

01 December 2017

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

The Parties:

National Union of Journalists

and

BuzzFeed (UK) Limited

Introduction

1. The National Union of Journalists (the Union) submitted an application to the CAC dated 14 March 2017 that it should be recognised for collective bargaining by BuzzFeed (UK) Limited (the Employer) for a bargaining unit comprising "Editorial staff currently working at BuzzFeed UK Limited at 40 Argyll Street, 2nd Floor, London, W1F 7EB excluding senior management defined as those who manage managers". The CAC gave both parties notice of receipt of the application on 14 March 2017. The Employer submitted a response to the CAC dated 21 March 2017 which was copied to the Union.
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 Lynette Harris, Chair of the Panel, and, as Members, Ms Lesley Mercer and Mr Roger Roberts. The Case Manager appointed to support the Panel for the purposes of this decision was Miss Sharmin Khan.
3. By a decision dated 3 May 2017 the Panel accepted the Union's application. The parties

then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. As no agreement was reached, the parties were invited to supply the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. In this case the Panel accepted a request for the initial hearing date in early July to be postponed at the request of one of the parties. The hearing was held on 6 October 2017 and the names of those who attended the hearing are appended to this decision. The Panel has extended the determination period to allow time for the Panel to hold the hearing, consider all the evidence provided by the parties before arriving at a decision and then to finalise its written decision. The initial determination period expired on 3 July 2017 and the final extension ended the determination period on 1 December 2017.

4. The Panel is required, by paragraph 19(2) of Schedule A1 to the Act (the Schedule), to decide whether the Union's proposed bargaining unit is appropriate and, if found not to be, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and 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. Paragraph 19B(4) states that in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that it considers would be appropriate.

Summary of the Union's submissions

5. The Union's proposed bargaining unit as set out in its application was:

“Editorial staff currently working at BuzzFeed UK Limited at 40 Argyll Street, 2nd floor, London, W1F 7EB, excluding senior management, defined as those who manage managers.”

The Union contended that its proposal was compatible with effective management when taking

into account the criteria set out in the provisions of paragraph 19B(3) as set out in paragraph 4 above.

6. The Union stated that there were no existing national and local bargaining arrangements.

7. In respect of the consideration to avoid small fragmented bargaining units the Union contended that ‘Editorial’ was a group already well defined and understood internally since the inception of BuzzFeed UK, from the management structure to the way the office was laid out. This group included everyone working in “Buzz” or “News”, and those working for both. It also included everyone working on the service desks that supported editorial work i.e. the Art desk, Photo desk and Copy desk.

8. Editorial was distinguishable from those working in “Commercial” (the other main group of workers) by the fact that these workers had “editorial independence”. Commercial however, produced work for a specific brand and with the brand owner typically having sign off on that work.

9. Editorial independence was a very important journalistic principle. The Union was aware of concerns amongst the workers in the Buzz section of editorial regarding the risk of lines being blurred between Editorial and Commercial. In the US, the company had decided to split this section out and apply different criteria governing their work which, if implemented in the UK, would mean a significant change to the roles of journalists in Buzz.

10. The Union’s intention was to represent all staff working on News and all staff working on Buzz as a single bargaining unit; any proposal to separate these two groups would, in its view, be likely to lead to unnecessary fragmentation. Staff on the two teams worked closely together and there was mobility between the two, some staff effectively worked for both teams and reported to managers in both Buzz and News. In comparison there was practically no day-to-day crossover between Editorial and Commercial. For these reasons the Union’s position was that its proposed bargaining unit was compatible with effective management.

11. The Employer had concerns about the current reporting lines within the proposed bargaining unit being compatible with effective management on the grounds that certain

individuals had reporting lines to the U.S. and that decisions about their pay and/or holiday arrangements were made in the U.S. The Employer had informed that decisions about pay and holiday arrangements for the workers in the Union's proposed bargaining unit were made in the U.S. To illustrate reporting lines, the Union provided an organisational chart with its written submission which it stated was based on a chart provided to the Union by the Employer.

12. The Union explained that it had considered this matter carefully, stating that it understood that it was necessary for effective management of certain roles that worked closely with the U.S. to have U.S. reporting lines. Its belief was that, to allow for flexibility whilst avoiding fragmentation of the bargaining, it was appropriate for all staff working in Editorial on UK contracts to be in a single bargaining unit. The Union's proposed bargaining unit gave the Employer flexibility to adjust reporting lines as part of normal management business and the Union did not seek to intervene in this. It did, however, have a concern that if reporting lines were used to define or decide the appropriate bargaining unit as, according to the current BuzzFeed U.K. contracts, a worker's contract could be altered at the Employer's discretion.

13. In its consideration of the characteristics of workers, the Union stated that the primary characteristic distinguishing those within the bargaining unit from those outside was the editorial nature of their work.

14. Turning to the matter of the location of workers, it was the Union's understanding that two roles were currently undertaken by workers working from Scotland but who had London as their contractual place of work. The Union had, therefore, these two workers in its proposed bargaining unit. Any future change affecting the location of workers and the coverage of the bargaining unit would be a matter, the Union hoped, for consultation between the Employer and the Union.

15. The Employer had not proposed an alternative bargaining unit even though the Union had made it clear on several occasions that should proposals be forthcoming from the Employer, the Union would have been happy to consider these. Management had indicated that they would wish for two roles defined as senior management to be included in the bargaining unit and the Union was prepared to discuss this further and would take a pragmatic approach. It was, however, opposed to any proposal which would limit the bargaining unit to just staff working on News or expand the bargaining unit to include those working in the

Commercial section for the reasons already explained although it was open to having a separate discussion with the Employer about recognition for this group of workers.

16. The Union confirmed that the two journalists that it had confirmed as being excluded from its proposed bargaining unit at the admissibility stage of the application were the Deputy World Editor and Deputy Global News Director. These roles were never included in its proposed bargaining unit and this was clarified at the start of the application to the CAC.

17. In response to the Employer's view that the Buzz team and the News team should not be included in the same bargaining unit, the Union stated that it was not unusual to have different job roles in one bargaining unit. The Employer and Union would still be able to effectively negotiate over pay hours and holiday despite the different objectives of the work of the Buzz team and the work of the News team identified by the Employer. In support of its position on this issue, the Union referred the Panel to paragraph 31 of the CAC's decision of NUJ & Telegraph Group Ltd (CAC reference – TUR1/204/2002) which stated:

“...the Panel sees no reason why the pay, hours and holidays of all journalists (excluding freelances) should not be the subject of collective bargaining within a single bargaining unit. In this case, there are in fact some elements of terms and conditions package that apply at present to all staff; for example, all staff receive, subject to conditions, a holiday entitlement. However it is perfectly feasible for one bargaining unit to cover different groups of staff with different terms and conditions of employment and for such arrangements to work successfully. The inclusion of all journalists (excluding freelances) within one bargaining unit would not hinder the parties' ability to negotiate salaries for permanent staff and minimum rates for casual staff if they wished to do so.”

18. The Employer's proposal was to include the News team only in the bargaining unit to reflect its organisational structure, in other words, to have one bargaining unit for one type of worker. But the Employer had not demonstrated or provided an example of why or how the Union's proposed bargaining unit was not compatible with effective management. In the Union's view, the Employer's proposal for team separation would lead to divergence and have a double time impact on negotiations and cause fragmentation.

19. The Buzz workers had more in common with the News team than they did with

“Creative” and they shared the same reporting line. Whilst the Union accepted that previous CAC decisions were not to be taken as precedent, it referred to paragraph 27 of the NUJ & Chartered Institute of Environmental Health/Chadwick House Group Ltd decision (CAC ref - TUR1/685/2002):

“This appears to us to be the central issue in the case. As Collins J said in R(Cable & Wireless Services UK Ltd) v CAC [2008] ICR 693, “it is obvious that the real problem is the risk of proliferation which is likely to result from the creation of one such [sc. small, fragmented] unit.” (paragraph 17) Although the Employer’s proposal might seem to reduce this risk (by bringing a greater number of workers within the first bargaining unit), it clearly does not eliminate it since, as pointed out above, the majority of the Employer’s workers will remain outside the bargaining unit, even on the Employer’s definition. In fact, we have concluded that the Union’s proposal better meets the guidance given by Collins J that “it is important to see whether such a unit is self-contained. Fragmentation carries with it the notion that there is no obvious identifiable boundary to the unit in question, so that it will leave the opportunity for other such units to exist and that will be detrimental to effective management.” Employees, whose work is predominantly characterised by editorial or creative work, can be said to be self-contained, by reference to that very criterion. By contrast, workers whose work contains only an element of editorial or creative work can often just as well be put together with workers whose work contains no editorial or creative element, by reference to some other element in their work than the editorial or creative one...”

20. At the hearing Ms Kelly Oakes, BuzzFeed U.K. employee and Union member explained that she was the Science Editor and split her time between working on News and on Buzz. In response, the Employer observed that Ms Oakes was the only employee with such a dual role and Ms Oakes confirmed she performed two roles, two days on News and three days on Buzz by choice but that the time she spent on News work and Buzz work was variable. She did not agree with the Employer that there was only occasional cross over between the two teams. Overlap and collaboration was the norm not the exception. Ms Oakes provided examples when Buzz and News worked together such as “Health Week, “Student Week”, “Black History Month”, “Disability Rights Awareness Week” and Facebook live events. The Employer disagreed, stating that in its view, Buzz occasionally did a News story but this was not a daily occurrence and such work was done on a freelance basis.

21. Ms Oakes also stated that, regardless of how management referred to the workers in the bargaining unit, the term applied to the News team and the Buzz team in the actual work place was “Editorial”. It could be true that the term was used by long standing employees in previous varied roles but this did not negate that there remained a great deal of interaction between the two teams. The teams worked together as “Editorial” including the Buzz Desk, News Desk, Art Desk and Copy Desk. For the workers “editorial independence” simply meant work independent from or outside of commercial interests i.e. content relating to the interest of the readers, in contrast to Commercial UK.

22. Ms Oakes did not agree with the Employer that pay increases were measured simply by volume of traffic for Buzz workers and quality and impact for News workers. News workers were praised if the impact of a piece increased traffic and Buzz work was not just about going viral but very much about the impact, for example there had been a conscious focus on impact during Black History Month. Furthermore, the rewards that the Employer referred to as incentives, in her view, went no further than good team building events. The Employer then clarified for the Panel that there was no bonus scheme for its workers but pointed out that the criterion set for promotions and pay increases were different for Buzz workers and News workers. Ms Oakes did not agree that News worked irregular hours and that Buzz workers did not. Buzz workers often attended events outside of office hours, for example red carpet events. Ms Tabatha Leggett, the Head of Buzz responding on behalf of the Employer said that if a Buzz worker did attend such an event, it was not a requirement but if they did so there would receive the time back in lieu.

23. Mr Francis Whittaker, BuzzFeed U.K. employee and Union member explained that even though some workers in the Union’s proposed bargaining unit reported to the U.S. this did not impact on how the proposed bargaining unit was compatible with effective management. It was true that the Head of the U.K Investigations team reported to the U.S. but on a day to day basis his work was done in conjunction with the U.K. Head of News who also reported to the U.S. The Global News team was managed by the U.K. Head of News too. The U.K. News reporter worked with the Global News team. There was always a certain amount of overlap. Taking the example of the unfortunate recent events in Las Vegas, the U.K. Copy desk had then reported to the U.S. but they were employees in a U.K role. The workers in the proposed bargaining unit did report to the U.S but their actual working hours were local U.K. times for the most part and their salaries were paid in £ sterling. The Global Breaking

News desk reported to the U.S. but the team responded in local U.K. time zones, and the workload was dictated by the U.K. time zones working in U.K hours.

The Union's Conclusions

24. The Union pointed out that it was open to the CAC to come to a different view on the bargaining unit than either of the parties. However, it was their view that limiting the bargaining unit to News only staff would not be compatible with effective management as it would lead to fragmentation. It would be the Union's intention to seek a separate bargaining unit for Buzz UK staff if they were not included.

25. In support of having a wider bargaining unit, the Union drew the CAC's attention to the fact that all of the U.K. roles, included those with reporting lines to the U.S., were subject to pay audits and that the pay bands were the same for News and Buzz staff. The fact that some of the pay rates were set in the U.S. was not relevant as the Union would not be seeking to bargain over the setting of individual rates of pay.

26. In the Union's view, there was nothing undermining about having collective bargaining for various functions. It was normal to have different pay arrangements for different types of jobs in the same bargaining unit, and collective bargaining was not necessarily about levelling.

27. Regarding the possibility of future reorganisations affecting Buzz staff within the Company, the Union argued that the CAC was not concerned with the future, rather it had to take a position on the situation as it was at present.

28. The Union concluded by summarising its key arguments:

- i. No evidence had been presented as to why their proposed bargaining unit would reduce effective management, over and above BuzzFeed simply not wanting it.
- ii. The Company's concession that News could be a separate bargaining unit suggest that it could equally be widened or extended, given that even within News, there were different roles.

- iii. The staff forum set up by the Company envisaged discussions on pay, hours and leave through a system of staff representation which again supported a wider bargaining unit.
- iv. BuzzFeed's own organisational chart showed that News and Buzz were the closest functions, and there were obvious similarities with World News. News and Buzz had a common line of command to the Editor in Chief, plus the U.K. based managers in World had a measure of control over their staff.
- v. Buzz was independent of its clients, in contrast to staff working in Creatives.

Summary of the Employer's submissions to the Panel

29. The Employer argued that the Union's proposed bargaining unit was not an appropriate bargaining unit and was not compatible with effective management on the following grounds. Firstly, the boundaries of the Union's proposed bargaining unit was ill defined. The Union had at the admissibility stage of the application (on 16 June 2017), confirmed that two News journalists were excluded from its proposed bargaining unit as they were on U.S. contracts so, in effect, had conceded that its bargaining unit was not appropriate. Secondly, the Union's definition of "Editorial" was problematic. Thirdly, the Employer did not accept that there was sufficient cross over between the characteristics of the work of the News workers and Buzz workers for both types of worker to be included in one bargaining unit. Finally, the Union's proposed bargaining unit did not fit well with the structure of the business by the Union's inclusion of workers who had reporting lines in the United States (U.S.). The organisation's business model was not like a traditional media company that would be normally be associated with the British Press.

Boundaries of the proposed bargaining unit

30. As the Union had confirmed the exclusion of the two News journalists with U.S. contracts after its request for recognition dated 25 November 2016 and subsequent application to the CAC, the Employer contended that the Union was now arguing a case for a different bargaining unit to that applied for. In the Employer's view this meant that the Union could not benefit from the prioritisation that the statute accorded to its proposed bargaining unit. The question of "what is an appropriate BU?" before the Panel was now "at large". The Employer's proposal was

now entitled to equal consideration with any other proposal made by the Union.

Background to the organisation

31. ***BuzzFeed Inc***, was founded in New York in 2006 and was a “viral lab” that focused on making and tracking viral content which expanded and now operated in eleven countries worldwide, receiving more than 200 million monthly unique views. Its content was viewed more than nine billion times a month. BuzzFeed currently employed more than 1,600 people worldwide. Buzz Feed’s expansion into “News” was a result of its commercial success in the entertainment field. To clarify the difference in content, in 2014, BuzzFeed “Editorial” (a loose term), was split into three divisions in the U.S.: “News”, “Buzz” and “Life”. This was taken a step further in 2016 when BuzzFeed split the creation of content into two divisions: “BFEG” (BuzzFeed Entertainment Group) and “BuzzFeed News”.

32. ***BuzzFeed UK*** launched in 2013 and now had 137 employees who were mainly based in the U.K. in a single location in London (including a U.K. News reporter and a Buzz editor whom both worked remotely). The News team was one of six teams. By 2015, the News team became focused on breaking stories and generating original journalism. In January 2015, the Investigative Journalism team was based in the U.K but was working as part of BuzzFeed’s transatlantic investigative operation and reported into the U.S. The U.K. News team and U.K. Buzz team reported to The Editor-in-Chief of BuzzFeed UK appointed in September 2015. The remaining teams, the Investigations team, Copy Editing team, World News team and Global News team remained part of their U.S. led organisations and continued to be managed by U.S. editors on a day to day basis. BuzzFeed UK hired 51 employees over the last year. For the Panel’s assistance the Employer provided the timeline of BuzzFeed’s expansion (Appendix 2 of the Employer’s submission) and a graph showing the growth in BuzzFeed UK’s employee headcount (Appendix 3 of the Employer’s submission).

The structure and business model

33. BuzzFeed was a purely digital, global, cross-platform, social news and entertainment publisher. The sole intention and purpose of BuzzFeed’s “BFEG” division at BuzzFeed Inc. and “Buzz” at BuzzFeed UK was to create content that would be shared socially by so many people that it could be described as “viral”. This was less true of BuzzFeed’s News division.

The difference between “News” and “Buzz” was at the core of the Employer’s business model. The News team produced topical, newsworthy content. BuzzFeed was one of the few purely digital publishers to have invested heavily in serious journalism as an addition to its viral content. BuzzFeed’s noteworthy news coverage by its U.K. News team spanned from 2015 to 2017 from the Multi Award-Winning exposure of corruption leading to the closure of the charity Kids Company (UK News team) and other serious news content.

34. By contrast the Buzz team created content famously consisting of popular trivia quizzes, personality quizzes, identity posts, text lists, memes, product roundups, and community sourced lists along with fun science and showbiz posts, all designed to become viral. The work of Buzz created the environment for the commercial engine of BuzzFeed UK to exist in. BuzzFeed’s viral content, most successfully seen in the UK through the Buzz division, had driven the commercial success of BuzzFeed’s “native advertising” model. Native advertising was branded content that was deliberately created to be extremely closely aligned to Buzz content so that it would be shared socially; this did not happen with traditional promotional content such as display ads, banner ads, and pre-roll video ads.

35. In contrast to business models operated by traditional media organisations, BuzzFeed’s business model involved BuzzFeed owning the intellectual property in the native advertising it created for advertisers. It owned and took full responsibility for the creation of advertising content. Traditional media organisations were not involved in the creation of advertising campaigns. BuzzFeed was both the publisher and advertising agency. This creative function effectively monetised Buzz. If something did not work well on Buzz in terms of traffic it would not work well for brands either and it would not be carried over to the commercial side of the business which essentially mimicked Buzz.

36. The Buzz team’s role was to create viral content i.e. content that would resonate with people so that they would share it with others. The underlying function of Buzz content was to build and engage with the audience, hence the performance measurement for the role was by level of on line “views” and “shares”. The proprietary engine that drove BuzzFeed’s creative team was the data gathered about how these pieces of Buzz content performed and why they performed well. This learning was then applied to the content that Creative generated for brands. The Buzz team continued to develop content that could be monetised by the Creative team. As an example in July 2015, the U.S. entertainment division created “Tasty“, a video

franchise consisting of very short online recipe videos distributed primarily through Facebook. Tasty started a U.K. version - "Proper Tasty" in December 2015, with its content originally created by Buzz team members. The concept was so successful that BuzzFeed began to monetise the Tasty franchise by having its Creative team create branded Tasty content for clients. In the U.K. this expansion into branded video created career opportunities for the producers who eventually moved out of the Buzz team and into the Creative team where they now created branded content for the Proper Tasty Facebook channel, amongst other branded content. BuzzFeed's network included the website but also on mobile applications and third-party social media distribution platforms. In contrast to traditional media organisations, the majority of BuzzFeed's audience accessed BuzzFeed content on social media like Facebook, Instagram, Snapchat, Twitter and YouTube. Some of its content, for example on Tasty, as well as other vertical brands such as "Bring Me" and "Nifty" was created for distribution on social media platforms such as Facebook, Snapchat or Pinterest and may not ever exist on the BuzzFeed website.

37. BuzzFeed workers were often "multi-hyphenates" within teams. For example, in the Facebook Live events referred to above, journalists from the News team, who might usually be involved in creating News posts, were producing the show and presenting on camera. There were 137 BuzzFeed employees based in the U.K. Staff working in the U.K. were broadly broken down into six 'divisions' or teams that reflected the different functions carried out: News; Buzz; Creatives; Sales and Sales operations ("Biz"), Tech and IT ("Tech") and Admin.

38. The UK News team consisted of 38 reporters and editors including a four person curation team and a five person art desk reporting to the Head of News who ultimately reported to the U.K.'s editor-in-chief. The U.K. News Team's remit was to report rigorously on U.K. news and to expose wrongdoing and injustice, particularly on subjects relevant to the core audience of under 35 years. The U.K. News team did not include the copy editors (sub-editors), the Investigations team, the World and Global news team, or the European Growth Editor, none of whom reported to the Head of News or the U.K. Editor-in-Chief and who were all managed by managers in the U.S.

39. The U.K. Buzz team consisted of 26 people including 18 writers, five editors, two video producers, and one social media editor whose job was to create viral, shareable content that spread across social platforms. As the commercial engine of the organisation Buzz was closer

to Creative than to News in terms of the content it created. By contrast with Buzz, News had to maintain complete editorial independence from BuzzFeed's commercial activities.

40. The UK Creative team consisted of 13 content creators who made native advertising (see paragraph 34 and 35 above) content which mimicked Buzz content. They all reported directly or indirectly to Ze Frank in the U.S. who also managed BFEG.

41. The Biz team consisted of 21 people including account executives, brand strategy managers, sales operation, strategy analysts and client services managers who provided sales services connected with native advertising to advertising agencies and advertisers.

42. The Tech team consisted of 12 employees including IT specialists, software engineers, and new format developers. They reported into and were managed by U.S. managers and finally the Admin team consisted of four HR staff and 1 each facilities, security and legal staff who reported into and were managed by U.S. managers.

News and Buzz as distinct functions

43. The Employer's position was that the Union's proposed bargaining unit contained two very different categories of workers (the "News team" and the "Buzz (entertainment) team") whose working practices and terms and conditions, particularly in respect of hours and pay, differed significantly from each other. The two teams did not exist together as a stable functional unit.

44. Outside the U.K. the News and Buzz equivalent teams were wholly separate and did not report into the same senior manager. The U.K., News and Buzz teams reported into the Editor-in-Chief of BuzzFeed largely because BuzzFeed U.K. had expanded very quickly since its launch and was still evolving. The News and Buzz teams in the U.K. currently sat under the umbrella management of the U.K. Editor-in-Chief but they were not a single unit and were managed quite separately. The reality was that they were separate functions and, as already pointed out, Buzz had more similarities with Creative than with News. The Employer stated that the separation had already happened in the U.S. and the "split" had already begun in the U.K and was just yet to be formalised.

45. The Employer stated that it was possible that content created by Buzz workers on Showbiz and Science, overlapped with News. Any news content that they produced was always checked and edited by U.K. News editors on the news desk. However, the Science Editor's position was an anomalous one. This individual had a dual role, reporting into News and Buzz, spending three days a week on News and two on Buzz, but this was a result of her preferences and as a long-standing staff member with specialist knowledge. News and Buzz work occasionally crossed over. For example, on the Facebook Live Referendum event, when BuzzFeed wanted in a particular context to combine entertainment and news content. This, however, was not the way BuzzFeed usually operated. The Employer provided the following examples of how News and Buzz were distinguishable.

46. A copy of BuzzFeed's News Standards and Ethics Guide (provided in Appendix 4 of its written submission) which applied to News journalists but not to Buzz content creators. Different operational guidelines also applied to the use of branding and references to products because of the more commercial nature of Buzz than of News.

47. In the U.S. BFEG and Creative now reported to the head of BFEG, while News reported to the Editor-in-Chief. BuzzFeed in the U.K. had also embraced the idea that News and Entertainment were different species since this had been found to be most compatible with effective management. A day to day example was that Buzz workers were not expected to attend the morning editorial conference and that the head of Buzz regularly created performance goals for Buzz in direct conjunction with the editor of BFEG its equivalent division in the U.S. In the U.K., the head of Buzz regularly shared data with the Biz and Creative team to help guide how the Creative team could make brand sponsored videos from the most successful Buzz posts. The data shared included: a weekly spreadsheet of every post published by Buzz, in order of UK traffic; a monthly spreadsheet of every post published by Buzz, in order of UK traffic. A monthly "awards" email detailed Buzz's most read posts, a new frame (i.e. title), the product post that drove the most revenue to the site, the post with the greatest impact (i.e. a combination of social lift, comments, badges, etc), and the top performing post, meme, and video on Facebook.

48. Buzz was run by operation desks rather than by news desks and content creators in Buzz reported to operation group leaders, rather than to editors like reporters did in News. Buzz operationally had different priorities to News. News was becoming increasingly commercially

driven which could result in, over time, changes to the way the News team was remunerated in the U.K. No firm plans were currently in place but it was possible that BuzzFeed's U.K. operations may be reorganised to reflect more closely the U.S. operations where the News and Buzz teams would be placed into entirely different reporting lines to reflect their different roles and goals.

Pay, conditions and Reward

49. The Employer pointed out that BuzzFeed UK had launched a staff forum “BuzzForAll” in early 2017 with representatives from all areas of the business. It covered a wide range of topics including pay, hours and holiday, wellness, diversity and other issues staff identified as important. This all-inclusive model of representation was intended to work for the benefit of everyone at BuzzFeed UK. The BuzzForAll constituencies were: Diversity, Wellness, Tech, Buzz, News, Art, Biz - Creative, Biz-Sales and Admin. This approach of inclusivity was reflected in the relaxed atmosphere that all BuzzFeed staff worked in and the many perks and benefits that they were all provided.

50. BuzzFeed maintained a corporate job structure which encompassed all roles in the company into job families and job levels. Each job was assigned to a family and level, the compensation structure and pay scale was then set for each family, level and geography. Individual merit and promotion compensation decisions were made by the direct line manager within the Company structure.

51. Levels and salary bands were the same across BuzzFeed but job ladders were different for News and Buzz and different criteria were applied to determine merit increases and promotions. BuzzFeed also provided different compensation budgets to each function, the budget allocation being based on a number of business factors including performance goals for that function, market movement of compensation for the specific roles in a given geography, and company performance. At the hearing, Ms Lenke Taylor, Chief People Officer explained in detail for the Panel how the salary bands and ladders on which workers were on were determined. The determination of pay bands and how job roles fit into families and then on which ladder specific job roles related to were made by the U.S. Pay increases, however, were decided locally for U.K. workers and an individual’s direct manager would determine whether a worker had gone over and beyond expectations in order to progress on the pay scale.

52. In the News team, staff could achieve pay increases and promotions in accordance with the quality and impact of their work. Impact was judged by the production of exclusives, by the pick-up of stories by other media and select committees and by follow ups, etc. A willingness to go “above and beyond” by taking on extra projects and/or responsibilities was also a significant factor here.

53. In the Buzz team, writers were assessed primarily on the volume of posts they created and the traffic that such posts attracted. Buzz employees were asked to spend time looking at data reports about traffic and at older successful posts to learn from them with a view to increasing the traffic generated by their own posts. They were tasked with making content that would go viral. The Buzz social media editor was judged on the extent to which she increased BuzzFeed’s social media channels (i.e. how many British people subscribed to BuzzFeed U.K. on Facebook, Instagram, Snapchat, Tumblr, and Twitter). Buzz video producers were judged on how widely their videos were watched and shared on Facebook.

54. Buzz staff promotions and merit increases, by contrast with those in the News team, were based on traffic. In addition, the Buzz team got whole team rewards for meeting traffic goals, and its members were eligible for other types of benefits not available to other teams. The differences in the way that Buzz and News teams were compensated was likely to increase. A number of the methods used to incentivise Buzz staff to meet traffic targets had included Buzz Bingo, Players Club which rewarded individuals who published a set number of posts of exceptionally high U.K. traffic with a day off work and a Harry Potter World day trip in 2017. The News team was not rewarded in this way. It was judged on impact and scoop with staff reviews and promotions being based on the exclusivity and impact of stories.

55. Buzz was increasingly commercially led and more aligned with Creative than to News and Creative very closely resembled Buzz content. The success of Creative content depended on its ability to benefit from data learned from the performance of Buzz content. Buzz shared data with Creative to help guide Creative content. Buzz/Entertainment developed “verticals” including video brands such as Proper Tasty and Nifty and Goodful, quizzes and other post formats, are monetised by BuzzFeed. Two former Buzz workers (job titles: Producer Branded Mint and Video Creative) had moved out of Buzz to Biz adjacent roles in the last 12 months and now produced both branded and non-branded content. In contrast, there had been

no such movement from Buzz to News.

56. Buzz already makes revenue from Buzz content via affiliate links which took users to marketplaces (such as Amazon) where they could buy products featured in BuzzFeed posts and aimed to increase this revenue in the coming months. At least half of Buzz staff had written posts that contained affiliate links. A recent example of a post containing affiliate links published 04 July 2017 was enclosed at Appendix 14 and included the following disclosure to readers: “We hope you love the products we recommend! Just so you know, BuzzFeed may collect a share of sales from the links on this page.” The role of the Buzz Social Media Editor included promoting sponsored content (made by the Creative team) as well as Buzz content; Both the Buzz Editor and the Social Media Editor have advised commercial video producers on pitches likely to perform well and the best time to schedule them from promotion on BuzzFeed’s Facebook page. It was anticipated that the Buzz team would increasingly add revenue-generating content.

57. In the News team, writers and editors had usually followed the traditional route into journalism but this was often not the case for Buzz workers. The News team were experienced journalists whose work was more in line with what would be expected in more traditional news organisations. A recent job description, typical of job descriptions for a U.K. News journalist was enclosed at Appendix 12. By contrast Buzz workers, in recent times, were usually recruited from the U.K. Fellowship Programme which was a three month paid internship with Buzz during which they learnt how to create shareable social content. They were not required to have any journalism experience. A typical U.K. Fellowship Programme job description was enclosed at Appendix 13 of the Employer’s written submissions. The performance of employees in the News team was measured more by reference to the political, social and reputational impact of their reports and stories, with traffic data playing a relatively minor role in their performance metrics.

Hours of work/flexible working

58. BuzzFeed operated specific hours of work for individuals, flexible working arrangements were approved by employees’ direct line managers. News employees were

required to work irregular hours in accordance with the news cycle. For example as a regular schedule, or on short notice, they could be called upon to work outside of BuzzFeed's standard office hours of Monday to Friday, 9am to 6pm, in order to carry out the requirements of news reporting such as a story deadline, breaking news or investigative reporting. This did not apply to Buzz employees who generally worked only during regular office hours and were not called to work out of their scheduled hours. They were not expected to work late nights and weekends because they were not reporting news and were not following a news agenda. Buzz staff would not have leave cancelled due to breaking news events or general elections as had happened to the News team in June this year.

Holiday entitlement

59. BuzzFeed had one holiday and leave policy which applied to all employees in the U.K. All leave requests had to be approved by the employee's direct line manager.

Employer's comments on the Union's definition of "Editorial"

60. The Union's proposed bargaining unit was not accepted by the Employer as an appropriate unit including or excluding the employees on U.S. contracts. The Union's term "editorial staff" was problematic when trying to establish a clearly defined bargaining unit. The term could not mean all content creators at BuzzFeed U.K. There were other content creators or "Creatives" doing similar work to Buzz content creators who were working adjacent to the Biz team and who were not included by the Union. The Union had already accepted that two News journalists, the Deputy Editor World and Deputy Director News, were not included. Also, the Managing Editor, who was included, was not a content creator. It was also unclear to the Employer whether the Executive Assistant to the Editor-in-Chief who was also not a content creator, was included in the Union's proposed bargaining unit.

61. "Editorial" had a limited meaning for the Employer. In practice, managers referred to "News" and "Buzz" not to "editorial". Insofar as the term was used by staff internally it was as a broad descriptor for content creators who were not Creatives, but it was not meaningful to define a bargaining unit using this term in the context of BuzzFeed as a business. The problem with the Union's use of the term "editorial" was demonstrated by the difficulties faced by the company upon receiving the Union's application. Identifying the exact employees required

clarity which was only gained through talks had between the Company and the Union representatives

62. The term “editorial” was occasionally used internally within BuzzFeed's UK office; however it was a term of convenience only. Its continued informal use was a legacy from BuzzFeed's early presence in the U.K. when a very small number of employees fulfilled multiple roles. The Employer referred the Panel to the organisational chart provided in Appendix 1 of its written submissions which illustrated the roles understood to be within the Union’s proposed bargaining unit. In its view this showed that the Union’s proposed bargaining unit diagram was an artificial construction that did not fit into the reality of how its U.K operations were managed. It included a wide range of different roles spread across a number of different teams and reporting lines. Its adoption as a bargaining unit would be inappropriate and wholly incompatible with continued effective management of BuzzFeed in the U.K.

63. Ms Tabatha Leggett, Head of Buzz on behalf of the Employer also disputed the Union’s notion of editorial independence on the basis that there were in place specific guidelines for Brand and the Creative team in the U.K. which mimicked what Buzz workers did in the U.S.

Inclusion of workers reporting to the U.S.

64. Furthermore, the Union’s proposed bargaining unit was not compatible with the efficient management of the company because it included staff who were managed from the U.S. and whose pay, hours and holidays were determined by U.S. line managers. The Employer explained that it was a company which supplied staff to its parent company, a company registered in the U.S. and where decisions on pay, hours and holidays were taken. All of the Employer’s employees were categorised, worldwide, according to their job specification.

65. The Union’s proposed bargaining contained 13 individuals who were not included in the U.K.’s reporting structure: Copy editors (sub-editors), Investigations, World news, Global news and the European Growth Editor (the relevant job titles were indicated in yellow in the representation of the Union’s proposed bargaining unit at Appendix 1 of the Employer’s submissions. These employees worked in “global” teams, often carrying out work unrelated to

the U.K. Like the Creative team, they reported directly to U.S. based managers. Although the majority of the workers in the Union's proposed bargaining unit were on U.K. contracts, these workers did not report to the U.K. Editor-in-Chief who was neither the budget holder nor the decision-maker. These workers did not come under the umbrella of the Editor-in-Chief and their U.S. managers decided the key elements of their terms and conditions. U.S. managers had in several cases made variations to the standard contract terms for BuzzFeed UK staff without reference to the UK Editor-in-Chief. UK based managers were not consulted on these variations. Remuneration for these individuals was decided solely by their relevant U.S. based managers including their pay and performance reviews, promotion-related decisions, hours of work and the timing of their holidays. For example, the head of BuzzFeed's Investigations unit was located in the U.S. and employed team members in the U.S. and U.K. who made the story assignments and often engaged team members in both countries to work together on a story. The Global breaking news desk was led out of the U.S. but had team members around the globe including the U.K. The functional lead in the U.S. determined the work schedules of those on the desk (including consideration in respect of a worker who needed to work a local statutory holiday, evening or weekend). The same was true of the World News team, the Copy editors (who work on content that is produced in the U.K. and globally) and the European Growth Editor.

66. Some BuzzFeed staff were managed from the U.S. because the U.S. leader oversaw the global function and was the only one who could assess and reward people doing those roles in a fair and consistent way. For instance, the U.S.-based leaders of "investigations" and "breaking news" set the relevant performance-related criteria and, when evaluating staff performance and making pay decisions, judged staff relative to those criteria and to the functional goals and operations overall. It was not possible to assess the performance of one or two individuals without taking into consideration the entire team as only the functional lead could. In this way leaders of global teams could discharge their functions according to a business need for that function to have a global presence, i.e. distinct from a local need for a function to be based in a location. For example, the Investigations team, Copy editing or Breaking news teams served multiple parts of the business and multiple geographies so a Copy editor could copy edit any piece of content not just pieces that were produced in the U.K.

67. The Union's classification that all of these workers were part of "editorial" ignored the complex reporting and working structure. The inclusion of these roles into any U.K. bargaining

unit would cut across the existing reporting lines of established teams and place BuzzFeed in the unworkable and untenable situation of requiring several U.S. based managers to negotiate with the Union on terms and conditions of staff managed from the U.S. as individuals within global teams who just happened to be U.K.-based. The majority of employees in the proposed bargaining unit, other than these 13, were workers in the News and Buzz team with in BuzzFeed U.K. as illustrated on the organisational chart enclosed at Appendix 11 of the Employer's submissions.

68. The Employer referred the Panel to a number of legislative points to reinforce its case: Firstly, in addition to the provisions set out in paragraph 19B of the Schedule the Employer also referred the Panel to paragraph 171 of Schedule A1 TULR(C)A which provided that:

“[i]n exercising 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.”

69. The Employer also cited the relevant paragraphs in Harvey on Industrial Relations (enclosed at Appendix 5 of its submissions). In particular there was a reference by Harvey (§1254) to the suggested test to be applied by the Panel, namely that:

“the concept of effective management is to be understood as relating principally to methods of resolving issues of pay, hours and holidays by means of collective bargaining (GMPU and Ritrama (UK) Ltd (TUR1/178/02, 11 July 2002), per the CAC). In paraphrase: taking account of the statutory criteria and of the way in which the undertaking operates and is organised, does the proposed bargaining unit offer a sensible and workable vehicle for settling by collective bargaining the pay, hours and holidays of the workers concerned?”

70. The Employer accepted that the decisions of the CAC did not have precedent value but nevertheless referred the Panel to a number of CAC decisions in Appendix 6 to 10 of its written submissions.¹

¹ R (Cable & Wireless) v CAC & CWU Case No: CO/8174/2007, NUJ & Chartered Institute of Environmental Health/Chadwick House Group Ltd. CAC ref. TUR1/685[2002], BFAWU & Fyffes Group Ltd. CAC ref: TUR1/912[2015], Unite the Union & Brakes Bros Ltd TUR1/898[2014], BECTU & Royal Shakespeare

Employer's Conclusions and proposed bargaining unit

71. The Employer had made its case contending that the Panel could not properly recognise the Union's proposed bargaining unit if it was to be consistent with paragraph 19B(2) of the Schedule. Nor was the Union's position advanced by the factors set out in paragraph 19B(3). In respect of paragraph 19B(3)(a), the views of the Employer and the Union were in conflict. There were no existing national and local bargaining arrangements (Paragraph 19B(3)(b)). The Employer's principle argument was that, for the reasons set out above, the characteristics of workers falling within the bargaining unit under consideration made it inappropriate (Paragraph 19B(3)(d)). All of the workers were in the same location though some were managed or reported to U.S. management (Paragraph 19B(3)(e)).

72. Paragraph 19B(4) of the Schedule provided that "In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate."

73. The Unions' proposed bargaining unit was not compatible with effective management as it would cut across the current managerial and global structure under which significant numbers of those within it had a reporting line directly to the U.S. where their pay, holidays and hours were determined by U.S. managers.

74. The Employer proposed that a more effective bargaining unit would be one that included the News team reporting into the U.K. Head of News only. The exact scope of this unit was set out as an organisational chart at Appendix 15 of the Employer's submissions. The 'News only' bargaining unit mapped more comfortably on to how BuzzFeed U.K. was structured and managed. It would ensure the Company was not restricted in its ability to continue innovating and adapting to the marketplace as it changed. The issues posed by trying to manage two groups of employees with fundamentally different characteristics and purposes under the same umbrella would be eliminated.

Company TUR1/540[2006].

75. The differences between News and Buzz had been explained but it was also the uniformity of the roles in News that made its proposed bargaining unit appropriate. Neither did the News role have similarities with the other functions in the business. All News workers had the same reporting line, the budget for their pay rested with the U.K. Editor-in-Chief; they were all judged by the same performance metrics; their positions within the pay bands were similar; they had the same job ladders and titles and the same holiday policy applied to them.

76. The News team was, by contrast with “editorial”, as understood by the Union, a functionally coherent and stable unit within BuzzFeed, rather than a contingent grouping which existed in name only for historical reasons. The similarity of the roles within the News team would facilitate the possibility of effective negotiations between the Employer and the Union should it be recognised, relating to the pay, hours and holiday of employees in the bargaining unit as proposed by the Employer.

The Panel’s Considerations

77. The Panel's decision has been taken after a full and detailed consideration of the views of both parties as expressed in their written submissions and amplified at the hearing. It is required by paragraph 19(2) of the Schedule to the Act, to decide whether the proposed bargaining unit is appropriate and, if found not to be so, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and 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. Paragraph 19B(4) states that in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that it considers would be appropriate. The Panel must also have regard to paragraph 171 of the Schedule which provides that "[i]n exercising 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."

78. The Panel's first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union's proposed bargaining unit is appropriate. The Panel recognises that it cannot reject the Union's proposed bargaining unit because it feels that a different unit would be more appropriate nor, in considering whether it is compatible with effective management, can it consider whether it is the most effective or desirable unit in that context.

79. The Panel considered the Employer's submission that the Union had changed its bargaining unit and had, therefore, lost its right to prioritisation as it had accepted on 16 June 2017 the exclusion of two news journalists, the Deputy Director World and the Deputy Director News, who had U.S. contracts and U.S. reporting lines. The Panel was advised by the Employer at the hearing that this had been confirmed at a meeting held between the parties to try to reach agreement on the bargaining unit. The Panel was not persuaded by the Employer's argument as it considered that it was unavoidable that sometimes a process of clarification of roles is required at the admissibility stage of an application as this is usually lodged by Union representatives that do not necessarily have access to all job titles and information about roles and rely on the workers and its members for this information rather than the Employer. Furthermore, having examined the responses of the Employer to the Union's proposed bargaining unit as set out in its application, the Panel noted that the issue of the exclusion of these two journalists with U.S. reporting lines was not raised in any of that correspondence.

80. Turning to the issue of fragmentation, the Panel's view was that a bargaining unit which consisted of staff working on News and on Buzz excluding senior management (defined as those who manage managers) would not result in fragmentation. It considered the Employer's argument that the difference in the work undertaken in News compared to the work undertaken by Buzz was so distinctive and there were such significant variations in the terms and conditions between News and Buzz staff that the Union's bargaining unit was inappropriate. The Panel did not believe that the differences in the work performed by Buzz and News staff or their conditions of service were such that having both groups of workers in the same bargaining unit was not feasible. Buzz and News staff had the same salary bands, the same holiday entitlements and there were standard office hours for all BuzzFeed (UK) Limited

workers with individual flexible hours working agreed by the direct line manager. The Panel noted that News staff could be called upon to work outside those hours because of the demands of the news cycle whereas Buzz staff generally only worked regular office hours.

81. The Panel then considered the proposed bargaining unit's compatibility with effective management. In response to questioning by the Panel it was established that the U.K. Editor in Chief held the pay budget and decided pay for all News and Buzz staff on U.K. contracts who had UK reporting lines. This led the Panel to conclude that, although the Employer's argument was that News and Buzz were regarded by the Company as distinct groups and the bargaining unit should reflect this, for workers with U.K. contracts and U.K. reporting lines working on News and Buzz the Union's proposed bargaining unit was compatible with effective management.

82. The Panel, however, did not believe that this was the case for workers who had U.S. contracts and U.S. reporting lines or U.K. contracts and U.S. reporting lines who had their pay decided in the U.S. From the organisational charts provided in the parties' written submissions it was identified that there were 13 workers included in the Union's proposed bargaining unit who worked in global teams reporting to the U.S. and not to the U.K. Editor in Chief. The Panel did not see how collective bargaining could be conducted for this group of workers and were of the view that their inclusion in the bargaining unit was not compatible with effective management.

83. The Panel has considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. The Panel does not consider that there are any existing national or local bargaining arrangements in this case. In relation to the desirability of avoiding small fragmented bargaining units within an undertaking, the Union's proposed bargaining unit would be the sole existing bargaining unit within the Employer's undertaking and there is no evidence of any current demand elsewhere. As far as the characteristics of workers are concerned, the Panel has noted that the Employer regards Buzz and News workers as distinct groups because of the nature of their work but does not consider that this means that it is not feasible for both Buzz and News staff to be in the same bargaining unit. With the exclusion of any workers in the bargaining unit who have U.S. reporting lines, the Panel's view was that a bargaining unit

consisting of both News and Buzz workers was not incompatible with effective management.

84. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

Decision

85. The Panel's decision is that the appropriate bargaining unit is:

Editorial staff working in News and Buzz and staff supporting editorial work on the service desks at BuzzFeed UK Ltd , 40 Argyll Street, 2nd floor, London, WWF 7EB who have U.K. contracts and U.K. reporting lines but exclude senior management (defined as those who manage managers) and editorial staff who have UK contracts but US reporting lines.

86. 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 valid within the terms of paragraphs 43 to 50 of the Schedule.

Panel

Professor Lynette Harris, Panel Chair

Ms Lesley Mercer

Mr Roger Roberts

01 December 2017

Appendix - Names of those who attended the hearing

For the Union

Mr John Hendy QC	-	Counsel
Mr Neil Todd	-	Solicitor
Mr Will Frost	-	(Chambers)
Ms Michelle Stanistreet	-	NUJ
Mr Roy Mincoff	-	NUJ
Mr Andy Smith	-	NUJ
Ms Laura Davison	-	NUJ
Ms Kelly Oakes	-	BuzzFeed employee and NUJ member
Mr Francis Whittaker	-	BuzzFeed employee and NUJ member

For the Employer

Ms Aileen McColgan	-	Counsel Matrix Chambers
Ms Lenke Taylor	-	Chief People Officer
Ms Anushka Methananda	-	HR Business Partner
Ms Siobhain Butterworth	-	Associate General Counsel
Ms Janine Gibson	-	Editor in Chief, BuzzFeed UK Limited
Ms Megan Cox	-	Managing Editor, BuzzFeed UK Limited
Ms Tabatha Leggett	-	Head of Buzz, BuzzFeed UK Limited