



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Employment Bill:
Consideration of Outstanding Issues

20 January 2016

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Sydney Anderson
Mr Gerard Diver
Mr Alex Easton
Mr Phil Flanagan
Mr David Hilditch
Ms Anna Lo
Mr Fra McCann
Ms Bronwyn McGahan
Ms Claire Sugden

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
Ms Deirdre Walsh	Department for Employment and Learning

The Chairperson (Mr Swann): I welcome Mr John McKeown, the acting assistant director of strategy in the European and employment relations division; Dr Alan Scott, head of the employment relations policy and legislation branch; and Ms Deirdre Walsh and Ms Margaret O'Hare from the employment relations policy and legislation branch. You are very welcome again, folks.

I advise the officials that I expect them to speak to each amendment as we reach the relevant point in the Bill during its formal clause-by-clause consideration. A paper from the Department detailing the proposed amendments is in Committee members' packs. I ask the officials to talk through the substantive items in paragraphs 9, 10 and 11 of that paper. Is that OK, Alan?

Dr Alan Scott (Department for Employment and Learning): Yes. I am very happy with that.

The Chairperson (Mr Swann): Do you want to make your opening statement?

Mr John McKeown (Department for Employment and Learning): At last week's Committee meeting, you asked officials to follow up on four issues. Those were that the regulation-making powers on tribunal deposits be made subject to the draft affirmative resolution procedure; that officials consider an amendment that would have the effect of preventing the introduction of multiple tribunal deposits; that officials provide some detail on the legislative provisions that specify the composition of

tribunals; and that officials provide additional data to clarify the figures provided by the Northern Ireland Courts and Tribunals Service concerning the enforcement of tribunal awards.

If you are happy enough, Chair, we will provide a brief update on each of those issues.

The Chairperson (Mr Swann): Please, John.

Mr McKeown: Officials apprised the Minister of the Committee for Employment and Learning's view that the regulation-making powers that are set out in clauses 5 and 9, which deal with deposits in industrial tribunal and fair employment tribunal proceedings respectively, should be made subject to the draft affirmative resolution procedure rather than the negative resolution procedure in the Assembly. The Minister has accepted the point that changes to mechanisms concerning tribunal deposits have the potential to be contentious and has agreed to table amendments to the Bill to provide that regulations, including such provision, will be subject to the draft affirmative resolution procedure.

On the proposed amendment to prevent the introduction of multiple tribunal deposits, given that the Minister has agreed to make the general power to amend provisions concerning deposits subject to the draft affirmative resolution procedure, the Department takes a view that it is undesirable to make provisions that would introduce particular restrictions in the absence of detailed consideration of the advantages and disadvantages of such action. Ultimately, a decision on whether multiple deposits are introduced will be subject, under the amended provision that we have just discussed, to the draft affirmative resolution procedure. Hence, there will be a full opportunity for Members to consider the merits of any proposals that are brought forward in that area.

Last week, members asked for some details on the legislative provisions that specify the composition of tribunals, and officials undertook to clarify where current legislation specifies the requirements for the composition of employment tribunal panels. For industrial tribunals, the primary enabling provision is article 6 of the Industrial Tribunals (Northern Ireland) Order 1996. Article 6(1) provides for the three-person composition of the tribunal, while article 6(3) specifies the particular circumstances in which the tribunal chairman may sit alone. Those circumstances include more straightforward cases and cases in which the parties have consented to the arrangement. As per article 6(6), regulations may also specify circumstances in which a chairman may sit alone, including in uncontested cases, cases in which facts are not disputed and cases in which preliminary issues are to be determined. The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 build on that framework by setting out details associated with those arrangements.

Provision on the composition of the fair employment tribunal as an institution is in article 82 of the Fair Employment and Treatment (Northern Ireland) Order 1998 and, for particular cases, in the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005. In accordance with those regulations, a chairman sitting alone may hear preliminary matters. A chairman may also sit alone where the parties have consented to that arrangement, but hearings are generally conducted by the full tribunal panel of three members.

Finally, you asked last week for us to provide some clearer explanation of the data presented to the Committee concerning the enforcement of tribunal awards, and we gave the undertaking to clarify the meaning of the figures that were provided by the Courts and Tribunals Service on the enforcement of awards in employment tribunals. Last week, we explained that any tribunal decision or Labour Relations Agency conciliated settlement becomes subject to the provisions of the Judgements Enforcement (Northern Ireland) Order 1981. Those matters are therefore pursued in the courts, and that is beyond the remit of the tribunals.

In the table that was presented to the Committee last week, the statistics demonstrate that, since April 2011, there have been 136 tribunal-related applications for enforcement and only four conciliation settlement-related applications for enforcement. Therefore, 140 applications for enforcement relate to the Department's work through tribunals or conciliation. In the same period — April 2011 to the present — there were 53,397 applications for enforcement. Those cover all judgements, including, for example, judgements made in the High Court or the County Court, or the small claims court. You can see from the figures that the percentage of tribunal conciliation cases is extremely small, coming out at 0.26%. Industrial and fair employment tribunals register, on average, about 4,000 claims a year. I stress that this is a very basic analysis. In the period that we examined, there were 140 applications for enforcement out of roughly 16,000 cases. Therefore, again, there were small numbers.

Looking at the issue in broad terms, I think that it is fair to say that two levels of information are missing. First, the number of completed applications for enforcement does not necessarily mean that they were successfully pursued by the Enforcement of Judgements Office. A private agreement may have been reached, the case may have been withdrawn or the debtor may have declared himself or herself bankrupt, meaning that the Enforcement of Judgements Office could not pursue the award. Secondly, information on the number of cases that are not pursued and the reasons that they are not pursued is required in cases in which people who are owed money as a result of a tribunal award do not apply for enforcement. At the moment, the system has no way of recording that decision and the reasons for it.

In its consultation on developing modern, efficient and effective employment tribunals, which ran between July and September 2015, the Department asked what, if any, quantifiable evidence stakeholders could provide on the failure to pay tribunal awards and the impact that that has. It also asked what additional measures, if any, are necessary to address non-payment. The Department is currently reviewing responses to that consultation and is scheduled to brief the Committee during February — in mid February, I think — on stakeholders' views on tribunal reform generally. If it is concluded that action is necessary on that issue, the new Department for the Economy will take forward policy work during the new mandate.

Mr Flanagan: I welcome the Minister's acceptance that further regulations on deposits and tribunals should be subject to affirmative resolution. I suppose that I can accept some logic in what he is saying about multiple deposits, but I may not necessarily agree with what he is saying. That is a welcome step, and something that the Committee should welcome.

Paragraph 10 relates to the composition of tribunals and the ability of the chairperson or judge to sit alone. You talk about the Industrial Tribunals Order and the Fair Employment Tribunal Regulations. Trying to look through and read various provisions and things like that that relate to the previous legislation is complicated. Can you confirm that, in the Bill, there are no changes being made to the ability of a chairperson or a judge to sit alone as part of an industrial tribunal or a fair employment tribunal?

Dr Scott: Yes, we can confirm that.

Mr Flanagan: That is perfect. Thank you.

Ms McGahan: You stated that there were 136 tribunals in 2011. Is there any information available on how many of those people were unrepresented litigants?

Mr McKeown: No, we do not have that information. The information on the number of applications for those awards was provided by the Courts and Tribunals Service. In that time frame, it was able to give us only the bare numbers.

Mr F McCann: On the back of that, do you think that the figures that we got — seven out of 10 people — are very high?

Mr McKeown: From the feedback that you have received?

Mr F McCann: Yes

Mr McKeown: Yes, 70% would be considered high, but we have not been able to verify the figures at this stage. As I said, that is the kind of issue that we will look at as we review the tribunal rules and the consultation feedback.

Mr F McCann: That is one of the things that we said last week. If you were to look at a map of the North, you would probably find that, again, big rural areas are completely devoid of any information or representation. That should be very concerning. Is there any possibility — I know that it might be beyond you to do this — that that information can be supplied? It would certainly help us target the areas where any resources, or additional resources, need to go.

Mr Flanagan: The issue of representation is one that we have rightly explored. What is missing from the Department's point of view, and what you may not be fully aware of, is the partnership that exists between organisations such as the Law Centre, the Citizens Advice Bureaux (CAB) and independent

advice centres. It is similar to the arrangement that the CAB and independent advice centres have with the Housing Rights Service. They are not qualified to deal with, or experienced in dealing with, issues to do with housing, so, if such an issue comes up, they refer people to the Housing Rights Service, which has an office in Belfast. Similarly, the independent advice centres and the CAB tend to refer people to the Law Centre. It will be interesting to see how the Department can further support those partnership arrangements with the local advice network that exists, which is going to be enhanced through the additional funding that it will get, and how additional partnerships, not only with the Law Centre but with organisations such as the Housing Rights Service, can be used to make sure that advice gets into rural areas.

Do you have any ideas for policy mechanisms that could be put in place to deal with the issue of the number of industrial tribunal and fair employment tribunal awards that are not being paid to successful claimants and to people who settle outside of court?

Dr Scott: One of the options that we had considered, and this may not go far enough, is the legislation introduced in Great Britain that sets up a service to pursue people who have not paid tribunal awards. Ultimately, there is a mechanism to impose a fine on those individuals. The outcome of that, though, is that the fine is capped at quite a low level, and, in fact, the money is paid not to the individual who is owed it but to the state. It is really a deterrent mechanism. It is an option that we are aware of, but it may not go far enough for what people in Northern Ireland want. I think therefore that we will need to pursue a range of wider options and take evidence from stakeholders on what they feel would address the issue. Obviously, there are implications for the Courts and Tribunals Service, so I will need to speak to it to see what options it thinks might be appropriate.

Mr Flanagan: Does the Department acknowledge that that gap exists, and is there a serious will in the Department to resolve it?

Dr Scott: Yes. We acknowledged that gap following the consultation that we released last year. We are committed to looking at how the situation can be improved.

Mr McKeown: On your point about the Law Centre, we meet it quarterly to review funding and the programme of work. Therefore, we are quite happy to bring that point to our next meeting and discuss ways of maybe strengthening the network.

Ms McGahan: This is on the back of Phil's point. At Question Time yesterday, a point was raised about the lack of personal legal advice to claimants and the fact that that is a key access-to-justice issue that could impact on early conciliation. From memory, the Minister stated that a study is currently being done on it. Those may not have been his exact words, but it is being looked into. I am just looking for further information on that. Exactly how are you going to do that? Can you provide the Committee with further information on that, if you do not have it today? The matter was raised during Question Time yesterday by my colleague Conor Murphy. Can you come back to the Committee with further information on how exactly you are going to carry out that scoping study?

Mr McKeown: We are scheduled to come back to the Committee in mid February on the consultation on tribunal rules. That will be a factor in our considerations. I cannot give a guarantee at this stage that we will have clear answers at that stage, but it is being looked at.

The Chairperson (Mr Swann): OK. Are members content?

Members indicated assent.

The Chairperson (Mr Swann): John and Alan, thank you very much.