

CENTRAL ARBITRATION COMMITTEE**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992****SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION****DETERMINATION OF THE BARGAINING UNIT****The Parties:**

Unite the Union

and

The College of Law

Introduction

1. Amicus (the Union) submitted an application to the CAC dated 19 March 2007 that it should be recognised for collective bargaining by The College of Law (the Employer) in respect of a bargaining unit comprising “all tutors at the Birmingham Branch”.
2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Professor Roy Lewis, Chairman of the Panel, and, as Members, Mr Bob Hill and Ms Bronwyn McKenna. The Case Manager appointed to support the Panel was Sarah Kendall.
3. By a decision dated 16 April 2007, the Panel accepted the Union's application and, as no agreement was reached on the bargaining unit, subsequently invited both parties to supply

the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. A hearing was held in London on 18 June 2007 and the names of those who attended the hearing are appended to this decision.

4. As Ms McKenna was unable to attend the hearing, the Chairman of the CAC appointed Mr Gerry Veart as a Member of the Panel. In addition, for the purposes of this hearing, Simon Gouldstone was substituted for Sarah Kendall.
5. As a consequence of the merger of Amicus and the TGWU, this application will proceed in the name of Unite the Union.

Findings of fact

6. The Panel makes the following findings of fact based on the parties' written and oral submissions.
7. The College of Law is an educational charity incorporated by Royal Charter and provides training courses for the legal profession in England and Wales. The College is wholly dependent on fee income and receives no public subsidy. It operates through Centres in the following locations: Birmingham, Chester, Guildford, London Bloomsbury, London Moorgate and York. In addition, it employs a small number of staff at Brems and Nottingham.
8. The College is headed by a Chief Executive Officer, who is supported by a Deputy Chief Executive Officer. The College has a Board of Management supported by (a) teams of Directors, who have College-wide responsibility for the different courses, staff development and training, and student services, and (b) Heads of Corporate Departments covering areas such as finance, marketing, HR, and IT. Additionally, each Centre has a Regional Director who is supported by a number of Deputy Directors; these individuals constitute a local Executive Board.

9. The College of Law provides a number of different courses, including the Legal Practice Course, the Bar Vocational Course, the Graduate Diploma in Law, and the Professional Skills Course. The design and delivery of courses is managed centrally, with the design of courses being undertaken in practice by a select number of tutors from different locations. The Director of Academic Staffing & Staff Training and Development works with each Centre's Deputy Directors to coordinate training initiatives to support course delivery.
10. The College maintains a quality assurance programme in respect of its courses. This involves, as assessors, some 20 experienced staff – mainly Directors and Deputy Directors - from different Centres . For the purposes of accreditation the Law Society monitors the College's performance nationally, as well as carrying out site inspections at each Centre.
11. In terms of marketing and competition, the Panel finds that the College is in a national market in which it competes with both university law departments and specialist providers of professional legal education, such as BPP.
12. The College employs approximately 739 staff. That figure includes a total of 292 tutors consisting of Lecturers, Senior Lecturers, Principal Lecturers and Associate Professors, excluding Directors and Deputy Directors.
13. The parties confirmed at the hearing that they both defined 'tutor' in the sense set out in the previous paragraph.
14. The number of tutors at each location is as follows:

Birmingham	27
London Bloomsbury	107
Breams	3
Chester	34
Guildford	43
London Moorgate	49
Nottingham	1

York	<u>28</u>
Total	292

15. At the Birmingham Centre the 27 tutors comprise 3 Lecturers, 23 Senior Lecturers and 1 Principal Lecturer.
16. Overall, about 25% of the 292 listed tutors are on part-time fractional contracts. At Birmingham, 10 out of the 27 tutors are on fractional contracts.
17. On appointment, all tutors are provided with a copy of the *Tutor Information Pack* which contains a wide range of information relating to tutors' duties and their terms and conditions. These arrangements are standard for all tutors. In addition, all new staff are provided with a copy of a *Joiners Pack* which specifies provisions applicable to all employees.
18. The standard terms and conditions of employment applicable to all tutors irrespective of the Centre where they happen to be based include the following:
 - (1) Starting salaries for new entrant tutors are common across all locations, as are the salary bands for Senior Lecturers.
 - (2) The pension scheme is common to all tutors, depending on their date of joining.
 - (3) The following terms are standard: holidays; occupational sick pay; private medical insurance; childcare vouchers; eyecare vouchers; interest free rail ticket loans; probationary periods; notice periods; and grievance and disciplinary procedures.
 - (4) The contracts of employment of all tutors specify a normal place of work, but

also provide that the College reserves the right to change this within a reasonable daily travelling distance.

19. Normally tutors teach at one Centre. However, a small number – currently around 7 tutors – teach at more than one Centre.
20. Each tutor is provided with a copy of a document entitled *Staff Handbook - Academic Staff Training, Development and Career Progression*, which covers issues such as career development and salary progression. The Staff Handbook sets out how each tutor can make career progress through defined stages: learning the trade (stage 1), honing of skills and mastering the craft (stage 2), and the achievement of higher status (stage 3) through different but overlapping career tracks that emphasise either teaching/research or management. The College's Director of Academic Staffing & Staff Training and Development has a key role in overseeing this process at central level for all tutors.
21. Promotions to Senior Lecturer and appointments to Associate Professor are determined centrally. There is a minimum starting salary for Lecturers to which a London or Guildford weighting is added as appropriate. Salary increases are decided centrally and apply in the same way to all tutors employed by the College. On promotion to Senior Lecturer, the "career grade", a minimum salary increase will be determined centrally; subsequent salary progression is determined by performance related pay (PRP).
22. For example, in 2006 the Board of Management decided that the general addition to the pay bill would be 3.6% but it also decided that that figure should be applied differentially to each Centre depending upon where a Centre's Senior Lecturers fell within the pay range. Those Centres where the Senior Lecturers as a whole fell towards the lower end of the salary range were allocated 4.0%, and Centres where the senior lecturers tended to be at the higher end of the salary range were allocated 3.2%. 50% of the increase was guaranteed subject to competent performance with the remaining 50% subject to the PRP system. A scoring range of 100 points was used with 50 of those points being based on teaching quality involving an assessment by students and the other 50 determined by the Centre Executive Board by reference to the four criteria of volume of work, range of work,

importance and degree of responsibilities and quality of work. That same process was applied at all Centres.

23. There are no adjustments to individual salaries to reflect market rates or specific payments for teaching particular subjects. Exceptionally, a tutor may be paid a responsibility allowance as a reward for undertaking a particularly demanding task or project. The decision to pay a responsibility allowance is determined centrally, as is the level of the allowance.
24. Staff associations exist at Bloomsbury and Moorgate. There are no existing local or national collective bargaining arrangements that apply.

Summary of the submission made by the Union

25. The Union contended that the College was opposed in principle to collective bargaining with a trade union and had indicated as much in a letter to all tutors from the Chief Executive Officer in March 2007. Although the letter did contain arguments as to why the College felt the Union's proposed bargaining unit was inappropriate, it also included a rationale for any collective bargaining being inconsistent with the College's culture. The Union argued further that, contrary to the impression given in the College's letter, Amicus was an appropriate union with strong and established base in the education sector.
26. The Union stated that there was no collective bargaining structure in place. It submitted that the College had in the past encouraged Centre-level discussions with local staff associations. Although this association currently existed only at 2 Centres and had not been involved in collective bargaining, the extant staff associations made representations about terms and conditions of employment.
27. The Union maintained that each Centre was managed separately. Each had its own local management, its own budget, its own targets and its own 'pot' for distribution under the PRP scheme. There were local differences in terms and conditions, for example, the

London and Guildford weighting payments. In addition, there was a unique shift system in operation at the London Bloomsbury Centre and the working patterns of part-time tutors were also subject to local variation. The Union also quoted an example of a grievance being determined locally rather than centrally.

28. As regards the PRP scheme, the Union provided evidence from the tutor present at the hearing that the scheme operated on a local basis. Tutors had to complete a form detailing their activities over the past year and that was sent to the Deputy Director of Staffing at Birmingham. The Team Leaders then completed a second form which allocated marks. Students completed a form about teaching quality and that again was sent to the Deputy Director. It thus appeared that the Centre Executive Board decided how much money should be allotted to the various points scores.
29. It was also part of the Union's submission that the Law Society's monitoring process was undertaken at each Centre. It explained that there was a three year cycle: in year one, an assessor visited the Centre; in year two, there was a pastoral visit; and in year three, there was self-assessment by the tutors. All this indicated that each Centre was treated separately.
30. The Union rejected the College's contention that collective bargaining at Birmingham would in some way disadvantage its competitive position. The Union explained that there were four other institutions that, geographically, could be seen as competitors to Birmingham for both staff and students but, as they were all single-site units, the Union could not see how the Birmingham Centre would suffer if pay, hours and holidays needed to be bargained locally.
31. The Union reminded the Panel that its responsibility under paragraph 19B(1) of the Schedule was to decide firstly if a union's proposed bargaining unit was appropriate. In making that decision, and in accordance with paragraph 19B(4), the Panel had to take into account the employer's views about the proposed unit and any view the employer had about the appropriateness of any other bargaining unit. The Union expressed concern that the thrust of the College's argument appeared to be that it wanted the Panel to find that its

proposed bargaining unit was more appropriate than the Union's, rather than putting forward coherent arguments as to why the Union's proposed unit was inappropriate.

32. The Union referred to the Court of Appeal's decision in *R v CAC ex parte Kwik-Fit (GB) Ltd* [2002] IRLR 395. The Union relied upon this authority in particular to support the proposition that the Panel's task under the Schedule was to determine whether the Union's proposed bargaining unit was an appropriate unit, rather than whether it was the most or the more appropriate unit.
33. The Union summarised its position by stating that it regarded its proposed bargaining unit, for the reasons given above, as being compatible with effective management. Furthermore, it stated that its position in relation to the matters listed in paragraph 19B(3) of the Schedule did not conflict with the need for its proposed unit to be compatible with effective management. There were no existing national and local bargaining arrangements; the proposed unit covered 27 tutors, was not small and would not lead to fragmentation; the workers in its proposed unit shared very similar characteristics; and, they were all at one location.

Summary of the submission made by the Employer

34. The College stated that it was not "anti union" and that it respected the right of individual members of staff to belong to, and to be represented by, a trade union. It was nevertheless unequivocally of the view that a bargaining unit comprising only those tutors in the Birmingham Centre was not compatible with effective management and that the only appropriate bargaining unit was one that included all the tutors employed by the College.
35. Its fundamental position was that the College operated on a national basis, facing competition for students from both university law departments and a growing number of private sector providers, such as BPP. Competition was not confined, as had been suggested by the Union, from institutions that were geographically close to the College's Centres. That was the background to why the College did not consider it compatible with

effective management to have separate bargaining for pay, hours and holidays for a small and fragmented unit of tutors in Birmingham. The College needed to be in a position to respond nationally to a competitive market within England and Wales.

36. The College maintained that all its core activities were managed centrally with the aim of achieving consistency throughout the College. It gave the following examples of matters that were dealt with centrally on a uniform College-wide basis:

(1) The content of the *Tutor Information Pack*, the *Joiners Pack* and the *Staff Handbook - Academic Staff Training, Development and Career Progression*.

(2) The design of courses. The College offered a standard product across all Centres. Course design was carried out by some 40 tutors drawn from all Centres.

(3) Vacancies were advertised nationally and the recruitment process was handled locally with central support from the HR function.

(4) The salary and benefits package was applied centrally with very limited scope for local variation. The exceptional responsibility allowance was determined and allocated centrally. There were no adjustments to reflect, for example, local market rates, apart from the centrally-determined London and Guildford weightings.

(5) Career progression for tutors was managed centrally in accordance with the procedures set out in the Staff Handbook.

(6) The standard terms and conditions of employment permitted the College to require tutors to work away from their 'home' Centres.

(7) Promotions to Senior Lecturer were decided by the Board of Management following a recommendation, and the submission of evidence, to the Director of Academic Staffing & Staff Training and Development. A process at central level

was also followed for promotions to other senior positions such as Deputy Directors and Associate Professors.

(8) PRP was administered locally under tightly-prescribed criteria that were stipulated centrally. Under this system a maximum of 25% of a tutor's salary increase was determined after an assessment by a local manager carried out in strict accordance with the criteria.

37. Centres were managed locally but local discretion was limited. Budgets, for example, were subject to central control. If it was decided that a particular Centre should offer a certain course, there were central criteria for the number of tutors and the associated cost was included in a Centre's budget. Business plans were handed down from the national Directorate rather than being determined locally and then submitted upwards. The Regional Director line-managed the local Deputy Directors but the latter group often met nationally to take initiatives forward. In short, there was only a limited discretion given to local management.
38. The College also cited in support of its position the findings of a Higher Education Review Committee chaired by Sir Michael Bett which endorsed the view that, within the sector, there should be a strong national dimension to the determination of terms and conditions of employment. Many of the College's practices were consistent with this approach, for example the central determination of promotion and salaries.
39. The College cited the CAC's decision dated 2 February 2006 on the appropriate bargaining unit in *CWU v MCI* (TUR1/482/2005). This was advanced as an example of the CAC deciding that an appropriate unit was one that accommodated all workers of a particular description in circumstances where the employer had systematically sought to harmonise terms and conditions and inject a team culture.
40. The College asked the Panel to find that the Union's proposed bargaining unit was not compatible with effective management, which was in all major respects carried out on a central College-wide basis. It argued that its proposed unit - all tutors employed by the

College, excluding Directors and Deputy Directors - was compatible with effective management.

The applicable law

41. The CAC is required by paragraph 19(2) of the Schedule to decide if a union's proposed bargaining unit is an appropriate bargaining unit. The test is whether the proposed unit is an appropriate bargaining unit not the more demanding test of whether it is the most or the more appropriate unit. In making this determination the CAC must apply paragraph 19(B) (4). This provision is the statutory codification of the test laid down by the Court of Appeal in the *Kwik-Fit* case on how the CAC should take account of an employer's suggested alternative unit in deciding the appropriateness of a union's proposed bargaining unit. By virtue of paragraph 19B(4), the CAC must take into account any view the employer may have about any other bargaining unit the employer considers appropriate. If the CAC decides that a bargaining unit proposed by a union is not an appropriate unit, it must further decide, under paragraph 19(3), a bargaining unit which is appropriate. It is only if the bargaining unit proposed by a union is found not to be appropriate that the CAC considers the employer's or any other alternative unit in its own right.
42. In deciding whether a bargaining unit is appropriate, the CAC is guided by the overriding principle, enshrined in paragraph 19B(2)(a), that a bargaining unit must be compatible with effective management. Additionally, paragraph 19B(2)(b) requires the CAC to take into account the matters listed in paragraph 19B(3) so far as they do not conflict with the need for the unit to be compatible with effective management. These matters are: the views of the employer and of the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers.
43. The CAC must also take into account paragraph 171 of the Schedule. This provides that

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

Considerations

44. The Panel has considered carefully the parties’ written submissions and the oral evidence and argument advanced at the hearing. The Panel has taken the following considerations into account:

(1) The nature and content of the courses offered by the College are determined centrally. Birmingham and other Regional Centres deliver a standardised product. Further, the College’s quality assurance programmes in respect of courses are centrally organised and managed.

(2) Regional Directors are responsible for the day-to-day delivery of courses but have little discretion over issues such as budgeting or business planning.

(3) The market within which the College operates is a national rather than a local one, with competition from universities and other professional course providers.

(4) Tutors are employed based at one of the Regional Centres. Under the terms of their contracts of employment, they can in principle be required to change their work location and go to another Centre. In practice, a few tutors teach at more than one Centre and a number of tutors participate in College-wide projects such as course design.

(5) Salaries and other terms and conditions of employment for all tutors at all locations are determined centrally. There are a very limited number of variations such as the London and Guildford weightings and the responsibility allowance,

but they too are determined centrally. Further, the details of the terms and conditions package are contained in two documents, the Tutor Information and Joiners Packs, which are issued centrally.

(6) There are centrally determined policies for promotion and staff development. These are centrally managed by the Director of Academic Staffing & Staff Training and Development, who makes final decisions or makes recommendations to the Board of Management.

(7) The principles governing the PRP system are determined centrally, and the Board of Management decides the overall annual addition to the pay bill and the amount allocated to each Centre for distribution. The PRP system is applied by local managers in accordance with the centrally determined criteria.

(8) The Union's proposed bargaining unit, 27 tutors, comprises a small proportion of the total of 292 tutors. The tutors at other Centres have generally the same or similar characteristics as the tutors employed at Birmingham.

(9) The management and organisation of the College of Law is highly centralised. This applies not only to the end product – the courses – but also to the provision of pay and other terms and conditions of employment and the criteria and processes governing tutors' career progression. This degree of centralisation can only reflect the systematic policy of the Chief Executive Officer and the Board of Management. In the Panel's view, this policy could be undermined by a separate bargaining unit based on a single location.

45. In the light of these considerations, the Panel concludes that the Union's proposed bargaining unit is not a unit that is compatible with effective management and is therefore not an appropriate bargaining unit.

46. Having decided that the Union's proposed bargaining unit is not appropriate, the Panel's next responsibility is to decide a bargaining unit which is appropriate. At the hearing, the

parties agreed the definition of ‘tutor’ and that the bargaining unit should comprise such workers, excluding Directors and Deputy Directors. The difference between the parties was geographical, in that the Union sought a bargaining unit solely for tutors in the Birmingham Centre, whereas the College proposed a College-wide bargaining unit.

47. The Panel has considered the College’s proposed bargaining unit in the light of the considerations already identified and the statutory criteria contained in paragraph 19B(2) and (3) of the Schedule. It concludes that the College’s proposed unit is compatible with effective management and is appropriate.
48. The Panel also considers that this conclusion is consistent with paragraph 171 of the Schedule.

Decision

49. The appropriate bargaining unit is all tutors (Lecturers, Senior Lecturers, Principal Lecturers and Associate Professors) employed by the College of Law, excluding Directors and Deputy Directors.
50. As the appropriate bargaining unit differs from the proposed bargaining unit, the Panel will proceed, under paragraph 20(2) of the Schedule, to decide if the application is invalid within the terms of paragraphs 43 to 50 of the Schedule.

Professor Roy Lewis

Bob Hill

Gerry Veart

4 July 2007

Appendix**Those who attended the hearing:****For the Trade Union**

Mr A Allen	Counsel
Mr A Emanuel	Regional Officer
Mr M Robinson	National Officer
Mr S Atkins	Employee
Ms K Edwards	Pupil Barrister

For the Employer

Mr T Player	Solicitor, Eversheds
Ms E Thomas	Solicitor, Eversheds
Mr M Petley	Director of Academic Staffing & Staff Training and Development
Mr K Sampson	Head of HR
Professor B Griffin	Regional Director, Birmingham