

# Industrial Court

Statutory  
Recognition

Guidelines for the  
Suitable Independent  
Person



*August 2006*

# CONTENTS

**Page No:**

Introduction	3
Industrial Court Contact Details	5
Statement of Purpose	6
Guidelines for SIP Organisations	7
Duties of the SIP	9
Duties of the Industrial Court Case Manager	11
Duties of the Employer	12
Treatment of SIP Costs under Schedule 1A	13

# INTRODUCTION

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

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

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

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

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

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

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

## CONTACT DETAILS FOR THE INDUSTRIAL COURT

**Address:** The Industrial Court  
Room 203  
Adelaide House  
39/49 Adelaide Street  
Belfast  
BT2 8FD

**Tel:** 028 9025 7599 (9.00am-5.00pm – Monday to Friday)

**Fax:** 028 9025 7555

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

**Web-site:** [www.industrialcourt.gov.uk](http://www.industrialcourt.gov.uk)

### **Contact names:**

Secretary:	Brian Patterson
Senior Case Manager:	Marie Turner
Case Manager:	Brenda Slowey
Head of Administration:	Paul Cassidy
Administration Support:	Alan Finlay

## STATEMENT OF PURPOSE

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

# GUIDELINES FOR SIP ORGANISATIONS

## Preamble

**3.1** Under the provisions in Schedule 1A, if a union's application is accepted by the Court it can request that the Panel appoints an independent party to handle communications between the union and the workers in the bargaining unit, the "relevant workers". During the statutory procedure the bargaining unit, and therefore the relevant workers, may change. The "relevant workers" may be:-

- those in the union's proposed bargaining unit (as described on its application form and in its formal letter of request to the employer);
- those in the bargaining unit that was agreed between the union and employer before it submitted its application to the Court;
- those in the bargaining unit that was agreed between the union and the employer after the union's application was accepted; or
- those in the bargaining unit where it has been decided by the Panel.

**3.2** The independent party is the Suitable Independent Person (SIP). The SIP chosen will be one of the organisations listed in the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (NI) 2004. The choice of which organisations to invite for tender will be made by the Court on the basis of who will carry out the SIP functions competently and whose independence in carrying out those functions cannot be reasonably questioned

## Appointment

**3.3** The Panel is responsible for deciding which SIP organisation to appoint. This decision will be primarily on the basis of competence, expertise, experience, and independence, together with value for money. The need to encourage competition will also be taken into account.

**3.4** The Court will invite estimates of costs from the organisations named in the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (NI) 2004. The estimate invitation will give details of the size of the bargaining unit and try to provide an indication of how many times the SIP will be used (see paragraphs 5.1 to 5.5, Duties of the Case Manager).

**3.5** The SIP organisation will notify the Court if they have in the past 12 months carried out any work for either the union/s or employer and will also notify the Court whether the identities of the parties present the SIP with a conflict of interest or anything that might be perceived as a conflict of interest.

**3.6** All interested organisations should provide a written estimate promptly. It may be necessary to request an estimate within 24 hours of the invitation.

- 3.7** The estimate should include details of such costs that are incurred in connection with issuing communications for the union by the SIP, together with the SIP's charges for their services. Estimates should include a breakdown of costs on the basis of the different activities involved (e.g. printing, postage, despatch, management of the lists of workers, staff costs etc).
- 3.8** Both the invitation and the estimate may be sent by fax or email as well as by post.
- 3.9** All SIP organisations submitting estimates will be informed as soon as reasonably possible of the Panel's decision on whether to appoint them.

### **Confidentiality- Data Protection Act 1998**

- 3.10** The Data Protection Act 1998 applies to information regarding individuals passed by the parties to the Court and by the Court to the SIP. Under the Data Protection Act 1998, the SIP will be performing the role of a data processor, while the Court will perform the role of a data controller. The Court and the SIP will abide by the Act's requirements, in particular the requirements for security in Principle 7<sup>1</sup>. Any personal information relating to individual workers, passed to the SIP by the Court, must be kept in a secure place.
- 3.11** The SIP should take note of its responsibilities under the Data Protection Act. The SIP must not:
- a) make further use of the personal information it receives or generates in carrying out its responsibilities under this agreement beyond that necessary for carrying out the SIPs role, nor
  - b) disclose this personal information to any third party.

### **Requirements of the Schedule**

- 3.12** The SIP must carry out its duties in accordance with the requirements of the Schedule. In addition to the statutory duties, the SIP should also take account of the Best Practice that SIPs are expected to follow set out in paragraphs 4.8 to 4.13.

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<sup>1</sup> For further information on the Data Protection Act, consult the Assistant Information Commissioner's Office (tel 028 9051 1270) [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

# DUTIES OF THE SIP

## **Statutory Duties**

- 4.1 The SIP must carry out its functions competently and with independence.
- 4.2 The SIP must send any information supplied by the union to the workers in the bargaining unit.
- 4.3 The SIP must send information supplied by the union until notified otherwise by the Court.
- 4.4 The Court will provide the SIP with the details of workers' names and addresses, including details of workers subsequently joining or leaving the bargaining unit. The SIP must not amend the list of names and addresses at the request of anyone other than the Court Case Manager. If the SIP is approached by either of the parties, or by any individual worker for the purposes of adding or removing names from the list, then they must be referred directly to the Case Manager by the SIP.
- 4.5 The SIP should provide a "named individual" within its organisation who will be the point of contact for the Case Manager, and will be responsible for sending out information supplied by the union to the workers in the bargaining unit.
- 4.6 The union bears the full cost for the SIP sending information to the workers in the bargaining unit on its behalf (see paragraphs 7.1 to 7.5).
- 4.7 The SIP will invoice the union for costs incurred for sending information to the workers in the bargaining unit. At the time the SIP is appointed the Case Manager will send the union a copy of the SIP's initial estimate. From the date of its appointment the SIP must ensure that it notifies the Court and the union of any changes to the original, or last updated, estimate as soon as reasonably practicable making clear the reasons for those changes. The union may appeal to an Industrial Tribunal if they dispute the invoice (see paragraphs 7.6 to 7.9).

## **Best Practice SIPs Are Expected To Follow**

### **General Principles**

- 4.8 The SIP will ensure as far as possible that the names and addresses of the workers to receive information issued from the union are accurate (e.g. by making amendments as soon as any are notified by the Court). Where there is more than one list of workers, the SIP should ensure that the most recent is used.
- 4.9 The SIP should keep a record of the date(s) when the information is received from the union and when mailing is sent to the workers in the bargaining unit.
- 4.10 When the SIP receives a request from the Case Manager for duplicate information to be issued, these should be sent as soon as is reasonably possible.

**4.11** The SIP must endeavour to send out information to the workers in the bargaining unit, within one working day of receipt of the material or otherwise as agreed with the union. The SIP should inform the union that the material has been despatched.

### **Irregularities**

**4.12** In the event of a failure by the employer to fulfil any of its statutory duties (see paragraphs 6.1 to 6.3), the Court will, provided the initial period has not yet ended, order the employer to take steps to remedy the failure.

### **Cover For The Named Individual**

**4.13** If the SIP's named individual is absent on any day during the initial period, s/he (or a representative at the organisation concerned) should inform the Court of another named individual at the same organisation who will carry out the SIP duties during their absence. The named individual should have access to the relevant e-mail and post, and should ensure that the switchboard routes all relevant calls to him/her.

## **DUTIES OF THE INDUSTRIAL COURT CASE MANAGER**

- 5.1** Before seeking estimates of costs from SIPs the Case Manager will ask the union to provide any information that might assist the compilation and accuracy of the estimates. Any information gathered will be included with the request for an estimate and should be taken into account by the SIP.
- 5.2** The decision on the appointment of the SIP is for the Court Panel and not the Case Manager or SIP. All organisations responding to the invitation to submit an estimate will be informed by the Case Manager whether or not they have been appointed as SIP.
- 5.3** The Case Manager will inform the union and the employer of the identity and role of the SIP.
- 5.4** The Case Manager will pass the names and addresses of workers in the bargaining unit to the SIP as soon as is practical after they are received. After this, the Case Manager will pass to the SIP the names and addresses of any workers who join or leave the bargaining unit. If the bargaining unit changes by agreement between the parties or by determination of the Court, the Case Manager will inform the SIP and provide a new list of those who are the “relevant workers.” The employer is under a continuing duty to provide these to the Court as soon as is reasonably practicable.
- 5.5** If a worker in the bargaining unit contacts the Court to inform it he/she had not received the information from the union, the Court will contact the union to seek clarification on whether it wants the SIP to send out duplicate information to the worker.

## **DUTIES OF THE EMPLOYER**

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

## **TREATMENT OF SIP COSTS UNDER THE PROVISIONS OF SCHEDULE 1A**

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

### **Right of the parties to appeal against costs**

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



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)