

**XIVth Meeting of European Labour Court Judges
4 September 2006
Cour de cassation
Paris**

UNITED KINGDOM

Collective agreements

**National reporter: Judge Jeremy McMullen, QC
Senior Judge
Employment Appeal Tribunal
London**

1.

1.1. An agreement between one or more trade unions and one or more employers or employers associations

1.2. No

2. Trade unions have been able to make what at common law would be unlawful agreements to restrict free trade since 1871. Thereafter, trade unions have been free to make agreements with employers to fix wages and other terms and conditions of employment. In 2002 the Trade Union and Labour Relations (Consolidation) Act 1992 was amended to allow an independent trade union to make a claim for recognition for collective bargaining over limited issues of wages hours and holidays. A procedure can be enforced for balloting etc and the fixing of a minimum collective agreement. Breach of such a collective agreement leads to imposition of minimum terms and conditions of employment. In practice employers ordered to recognise a trade union do so.

In limited EU situations, non-union employee representatives can be appointed and recognised, in the absence of trade unions, for consultation (not negotiation) over transfers of undertakings, mass redundancies and workplace changes.

3.

3.1. Defined by statute

3.2. A collective agreement has no contractual enforceability as between the collective parties unless they say so. There is no such agreement in practice. But it has effect by way of incorporation into the contracts of employment of the employees (not just trade union members) within its scope.

3.3.

3.3.1. See above

3.3.2. Neither standards nor collective agreements are enforceable; there is no hierarchy nor principle of favour nor in melius/inn perjus tradition nor a definition of social law; if a

collective agreement is sex discriminatory it can be challenged in an Employment Tribunal through an individual complaint or action by the Commission. There is no duty of good faith

3.3.3. A collective agreement and contract of employment may not abridge statutory rights;

B) Statute does not annex collective agreements. Some laws may be derogated eg to workplace agreements on hours of work. A collective agreement can set terms and conditions of employment which are incorporated into individual contracts

C) Can override and thus become the custom
Yes an employer can volunteer

D) Yes

The contract of employment is independent but it may by reference incorporate individual terms of the collective agreement, but not vice versa. A new collective agreement may in practice modify a contract of employment if the contract of employment itself provide for that eventuality, or by custom that has happened.

4.

4.1.1. Workplace, department, location, enterprise, national, multi-employer

4.1.2. Sometimes related, sometimes independent

4.1.3. Free collective bargaining unless there is a statutory requirement to recognise a trade union

4.1.4. All

4.2.

4.2.1. Only trade unions. There is no condition of representativity. In practice all trade unions sign. There is no express right of opposition.

4.2.2. Oral or written but in practice written. No notice or registration required

5.

5.1. Any area or profession except armed forces and police and some security services

5.2. In practice collective agreements are voluntary

5.3. See above

6.

6.1. Free

6.2. All subjects can be covered

7.

7.1. Insofar as interpretation is required it is given by Employment Tribunals, the Central Arbitration Committee and the courts

7.2. There are no remedies unless the employer is ordered by law to recognise the trade union. Insofar as the term has become part of the contract of employment, it can be enforced in the Employment Tribunal or the court

7.3. See above

8.

8.1.1. No

8.1.2. They transfer if undertaking keeps its identity/see EU directive

8.1.3. Negotiation

8.1.4. Not regulated

8.2. Yes

9.

9.1. Yes

9.2. Yes, this is frequently misunderstood by the mainstream (not employment) courts

9.3. Don't understand