



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Employment Bill: Departmental Briefing

13 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Employment and Learning

Employment Bill: Departmental Briefing

13 January 2016

Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Sydney Anderson
Mr Gerard Diver
Mr Alex Easton
Mr Phil Flanagan
Ms Anna Lo
Mr Fra McCann
Ms Bronwyn McGahan

Witnesses:

Mr John McKeown	Department for Employment and Learning
Ms Margaret O'Hare	Department for Employment and Learning
Dr Alan Scott	Department for Employment and Learning

The Chairperson (Mr Swann): I welcome Mr John McKeown, acting assistant director for strategy in the European and employment relations division; Dr Alan Scott, head of employment relations policy and legislation branch; and Ms Deirdre Walsh and Ms Margaret O'Hare from the employment relations policy and legislation branch. Sorry, I have just noticed that Deirdre is not here. John, over to you.

Mr John McKeown (Department for Employment and Learning): Chair, as you rightly said, a number of issues arose from last week's session. The first was the outstanding submission from the Bar NI. We received its written submission the day before yesterday. A bit like the other submissions from the call for evidence, we are pleased that there was a broad welcome for the proposals, but, again, there were some issues. We are happy to answer any questions on that and then, if you want, proceed to the four outstanding issues from last week's discussion.

The Chairperson (Mr Swann): What way do you want to work?

Mr McKeown: If there are any questions from members resulting from the Bar NI submission, we will take those first. We can then move on to the four outstanding issues from last week.

The Chairperson (Mr Swann): Bronwyn, do you have anything —

Ms McGahan: From the Bar Council?

The Chairperson (Mr Swann): Yes, from the Bar Council submission.

Ms McGahan: We were at the meeting yesterday when they talked about the high number of unrepresented litigants. That is a concern. They said that, in their experience, seven out of 10 litigants were unrepresented. It might be worth drilling down into that to see if we can get figures. That needs a focus.

The second issue is access to services. Phil raised the point that he would contact the Law Society about that, but there are a lot of people out there who are not aware. If they contact your office, you can refer them on, but there are people out there who do not do that and walk into a tribunal when it is too late. As someone said last week, they are there to tell a story, but you cannot tell your story when you go into that legal setting. There is a wee bit of work to be done on that.

Dr Alan Scott (Department for Employment and Learning): I think that the Department accepts that. We carried out a consultation between last July and September on new tribunal rules and procedures, and part of the review will look at the accessibility of the system. We already fund the Law Centre to provide assistance to vulnerable claimants, but, in that consultation, there was a wider look at the position of vulnerable people and how they access the system. There is a recognition that we need to look more broadly at the guidance and information available to people.

Tribunals already offer a system of early neutral evaluation of claims. That gives people a steer on where they think they will go with their claims. People will get a sense from an early stage of whether they have a difficult case to argue.

We need to look at various things in response to that consultation. We are looking at responses at the moment, and a policy response will be developed over the coming months.

Mr F McCann: My point comes on the back of yesterday's meeting. Thanks for the presentation and the information.

Two additional issues raised were the change of name from "chair" to "judge" of a tribunal and the impact that that might have on people when they go in. The Bar Council also raised concerns about that. We discussed that at the Committee. I have had that in my own head and raised questions about it last week. By their very nature, tribunals are informal, and their purpose is to make people at ease with their surroundings and circumstances so that they can play a full part in the proceedings. A change of name, whilst it may not mean anything to some people, will mean a terrible lot to others and may put people on the back foot. "Fear" may be too strong a word for that whole judiciary end of things.

One of the other questions touched on by Bronwyn yesterday was that, whilst the Law Centre does a tremendous job, its resources for doing the job are severely limited. It is Belfast-centric in many ways. A number of us are concerned that this may be well and good in the cities, but most of the North has a big hinterland — it is called a rural community — and there need to be ways of tapping into the towns and villages. There are organisations and groups that work well in providing for people in a rural setting. They need to be looked at. We need to widen out the sphere of advice and how it is operated.

The third issue is one of my wee pets; forgive me if I have raised it with you before. I have always been a cynic about consultations. They are wonderful if you can get everybody to participate, but what you get in consultations is the usual suspects lining up to put in their twopence halfpenny worth. If it is listened to in the advice that is coming, it in no way reflects the wider community. It would be interesting to find out how the consultation was handled, how wide it went and what the Department did to entice people to come forward. I have travelled round quite a number of community organisations to encourage people to take part in consultations. If what is on offer can be changed by people participating, people should be encouraged to participate.

Dr Scott: I will try to deal with those issues in order. I think that we have already had the discussion about tribunal judges. We accept that there are different views on it, and certainly there are people who believe that it creates undue formality in the system. There are others who accept that the difficulty is that we are entering a legal framework and it gives people entering that framework a sense that this is what they are doing and there are other options that they can pursue. However, if they are going into a tribunal setting, they will receive a legal judgment. At the same time, there is a tripartite panel, and the Minister has given an assurance that that will not change; the process will remain as it is now. That does not mean that we will not encourage people to explore other options through the early conciliation and neutral assessment proposals.

That leads us to the second issue, which is the support available to people through the Law Centre. You mentioned that there are potential gaps for rural settings. The way that the Law Centre's service works is that people will, generally speaking, initially go to their local advice centre, should that be the citizens advice bureau or some other organisation. In some cases, those organisations will be able to deal with the query. In cases where the query is more complex, it can and will be fed through the Law Centre, which will be able to deal with and, hopefully, resolve it for the person concerned.

The way our consultations work is that we publish them online and draw them to the attention of employer and employee organisations, as well as groups that have responded to our consultations in the past. We also encourage people who are sent to consultation to alert us to any additional organisations or people whom they feel should be included.

It is publicly available on the Internet, and we encourage anybody to respond to it. We accept that there is scope to improve engagement with people, and we will have to look at how we can get the message out more widely. One of the difficulties with these issues is that some of them are quite technical, and it may not be something that a person in the street will connect with. Maybe we need to be a bit clearer about how these issues can affect the person on the street. There is probably more that can be done. We will review our consultation processes and how we engage with people. It is an ongoing improvement exercise; there is always scope for improvement.

Mr McKeown: We share your concern about consultation. When we issue something and get only a small number of responses, we are disappointed because we recognise that the consultation response should be broad, that we need more evidence and that policy should be evidence-based. In the team, we have talked, as Alan said, about reviewing the consultation process, and we very much welcome your contribution in that sense and the points that you have made. We want to make it as wide and as effective as possible, so we will review, in the coming year, how we go about improving access.

Mr F McCann: Thanks for that. I appreciate what you are saying. I am happy that some other Departments have departed from the usual run-of-the-mill ways in which consultations are held. They have organised events in community and other settings throughout the North and invited in a wider range of people. Those who do not have the technical know-how will, maybe, go along out of pure nosiness to pick up on what is being said because a government Department is doing it. A lot of the stuff that tribunals do affects everybody, not just the technocrats and the people who have computers. There are still quite a lot of people out there who do not have computers. It is important to make it accessible to everybody.

You should contact some of the Departments or even some of the bigger voluntary organisations, such as NICVA or groups like that, the partnership boards or the neighbourhood renewal partnerships, and say, "We are interested in getting points of view on this. Can you assist us to widen that whole thing out?". The important thing that came from yesterday is that, whilst we have heard this before, they were still saying that seven out of 10 people did not pick up on this. Regardless of what is happening, people are not going to advice services because they do not know that that service is available to them locally, and many cannot travel into Belfast to consult them.

Mr Flanagan: You talked about the services that the Law Centre provides to vulnerable people. In terms of how they are funded, what is the definition of "a vulnerable person"?

Dr Scott: My understanding is that there is no clear definition. At least, if the Law Centre operates a definition, it is not one that I am aware of.

Mr Flanagan: Is it not set out in the parameters of funding that you provide to them?

Dr Scott: Not generally speaking, no. It is more focused on providing support to people whom the Law Centre judges to need it. It is a discretionary offering; it is not something —

Ms Lo: It does a lot of work for asylum seekers and immigrants; we refer a lot of cases to it. The Law Centre is very good; actually, it is better than a lot of the lawyers here.

Mr Flanagan: I was wondering whether non-trade-unionised workers would fall into that category, but, if there is no hard-and-fast rule, there is not really an answer that you can give me.

When the Minister brought forward his proposals on dealing with zero-hours contracts, some of the solutions that he was going to bring forward involved legislative change and the introduction of regulations. He also indicated that he wanted to work with the Minister for Social Development, to seek his support for the establishment of a joint departmental project team to explore the potential to develop more responsive processes and enhanced guidance that would assist vulnerable workers in accessing their benefit entitlements. One of the concerns raised during the consultation is that people might be working 30 hours this week and no hours for the next three weeks. Making sure that they were getting regular access to benefits was a problem. Can you give us an update on the work between DEL and DFP in that regard?

Mr McKeown: There was some initial work in March/April, although I may not be accurate on that. The focus at that stage was on the existing system. We were in brief discussions with our colleagues in the employment service who liaise with the Social Security Agency and the jobs and benefits offices. The offices are shared, and the feedback at that stage was that the new system of universal credit would make it easier for people on zero-hours contracts to claim benefits. They recognised the difficulty with the current system, but the hope was that the introduction of universal credit and a more real-time assessment of benefits and wages earned would speed up the process.

At that stage, universal credit and the wider welfare reform package were matters for debate and discussion, so there has been no further development, now that our colleagues in the Social Security Agency are working on universal credit. We hope to re-engage on that issue.

Mr Flanagan: Is that based on the recent agreement and proposed changes, or are you waiting for the mitigation measures to take effect or to be announced?

Mr McKeown: I do not honestly have any grasp of the detail of where the discussions will go at this stage because we have not had discussions in the interim. We will look to see how our colleagues in DSD and our employment service colleagues can work as smooth a system as possible and as real-time an assessment as possible. You and other members have highlighted examples of how people struggle on the variability of hours from one week to the next and its impact on benefits.

Mr Flanagan: Who will take the lead on that? Will it be DEL, DSD or the Social Security Agency?

Mr McKeown: It is a joint approach to which both Ministers are committed. However, in developing policy for zero hours, we will approach our colleagues in social security and the employment service.

Mr Flanagan: Is it changes to the benefits system that we need or changes to the law on zero-hours contracts? Is it inclusion in the mitigation measures to help people on zero-hours contracts that might be the preferable solution?

Mr McKeown: The initial intention was that the system would address the immediate concerns at that time of a difficulty in making a fresh claim for benefit having been kicked out of the system for having worked 30 hours in the previous week. My sense was that it was much more a technical than a practical solution.

The Chairperson (Mr Swann): We have strayed into concerns that are outside the Bar of Northern Ireland, John, but do you want to pick up on the four main concerns that were raised? Can I clarify that it is not the Minister's intention to take forward zero hours in any shape or form now?

Mr McKeown: Yes, that is the case. The Minister no longer has plans to table amendments to the Bill on zero-hours contracts.

The Chairperson (Mr Swann): OK, just to clarify that. Do you want to go on to the rest of your submission?

Mr McKeown: OK, I will focus on the headline issues that were raised at last week's session. The first was circumstances in which the Labour Relations Agency's early conciliation would not apply. As we provided in the written submission, those circumstances will have to be specified in regulations developed once the enabling powers in the Bill are in place.

The Chairperson (Mr Swann): Sorry, John. Members, tabled papers are on page 3 of your pack.

Mr McKeown: Those circumstances will be finalised following engagement with stakeholders during the coming months. However, the initial assessment set out in the public consultation was that jurisdictions, where a very short period existed for presenting a claim or a settlement would be inappropriate, should not be subject to early conciliation requirements. We set out a list of the likely jurisdictions in annex A to that table.

We are happy to take any questions on that issue before moving on to the next.

The Chairperson (Mr Swann): Are members content? OK John, go ahead. If members want to come back in later I will allow them, when they get a chance to read annex A.

Mr McKeown: The second issue was the rationale for making provisions concerning tribunal deposits subject to the negative Assembly procedure. I will ask Alan to address that.

Dr Scott: The proposal has been developed on the basis of the fact that other tribunal procedures and rules are developed subject to negative procedure. That seems to have worked well and to have been uncontentious previously. The Minister indicated yesterday that he would be open to considering an alternative approach, if that is what Members seek. That was the rationale for developing the proposal in that way.

Mr Flanagan: He is once again open to considering something. Does he have any intention of tabling an amendment to the Bill to make future changes to tribunal deposits subject to affirmative resolution?

Dr Scott: If that is the desire of Members generally speaking, then it is something that he would be interested in doing. Obviously, it would have to be verified with him.

Mr Flanagan: OK.

The Chairperson (Mr Swann): I suppose that I may as well clarify at this stage whether it is the will of the Committee to look at that. That it has been done elsewhere is not a reason that it should continue to be done in that way. What is the feeling among members?

Mr Flanagan: Some of the proposed changes to tribunals are, in fact, very contentious. Some of the changes in the past have not been contentious; they have been technical changes. What is proposed here — not so much by the Minister, but what is going on in England — would turn out to be very contentious if it was allowed to happen.

The Chairperson (Mr Swann): I am dealing with Northern Ireland legislation, Phil.

Mr Flanagan: I accept that, but the argument for doing it by negative resolution is that it has not been contentious in the past. I am saying that if we adopted —

The Chairperson (Mr Swann): I will ask what the Committee's feeling is at the moment. Do you want to recommend to the Minister that we should look for affirmative resolution? Are members content? Is everybody in favour?

Members indicated assent.

The Chairperson (Mr Swann): John and Alan, is that something that you can feed back? I do not think that it is a new concept. It is something that the Committee has been asking for throughout the review of this stage.

Mr McKeown: We are happy to take that back.

The Chairperson (Mr Swann): We would be keen to see that move to affirmative resolution. OK?

Mr McKeown: The third issue was the public interest disclosure. There was some discussion about a new category to cover financial irregularity or, in the absence of that, to provide a catch-all provision. I will ask Margaret to run through the response.

Ms Margaret O'Hare (Department for Employment and Learning): We had a look at our categories within the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999, which accompanies the Public Interest Disclosure Act 1998, to see if, indeed, we were covered for the financial concerns that were raised last week by the Northern Ireland Committee, Irish Congress of Trade Unions (NICICTU). The Comptroller and Auditor General for Northern Ireland, the director of the Serious Fraud Office and the Financial Conduct Authority actually cover any financial irregularities that may happen.

We think that when NICICTU raised that issue last week, it was referring to a call for evidence that GB conducted in 2014. Amongst other things, they looked at the categories to see whether they covered all eventualities for people raising issues that related to disclosure. I think that NICICTU mentioned that they felt that some of the financial irregularities had not been covered. With that in mind, the UK Government carried out a consultation. While some people at the time thought that the categories might have been a wee bit too limiting, when the Government did more research, they felt that the categories covered most of the categories, including the financial categories. In that regard, they did not see any need to add to the categories at that time. We did not consult on our categories. GB is keeping an eye on their categories, and we will do the same. Going forward, if there were any further reviews on public interest disclosure and we felt that there was a need to look again at the categories, we would do so. I should add that when we did our consultation on public interest disclosure, there was a section where we invited people to comment in general about the legislation. No concerns were raised at that time about the categories.

The Chairperson (Mr Swann): Are members content to note that response?

Members indicated assent.

Mr McKeown: The final issue was the request for statistical information. A concern was raised regarding the non-payment of tribunal awards. We have provided in the written document a brief table outlining the number of applications for enforcement. If there are any questions around that, we are happy to take them.

Mr Flanagan: I do not really understand the table. Can you explain it to me?

Dr Scott: It is really just statistical data from the Northern Ireland Courts and Tribunals Service. Applications for enforcement are people who have gone through an industrial tribunal, a fair employment tribunal or an LRA conciliation, have been awarded a sum of money and are applying to get that through the court system because they have not been paid it. In this case, the number of applications has been recorded as 140. In terms of the completed applications, which are those that have gone through the full system, there are 73. There are 67 ongoing. The figures below that are the total number of applications for enforcement that the Court Service deals with. That is just to give you an idea of the sort of percentage that is to do with industrial tribunal, fair employment tribunal or the LRA. It is a very small percentage, as you can see, of the overall number of applications for enforcement. The number of cases completed may not present the full picture, because the figures show the number of cases ongoing; it does not necessarily indicate the full picture because people may settle privately or get a settlement that is not recorded through the system. That is the extent of the information available on people pursuing those settlements through the courts at the moment.

Mr Flanagan: That looks at the total number of applications for enforcement through the court system. I would have been more interesting in looking at the total number of findings against employers through industrial tribunals, fair employment tribunals or the conciliation measures. The statistics that I would have rather seen, if it is possible to get them, is that there were x number of successful claims by employees or former employees and y number of those were unpaid. I would like to see both the number of cases and the value of the money involved. Is it possible to get the findings in that way, instead of comparing it with the total number of —

Dr Scott: I will investigate that. I am not sure that the information is available in that level of detail, but I will investigate that to establish whether we can get more on that.

Mr McKeown: It is Court Service information, so we would have to go to our colleagues in the Court Service.

Mr Flanagan: If that information is not there, is there any way that, in future, somebody could collate the number of successful and unsuccessful claims brought to a tribunal, what the monetary value of the successful ones is and whether all those payments will be made in future? If that is not available now, is it a process that we can start?

Dr Scott: There is statistical information in terms of the number of cases won and so on. In terms of the amount of awards, that information is recorded, but it is not currently published. We are looking at ways of making that more transparent. People have said through the consultation that maybe we need to be saying more about what people are actually awarded in the tribunals. We will explore that.

In terms of the connection between that and whether the people are paid it in the end, that would require something more than what we have at the minute. We will have to investigate how that could be done. There may be scope to explore bridging the gap between what happens at the tribunal and what happens in the Court Service. In some ways, we are prevented from finding out that information if people do not report it. If people are not paid their tribunal award and subsequently do not lodge a court application or do not tell anyone, that is the difficulty that we are facing in terms of unrecorded information.

The Chairperson (Mr Swann): John, do you have anything else?

Mr McKeown: No, that is everything in relation to the issues raised.

Ms Lo: I am just looking at the table. Beside "Total Number of ... Applications for Enforcement" is 100%, then there is "Total number of Applications". What is the difference between those two? I am a bit confused about it. "Total number of Applications for Enforcement" is 53,000. What is the difference between those two?

Dr Scott: The figure of 53,000 is really about all applications that the Northern Ireland Courts and Tribunals Service receives.

Ms Lo: So only 140 — 0.26% — actually go for applications for enforcement.

Dr Scott: Yes. The 0.26% is about the number of tribunals.

Ms Lo: Why is it so low?

Dr Scott: I do not have a full list of the applications for enforcement that the Courts and Tribunals Service deals with. It may be that those are all applications that arise from every tribunal and every form of court. The number of employment cases as part of that is probably not very high. I do not have a full explanation of what the 53,000 figure represents, but it may be that there are so many other issues there, which means that the 0.26% figure is the proportion of employment cases that are represented there.

The Chairperson (Mr Swann): Alan, can you come back with a response to Anna and Phil's questions and a more detailed explanation of what that table shows us?

Dr Scott: OK.

The Chairperson (Mr Swann): It is not going to hold up the Bill or affect it in any way at this stage; it is just that we will need further clarification.