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The Content of New Voluntary Trade Union Recognition Agreements 1998 – 2002: Report of Preliminary Findings

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Foreword

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The views expressed in these publications do not necessarily reflect those of the Department or the Government. We publish them as a contribution towards open debate about how best we can achieve our objectives.

Grant Fitzner
Director, Employment Market Analysis and Research

Acknowledgements

We would like to thank all those national and regional trade union officers and administrative staff who supplied the copies of recognition agreements or other documentation or information on recognition, upon which this study is based. We would also like to thank the TUC and Labour Research Department for their co-operation in providing access to their original surveys of voluntary trade union recognition agreements.

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Glossary of abbreviations and acronyms

CAC	Central Arbitration Committee
DTI	Department of Trade and Industry
LRD	Labour Research Department
TOIL	Time off in lieu
TUC	Trade Union Congress
TUPE	Transfer of Undertakings (Protection of Employment) Act 1981
PFI	Private Finance Initiative
PSI	Policy Studies Institute
RPI	Retail Price Index
WLRI	Working Lives Research Institute

Executive summary

The vast majority (84 per cent) of voluntary trade union agreements concluded in the light of the Employment Relations Act 1999, took the form of formal written agreements. The majority were for full recognition for collective bargaining and either specifically covered pay, hours and holidays or were more generally defined as covering 'terms and conditions'. One in five (20.5 per cent), however, reflected the statutory model in restricting the scope of bargaining to pay, hours and holidays only. Non-core issues, such as pensions, training and equal opportunities, were less likely to be explicitly included and more likely to be specifically excluded, but in most agreements the scope of bargaining was not explicitly stated and it is not possible, purely from an analysis of the text of agreements, to state categorically whether these issues were the subject of collective bargaining.

This report presents the preliminary findings of a statistically representative sample of voluntary trade union recognition agreements drawn from the TUC/LRD surveys of new recognition deals reached between 1998 and 2002. . The formal analysis is based solely upon the text of the recognition agreements. The reality of the bargaining relationship and bargaining outcomes following recognition, as perceived by the parties themselves, will be the subject of the next phase of the research.

The context for this study was the increase in voluntary trade union agreements recorded both prior to and following the coming into force of the statutory trade union recognition procedures in June 2000 (as introduced by the *Employment Relations Act 1999).*

The study aimed to establish the form that new recognitions have taken. The content analysis of 100 recognition agreements focussed upon the depth of recognition, whether negotiation, consultation, or information sharing, and its scope in terms of both the "core" issues of pay, hours and holidays, and the "non-core" issues of pensions, training and equal opportunities. The study also intended to determine how far the agreements included a range of procedural issues.

The form recognition has taken

- The vast majority (84 per cent) of new voluntary recognitions concluded between 1998 and 2002 took the form of formal written agreements. In only a small minority (five per cent) was recognition confirmed by supporting documentation rather than a formal agreement. In a similar proportion of cases (six per cent) recognition was based upon a verbal agreement or understanding.

- In nine out of ten (91 per cent) of the recognition agreements recorded by the TUC/LRD survey the union was still recognised by the employer at the time of this study. In only two cases (under one per cent) had the recognition relationship formally ceased, one through derecognition and another because union membership had collapsed. In the remaining eight per cent of cases the workplace had subsequently closed or been taken over.

The depth of recognition

- The content analysis of the sample of 100 recognition agreements showed that over seven out of ten (73 per cent) appeared to provide recognition for collective bargaining either at workplace or employer level. In another ten cases (10 per cent) terms and conditions were covered by collective bargaining at national or industry level.

- In one in seven (14 per cent) agreements trade union recognition did not extend to collective bargaining but was limited to either consultation or collective representation (where unions represent the views and opinions of their members as a group to the employer)

The scope of recognition – core issues

- Of the 73 agreements where there was provision for either employer or workplace collective bargaining, one in five (20.5 per cent or 15 cases) restricted the scope of negotiations, in substantive terms, to one or more of pay, hours or holidays. Of these 15 agreements, 12 mirrored the statutory model of bargaining introduced by the statutory recognition procedure in specifying pay, hours and holidays.

- Pay was specified in three quarters (75 per cent) of collective bargaining agreements; hours in half (48 per cent) and holidays in just over a third of cases (37 per cent). In no cases was pay specifically excluded and in only two (three per cent) were hours and holidays excluded.

- In around half of collective bargaining agreements (53 per cent or 39 agreements) bargaining coverage was defined in general terms as over 'pay and conditions' or 'terms and conditions'.

The scope of recognition – non-core issues

- Pensions, training and equal opportunities were less likely to be specifically included in, and more likely to be specifically excluded from, the scope of bargaining. Pensions were stated as a subject for negotiation in around one in ten agreements where there was collective bargaining (11 per cent), but specifically excluded in a quarter (26 per cent) of agreements.

- Training and equal opportunities were included in fewer than one in ten cases (seven per cent) and specifically excluded in just over a quarter (26 and 27 per cent respectively), although a number of other agreements provided for consultation or representation over these issues.

Bargaining machinery

- Recognition agreements did not typically provide an institutional framework for collective bargaining. Around three-fifths (59 per cent) of those agreements with a commitment to collective bargaining contained no reference to any formal bargaining body or procedure.

Reference to procedural issues

- Over a half of the agreements (55 per cent) included a statement on management's right or responsibility to manage the organisation. Less than a half (43 per cent) contained no such reference.

- In one in 20 agreements (five per cent) there was provision for negotiation on organisational or technological change. A further one in five (20 per cent) involved a commitment to consultation

on this issue. In a quarter (23 per cent) there was provision for management to introduce such change, but no commitment to either consultation or negotiation with the union.

- Over half (53 per cent) of the sample of agreements contained a status quo provision; less than a half did not (41 per cent). These provisions refer to where proposed changes to terms and conditions, or work organisation, are deferred until domestic disputes procedures are exhausted.

- Two thirds of agreements in the sample (66 per cent) provided for some form of collective disputes resolution. In two fifths (42 per cent) this was a specific disputes resolution procedure; in a further 16 (16 per cent) it took the form of a collective grievance procedure; and, in a further eight agreements, a negotiating procedure which aimed to resolve differences between the parties.

- In a third of sampled agreements (33 per cent) there was provision for direct communication by the employer with employees, alongside union representation.

About this project

The research was undertaken as part of the Department of Trade and Industry's Employment Relations research programme. It was carried out by the Working Lives Research Institute at London Metropolitan University, with assistance from the Policy Studies Institute. The authors of the report are Sian Moore (WLRI) and Helen Bewley (PSI), who provided support for the statistical analysis. Louise Raw (WLRI) was the research assistant.

The final report is expected to be published by the end of 2004.

1

Introduction and background

'One of the striking contemporary features of British collective bargaining, compared with say collective bargaining in the U.S, is the poverty of its subject matter, the limited range of substantive issues regulated by written and formally signed agreements'. (Flanders 1964: 158)

The Employment Relations Act 1999 established a statutory recognition procedure, which came into operation in June 2000. The Government's intention was to introduce a mechanism for union recognition where a majority of the workforce is in favour, but that it should be used as a last resort, its existence encouraging the conclusion of voluntary agreements (Fairness at Work 1998). The TUC/LRD surveys, used as the basis for this research, have demonstrated a rise in the number of voluntary recognition agreements concluded over the period 1995 to 2002, with a surge immediately preceding and immediately following the introduction of the statutory procedure. In its Consultative Document on the Review of the Employment Relations Act, published in February 2003, the DTI drew upon this alongside other evidence of the increase in voluntary recognition agreements to support its claim that 'the procedure is, overall, working well' (Department of Trade and Industry, 2003).

To date there has been little research on the coverage and content of voluntary recognition agreements concluded in the light of the law or on the outcomes of the process of recognition. The statutory procedure included a legally enforceable method of bargaining. This can be imposed by the Central Arbitration Committee (CAC), the body charged with handling the statutory recognition procedure, if the

parties cannot come to their own agreement. The statutory model is confined to pay, hours and holidays and is considered by unions to be restrictive in its scope (TUC, 2003). The highly prescribed procedural arrangements and requirements for the establishment of statutory recognition may have been designed to deter both parties from going down the statutory route. Instead it may encourage a voluntary agreement which might better suit either or both parties.

This context gives rise to three hypotheses. First that since voluntary recognition is defined by less adversarial relationships than recognition which is the outcome of a statutory award, the scope and depth of voluntary agreements will be wider and bargaining relationships more constructive (Moore et al 2000). Similarly where a CAC case is withdrawn and recognition concluded (a semi-voluntary agreement), it is possible that bargaining will be more expansive than where a statutory award is made. A second hypothesis is that a voluntary recognition agreement might be signed in order to pre-empt the statutory route and in these circumstances either party may be prepared to make concessions limiting the scope and depth of recognition, depending upon the strength of the union in the workplace. Finally the legislation may have a shadow effect: new voluntary recognition agreements may reflect the statutory model in terms of the scope of bargaining and/or procedures.

One difficulty in any analysis of the coverage and content of new voluntary recognition agreements is the absence of any historical study of a body of union recognition agreements, against which to make comparisons. A number of commentators have traced the formalisation of the procedural nature of recognition in the 1970s, including the systemisation of negotiation and disputes procedures and arrangements for discipline and dismissal (Hyman 2003). The reassertion of managerial power in the 1980s and 1990s was seen to lead to a focus on the negotiation of organisational change and working methods at the expense of what was seen as the more 'traditional' areas of bargaining, such as pay-setting (Kessler and Baylis 1998). Hence the importance of the 'status quo' clause restricting management's right to make unilateral changes (Terry 2003).

Research suggests that the right to statutory recognition was introduced at a time when the scope of bargaining in companies that continued to formally recognise trade unions had narrowed. Oxenbridge et al's study, conducted during 1999 and 2000, proposed

that 'a fundamental change has occurred in the character of collective bargaining' concluding that 'union recognition has become a diffuse and often shallow status' (Oxenbridge et al 2003:327). This conclusion may need to be treated with caution since it is based upon analysis of the 24 companies where recognition agreements were in operation, out of the 60 companies in their study. The research supported Brown et al's 1998 work in identifying a particular decline in collective bargaining over pay, encouraged by the rise in individual performance-related pay.

Oxenbridge et al (2003) also identified an increase in consultation in the workplace possibly stimulated by the right to statutory recognition, but also possibly in anticipation of the introduction of new legal rights to information and consultation. New recognitions are thus being established in the context of encouragement by the law of wider channels of employee representation, with implications for the scope and depth of collective bargaining. Recognition may co-exist with new or existing employee consultation mechanisms or with direct communication with the workforce. For Oxenbridge et al (2003) collective representation is taking the form, not of 'traditional collective bargaining', but increasingly of consultative and representational arrangements.

New voluntary recognition agreements are being concluded not only within a changed legal framework but also within the context of national and international economic changes, product market competition and the increasing demands of shareholders. It would therefore be surprising if new recognition or the re-recognition of unions was not taking place on a different basis to that which characterised recognition in the 1970s. At that time union membership was increasing in the public sector and amongst white-collar workers (Bain 1970), and industrial action was much more common (Waddington 2003).

Yet at the same time Flanders' (1970) analysis of industrial relations in the era of voluntarism stressed that collective bargaining in the UK was distinctive in its emphasis on procedure rather than substantive issues. It is questionable how far the scope and substance of bargaining was ever absolutely defined or codified in collective agreements, and how far this was ever their primary purpose for trade unionists. Flanders (1970) suggests that recognition may have a wider role than bargaining over substantive issues. He states that for unions the rules of collective bargaining 'provide protection, a shield

for their members. And they protect not only their material standards of living, but equally their security, status and self-respect; in short their dignity as human beings.'

2

Aims and objectives

In September 2003 the Department of Trade and Industry (DTI) commissioned the Working Lives Research Institute (WLRI) at London Metropolitan University to examine the coverage and content of voluntary trade union recognition agreements reached between 1998 and 2002 in the context of the statutory trade union recognition procedure introduced by the *Employment Relations Act 1999*.

The main objectives of the study were to:

- Provide a sound statistical estimate of the proportion of new voluntary formal agreements that include explicit reference to the "non-core" collective bargaining issues of pensions, training and equality (excluding equal pay) and the extent to which to recognition on these issues extends to collective bargaining, consultation or information sharing. This forms Stage One of the study and is the subject of this report.
- Establish the extent to which, in practice, the "core" issues of pay, hours and holidays and the "non-core" issues of pensions, training and equality are perceived by the principal parties to be subject to collective bargaining, consultation, or the provision of information. This forms Stage Two of the study and will be the subject of future research.

Research strategy

The study is based upon the TUC/LRD surveys of new voluntary recognition agreements concluded between 1998 and 2002. The survey data represents the most comprehensive source of information on where voluntary recognitions have taken place. Stage One, designed to establish the feasibility of the study, aimed to retrieve a statistically representative sample of approximately 200 recognition agreements from all those identified by the TUC/LRD surveys. This

would provide a sound basis from which to estimate the extent to which formal agreements made explicit reference to substantive core collective bargaining issues (pay, hours and holidays), and non-core issues, most importantly, pensions, training and equal opportunities.

Stage Two of the study will be based on a survey of managers and trade union representatives involved in Stage One of the study, and a limited number of in-depth case studies. The main aim of Stage Two will be to get a better picture of the reality of trade union recognition, and what the agreements mean in practice. A report on Stage Two is expected by the end of 2004.

The preliminary analysis of the outcome of Stage One

By mid-November 2003 it was clear that Stage One of the research would succeed in securing at least 200 actual voluntary recognition agreements from the TUR/LRD survey sample. In order to provide timely findings to inform policy officials and public debate on the review of the *Employment Relations Act 1999*, it was decided to provide a preliminary analysis of 100 randomly selected recognition agreements from those collected to date.

This preliminary analysis aimed to:

- Identify whether the agreements included explicit reference to the core collective bargaining issues of pay, hours and holidays.
- Identify whether the agreements included explicit reference to the non-core collective bargaining issues of pensions, training and equality (excluding equal pay).
- Establish whether in the texts of the agreements the core issues of pay, hours and holidays and the non-core issues of pensions, training and equality, were subject to collective bargaining, consultation or the provision of information.

In addition, to provide information with reference to:

- Management's right to manage clauses: including, the right to introduce organisational change with particular reference to the introduction of technology and changes in working practices;
- Status quo provisions: whereby proposed changes to terms and conditions, or work organisation, are deferred until domestic disputes procedures are exhausted.;
- The right of management to engage in direct communication with employees outside union channels.

In terms of the organisational context this analysis of agreements also provided an indication of:

- Whether the union had sole bargaining rights for the bargaining unit, workplace or organisation;
- Whether the recognition was a result of the transfer of staff to an organisation under the Transfer of Undertakings *(Protection of Employment) Regulations 1981*;
- Whether the agreement was defined as a 'Partnership'.

The report begins by describing the research methodology and the process by which the statistically representative sample of recognition agreements were retrieved. Chapter three describes the sampling of the TUC/LRD survey and the subsequent provision of a sample of 100 agreements for textual analysis and records the response rate. Chapter four then describes the research outcomes; principally the form that voluntary recognitions concluded between 1998 and 2002 took.

The main body of the report provides preliminary findings from the content analysis of the random sample of 100 recognition agreements. Chapter five outlines the structure of the agreements. Chapter six focuses on the depth of recognition, in terms of collective bargaining, consultation or collective representation. Chapter seven analyses the scope of collective bargaining in terms of core and non-core bargaining issues. It also looks at the codification of terms and conditions, references to bargaining machinery and the meaning of bargaining. Chapter eight examines coverage in terms of procedural issues. Finally, chapter nine provides some preliminary conclusions and the implications for future research.

It is important to stress from the outset that this analysis is based solely upon analysis of the text of the formal recognition agreements. The reality of recognition as it is perceived by the parties, and the extent to which recognition reflects the content of these agreements, will be investigated in the second stage of this study. Union recognition is a dynamic relationship that changes over time and actual bargaining relations cannot be assumed from the content of written agreements. These may deliberately avoid reference to tacit understandings and contentious matters through the ambiguous use of language. The written agreements set out the parameters of the relationship and are starting points from which bargaining relationships evolve. Bargaining outcomes and the reality of industrial relations

following recognition, as perceived by the parties themselves, is the subject of the next phase of the research.

3

Research methodology

Sampling from the TUC/LRD surveys of voluntary recognition

The sampling frame

This research is based upon the TUC/LRD surveys of new voluntary trade union recognition agreements conducted for the years 1998 to 2002. The data for each year was supplied by LRD to the researchers and merged into one file comprising a total of 991 cases. This data was checked against the published TUC recognition reports, since the information in these reports is verified before publication. The data was further cleaned to remove any duplicate records and any anonymised agreements that would be difficult to identify for the purposes of the research. A small number of statutory agreements were also removed – that is cases where recognition had been awarded through the statutory procedure. Semi-voluntary agreements that had been initially submitted to the CAC, but then withdrawn when the parties indicated they could reach agreement, were included in the sampling frame. The cleaned dataset consisted of 958 cases. The number of cases recorded for each year, after cleaning, is shown in Table 1.

The sample

Due to time and resource constraints, the DTI required the identification of a statistically representative sample of recognition agreements, rather than to seek copies of all the agreements detailed in the database from 1998 to 2002. A decision was made to sample around half (477) of the total number of agreements (958) on the database, with the aim of obtaining 200 recognition agreements from

this sample. It was felt that this would be sufficient to provide a sound basis for analysis given concerns about the extent to which agreements would be codified.

1. Voluntary recognition cases, 1998-2002

Year	Number of cases
1998	34
1999	74
2000	157
2001	444
2002	249
Total	958

Source: TUC/LRD database of voluntary union recognition agreements (2003)

Stratifying the sample

Given the relatively small number of voluntary recognition agreements made during 1998 and 1999, and the interest in studying negotiating relationships which have had a longer time to develop, it was decided to over-sample from the first two years of the study. Accordingly all 108 cases recorded for 1998 and 1999 were included in the sample, with a further 369 cases being selected at random from across the remaining three years (using a sampling fraction of 0.44 per year). This produced an overall sampling fraction of 0.50 for the 1998 to 2002 period. In total, 477 agreements were selected, from 30 unions. The actual number of cases selected for each year is shown in Table 2.

2. Sample of voluntary recognition cases and sampling fractions

Year	Sample	Sampling fraction
1998	34	1.00
1999	74	1.00
2000	70	0.45
2001	189	0.43
2002	110	0.44
Total	477	0.50

Source: TUC/LRD database of voluntary union recognition agreements (2003)

The representativeness of the sample

The characteristics of the first sample (477) of TUC/LRD agreements were compared with those of the full, cleaned dataset, in order to verify the representativeness of the sample chosen. This was of particular concern because in sampling all cases from 1998 and 1999 it was possible that unions which made fewer agreements in these early years might be under-represented in the sample as a whole. The extent to which agreements reported by national or regional officials were disproportionately sampled was also considered. The analysis was limited to a consideration of the representativeness of the sample based on these two features alone, as complete data was available for all respondents. The representativeness of the sample was established using a probit regression to predict the probability of an agreement being sampled.

Seventeen cases were dropped from the probit analysis where unions had made only a small number of voluntary recognition agreements, and either all or none of these cases were selected for the sample. From the remaining 30 unions, the probit analysis demonstrated that only one union was over-sampled, due to the high number of agreements that it reached during 1998 and 1999. There was no significant over-sampling of regional or national respondents. This suggests that the method of over-sampling from the earlier years of the TUC/LRD surveys of voluntary recognition did not bias the sample in terms of the number of agreements selected from individual unions, or the location of the respondent. Therefore there is reason to believe that the sampled agreements were representative of the population of voluntary agreements detailed in the TUC/LRD database with regard to the unions party to these agreements and the location of the union official who reported the agreement.

The sample of 100 recognition agreements for content analysis

By mid-November 2003, since it was clear that Stage One of the research would succeed in securing at least 200 actual voluntary recognition agreements from the sample. The project then moved into the second stage; a textual analysis of a sample of 100 voluntary trade union recognition agreements. At this point 136 copies of actual recognition agreements or other documentation had been received. A sample of 100 of these agreements was selected at random in order

to undertake content analysis. Table 3 shows the number of cases selected from each year.

3. Voluntary recognition agreements sampled for content analysis

Year	Number of cases (% of agreements reached in year)
1998	7 (20.6)
1999	15 (20.3)
2000	11 (7.0)
2001	33 (7.4)
2002	34 (13.7)
Total	100 (10.4)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

Protocols and the collection of primary data

Once the sample of 477 agreements from the TUC/LRD surveys had been drawn, a letter was sent to the general secretaries of the 30 trade unions[1] included in the sample (September 2003). The letter outlined the aims and objectives of the research and described how the sample was obtained. It explained that respondents would be asked to provide copies of the recognition agreements or other documentary evidence of recognition.

Since only four unions responded formally to this letter, more informal approaches were then made to establish how the information could best be provided. Of the 30 unions it was established that 14 would coordinate the provision of the agreements from their Head Offices; in some cases the agreements were held nationally, other unions decided to collate the information centrally. In the case of two of the larger unions it was agreed that information should be secured directly from regional officers. In two other cases, national officers undertook to provide the agreements, but in practice found that only a proportion of those in the sample were held nationally and then redirected the researchers to other regional or national officers.

Although some officers reported that the provision of the information would be time consuming and resource intensive, 29 of the 30 unions

[1] Two unions merged during the period of the TUC-LRD surveys; however the two sections of the union have been counted as two unions for the purposes of the report.

indicated that they were prepared to provide the information. However, one large manufacturing union indicated that it was not prepared to be involved in the study.

A short self-completion questionnaire was designed in consultation with Department of Trade and Industry (DTI) officials. The questionnaire was intended both to assist with the collection of the agreements themselves, and to serve as a back-up source of key information in the event of failing to obtain the actual agreements themselves. The questionnaire collected limited information on the form and content of each recognition agreement at the time it was agreed. . It aimed to establish if the union was still recognised and, if not, whether the employer was still in business. In addition it asked for information on the number of workplaces covered by the agreement and the proportion of employees covered by the agreement. Finally the questionnaire collected the contact details of the union officer or workplace representative most involved in dealing with the employer, as well as the contact details for the employer and the employer's representative most involved in the day-to-day management of employment relations. This information will be used in the next stage of the project. A copy of the questionnaire is provided, as Annex A.

Having gained the informed consent of the union general secretaries to carry out the study; letters were then sent to appropriate national officers and regional officers in October 2003. These outlined the aims and objectives of the research and explained how the sample was obtained. The letters described the two objectives of the survey. Firstly to secure a sample of agreements (or any supporting documentation) associated with the original recognition deal. Secondly, through the completion of the short questionnaire, to provide information on the key topics covered by recognition at the time it was agreed, and the extent of trade union involvement in a number of key industrial relations issues.

The letter was followed up with an email to national and local officers. This checked if officers had received the letter and whether they were responsible for the named agreement, if they were not they were asked to provide details of the appropriate officer. From the week beginning 20 October responses were pursued by telephone as well as email. In a substantial number of cases researchers were redirected to different officers, in some cases more than once. Only two regional officers (covering four agreements) said that they could not provide

the information and this was due to pressure of work. In a number of other cases the appropriate officer was on long-term sick leave, but in all but one of these, another officer provided information on their behalf. In almost all cases regional officers and their administrative staff were extremely helpful.

Response rate

By the end of December 2003, WRLI had received 255 responses out from the 477 agreements sampled. Responses took the form of returned questionnaires and/or copies of recognition agreements. Overall 25 of the 30 unions in the sample replied. This represented a response rate of 54 per cent of the sample (excluding three records that were found to be duplicates). If the large manufacturing union that declined to participate is excluded the response rate rises to 64 per cent.

Response by date of notification of the agreement

Table 4 shows the breakdown of responses by the year in which they appeared in the TUC/LRD survey and a comparison with the composition of the sample. This shows that the distribution of the achieved responses mirrors the distribution of the original sample.

4. Responses by year of notification of agreement

Year	Response (%)	Sample (%)
1998	19 (7.5)	34 (7.1)
1999	47 (18.4)	74 (15.5)
2000	39 (15.3)	70 (14.7)
2001	91 (35.7)	189 (39.6)
2002	59 (23.1)	110 (23.1)
Total	255 (100.0)	477 (100.0)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 477 agreements

The influence of the Transfer of Undertakings (Protection of Employment) Regulations

A number of recognition agreements were the result of the transfer of existing union members to a new employer under the TUPE regulations, rather than of a union recruitment campaign. This led to some complications in locating agreements. In two cases involving large national employers with a number of contracts within the public sector, agreements were returned which did not appear to match the

details specified in the TUC/LRD surveys. In some cases the agreement may have covered workers on a specific contract which has since expired or been transferred to another employer. In others, the union may have gone on to negotiate other agreements with the same contractor or to extend the initial agreement on a regional or national basis. In these cases it was difficult for union officers to identify the original agreement covering the specified contract.

The characteristics of the unions

The sample of TUC/LRD agreements

The decision of one of the larger manufacturing unions not to participate clearly affected the representativeness of the data, particularly as it was one of the four unions that were party to around three quarters (77 per cent) of the voluntary union agreements in the TUC/LRD surveys. The impact, however, was somewhat mitigated by the predominance of the other three unions amongst the respondents. In terms of the distribution of responses by union, these two large general unions and one smaller manufacturing unions dominated, with over two thirds (67 per cent) of agreements being signed by these three unions.

Two of the three were also large general unions operating predominantly in the manufacturing sector. They were responsible for 40 per cent of cases in the sample and 49 per cent of all responses. Although the history and origins of these two unions differ from the union that did not participate, it can be argued that in the period covered by the TUC/LRD surveys there was considerable overlap in the sectors, employers and occupational groups that they would have targeted for recruitment and recognition.

Table 5 shows the distribution of the sample and respondent unions by membership size demonstrating that the survey covered a range of larger and smaller unions, although larger unions predominated.

5. Responses by union size

Number of members	Responses (%)	Sample (%)	Responses - number of unions (%)	Sample - number of unions (%)
0-19,999	8 (3.1)	9 (1.9)	5 (20.0)	5 (16.7)
20,000-49,999	33 (12.9)	47 (9.9)	7 (28.0)	7 (23.3)
50,000-149,999	10 (3.9)	26 (5.5)	3 (12.0)	6 (20.0)
150,000-499,999	60 (23.5)	104 (21.8)	6 (24.0)	7 (23.3)
500,000 or more	144 (56.5)	291 (61.0)	4 (16.0)	5 (16.7)
Total	255 (100.0)	477 (100.0)	25 (100.0)	30 (100.0)

Source: TUC (www.tuc.org.uk/tuc/unions_main.cfm) *Membership figures as given to TUC January 2002

The response by union sector and Turner's typology of unions

Tables 6 and 7 attempt to categorise those unions included in the sample and those responding. Although privatisation and contracting out of public services make it increasingly difficult to define unions in terms of the sectors in which they operate, Table 6 shows that unions recruiting largely in the private sector dominated both the sample and responses. Unions operating in both sectors were proportionately more likely to conclude agreements. Around one in five unions (20 per cent of the sample and 16 per cent of respondents) operated predominantly in the public sector, but these were responsible for disproportionately few agreements (four per cent). This is not so surprising given that much of this sector continues to be largely covered by nationally negotiated agreements.

6. Responses by union sector

Sector	Responses (%)		Sample (%)	
	Unions	Agreements	Unions	Agreements
Private sector	16 (64.0)	163 (63.9)	19 (63.3)	340 (71.3)
Public	4 (16.0)	10 (3.9)	6 (20.0)	20 (4.2)
Public/private	5 (20.0)	82 (32.2)	5 (16.7)	117 (24.5)
Total	25 (100)	255 (100)	30 (100)	477 (100)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 477 agreements

Table 7 shows that the majority of agreements have been signed by unions that can be defined either as 'general' unions, in that they recruit across sectors, industries, occupational groups and notions of 'skill'; or by unions that recruit in specific industries or sectors, but within that do not confine themselves to any one occupation or skill group. The latter is the most common type of union in the sample.

Just over a quarter (27 per cent of unions in the sample and 28 per cent of responding unions) were restricted in their recruitment activities to either a defined occupational group, or by occupational level (in all cases managerial and professional staff). However, these unions had concluded less than one in ten agreements (eight per cent in the sample, 11 per cent of responses). Two unions in the sample were defined by both occupation and industry, recruiting only managerial staff in a specific industry or sector. One union was entirely employer-based, constrained by its origins as a staff association.

7. Responses by union category

Category	Responses (%)		Sample (%)	
	Unions	Agreements	Unions	Agreements
'Open unions'				
General	3 (12.0)	127 (49.8)	5 (16.7)	274 (57.4)
Industry	12 (48.0)	91 (35.7)	14 (46.7)	154 (32.3)
'Closed unions'				
Employer	1 (4.0)	1 (0.4)	1 (3.3)	1 (0.2)
Occupation	7 (28.0)	29 (11.4)	8 (26.7)	40 (8.4)
Occupation and Industry	2 (8.0)	7 (2.8)	2 (6.7)	8 (1.6)
Total	25 (100.0)	255 (100.0)	30 (100.0)	477 (100.0)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 477 agreements

Turner's work on union structure provided for a dichotomous model of union organisation based on 'closed' versus 'open' unions (Turner 1962). Based upon a study of unions within the cotton industry, this was a historically specific model with 'closed' unionism dependent upon both tight control of the labour process and the restriction of labour supply. 'Open' unionism occurred conversely where the labour processes involved allowed relative ease of access and hence unrestricted labour supply. The latter decades of the twentieth century saw the disappearance of any such remnant of craft unionism with the distinction between craft, industrial and general unions blurring and multi-industry and multi-occupational unionism increasingly the 'norm' (Hyman 2003). It can be argued that manufacturing decline, increased privatisation and the introduction of the TUC 'organising' agenda (more dynamic and general recruitment based on the need to reverse union decline) have all encouraged a more 'open' approach by unions. Indeed, one union that could be considered most recently

dependent on a closed approach based upon narrow definitions of skill and restricted entry, has also been one of the most enthusiastic in the 'turn to organising'. This is reflected in this study by the composition of the bargaining units in some of its new recognition agreements. Turner's model can be most usefully applied today to distinguish those unions that can be defined as 'closed' in terms of professional or occupational status from those general 'open' unions with a more inclusive approach to recruitment. Today's 'closed' unions are the professional or 'white-collar' managerial (or in one case technical) unions as opposed to those defined in terms of craft status. Table 7 shows that 'closed' unions represent over a third of the both the sample (37 per cent) and respondents (40 per cent), but have only concluded a minority of new union recognition agreements (ten per cent of the sample and 15 per cent of responses).

Semi-voluntary agreements

Semi-voluntary agreements, that is agreements reached after the union had made a formal application to the CAC but which are then withdrawn, represented three per cent of the sample and four per cent of responses. This indicates that the vast majority of new agreements have been concluded without recourse to the statutory procedure.

Sampling agreements for content analysis

The 100 agreements randomly selected for content analysis were signed by 14 unions, but once again three unions dominate. Three quarters (75 per cent) of agreements were concluded by three predominantly manufacturing unions, two of them large general unions. The majority of agreements (60 per cent) were concluded by ten unions mainly operating largely in the private sector; with only seven signed by two unions largely operating in the public sector. However, one third (33 per cent) were secured by two large unions recruiting in both sectors. Just over half of the agreements (54 per cent) were concluded by three 'general' unions and another third (36 per cent) by six unions that recruit within specific industries or sectors. Only one in ten of the agreements in this sample were signed by the five so-called 'closed unions', defined by occupation or by a combination of occupation and industry or by their recruiting within a specific employer.

Industrial classification

Table 8 illustrates that the sample of agreements is dominated by five broad industrial classifications (these classifications are amalgams of groups from the Standard Industrial Classification 2003). Around three quarters (76 per cent) were drawn from manufacturing, printing or publishing, transport and the education and health and social work sectors. The 'health and social work' category included three private companies providing health or social care and six voluntary sector organisations providing social services. 'Housing' covered three housing associations. The 'other' category represented eight standard industrial classifications each with one agreement.

8. Analysed agreements by industrial sector

Activity	Number of cases
Manufacturing	24
Printing/Publishing	17
Hotels and Restaurants	3
Transport	16
Finance	3
Other Business Activities	7
Education	10
Housing	3
Health and Social Work	9
Other	8
Total	100

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

Bargaining units

All but ten of the recognition agreements in the sample specified the bargaining unit which representation covered. Where they did not it has been possible to identify the occupational groups represented from information collected in the TUC/LRD surveys. In terms of broad standard occupational classification (SOC 2000) Table 9 shows that around half (49 per cent) covered process, plant and machine operatives. Approaching one in five agreements (15 per cent) represented more than one group. In five this was a combination of production and administrative workers; in another three printing firms a combination of production and sales or accounts staff. In four other cases the bargaining unit contained a combination of clerical and technical or professional and managerial staff. In nine agreements the

bargaining unit included all workers at the workplace below senior management. In at least half these appeared to be smaller companies. Only a minority of bargaining units comprised either only professional, personal services, administrative, professional or associate professional and technical workers. None included managerial staff or skilled workers, although in the case of the latter this may be based upon perceptions of skill and the limited descriptions of the bargaining units provided in the agreements.

9. Analysed agreements by occupational group of bargaining unit

Occupation	Number of cases
Managers and senior officials	0
Professional occupations	7
Associate professional and technical	6
Administrative and secretarial	2
Skilled trades	0
Personal services	8
Sales and customer services	4
Process, plant and machine operatives	49
All workers below senior management	9
More than one group	15
Total	100

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

From information provided as part of this stage of the research it appeared that over two thirds (69 per cent) of agreements covered one workplace only; in the remaining third (31 per cent) the bargaining unit included more than one workplace.

4

The agreements

The form recognition takes

Table 10 illustrates that in the vast majority of cases voluntary union recognition agreements concluded between 1998 and 2002 took the form of a formal written agreement outlining the scope of the agreement and procedures between the parties. For a small minority (five per cent) recognition was confirmed by supporting documentation other than a formal recognition agreement. New recognitions were not generally based upon a verbal agreement or understanding – this was the case for only six per cent of agreements.

10. The form recognition takes

Form	Number (%)
Formal recognition with written agreement outlining the scope of the agreement and procedures (signed by parties)	215 (84.3)
Formal recognition without written procedures but with supporting documentation to confirm recognition (for example, noted in correspondence, minutes of meetings, etc)	12 (4.7)
No documentary evidence but recognition based on practice and/or verbal agreement/understanding	14 (5.5)
No recognition recorded (for example, if no agreement was or has been reached)	5 (2.0)
Recognition ceased to exist with no record of the form it took	8 (3.1)
Missing	1 (0.4)
Total	255 (100.0)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Survey responses from sample of 477 agreements

In five cases unions reported that despite being included in the TUC/LRD database no recognition had in fact been recorded. In two

of these cases while there may have been a campaign for recognition, no agreement was concluded (although in one, the union was still in discussions with the employer). In two cases inclusion in the TUC/LRD database was something of a mystery since it was reported that recognition was longstanding and had not been introduced, amended or extended within the past five years. In one other case the workers involved had been the subject of a TUPE transfer from a local authority, but the new employer had not subsequently signed a recognition agreement.

In eight cases (three per cent of responses) union officers reported that recognition had ceased to exist and the union no longer held any documentation of recognition. It was thus unclear what form recognition had taken (as opposed to other cases where recognition ceased to exist but the union was able to provide information and/or documentation).

The durability of recognition

Overall, in nine out of ten cases (91 per cent) the union was still recognised by the employer. Where it was not, in only two cases (under one per cent of the whole survey) had the recognition relationship formally ceased: one through derecognition; the other because union members had left the union. In the remaining 20 cases (eight per cent) the workplace had subsequently closed; in another the company had been taken over and recognition continued under the new employer. Unsurprisingly it was more difficult to obtain copies of recognition agreements in these cases. In only seven of these 21 cases (33 per cent) was the officer able to provide a copy of the agreement. In the other cases union officers had disposed of the records or were unable to locate them.

The provision of agreements

Table 11 shows that by the end of December 2003, 209 copies of union recognition agreements or documentation confirming recognition had been retrieved. This was 82 per cent of all responses, but 92 per cent of cases where there was a formal recognition agreement or documentation of recognition. As anticipated, respondents were less likely to provide copies of actual agreements for 1998 and 1999 than for the later years. Nevertheless 46 agreements were retrieved for these years.

11. Copies of agreements provided by year of notification

Year	Copy of Agreement (%)		Total (%)
	Yes	No	
1998	13 (68.4)	6 (31.6)	19 (7.5)
1999	33 (70.2)	14 (29.8)	47 (18.4)
2000	32 (82.1)	7 (17.9)	39 (15.3)
2001	78 (85.7)	13 (14.3)	91 (35.7)
2002	53 (89.8)	6 (10.2)	59 (23.1)
Total	209 (82.0)	46 (18.0)	255 (100.0)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Survey responses from sample of 477 agreements

5

The form and structure of agreements

'The parties to collective bargaining in this country have generally preferred to build their relations more on procedural than on their substantive rules' (Flanders 1964: 98)

Caveats

The preliminary analysis of the coverage and content of recognition was based upon the sample of 100 agreements drawn from the agreements collected in the initial phase of the study. It draws solely upon the text of recognition agreements provided by union sources. It records only that which is explicitly stated in the text of the agreements, not what is omitted, or implied by omission, or what occurs in practice. It is a snapshot of recognition at the point at which the agreement was reached and does not reflect subsequent developments in bargaining relations.

In four cases the main recognition agreement referred to appendices or other procedural agreements that were not provided by the respondent and it was not possible to secure these documents. It is also unclear from the main body of agreement whether the arrangements and policies were in place prior to the recognition agreement.

The sample also included two cases where recognition was confirmed by supporting documentation rather than a formal written agreement and, in both, the scope of recognition was not specified. For one of the agreements documentation of recognition comprised only an announcement to staff saying that an agreement would be

forthcoming. The respondent reported that no such formal agreement existed, although in practice a full bargaining relationship had developed. In another case a letter from the employer in 2002 confirmed recognition, but the union officer explained that the union had not yet signed a formal agreement, but expected to do so in early 2004. Meanwhile the union had been involved in negotiations with the employer on a range of issues. In the findings reported below these two cases are treated as missing.

In one in five cases (22 per cent) the year when the agreement was signed, as recorded in the text of the agreement, did not coincide with that recorded in the TUC/LRD survey. This appeared to be either because the agreement was concluded at the end of one year and reported in the following year or because the agreement was reported towards the end of one year, but actually signed in the next. In nine cases the gap between reporting and signing was somewhat longer; where this was checked with respondents it was due to the time it had taken to finalise and sign the documentation. In one case an officer took over responsibility for the company after the original recognition was reported and found there was no written agreement available from either party. When the employer took over two other companies where the union was also seeking recognition the officer used the opportunity to ensure that the extended recognition was documented.

Main findings – an overview

In general the agreements shared a similar structure, opening with one or more paragraphs stating aims and/or general principles, which often included the responsibilities of the parties to the agreement. The scope of the agreement in terms of the bargaining unit was usually outlined. Most agreements were dominated by sections outlining the terms of union representation and union facilities. There was often a paragraph committing the employer to either informing new employees of recognition or granting permission to union representatives to speak to them about the union. The agreements generally outlined the coverage and scope of the agreement in terms of the issues that were the subject of bargaining, consultation or representation. If a body was to be set up for bargaining or consultation the agreement sometimes outlined its remit, constitution, composition and operation. There was usually a paragraph on both the avoidance of disputes and on individual or collective grievance and disciplinary procedures. These procedures may have been appended or a commitment made to

adapt, incorporate or amend existing procedures. Some agreements had a paragraph on the confidentiality of information. Most ended with a paragraph on variation and termination. A full categorical analysis of the structure and content of the agreements will be provided with the final report, based on all two hundred agreements collected in the first phase.

The use of model agreements

Only one agreement appeared to be completely based upon the union's model recognition agreement. A number of others were to a lesser degree based upon a model provided by a union, with common headings and employing specific phraseology. In addition, a number of different unions used common phrases, for example, regarding the right of management to manage or status quo provisions. Despite this, none of the agreements within this sample were identical (although two for independent schools were very similar) and those that appeared to be based upon a model have been customised to suit the particular employer. There were two agreements for one large employer in the logistics sector, but they were not similar in content or phrasing, possibly because they were negotiated by different unions and applied to specific contracts with different companies. This might suggest that there was active bargaining over the form recognition took and the tailoring of agreements to fit specific contexts.

Sole recognition

In nearly nine out of ten cases (85 per cent) the union appeared to have sole bargaining or representational rights for the bargaining unit covered by the agreement. There was joint recognition of more than one union for the bargaining unit in only five agreements (five per cent). In another eight cases (eight per cent) the union had sole recognition for all employees (below senior management) in that workplace or in the organisation as a whole. It was not generally possible to detect from the agreements whether there was separate recognition covering workers in other bargaining units within the same workplace or organisation, either concluded with the same or with other unions – this is something which will be pursued in the next stage of the research.

Agreements emerging from TUPE

Four agreements (four per cent) had resulted from the transfer of staff to the organisation under the *Transfer of Undertakings (Protection of Employment) Regulations 1981*. In three cases the organisation already recognised other unions for other groups of workers and in one case it was possible that the recognition agreement was based upon an existing agreement with another union. In one case, where the employer was a university, the agreement only applied to staff retaining existing terms and conditions on their transfer to the university. Those appointed or promoted after the transfer were on different terms and conditions. In this and two other TUPE cases, one involving the transfer of staff from a health trust to a housing association, and the other covering staff transferred to a private service contractor as part of a PFI deal, terms and conditions remained largely determined by national agreements. In the other case involving school meals staff transferred from local authority employment the new employer recognised the right of the union to negotiate terms and conditions.

Partnership

Just over one in ten agreements (13 per cent) were referred to in the text of the agreement as a 'partnership', but there was variation in the extent to which the term was defined in the agreement. What is meant by partnership will be explored further in the next stage of this study.

6

The depth of recognition

A key objective of the research was to establish the depth of recognition provided by new voluntary agreements and the extent to which they were the subject of collective bargaining, consultation or the provision of information.

Table 12 shows that nearly three quarters (73) of the agreements in the sample provided recognition for collective bargaining at workplace or employer level. In another ten cases terms and conditions were covered by collective bargaining at national or industry level.

12. Recognition for representation or consultation only

Type of recognition	Number of cases
Representation only	6
Consultation only	8
Terms & conditions covered by national or industry bargaining	10
Workplace or employer collective bargaining	73
Unspecified	1
Missing	2
Total	100

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

Collective representation and consultation

None of the agreements defined recognition in terms of 'the provision of information'. Where recognition was restricted it was either to consultation with the union or to the collective representation of union

members, or was unspecified. In 14 per cent of cases the agreement specified that recognition was limited to collective representation or consultation only. Of the six cases confined to representation, in one the agreement allowed the union to represent members solely in connection with individual grievances, disciplinary matters, references to the staff handbook, redundancy and general issues excluding collective bargaining. This case had been the subject of a CAC application for recognition for full collective bargaining. In another case where pay was determined on an individual rather than a collective basis the company committed itself to 'reaching agreement' with the union on the process of the determination of pay and about the nature, scale and distribution of awards. Any employee dissatisfied with their pay award or the appraisal on which it was based had the right to pursue it through the grievance procedure. Another agreement stressed that recognition did not extend to negotiating arrangements, but the company acknowledged the right of the union to make representations in relation to terms and conditions of employment.

In eight per cent of agreements recognition was for consultation only. In one case the agreement specified that consultation included the review of pay, benefits and terms and conditions of employment and that 'reviews will be conducted in a manner that is two-way, objective and positive'. Another agreement specified consultation over pay, but pay was actually dealt with by individual assessment, whilst there was provision for bargaining over grievance and disciplinary issues. In the case of another employer the commitment was that no 'regulation' should be amended to the detriment of employees without 'consultation and agreement' with the union.

In six of these eight cases, joint consultative committees had been established and some of these specified a wide range of issues for consultation. In one case these included: adjustments to salary levels; changes to job descriptions; hours of work; health and safety; all forms of paid and unpaid leave; benefits including maternity and paternity leave; termination of employment; pensions; staffing levels; and the use of new technology. In two other similar agreements the employer was committed to consult on: changes to conditions of employment, employment policies or working practices; and to consultation with union representatives on conditions of employment. These included include: pay; hours; holidays; and workplace policies and procedures (excluding individual, disciplinary or grievance cases). In another case the consultative committee was free to discuss all

aspects of performance including: financial information; projected plans; staffing levels; mobility and training; health and safety; as well as reviewing the pay, benefits and terms and conditions of employees.

In one case it was not possible to identify the nature of recognition from the text of the agreement. The agreement comprised a framework in which 'properly constituted regional recognition and procedure agreements can operate at local level to mutual advantage'. The union officer reported that no other agreements existed although the union had engaged in full discussions with the company.

7

The scope of collective bargaining

The primary objective of this research was to provide an estimate of the proportion of new voluntary agreements that included explicit reference to the "core" collective bargaining issues of pay, hours and holidays and the "non-core" issues of pensions, training and equality (excluding equal pay). It also considered how far recognition reflected the statutory model of collective bargaining in confining the scope of bargaining to pay, hours and holidays only.

Core issues: pay, hours and holidays

The restriction of collective bargaining to one or more core issues only

Table 13 shows that of the 73 agreements where there was provision for workplace or employer level negotiations, in one in five (20.5 per cent, or 15 cases) bargaining was specifically restricted in substantive terms to one or more of the "core issues" of pay, hours and holidays. In nine cases the agreements were unequivocal in restricting bargaining to pay, hours and holidays only. In one of these this was explicitly linked to the model method of collective bargaining introduced by the provisions of the *Employment Relations Act 1999* and the agreement also adopted the method of conducting collective bargaining laid down in the statutory instrument. In another of these cases pay was defined as salaries and all other payments including basic rates, job rates and overtime premium and rates.

In one agreement the only issue actually specified as the subject of bargaining was pay. In one agreement the scope of bargaining was restricted to pay, holidays and sick pay (i.e. excluding hours). In

another variation bargaining was defined as covering wages, hours of work and health and safety (i.e. excluding holidays). In three other cases as well as pay, hours and holidays, agreements also provided for bargaining on a number of stated procedural issues; in one for bargaining on health and safety and in another two for bargaining on redundancy, disciplinary and grievance matters. The agreements restricted to only core bargaining issues were made by four different unions, with two unions responsible for securing eleven of the fifteen. Six were in the printing and newspaper sectors, whilst ten represented production workers.

13. Restriction of collective bargaining to core issues

Issues	Number of cases (%)
Restriction of bargaining to one or more core issues	15 (20.5)
Bargaining not restricted to core issues	58 (79.5)
Total	73 (100.0)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

The specification of core issues

Table 14 shows that where unions were recognised for bargaining, the majority of agreements specifically stated that they did so for pay (75 per cent); one half (48 per cent) specified that they did so for hours, but only just over a third for holidays (37 per cent). In only one agreement were both hours and holidays specifically excluded from collective bargaining. As mentioned above one agreement included pay and hours, but not holidays; and another pay and holidays, but not hours.

Uncertainty and ambiguity in the scope of collective bargaining

Table 14 also demonstrates that the agreements in the sample did not necessarily define explicitly the scope of bargaining. In over half of collective bargaining agreements (53 per cent or 39 cases) bargaining coverage was defined in general terms as over 'pay and conditions' or 'terms and conditions'. This could suggest that pay, hours and holidays were included. It would be in line with the *Trade Union and Labour Relations (Consolidation) Act 1992,* in which collective bargaining is defined as negotiations relating to one or more matters including 'terms and conditions of employment, or the physical conditions in which any workers are required to work'. As previously

stated, in 15 agreements bargaining was restricted to the core subjects and in three specified as pay only. In another 14 agreements (19 per cent) the scope of bargaining went beyond the core issues and these were specified in the agreement. In eight of these the issues listed appeared to be exhaustive, but in the remaining six a number of issues were stated as being amongst those included in the scope of bargaining. For example in the case of one large oil company, the union was accorded negotiating rights on the three core and non-core bargaining issues. However, the agreement also stated that negotiations 'may cover, but will not be limited to': pay and benefits including the principles and structure of the payments system; job evaluation systems and grading criteria; competency criteria, and market salaries; bonus systems including profit-related pay; working hours; shift patterns; parental leave; equal opportunities policies and procedures; holiday entitlements; sick leave entitlement; redundancy terms and entitlements; training; location allowances; study leave entitlements; pension entitlements; and the treatment of staff.

14. Bargaining on core issues

Reference to issues	Pay (%)	Hours (%)	Holidays (%)
Specifically included	55 (75.3)	35 (47.9)	27 (37.0)
Specifically excluded	0 (0.0)	2 (2.7)	2 (2.7)
Terms and conditions	13 (17.8)	29 (39.7)	37 (50.7)
Unspecified	5 (6.8)	7 (9.6)	7 (9.6)
Total	73 (100)	73 (100)	73(100)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

In five agreements although it appeared that the union was afforded bargaining or negotiating rights, there was no mention of any issues that this might cover. In one such agreement the union was granted sole recognition and bargaining rights to represent employees and it was stated that as the company expanded there would be a need to establish progressive employment terms and conditions, but beyond this the scope of bargaining was not specified. In two cases the agreement merely stated that 'the company and union have a common objective in using the process of negotiation to benefit the company and employees'. In one other the agreement conferred upon the union, 'representational and negotiating rights in respect of its members'. However there was no further reference to how terms and conditions were to be determined and the remainder of the agreement concerned the resolution of differences through a disputes/negotiating procedure. Whilst it is possible that such a procedure may be used to reach

agreement on terms and conditions it would only be by observing how the agreement operated in practice that a conclusion could be reached as to whether it would be defined as collective bargaining.

Non-core issues: pensions, training and equal opportunities*!!*

Reference to pensions

Table 15 illustrates the specific inclusion and exclusion of non-core bargaining issues. In eight cases (11 per cent) pensions were specifically included in the scope of bargaining. For example one agreement stated that 'changes to the pension scheme and benefits policies' would be amongst the specific matters, which were the subject of negotiation. In one large finance company a specific consultation and negotiating committee was the formal mechanism through which the company and union consulted and, where necessary, negotiated on matters of present and future pensions policy. In another case in the finance sector a joint committee would consider proposals initiated by the bank or union relating to conditions of service that included, but would not be limited to, pay, hours of work, holidays and pension entitlements.

15. Bargaining on non-core issues

Reference to issues	Pensions (%)	Training (%)	Equal opportunities (%)
Specifically included	8 (11.0)	5 (6.8)	5 (6.8)
Specifically excluded	19 (26.0)	19 (26.0)	20(27.4)
Terms and conditions	39 (53.4)	42 (57.5)	41 (56.2)
Unspecified	7 (9.6)	7 (9.6)	7 (9.6)
Total	73 (100.0)	73 (100.0)	73 (100.0)

Source: TUC/LRD database of voluntary union recognition agreements (2003) *Sample of 100 agreements for content analysis

However, bargaining on pensions were specifically excluded in a quarter of cases (26 per cent, or 19 cases). These included those agreements that restricted bargaining to core issues, plus a number that specified a range of core and non-core bargaining issues, but not pensions. Consultation on pensions was explicitly allowed for in 13 per cent of all analysed agreements while another 3 per cent allowed for the provision of information on pension to unions.

Reference to training and equal opportunities

Both training and equal opportunities were slightly more likely than pensions to be specifically excluded from collective bargaining (26 and

27 per cent respectively). In fewer than one in ten cases (seven per cent) were these issues specifically included. In one agreement the issues for negotiation included pensions, equal opportunities, maternity, paternity, family and bereavement leave and pay and training and retraining. In another, it was stated that negotiations covered equal opportunities policies and procedures, training and pension entitlements.

Once again, in around half of cases bargaining is defined in general terms as being over 'terms and conditions of employment'. Although it may be concluded that the core issues of pay, hours and holidays are included under this remit, it is less clear that this was the case for the non-core issues of pensions, training and equal opportunities.

Although staff training was specified as the subject of negotiation in only five agreements, it was the subject of consultation in a further 17; specified as an issue for union representation in another seven; and for the provision of information in one other. For example, in one case there was a commitment to staff training as part of the agreement, whilst another contained an assurance of union involvement in the training programme. In one agreement the union was recognised for negotiations on collective matters on their members' pay, hours and holidays and to represent members collectively and individually in matters relating to training.

Equal opportunities was stated as an issue for collective bargaining in only a minority of agreements, but was a subject for consultation in a further 15 agreements; for representation in another two; and for the provision of information in one other. There was a commitment in three agreements to develop equal opportunities and anti-harassment procedures. Employer equal opportunities policies were appended as part of other agreements.

Reference to the emergence of new non-core issues

As previously reported, 14 agreements covered a range of specified non-core bargaining issues. Nine of these included negotiation on 'family-friendly' policies; namely maternity and paternity or maternity support leave and pay, parental leave, adoption leave, compassionate or bereavement leave and time off for emergencies. At one voluntary organisation the agreement stated that the 'following specific matters shall be the proper subject of negotiation: changes to salary policy and job evaluation grading process; changes to recruitment policy;

changes to working hours and TOIL policy; changes to annual, exceptional and unpaid leave policies e.g. maternity/paternity, compassionate leave, carers leave, all forms of paid or unpaid leave of absence; changes to the pensions scheme and benefits policies; changes to policies covering termination of employment; suspension and extension of the probationary period; any other matters arising which members of the union wish to take regarding staff conditions of employment'.

The codification of terms and conditions

The codification of substantive terms and conditions of employment is not generally considered to be the norm in UK collective bargaining (Flanders 1970). This was born out in the sample with only seven exceptions (ten per cent), where the principal terms and conditions were set out in the agreement. One, covering a company's specific contract with a large retailer, was designed to include the rates of pay and conditions of employment relating to operating staff. It encompassed salary review arrangements for the first four years of operations (linked to RPI) and enshrined a range of other conditions of employment including hours and holidays. The agreement stated that the Company Trade Union Forum would meet on a six monthly basis to review the effectiveness of the agreement and discuss proposed amendments. However, 'as the mechanisms for improvements to salary and other financial benefits have already been determined, these will fall outside the scope of the Forum and management reserves the right to exclude issues which have a significant cost implication'. In one other consultative agreement the 'regulations governing conditions of employment are deemed to be incorporated in the agreement' and these reflect pay rates, hours and holidays.

Reference to bargaining machinery

Although the sample shows that collective bargaining over core issues predominated, the agreements contained little in the way of actual negotiating procedures or frameworks and few references to bargaining institutions. This may be because negotiating procedures were developed separately or subsequently. However, in terms of the sample of those agreements collected, 38 per cent of those that specified negotiations made reference to a formal bargaining procedure or body, whilst the remaining 59 per cent did not. Three agreements stated that issues would be dealt with by the grievance or disputes procedure. Two of these stated, 'issues concerning formal

negotiations in respect of pay, hours and holidays will be progressed through the Company's Grievance and Dispute Procedure', with the third stage the point at which formal negotiations commenced.

In eight cases (11 per cent) where there was collective bargaining, there was reference to a joint consultative and negotiating body and in seven (ten per cent) to a separate consultative body. In a number of agreements there appeared to be dual channels of employee representation post-recognition. Under one agreement the Staff Consultative Group (SCG) continued to function, representing all employees whether covered by recognition or not, and the union undertook to cooperate with members of the SCG who happened not to be union members. In another the company stated that it would continue to communicate and consult directly with employees and the Works Council, and that management, the Employee Works Committee and Union representatives would meet regularly together as a Works Committee. In one agreement covering a local careers service there was a joint negotiating and consultative forum, but a clear separation between matters which were the subject of negotiation (pay and other conditions of service) and those operational strategies, staffing structures, personnel procedures, health and safety etc, which were the subject of consultation.

The meaning of bargaining

The textual analysis raises the question of what is meant by the terms 'collective bargaining' and 'negotiation'. It has been suggested that these terms are not synonymous or interchangeable, but that collective bargaining is distinct in terms of its structural and institutional arrangements and processes (Salamon 2000). At the same time the *Trade Union and Labour Relations (Consolidation) Act 1992* states that collective bargaining means 'negotiations' relating to a number of substantive and procedural matters. Simpson has suggested that the statutory model of bargaining provides only an obligation for the parties to 'meet and talk rather than to negotiate or to negotiate with a view to reaching agreement or bargain in good faith' (Simpson 2000: 216).

In this analysis recognition has been treated as being for collective bargaining if the agreement confers bargaining or negotiating rights on the union for substantive issues. In one agreement negotiation was defined as 'for the purposes of reaching agreement and avoiding disputes' distinguishing it from consultation, which involved 'an

opportunity to influence decisions and their application'. However, in other cases although the terms 'bargaining' and 'negotiations' were used the extent of joint regulation was unclear. In one case under the heading 'negotiations', the agreement contained a commitment to meeting the union on an annual basis to review terms and conditions of employment and to give serious consideration to the views of the union. The union could put collective points to the company or trustees and the company would give full consideration of the union's views and undertake to give written responses and explanations of the company's position. Another ambiguous case aimed to ensure that 'through prior consultation and negotiation' the minimum of differences arose, but also stated that the union was entitled to 'represent collectively and individually its members employed in the factory in all matters relating to their employment and terms of employment'. In another agreement there was provision for 'discussions' on pay with an annual review date from 2002 and on hours and holidays from 2001.

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The coverage of procedural issues

An additional objective of the research was to identify the extent to which there was reference to a number of procedural issues in the text of recognition agreements concluded between 1998 and 2002. This may identify how far the drive by employers for greater organisational flexibility in the 1980s and 1990s is reflected in new collective agreements, through the removal of measures protecting against the exercise of unfettered managerial prerogative and the strengthening of managerial rights in the workplace.

The right to manage

Over half of the analysed agreements (55 per cent) contained a statement on management's right or responsibility to manage the organisation. This right generally preceded acknowledgement of the right of the union to represent its members. In just under half of these cases (45 per cent) it was expressed as the 'right' of management, in just over half (55 per cent) it was in terms of their 'responsibility' or 'function'. In 43 per cent of the analysed agreements there was no such statement. In some the responsibilities and interests were expressed in more mutual terms. For example, 'both parties commit themselves to make a positive contribution to the efficient and effective development of their mutual interests'.

In one case the agreement went beyond management, to recognise the interests of customers and shareholders; 'the union recognises the right of the company to plan, organise and manage its operation of the business and with the support and cooperation of its employee stakeholders to fulfil its objectives to meet the needs of the customer

as cost effectively and profitably as possible. To generate a return for the shareholder in line with business expectations, to strive continually to improve health and safety, efficiency, staff competencies and employment security of the company and its employees'.

Organisational change

In the context of the proposed reassertion of managerial power in the workforce, and in keeping with the possible move away from status quo provisions, the sample of agreements were analysed for the provision of organisational change with particular reference to the introduction of technology.

One in 20 agreements (five per cent) allowed for the negotiation of such change, including negotiation over the use of new technology. In one large communications company technological change was the subject of negotiation; it was agreed that the parties would work jointly to ensure that the company 'shall successfully meet changing requirements as well as adapting quickly and easily to technological change'.

In another fifth of analysed agreements (20 per cent) there was provision for consultation on change. In one agreement the parties recognised 'the challenge that change brings in the modern environment. They commit themselves to bringing about change in a manner that is properly managed and is in accordance with the procedures and principles established through this agreement in such a way that recognises the mutual needs of the employers and its employees'. In another 'it is recognised that mutual benefits and job security will be derived through a climate of continuous improvement and the acceptance of new methodologies and technology'. Responsibilities of the union included to 'encourage and support participation by employees in developing operational change and to take full part in the consultative procedures to facilitate necessary changes for improving customer service'.

In just under a quarter of analysed agreements (23 per cent) there was provision for management to introduce organisational or technological change, but no commitment to either negotiate or consult on this. In one agreement covering a logistics firm it was stated that 'the company requires a flexible approach, a high level of productivity and a willingness to accommodate change due to market/operational demands or technological innovation'. In another manufacturing

agreement there was full commitment from the union 'to support changes wherever possible in work methods and technology, which will enhance the company's business position.' In service industries organisational change may be focussed on improving customer services. In one such agreement, 'the parties are agreed on the need to establish and maintain an enterprise committed to high levels of quality, productivity and competitiveness by engendering customer focus and a positive response to change; and to respond quickly and flexibly to changes in demands for the company's services'. The agreement stated that it was the responsibility of the union 'to cooperate with the company in introducing more effective ways of working, including training, to improve service to the customer'.

One half of agreements (50 per cent) made no reference to how organisational change might be dealt with, and under half of these had status quo provisions.

Status quo provisions

It has been suggested that during the 1980s a number of employers removed status quo provisions in order to increase organisational flexibility. Such provisions restrain management's power to introduce changes unilaterally, ensuring changes will not be made nor any direct action (in the form of a strike or a lock-out) taken until agreement has been reached or procedures exhausted. In just over half (53 per cent) of analysed agreements there were status quo provisions. In most cases these provisions were contained in the main body of the agreement. In 41 per cent of cases there was no mention of a status quo provision. In three of the remaining cases (three per cent) there was no status quo provision in the main body of the agreement, but there was reference to a disputes procedure that had not been appended. In one other case the disputes procedure enshrined in the industry-wide agreement applied.

There were differences in the extent to which status quo provisions express mutuality. The majority reflected the obligations of both parties. For example ' in the event of a dispute, all parties agree that there shall be no stoppage of work, restrictive practice, lock out or any form of industrial action or other disruption of normal working whilst the problem is still under discussion or until the disputes procedure .. has been exhausted'. Some agreements were more specific in placing restrictions upon management prerogative; 'the management agrees not to implement any change which is the subject

of dispute until the matter has been considered in the committee. The union further agrees not to implement action unless and until the committee has failed to achieve a resolution of the matter in dispute. It is open to the committee at any time to agree to refer a matter which is in dispute to arbitration'.

These contrasted with the provisions of five agreements where the obligation was less mutual. In one, 'no industrial action of any sort will take place as a result of any dispute, grievance or contention against the company until the procedure has been fully exhausted. It is further agreed that there will be no disruption to full normal working and cooperation by members of the union employed by the company as a consequence of any other industrial dispute'. In another it also appeared that management had more freedom; 'it is understood and agreed that in the event that any dispute or difference cannot be resolved immediately such changes may as a matter of urgency have to be implemented immediately. Thus these changes may be implemented during the Disputes Procedure in such circumstances whilst both parties continue to resolve the differences through negotiation. Therefore whilst talks take place it is agreed that this status quo clause allows the company to respond to the market and continue development....to implement changes in the workplace and/or implement the installation or operation of new or relevant equipment. Where the business as determined by management does not require immediate changes then whatever agreement or practice existed prior to the difference shall continue to operate until the matter is resolved'.

Disputes procedures*!*

Just over two fifths (42 per cent) of the sample of 100 agreements contained a specific disputes resolution procedure. In a further 16 dispute resolution took the form of a collective grievance procedure and in another eight a negotiating procedure aimed to resolve any differences between the parties. Three agreements made reference to such procedures, but they were not attached and in two cases the agreement referred to a national or industry procedure. In over a quarter of agreements (27 per cent) there was no disputes procedure or any reference to one. Over a third (41 per cent) of these were signed by one particular union whose agreements could be generally characterised as briefer than most.

Direct communication

In recent years it has been suggested that there has been a shift away from collectivism, with its emphasis on the management-union relationship, and towards individualism, focussing on the management-employee relationship (Salamon 2000). In one third of the analysed agreements (33 per cent) there was provision for direct communication with employees alongside union representation. In almost two thirds (65 per cent) there was no such provision. In one case where there was provision for direct communication, the union was represented at the Consultative Forum, but the parties also agreed on the need to maintain open and direct communication with all employees on matters of mutual interest and concern. In 28 agreements the right to direct communication was expressed as a mutual right for both employees and management. For example, four agreements signed by two different unions stated that every employee 'shall retain the right to individual access to management and management shall retain the right of individual or group access to employees on matters that concern an individual or a group of individuals'. In seven agreements direct communication was expressed as a management, rather than employee, right: 'management has the right to communicate and give instructions direct to all employees'. In one other it is stated as management's 'responsibility'.

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Preliminary conclusions

This report of preliminary findings provides for the analysis of a representative sample of new voluntary recognition agreements concluded prior to and following the introduction of the statutory recognition procedure established by the *Employment Relations Act 1999*

The research has confirmed the extent of voluntary recognition recorded by the TUC/LRD surveys, suggesting that these new relationships have substance and in the majority of cases, appear to provide a basis for longer-term relationships. Where recognition no longer exists it is largely because of workplace closure. The variation between the content of agreements suggests that there has been active bargaining over the form recognition has taken and that agreements have been tailored to fit specific contexts.

Flanders suggested that historically one of the features of UK union recognition was that substantive issues have not been formally set out in signed agreements. This survey demonstrates that agreements concluded in the light of the legislation on statutory recognition have overwhelmingly taken the form of formal written agreements.

A substantial proportion of new voluntary agreements specify the inclusion of core bargaining issues and the majority specify pay; a minority specify non-core issues. In around half of agreements analysed the scope of bargaining is defined in general terms as for 'pay and conditions' or 'terms and conditions'. This may confirm Flanders' conclusions that in terms of the scope of recognition historically UK recognition agreements have been limited in the extent to which they specify substantive issues.

Procedural issues remain central to UK recognition agreements. A number of provisions for organisational change in some agreements appear to reflect an assertion of managerial power over such issues. Since there is no body of historic agreements with which to compare this sample it is impossible to draw conclusions as to whether they constitute any significant change. The same applies for the inclusion of provision for direct communication with employees alongside union representation.

In a number of agreements the form, depth and scope of recognition is unclear and ambiguous, whilst questions have been raised about the meaning of the terms 'bargaining' and 'negotiation'. These issues can be explored in more depth by examining the reality of bargaining in practice. It has also highlighted the absence of any institutional framework for bargaining in many agreements, another issue which can only be followed up by more in-depth analysis involving the parties themselves. It has not been possible to fully consider the organisational context of recognition and how far this has affected the form, scope and depth of new agreements.

The next stage of this study will focus upon what recognition means in practice; the reality of bargaining and bargaining outcomes. This will be based upon the perceptions of the parties themselves. It will aim to capture the extent and dynamics of change over time in the content and coverage of new voluntary recognition agreements.

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Annex A – Self completion questionnaire

The Form and Content of New Voluntary Trade Union Recognition Agreements

Name of Employer **Year of agreement**

Background

The main purpose of this questionnaire is to establish the form and content of new trade union recognition agreements and the extent of trade union involvement at the time they were first negotiated. A second, later part of the study will be to establish the extent to which parties' initial aspirations were realised in practice.

To take this forward we would like to examine copies of the agreements, where such formal agreements exist, or alternatively any supporting documentation associated with the recognition, as well as gaining the views of the parties to the agreement. It would be helpful, therefore, if you would complete this questionnaire for the above employer and provide any documentation you might have.

Question 14 asks about the nature of union involvement in the issues which recognition may cover. Here consultation is defined as where management elicits the views of employees through union representation before coming to a decision; negotiation as a decision arrived at through a process of mutual concessions, bargaining and/or agreement between the employer and union representatives. The sharing of information excludes both consultation and bargaining, and direct communication to employees with indirect union involvement excludes all three.

Many thanks for your help.

1. At the time the recognition deal was struck, which of the following **best** describes the form that it took?

Please tick one of the boxes

(a) Formal recognition with **written procedure agreement** outlining the scope of the agreement and procedures (signed by the parties).	
(b) Formal recognition **without written procedure but with supporting documentation to confirm recognition** (for example, noted in correspondence, minutes of meetings, etc).	
(c) No documentary evidence but recognition based on practice and/or verbal agreement/understanding.	
(d) No recognition recorded (for example, if no agreement was or has been reached).	

2. Have you a copy of the recognition agreement or other supporting documentation confirming recognition?

Please tick one

Yes	
No	

If no please go to question 5

3. Have you enclosed a copy of the written recognition agreement or supporting documentation confirming recognition?

Please tick one

Yes	
No	

If yes please go to question 7

4. Why have you not enclosed a copy of the recognition agreement or supporting documentation?

5. Is there another union officer who would be able to provide a copy of the written recognition agreement or supporting documentation?

Please tick one

Yes	
No	

If no please go to question 7

6. What is the union officer's name and contact details?

Name:	
Address:	
Telephone:	
Email Address:	

7. Does the employer still recognise the union?

Please tick one

Yes	
No	

If yes please go to question 9

8. Is the employer still in business?

Please tick one

Yes		If yes please go to question 11
No		If no please go to question 13

9. Are you the union officer who is most involved in negotiating and dealing with issues with the employer or is this someone else?

Please tick one

Myself		If myself please go to question 12
Someone else		

10. What is the name and contact details of the union officer or workplace representative who is most involved in negotiating and dealing with issues with the employer?

Name:	
Address:	
Telephone:	
Email Address:	

11. Is the employer still operating from the workplace?

Please tick one

Yes		
No		If no please go to question 13

12. What are the contact details of the employer and the name of the employer's representative most involved in the day-to-day management of employment relations?

Name:	
Address:	
Telephone:	
Email Address:	

3. **At the time of the original recognition agreement**, which of the following issues were covered in the original agreement?

Please tick as appropriate.

Issues	Included	Not included
Pay		
Hours		
Holidays		
Pensions		
Training		
Equal Opportunities		

14. **At the time of the original recognition agreement,** which of the following categories **best** describes the nature of the trade union involvement?

Please tick one for each issue	No union involvement	Management communicates directly with employees with indirect union involvement	Management provides information direct to the union	Management consults with the union	Management bargains with the union
Pay					
Hours					
Holidays					
Pensions					
Training					
Equal Opportunities					

15. **At the time of the recognition agreement**, did the agreement cover one or more than one workplace?

Please tick one

One workplace	
More than one workplace	

If one workplace please go to question 17

16. What is your best estimate of the total number of workplaces covered by the original recognition agreement?

Total number of workplaces	

17. What is your best estimate of the **current** proportion of all employees that the bargaining unit covered by the recognition agreement represents?

Proportion of employees	%

MANY THANKS FOR PROVIDING THIS INFORMATION

Your Name		Position in the union	
Telephone		Email Address	

Please return in the prepaid envelope provided or send to: SIAN MOORE, WORKING LIVES RESEARCH INSTITUTE, ROOM 3.24, STAPLETON HOUSE, 277-281 HOLLOWAY ROAD, LONDON N7 8HN.