Northern Ireland
Assembly

COMMITTEE FOR EMPLOYMENT AND LEARNING

OFFICIAL REPORT (Hansard)

Workplace Dispute Resolution

14 October 2009

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Sue Ramsey (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Paul Butler
Mr Trevor Clarke
Rev Dr Robert Coulter
Mr David Hilditch
Mrs Claire McGill
Mr Pat Ramsey

Witnesses:
Mr Tom Evans) Department for Employment and Learning
Ms June Ingram)

The Chairperson (Ms S Ramsey):

I welcome June Ingram and Tom Evans, who will brief the Committee on the workplace dispute resolution. It is good to see you again. Committee members should have a copy of the executive summary of the Law Centre's response to the Department for Employment and Learning's consultation on resolving workplace disputes. Members will remember that we asked the Law Centre to start to build a relationship with the Committee. In the previous evidence session on the topic, the Committee received a considerable amount of evidence, and it published its report before the summer recess. Today's briefing will bring the Committee up to date with the

Department's latest consultation process. The witnesses have submitted a briefing paper, so I shall hand over to June and Tom to go through it. Members will then be able to respond with questions and comments.

Ms June Ingram (Department for Employment and Learning):

We thank the Committee for affording us this opportunity to discuss the review of dispute resolution arrangements. Tom and I appeared before the Committee in November 2008, and a great deal has happened in the intervening 11 months. The Department's public consultation process ended in early September, and we are now analysing the responses. However, we thought it important to give the Committee some preliminary reactions to the consultation.

The Department received almost 40 responses, which is encouraging, and I thank the Committee for the role that it played in promoting the importance of the review to the wider employee relations network. In addition, I thank the Committee for its report, which we believe captured the essence of the review and will form a significant element of the evidence base to inform the policy-development process.

Before I hand over to Tom, I also want to thank the consultation steering group, which played an important role in the process. Tom will take the Committee through the consultation process, and we are happy to respond to questions during the presentation or at the end.

Mr Tom Evans (Department for Employment and Learning):

I appreciate the opportunity to come to the Committee to talk about the review. Members have received a copy of the presentation, which is quite substantial, so I will try to move through it fairly quickly in order to allow more time for discussion and questions.

We were before the Committee in November 2008, so it might be useful if I were to paint a picture of the progress that has been made since then. I shall give a statistical breakdown of the almost 40 responses that June mentioned. I shall remind members about the key stages of the dispute resolution system, which is important to know about in the context of the consultation responses. I shall outline some of our analysis, which is at a preliminary stage, because we are working through responses to the 36 questions that we asked. We are trying to distil a great deal of information.

I shall talk about the key issues that were raised in the Committee's report, the findings of which are significantly consistent with our own. We appreciate the Committee's work on that report, which was a helpful signpost for other organisations. We have been referring people to the Committee's web page, and we sent a link to the consultation steering group. I have also signposted other organisations to the Committee's report. I shall then come to the thorny matter of unresolved issues that require a ministerial decision. A fair degree of burning the midnight oil will be needed to talk them through. Finally, I will say something about the way forward.

The steering group has met eight times since November 2008. Members will remember that the steering group is made up of representatives from the Equality Commission, the Confederation of British Industry (CBI), the Federation of Small Businesses (FSB), the Labour Relations Agency (LRA) and the Northern Ireland committee of the Irish Congress of Trade Unions (ICTU). The consultation steering group always acted in a corporate manner, in which members set aside their personal agendas in order to take forward the consultation process.

The steering group was exposed to presentations from the Advisory, Conciliation and Arbitration Service (ACAS), which has been taking forward the new arrangements in GB. In particular, ACAS gave a presentation on the pre-claim conciliation pilot scheme, which it managed. In addition, the Labour Relations Commission (LRC) came up from the South to talk about its rights commissioner service. Some members of the steering group went to observe some rights commissioner hearings, and that was helpful. We also commissioned a human-resources (HR) consultant to undertake some qualitative research into the experiences of various people who have gone through a tribunal system, such as claimants, respondents, employment lawyers, HR professionals and trade union representatives.

The consultation document was signed off in February 2009. Having been approved by the Minister for Employment and Learning and the Executive, it went out to public consultation from late May to 4 September. As part of that process, partly by way of clarification and partly to encourage groups to respond, we helped to establish a set of expert user panels, comprising people from the HR profession, union representatives, employment lawyers and people from community advice centres. Those panels are very helpful, and we hope to hold on to them, because they enable us to connect with people who are dealing with the issues.

I have been involved in giving presentations at various conferences and workshops, such as

those organised by the CBI and the Engineering Employers' Federation (EEF), and, in November, I will speak at two annual conferences that are being run by Legal-Island, at which there will be a high attendance of employment lawyers and HR consultants. The conferences should be useful.

I shall now outline the breakdown of responses. We received 38 responses, 20 of which included answers to almost all questions, 13 of which were partially complete, and five that offered no comments but at least did us the courtesy of replying. There is also in the written presentation a breakdown of the sectors involved. I will not go through it, but it is available for members' information.

I will move on to the key stages in dispute resolution. When I came into this job, I tried to visualise the whole process and came up with a pyramid diagram, which I initially thought was a bit silly, but people have found it helpful in understanding that it is not about what is happening in the tribunal system but about the peace process, from every contract of employment, right through to court or to appeal. The consultation has been based on those stages. The response to the consultation — the policy document — will be based on those stages.

To move on to the preliminary analysis, members will not be disappointed that I have not provided a slide for all 36 questions. Rather, I have selected important questions on which the Committee will want early information.

Question 2 was on the inter-agency approach to the provision of information and advice. The steering group agreed that the question was more about how that should happen. The steering group is part of that advice network, so it mandated itself to get more involved in inter-agency work. Some 23 response expressed a clear preference that there should be a joined-up approach. Some of the comments included requests that there be a one-stop shop for people who provide that level of support and a one-stop shop for information. That does not stop advice organisations such as the Labour Relations Agency or Citizens Advice from providing more detailed guidance. Our Department provides more detailed guidance. However, we are providing early signposting of information and advice that should have a more uniform and corporate approach so that both employees and employers are not confused about the next stage when a problem arises.

I move on to question 3, which refers to the role of the public sector as an employer in developing best practice. As the Department responsible for policy on the subject, it is important

for it to ensure that it follows good practice. Some 21 clear preferences were expressed in answer to the question about whether the public sector should take the lead. Some 14 responded positively, six did not think it a good idea, and one saw merits and demerits to that suggestion. Some of the comments were that the public sector has a responsibility to lead, and that the Department for Employment and Learning (DEL) pilot is to be welcomed.

Where responses were negative, they seemed to express the fear that the public sector was going to offer another bureaucratic system. We will take note of those concerns. We have already established a pilot scheme on good employee relations in the Department. It is at an early stage. I chair meeting and act as honest broker. The human resources side and the union side are represented, and we have just engaged the support of the Labour Relations Agency. The scheme has a high feel-good factor, and at our next meeting we will sign off on an action plan about how to take forward our work. We have decided to do that anyway, because we think that it is a good idea. At a corporate level in the Civil Service, there is great interest in the pilot and what may come out of it. If there are good lessons to be learned or good practice to be imitated, that will be rolled out to the personnel directors' group and the established officers' group on the corporate side of the Civil Service. Then we can offer support, information and advice to the private sector, and particularly to the small and medium-sized enterprise (SME) sector. That is where we intend to make an impact.

Question 5 was on the issue of supporting small businesses to establish and maintain good employment relations. That is a particular issue in the review, and I know that the Minister is concerned about how SMEs, which do not have a big infrastructure, can cope and how they may be supported. The question asked whether it would be beneficial for small businesses to get support to maintain good employee relations. We had 15 substantive responses, of which 14 were broadly supportive. The points made included a comment that better information was needed and that that needed to be targeted. Much good information is available, and our counterparts in GB produced an employment law guidance programme. The Northern Ireland business info website provides very good information. Many small businesses still do not know about that because they are busy running a business. This is about signposting for people, helping them to draw down information and to construct a good employee relations process.

The following comment came from an SME and was a cry for help and more support:

"As a SME you are expected to follow and know all this legislation. In reality you find out as it happens because

generally that is the only time you have to research these things as most of the time you are just working at working!!"

The central theme of the review, and of the GB review, is about our current statutory dispute resolution procedures, which were repealed in GB. New arrangements have been in place since April 2009. Question 9 asked whether the current procedures should be retained, whether they should be modified in some way or whether another model should be used. Some 23 clear preferences were expressed, 14 of which favoured repeal of the statutory procedures. As the Committee's report also flagged up, many, although not all, of the responses that were in favour came from employers' representative bodies, employers and HR professionals.

Nine responses favoured retaining the procedures in modified form, and many of those responses came from organisations that support employees — not only the trade union movement but other organisations. Members will know that the Law Centre was clear in its understanding. It told the Committee that the statutory disciplinary procedure was good for employees and for employers.

Of the nine respondents who favoured retaining the procedures in a modified way, four favoured repealing the grievance procedure and retaining a discipline-and-dismissal procedure. I know that the Committee felt that the grievance procedure had not worked. A further four favoured some retention of those procedures, but in a modified form. The review should be about simplifying the process rather than including a great deal of prescription in legislation. With one response, we were not sure whether the repeal of the grievance procedure was favoured, but we recognise that that organisation responded.

Where retention was favoured, modifications were desired to make the procedures more user-friendly. In a meeting with one of the expert panels, we heard a useful comment. We were told that the three-step procedure that leads to dismissal is an irreducible minimum requirement wherever it is set. You may hear that again as we brief the Committee and the Minister.

Question 15 deals with the role of the Labour Relations Agency. Positive comments were made about the agency, and 20 substantive responses were received on the conciliation process that takes place before a tribunal claim is lodged. Fourteen of those responses favoured the LRA's getting more involved. The LRA does get involved in pre-claim conciliation, but that is quite a small part of its business. However, pre-claim conciliation makes up a more substantial

part of its business than that which is undertaken by its counterpart in England, ACAS.

Respondents felt that the role of the LRA should not be inflicted on people. Its strength is that it carries out voluntary action. Employers and employees volunteer to engage with the LRA, and its neutrality should not be compromised by its having a compulsory role. Suggestions were made that the LRA is overstretched, and our findings reflect that.

The responses reflect an energy for other alternative dispute resolution (ADR) techniques, such as mediation and arbitration. They reflect the view that a menu of ADR techniques should be available to employers and employees and that they should be more widely available. That reflects what happens across the water.

Question 18 asked about the Labour Relations Agency's statutory arbitration scheme, which has been almost redundant because it was restricted to two jurisdictions: unfair dismissal and flexible working. Most problems that arise go beyond those two jurisdictions. Much of the LRA's arbitration work takes place in a non-statutory area, but it does not have the recognition of being set in law. Eighteen substantive responses were received, 11 of which favoured expansion of the current scheme. The point was made that the current scope of the service is too limited, and we are looking at that issue. It was also said that statutory arbitration should be expanded to cover all employment jurisdictions.

Some respondents felt that expanding the scheme would simply add another layer to the process. However, it is not an added layer, because the scheme is already in place, but it is underused. We need to take a view on whether it should be more widely used.

The LRA has a duty to attempt to conciliate within a time limit of seven and 13 weeks. We received 17 substantive responses to question 19, of which 10 favoured the removal of the time limit, and seven stated that they should be retained. Those who were in favour of the removal of the time limit feel that time limits are unhelpful and unrealistic, and employers and employees are not at a state of readiness to consider some sort of conciliation. Others stated that the issues that end up in a tribunal are too complex to have time limits imposed. The LRA has always gone beyond the 13 weeks and gone the extra mile. ACAS was rigid in its application of the time-limit constraints, but others felt that time limits focus the minds of both parties on the issue of resolution. Some people suggested that time limits encourage early resolution, as long as there is

a flexibility to extend them.

Question 20 asked whether the Republic of Ireland's rights commissioner service in the Labour Relations Commission should be considered for Northern Ireland in future. The steering group received presentations, and some of the steering group observed rights commissioner service hearings. Eighteen substantive responses were received, 12 of which stated that it would be beneficial. Six were not in favour. A context for that needs to be set, and we flagged that up in the consultation document. The Labour Relations Commission, which looks after the rights commissioner service in the Republic of Ireland, does not offer individual conciliation. Our Labour Relations Agency does. That is quite a difference. The Committee's view was that it would need to be well thought through before any new system was imported. There are different employment law and structures in Northern Ireland, and there are more tribunal systems, in a variety of guises, in the Republic of Ireland than there are here. Therefore, it is not comparing apples to apples, so there needs to be careful consideration of that.

The final two questions, 35 and 36, related to the appeal mechanisms to any decision that is taken by a tribunal chairperson. In Northern Ireland, appeals go to the Court of Appeal; in the rest of the UK, they go to an employment appeal tribunal. We asked whether an employment appeal tribunal should be created here. We received 22 responses: 15 favoured the establishment of an employment appeal tribunal; four were opposed to it; and three stated that further consideration was required. The people in favour of an employment appeal tribunal mentioned the high cost of going to the Court of Appeal. It was explained to me by the legal profession that the tribunal system is at the lower end of the judicial system, although it is no less important, and the Court of Appeal is the final arbitrator in the legal system. It is a costly system, and there are issues around cost. If a claimant brings a decision to the Court of Appeal and loses, there is every likelihood that costs will be incurred, and they are particularly prohibitive.

The level of formality and legalism associated with the Court of Appeal is intimidating and off-putting to some. There is also a view that the existing arrangements are sufficient to meet the small number of appeals, and that view was provided by the four responses that opposed the creation of an employment appeal tribunal. The question to be asked is: would there be more appeals if there was a more facilitative process? That is the question, and those are the issues with which the Minister will have to come to terms.

The Committee report was helpful and contains much good stuff t. None of the points that you raised caused the Department any problems. I am not trying to cosy up to the Committee, but it is good to see commonality between what the Department and the Committee are picking up on.

The Chairperson:
I do not know whether it is a good thing or a bad thing that we are always in agreement.

Mr Evans:
It is said that a little bit of grit in the oyster is needed at times, but there needs to be a balance.

I do not intend to go through all the points in our submission in detail. They are there for the Committee and are included in its report. If the Committee feels that there are any points that the Department has not reflected accurately, please raise them.

Professional mediation was among the key issues raised, and that is important. Professional mediation focuses very much on the position of SMEs and on the need for greater support. The Committee supported the LRA's intervention prior to the lodgement of claims.

Interestingly, a joined-up approach to the work of the Labour Relations Agency and the Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET) was advocated by the Committee. We would probably not argue with that but proffer that there is already joint working. However, the Committee is right — it is important to consider that in more detail. In partnership with OITFET and the LRA, the Department is looking for greater opportunities to work together to make the process more seamless, once employees and employers are involved in the tribunal process.

The Committee talked about the appointment of a rights commissioner but added the caveat that such a role must be carefully thought through. The Committee stated that the statutory grievance procedure was not working. I think that the almost universal view is that the statutory grievance procedure is well intentioned, but it has not worked. In many ways, it compromises many of the objectives behind the existing system. Therefore, the Department concurs with the Committee's position.

The Minister will have to decide on unresolved statutory procedures. I was not shocked that the consultation showed a division on the issue of retaining statutory procedures in their current form, partially modifying them or repealing them. We must consider the weight of the responses and the justifications provided for retaining statutory procedures, after which the Minister must take a decision.

Questions concerning the LRA's statutory arbitration scheme centred on whether it should be retained, repealed or expanded. Employers, and, to a lesser extent, employees and their representatives, are nervous about using the LRA scheme, because it has no appeal mechanism. The thrust of the review is about resolving disputes earlier — before they reach tribunals — and getting people to consider alternative settlements. Therefore, the question is whether to introduce an appeal mechanism or to improve the arbitration scheme without adding an appeal, so that people realise that arbitration provides an early resolution and not just another route by which to take an employer to the tribunal system. To do that would add further layers, or at least give the sense of doing so.

The Department will want to meet the LRA to discuss the decision it must take on the agency's role. However, I sense from the LRA that it realises the value in looking towards more pre-claim conciliation and targeting earlier resolution of disputes. The Department's whole employee-relations pilot is also around that. Furthermore, the issue of an appeals mechanism for tribunal decisions must be thought through. That issue is complex, and the Department must discuss it with the judiciary. It is not simply a matter of the Minister's saying that it is a good idea to have an employment appeal mechanism. There are cost and value-for-money issues, and an infrastructure would be required, which the Department must examine.

Finally, that takes me to the way forward. The Department is endeavouring to produce a report on the output of the consultation. This review differs slightly from others, because it is for the consultation steering group to present the Minister with a report. What usually happens in a consultation is that the Department responds to the consultation. That approach has an extra layer, and, because it is a major review, the Minister thought that it was sensible to report on the consultation process. That report will be published and shared with the Committee early.

Then, we need to develop a policy memorandum, along the lines of the more usual departmental response. That will go to the Executive. The policy then needs to be agreed by the

Executive, and, from that, final instructions will go to the Office of the Legislative Counsel for the final drafting of a Bill.

I must say that the Executive are already aware of the need for an employment Bill, and we have given them some feel for the kind of areas that would need to be contained in such a Bill. Looking at the GB Bill, we see that when that legislation was introduced, it was not a lengthy Bill. Hopefully, when employment legislation comes before the Committee, it will not be 35 clauses in length. It will be a fairly neat Bill, except if there was to be an employment appeal tribunal. However, the Bill will be very detailed and very much about replicating what is happening in GB. I do not think that that would be that onerous a task. Hopefully, the employment Bill will be cleared by the Executive and then introduced in the Assembly.

We have an absolute deadline of April or May 2010, as dictated by the parliamentary calendar. The Bill would go through all its parliamentary and legislative stages to receive Royal Assent before the dissolution of the Assembly, if an election were to happen, in 2011.

The Chairperson:
Tom and June, thank you very much. That was a very comprehensive presentation. I think that it is important, as you said, for the public sector to take the lead, especially considering the costs in and around disputes in the public sector. Some people say that, because it involves public money, there is no hurry to resolve such disputes. I really think that it is important that the public sector take the lead from the start.

I appreciate your involvement in this, and that of others. I appreciate the Department's coming to the Committee last November and giving us an early sighting of the issues. That allowed us to go out to stakeholders, and we have built up a relationship with the people involved. Earlier, I asked whether it is a good thing or a bad thing that we always get agreement. However, if we can get agreement on the major issues at this stage, it will make the journey easier.

I have some procedural questions. Talking about the way forward on the unresolved issues — those are big issues — you gave a timeline of when you hope to bring the legislation to the Executive, with the deadline for the introduction of a Bill in April or May 2010. Can you give the Committee an idea of which way the Minister will sway on some of the unresolved issues?

When do you think that policy proposals will be brought to the Executive, and will the Committee get that information at the same time? I am conscious that, along the line, we have had a partnership approach to this. I would not like to see proposals go to the Executive without the Committee having seen them, because that creates a gap. The Committee must be part of the process all along. You say that the Bill must be enacted by 2011, and, nine times out of 10, if a Committee is agreed on a Bill, that legislation will have a clear run, and it will be easier to reach agreement in the Assembly.

Mr Evans:

That was one of the issues that we wanted to talk about today, and I am not surprised that you raised the issue. We deliberately included a "Way forward" section in our submission to stimulate the debate, and we are very keen to come back to the Committee on that.

The reality is that we need to go to the Executive after we have analysed the consultation responses, talked to the Minister, and advised him of what we think are the options on the way forward on those unresolved issues. The Minister would make a decision on that, and he would be keen to share that decision with the Committee at an early juncture. That will probably happen in the latter part of November 2009. When we get a sense that we have a reasonable consensus and that the Minister is content with the policy, and if the Committee is content, it would be very helpful to go to the Executive in early December. We recognise that this is a very big policy issue, so we need to brigade the paper in a way that is seen as manageable by the Executive Committee so that we get the legislation through. We do need that clearance.

That is a long-winded way of saying that we will want to involve the Committee at a very early juncture. We will, obviously, have to consult with our Minister, but the Minister was at every stage directing us back to you, and I do not think that that will change. Therefore, yes, we will be coming back to the Committee at an early stage.

Mr Buchanan:

Thank you for your report. I am a newcomer to the Committee, and this matter came through the Committee before the summer recess. How difficult will it be to get a policy that fits all sectors? For example, one policy might not fit large firms and SMEs or fit the public sector and the private sector. The problem is getting a policy into which all those sectors can be tied. How difficult will that be to achieve?

Mr Evans:

You may have just joined the Committee, but that is probably the big question. This started as an issue about regulation or deregulation of the statutory procedures. I think that too much focus is place on that across the water. Our review found that there is no simple solution. If one considers the stages of the process, the review is about encouraging better practice and better joined-up working. If the Minister decides to repeal the statutory procedures, people will be unhappy, particularly from those sectors that represent employees. There is no doubt about that. If it is decided to retain them, the employers' sector will probably be unhappy.

However, that is only a small part of the process; the big part is about working with SMEs through the various agencies and the Department to help and support them to build good employee relations. Many disputes happen not deliberately but as a result of a lack of capability, and a lack of understanding the value of resolving a dispute early. One organisation said that if small businesses go to a tribunal twice, and a tribunal finds against them and costs them money, they could be out of business. The reality should be about improving practice.

I will be speaking at the Legal-Island conference, when we will not have a policy. However, I now know the end of my presentation, which will involve my saying that this is about the HR sector, employment lawyers, the advice sector, and individual employers and employees understanding their rights and responsibilities, and about improving practice. This will be more of a slow-burn process, because it is about improving the way in which employee relations operate in Northern Ireland. The Minister is very conscious of what he called micro-employers and how they are supported.

Ms Ingram:

The review highlights difference, and we want to look at the information that we have on differences and differentiation, and, as Tom said, take that forward, whether into new systems and processes, or into a new culture of information, advice and support in order to tackle the issue of getting one policy that fits all sectors.

Rev Dr Robert Coulter:

Tom and June are to be congratulated on the report, which is most enlightening for the Committee. Can you enlighten us on the type of appeal mechanism for decisions made at

tribunals? Many people have difficulty with that.

Mr Evans:

The existing arrangement is to go to the Court of Appeal, which is way beyond some people's compass. We asked people whether they favoured replicating an employment appeal tribunals such as that in GB, which is practised in dealing with and examining the decisions of employment tribunals, and which has a greater understanding of the intricacies of employment law. The majority of responses favours an employment appeal tribunal, but some say that we should remain with the status quo.

The argument is that there are not enough appeals to justify a new appeals mechanism. The argument from lobby groups is that there will never be many appeals when they are so costly. Cost is probably the most prohibitive factor.

The Court of Appeal is quite a daunting place. The whole vernacular is different. The tribunals system is an onerous place because employment law is so difficult, but it is not so intimidating in its complexity. We need to liaise with the Court Service and the judiciary, because one cannot switch the lights on and off if the decision is taken to do that. If the decision is so taken, we will have to do it in a measured way.

Ms Ingram:

Nothing has come from the consultation that would give us any interim position between what we have now and an employment-based tribunal. We need to consider carefully.

Mr Butler:

Thank you. I know that this is a difficult issue to resolve, if you will pardon the pun, but when the Law Centre gave its presentation, one of its key points was on the lack of advice that is given. It was very costly for a lot of individuals to have representation. Some people did not get legal aid, and employers dragged the process out. Those individuals would then get fed up with the length of the process and could not afford to proceed. Will this process end in our having better, personalised information for people?

Representation is a key issue, as are mechanisms and techniques. Your presentation was about the response to the consultation. I thought that the pyramid example of the key stages in

disputes was a good one, but advice and representation for people who are involved in workplace disputes seems to be lacking at the coalface up to this point. Individuals took cases on their own in many instances. Big employers in particular were able to employ solicitors and string the case out until people got fed up, so there are many unresolved cases, which were probably legitimate, that could not get through the system.

Mr Evans:

People find it difficult to resolve their disputes, so they end up running into a later stage in the process. I will provide the Committee with an anecdote that I think is quite helpful. A couple of Fridays ago, an individual travelled from the west of the Province to see me. He had gone through the tribunal system, having been sacked by his employer. I was struck by how articulate he was about the process. He said that, when an organisation has a grievance and disciplinary procedure, even though HR does good work, those processes are not looked at until there is a problem. He said that organisations in both the public and private sectors train people on freedom of information (FOI) awareness and data protection. We will be training people on their rights and responsibilities in the employer relations pilot. That is hugely important.

That individual also said that he ended up in two cases: one on equal pay grounds was thrown out; and one for unfair dismissal was settled. He commended the work of the conciliator and the LRA. He was awarded a settlement, but he would have appreciated early arrangements through mediation so that he would not have to have gone through the whole process. He still remembers the whole process vividly, and it is not a good memory. It was useful to hear him say that he would have gone to mediation or arbitration, or indeed anything, to sort out the problem at that stage. He would have preferred the employment relationship to have been repaired at that stage. The reality is that few will be. In the majority of cases when disputes become external, the employment relationship has ended. The point is how the situation is resolved at that stage. Can it be done in a more user-friendly way to boost the employee and, to a lesser extent, the employer?

Ms Ingram:

Early resolution is important. There is also a link to management leadership and people-management skills. As Tom said about employee relations, it is about how people are treated in their workplace but it is also related to general people-management leadership issues.

Mr P Ramsey:

You are both extremely welcome. A great deal of work has gone on to date, and there will be a great deal more to come, I presume, to produce a fitting model.

I want to follow up on a point that Paul made that is very relevant at an early stage, particularly for non-unionised members who find themselves in difficulties. Where do they go or to whom do they turn for the best advice? In your presentation, you referred to a one-stop shop. Is there a model of best practice in Britain or the Republic? Is there a one-stop shop? We have advice centres — Citizens Advice and Advice NI, for example — that generally provide information, but have they the capacity to deal with the complex needs of employment law and other matters? The Law Centre clearly has that capacity, but individuals need to be referred to it. A person cannot just walk in off the street into the Law Centre or log on to its website. Perhaps you can clarify that.

A considerable percentage of representations received, more than 70%, favoured employment tribunals. That represents a significant number of people and is a wide-ranging sample. How many of that 70% that favoured tribunals, how many of them were employment lawyers? Five representations were received from legal sources. Did any of those legal representations favour tribunals? I doubt it. They would prefer the absolute resolution of disputes offered by going to court.

I presume that a major determining factor in this is the cost, but I do not think that should be so. Have you costed any of the options? What is the cost of setting up, as you put it, the infrastructure for tribunals in Northern Ireland? What are the initial costs and the annual running costs? It is important for the Committee to know that in advance of bringing the issue to the Chamber for discussion. It is highly relevant.

What is the difference between rights commissioners in the South and the ultimate appeals tribunal? What are the mechanisms, the course of actions and the outcomes that emerge? The Labour Relations Agency does a considerable amount of good work, and it seems that the Law Centre in particular favours the courts.

We should allow a more extended period for this. Tom indicated that that is allowed, even though it is not fixed. However, because of the complexity of the matter, people are becoming

more aware, and more cases will be coming to the fore.

Ultimately, the Committee will have to examine and favour the tribunal approach, because of people's fear of going into a big, bad courtroom setting. However, cost is also a factor.

Mr Evans:

There is a number of questions in that, and I will try to address them in sequence. You ask about one-stop shop advice centres, which is an important issue, particularly outside Belfast. The Labour Relations Agency provides a comprehensive service across Northern Ireland and it has a location in Derry, the Mr Ramsey's neck of the woods. It works closely with Citizens Advice, which has bureaux across Northern Ireland. My Department also provides information.

In the review, the issue is that all the organisations provide signposting advice, and all have a different emphasis. The question is whether there should be more co-operation among all the agencies involved. I include also community advice centres, which produce their own leaflets and avail themselves of the LRA's services. It is about joined-up working. When organisations work separately, they expend more resources for the return, and we need to look at that.

I know that the legal profession has responded to the proposal for an employment appeal tribunal. However, in the two workshops that we held, employment lawyers were very solution-orientated: they were trying to get the issue resolved as far as possible before it got to litigation. They strongly supported ADR, mediation, conciliation, the role of the Labour Relations Agency, and good employee and employer practices.

During the two or two-and-a-half-hour workshops, the lawyers spent very little time on the tribunal system, other than to say that it would be better if it were simplified. However, they said that they understood that employment law is very complex.

The rights commissioner service in the South and an employment appeal tribunal are two different animals. The nearest comparison to the rights commissioner service is a mixture of the LRA's conciliation, mediation and arbitration service wrapped up in one system. However, individual conciliation is not offered in the South. The Labour Relations Agency here offers thousands of conciliations each year, many of which are quite successful.

The issue is that the rights commissioner service is a different system — it is not like an employment appeal tribunal. It is not a legalised forum; rather, it is like an informal arbitration process. Even if an employment appeal tribunal were not as demanding as the Court of Appeal, the process would still be judicial, because points of law and decisions would be tested.

Mr P Ramsey:

That was obviously a difficult question, Tom. What about the costings?

Mr Evans:

Regulatory impact assessments will have to be conducted on all the policy proposals, and if any of them has equality considerations, we will have to do further impact assessments.

Ms Ingram:

As regards your question about the potential cost of an employment appeal tribunal, we need to be able to do that.

Mr T Clarke:

I apologise for missing the start of your presentation. Like Mr Buchanan, I am new to this Committee. I am probably coming at this issue from a similar angle as some of the other Committee members, and I take it from their responses that, like me, they welcome the possibility of an employment appeal tribunal.

The respondents said that there are only a few cases. As you identified, there might be more cases if the system were easier, and I think that that number would be more than we could ever imagine. Although many good things have been said about LRA — I do not know whether anyone here is from the Labour Relations Agency — but I do not necessarily have the same confidence in it.

As a constituency representative, I conducted an experiment on the Labour Relations Agency. I asked two LRA advisers the same question and got totally different answers — to go ahead with a claim and not to go ahead with it. I put on record that the LRA does not give the representation that everyone in Committee may believe that it does. I apologise if I have offended anyone by saying that; however, that is my experience.

I would have thought that even to consider taking legal recourse, as one of the advisers suggested, would weaken a claimant's hand. Were there an employment appeal tribunal, claimants could seek advice from elsewhere as well as from the LRA and then decide whether to proceed with the case.

I welcome this exploration of the employment appeal tribunal option. Pat raised the issue of costs, and I know that costs can be prohibitive. I believe that employment law protects the employer more than it does the employee. We must get to a situation in which employees' rights are protected, as opposed to their being prohibited from taking cases against employers because of the cost of such an action. Employers have hid behind the unfair decisions that have been made on many occasions. People felt as though their hands were tied because they did not have the support to take cases. My point about the cost of taking proceedings to court has already been identified.

Cases will take even more time, even if settlements are awarded in people's favour, if they do win. Therefore, that has been prohibited, and I welcome exploring the idea of an employment appeal tribunal and would welcome that happening in the near future. That is probably more a statement than it is a question.

The Chairperson:

I will give Tom and June the opportunity to reply anyway.

Mr Evans:

The emphasis of the review is on trying to prevent disputes and to resolve more of them in the workplace, or just outside the workplace through the Labour Relations Agency, prior to any proceedings being lodged with an employment tribunal. That is the focus of the review. When one reaches the stage of legal representation, the process becomes difficult and costly.

Mr T Clarke:

Are you from the Labour Relations Agency?

Ms Ingram:

No. We are from the Department for Employment and Learning.

Mr T Clarke:

I am new to the Committee, so I apologise, and I will probably have to apologise for a few months until I get used to who's who. What link does the Labour Relations Agency have with the Department?

Ms Ingram:

It is a non-departmental public body (NDPB).

Mr T Clarke:

Does the Department scrutinise such NDPBs that give out advice? Is there a mechanism to check what information they disseminate? Someone who went through the experience came to me, and I double-checked the information, and, over a week, I asked the same question of two people and got two different answers. Although the LRA is there supposedly to give out advice, is there a mechanism to check whether that advice is always accurate?

Ms Ingram:

I would imagine that the LRA has internal processes for that.

Mr T Clarke:

That would be self-policing.

Ms Ingram:

I understand. The Department has arrangements in place to have, if you like, monitoring and accountability meetings. The LRA has its own business and corporate planning processes, and the Department has a relationship with it on that basis. If issues arise such as the nature of its advice, it would be appropriate for the Department to talk to the LRA about it.

The Chairperson:

Rather than go down that road, Trevor, if there are specifics —

Mr T Clarke:

No, Chairperson, there are not specifics. There are obviously issues about advice, and I am wondering whether there is a mechanism to check that that is the case.

The Chairperson:

I know what you are saying. However, if there is an issue, provide the Committee Clerk or me with the details, and we will raise the matter with the Department.

The other issue which has come through the whole process is the one-stop shop. You are 100% right: if two people look at the same advice and guidance, it depends on the way in which they read it. A one-stop shop is the way forward, because everyone, whether employee or employer, gets the same advice and there can be no confusion. It is probably better to resolve disputes even before they reach the tribunal stage, because people have by then become entrenched. That is why the Committee is happy that the Department is making that proposal. However, it must be right before it is becomes law. Therefore, if you have specifics, Trevor, give me the details and I will raise the matter with the Department and the Labour Relations Agency.

Mrs McGill:

Thank you, June and Tom, for your paper. You received about eight responses, two of which were from trade unions. Is that two trade unions out of all trade unions?

Mr Evans:

One is from the Northern Ireland committee of the Irish Congress of Trade Unions. Therefore, it is a response from the trade union movement. I met the committee, and its chairperson made it very clear to me that the response represented the trade union movement. I am not saying at this stage who made the other response, but one union decided to give its own response.

Mr P Ramsey:

Why will you not tell us?

Mr Evans:

I am not actually sure. I think that it was one of the teachers' unions. All the responses are available, and people can have sight of them. However, that union decided to make its own response.

Mrs McGill:

Do those two responses, therefore, account for most of the unions that represent workers?

Mr Evans:

The Northern Ireland committee of ICTU has representation from every trade union in Ireland.

Mrs McGill:

How does the DEL pilot scheme work? Does it involve real cases?

Mr Evans:

No, it does not. I do not want to raise expectations. We will establish an employee-relations pilot to try to resolve issues that would otherwise escalate to tribunals. The pilot is also being commissioned to improve general staff relations, and we have a labour relations team to help us with that.

The plan is to carry out a baseline audit of instances of informal and formal grievances and to record why they happen and why they escalate. We want to examine the skills of managers: one of the main aspects of the pilot will be the training of managers to develop, what the Chartered Institute of Personnel Development (CIPD) calls, their soft skills, so that they are able to have difficult conversations with their staff without creating a dispute or a grievance.

The pilot is at a very early stage, but it will analyse the informal and formal disputes to find out why they happen, why they become formal and whether there are training or policy issues involved. From that, we will develop some action plans.

Mrs McGill:

Would that not be difficult for an employee in the Department? I probably do not fully understand what you are saying, but will the pilot require an employee in the Department to explain the difficulties that he or she is having?

Mr Evans:

No, we will look for volunteers. The pilot has the blessing of both the trade union movement and management. It is seen as a good-news story and as being good for staff, and it will be promoted as such.

We will carry out a significant communication exercise with staff and management to say that

the pilot is about trying to improve things for their benefit. We will also run some focus groups and workshops with staff to find out what issues cause them problems. Those exercises will be handled in such a way so as to enable participants to talk about situations that could have been handled better. We will be looking to see if there are training needs for managers. If so, we will mainstream that training in the Department's management development programme.

Ms Ingram:

The pilot will concentrate on prevention and early resolution rather than on the processes. However, it will also focus on learning from past experiences.

The Chairperson:

What strikes me is that you managed to get agreement from the trade unions and management — it is not often that that happens.

In his opening remarks, Tom indicated that there is training on equality issues and freedom of information, but that there is very little, if any, training done on staff issues and rights. I take it that the pilot project will cover those issues.

Are there any plans to run another version of the pilot parallel to this one?

Ms Ingram:

There are no plans to run one in tandem with this one.

Mr Evans:

We will write up the results of the pilot, and, if there are things to learn, we will promote the pilot in the wider public service.

Several private organisations are interested in the pilot. For example, when I mentioned it in the my first presentation, someone in the Public Gallery, who was from a quasi-private organisation, came to me and said that he would be very interested to learn about what we are doing.

The issue is implementing ADR techniques in an organisation, such as mediation. For example, a relationship issue in an organisation could cause problems. However, that could be

resolved through professional intervention from an independent source, such as a mediator.

We will write-up the results of the pilot and promote it through our Civil Service system, but it will be more widely available that that.

Ms Ingram:

That is the first step, and we will see where it takes us.

The Chairperson:

We have thrashed out the issue and will return to it again and again. Tom and June, I thank you for coming to the Committee this morning.