr Alan Scott  
Secretary  
The Industrial Court  
Room 202  
Adelaide House  
39-49 Adelaide Street  
BELFAST  
BT2 8FD

**Telephone:** 028 9025 7531

**E Mail:** [Alan.Scott@delni.gov.uk](mailto: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.

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)