Northern Ireland
Assembly

COMMITTEE FOR EMPLOYMENT AND LEARNING

OFFICIAL REPORT (Hansard)

Briefing from the Law Centre (NI) on Proposed Changes to the Workplace Disputes Resolution Procedure

20 January 2010

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
Rev Dr Robert Coulter
Mr David Hilditch
Mr William Irwin
Ms Anna Lo
Mr David McClarty
Mrs Claire McGill
Mr Pat Ramsey

Witnesses:
Mr Daire Murphy) Law Centre (NI)
Ms Ursula O'Hare) Law Centre (NI)

The Chairperson (Ms S Ramsey):

The Committee has been considering the issue of workplace dispute resolution for some time. I welcome Mr Daire Murphy and Ms Ursula O'Hare from the Law Centre and thank them for coming to the Committee. I will hand over to them, and then we will take questions. Thank you for all your assistance on the matter over the past few months.

Ms Ursula O'Hare (Law Centre (NI)):

I thank the Committee for the opportunity to discuss the matter further. We were pleased to give evidence last year at the pre-consultation stage, and we are please to have the chance to talk to the Committee again. Since we were last here, members will be aware that, as part of the Department's extensive pre-consultation exercise, we had a seminar with the Department to bring together the advice sector to look at the issues that were emerging from that sector around dispute resolution. In turn, we commented extensively on the Department for Employment and Learning's consultation exercise. We know that the Committee kept a close interest in that at the pre-consultation stage, and we are pleased that it has continued to sustain that interest post consultation. I know that the Committee heard from the Department in October 2009. The Law Centre is not a member of the steering group that the Department convened to drive the work forward, but it has been deeply involved in the process. Since we last spoke to the Committee, and on foot of the Department's consultation, we have refined and developed our thinking, and that is why we wanted to talk about the matter further.

In essence, we want to do two things today. First, we want to comment briefly on the outcomes of the consultation; and, secondly, to outline what we consider to be an holistic model for resolving workplace disputes that we think will bring lasting benefits and that will stand the test of time. I do not want to rehearse evidence that we have already given.

I want to comment positively on the welcome opportunity that the Department and the Committee have created for a wide, deep and holistic review of the system. It has not simply been a discussion of the reform of the statutory dispute procedures; rather, it has been a root-and-branch review of the many barriers that limit access to justice from the advice to the tribunal stage. We would like to see that holistic approach reflected in the outcome of the policy process, which is moving to an advanced stage. Our thinking has benefited tremendously from reviewing the Department's consultation report and from meeting others who were involved in that process. Just before Christmas, we spoke to the Department again, and I know that the Committee will hear from the Department later this morning.

Our key objective, and one on which there is much common ground among all those involved, is to develop a coherent, systematic reform programme that serves everyone involved in the system — employee and employers. It is important, particularly in these difficult economic times, that that system be cost-effective, that it build on the resources and structures already in

place and that it stand the test of time.

In its extensive report, the Committee noted that there was a need for a faster and a more cost-effective way of resolving grievances; getting it right now will bring long-lasting benefits. The Committee spoke about the need for a bespoke local system of dispute resolution, recognising that our labour market is characterised by a large number of small and medium-sized enterprises. The Law Centre has been very supportive of that approach.

We represent otherwise unrepresented claimants to pursue an employment matter through the appropriate channels. Through their constituency work, I am sure that members are all too aware of the complexity of employment law and of resolving disputes. We come to the issue firmly committed to a reform that will work for all concerned in the long term.

In considering the outcome of the consultation exercise, we have been encouraged by the range of areas in which there appears to be consensus or at least broad agreement. Those areas include the need for co-ordinated information and advice; the need for a simpler, fast-track system for dealing with tribunal claims; support for early neutral evaluation; and support for an employment appeal tribunal.

It is clear from the Committee's report that it is keen to see a culture of early dispute resolution; no one would disagree with that. It is important to resolve disputes as close to source as possible; however, that is not always possible. When recourse to legal remedy is required, we would like the system to be accessible, fair, balanced and speedy.

The Committee has recognised some concerns about the tribunal system from both the employer and the employee perspective. There is a great opportunity for implementing change, and we are interested in an holistic model that would change the tribunal system to build on existing structures, harness the best of the current system and utilise existing resources.

We met the Confederation of British Industry (CBI) and the Department before Christmas to talk through the outcomes of the consultation exercise further, and our thoughts around the need for holistic and comprehensive reform. One issue that we were keen to explore with them was the idea of an employment adjudication system and opportunities for early neutral evaluation organised and resourced in the existing system. When we last gave evidence to the Committee

we strongly supported early neutral evaluation, and we have developed our thinking on that further. Daire will elaborate on that.

We have developed a model that we think will support and encourage the resolution of more cases at an early stage and encourage further and speedier access to justice at the tribunal stage by filtering out cases. That would leave the tribunal to deal only with those cases that need to be dealt with by a tribunal. We would like to see some limited extension of legal aid in such cases, although I am aware that there was not consensus on that in the DEL consultation. Ultimately, we want to look at the establishment of an employment appeal tribunal, on which there was broad consensus in the consultation exercise.

That is some background to our comments; Daire will outline the model that I mentioned. We submitted an executive summary to the Committee in October, and I have copies of a flow chart diagram.

Mr Daire Murphy (Law Centre (NI)):

When we started to consider developing our detailed response to the consultation, the first step was to look at the operation of the industrial tribunal to see what improvements could be made. Through our advice line we regularly speak to workers who have tried to enforce their rights through the industrial tribunal; they are often left intensely frustrated and alienated by that experience. Although we feel that efforts could be made to ensure that tribunals run more smoothly, the scope to make a radical difference in that area is unfortunately limited.

There is a vast corpus of employment law, including European directives; it is now so complicated that I do not believe it to be amenable to easy simplification. Against such a background, it is hard to see how one could make the hearings less complex.

Since there will always be a need for a court to resolve complex employment law claims, how can we improve the system? Claimants should either be given support to put them on an equal footing, or there should be an easier forum to which they can go to get justice, or there should be a combination of the two approaches.

In developing our model, we sought to incorporate existing structures, which can be built on and adapted to give a coherent and efficient system that will have a profound effect, but without

the costs that a radical departure might entail. As Ursula said, the following key areas should be targeted: an increase in early intervention techniques; the establishment of a quicker, alternative, informal system — a twin-track approach; and, thirdly, wider access to representation to assist meritorious cases that eventually have to proceed to a tribunal. We hope that the net result of those proposals will be to whittle down steadily the number of disputes through early resolution, acceptance of adjudication or evaluation, and settlement so that only those cases that require a tribunal hearing actually reach that stage. We have illustrated the decreasing number of claims through the flow chart in the visual presentation.

There has been wide consensus in the responses to the consultation about the need for wider information for all parties. We support the idea of a one-stop shop, a consolidated and co-operative approach; we also agree with the majority of responses, which favour alternative dispute resolution, such as mediation or conciliation. We believe that those should be widely available and delivered through the Labour Relations Agency, and that they should continue to be available from the time before a dispute blows up until the end of the process.

However, although we are strongly supportive of the provision of information and the accessibility of alternative dispute resolution, we also sound a note of caution, as we do not believe that that would be sufficient in itself to solve the problems with the present dispute resolution system. Conciliation and mediation must remain voluntary; that is reflected in the responses. Many respondents and their representatives will not engage in voluntary early conciliation; they see no benefit in that, as the industrial tribunal system works on their behalf. Unless there is further system change, there may be no sea change in attitudes purely by concentrating on early voluntary processes. We need to do something to change what is an ingrained culture.

The other area that should be targeted at an early stage is the provision of personalised advice; the Committee has been supportive of that, which is very welcome. At the moment, claimants and their representatives have little or no source of advice that would help them to appreciate the strength or weakness of their claim. If people can get a professional view of their case, which they know is given in their interests, it is much more likely that matters could be resolved without the need for legal action and going to court. If someone is unsure of their position, it is difficult for them to discuss resolution or settlement.

The Labour Relations Agency provides a well-established, if limited, information service; however, it cannot give detailed, personalised advice without compromising its neutrality. Almost all responses highly valued that neutrality and agreed that it should be preserved. Our members have experience of providing detailed, personalised advice, and have found that many more cases could be resolved at an early stage with good advice. That feeds into the alternative dispute resolution techniques, in that the effectiveness and efficiency of mediation or conciliation would be enhanced if the parties had already received the detailed advice that they need but which the conciliation officer or mediator cannot provide.

At the moment, the Labour Relations Agency will often refer cases to us for such personalised advice; unfortunately, however, we do not have the resources or capacity to deal with the scale of claimants' needs. We therefore propose that there should be increased funding for a personalised advice service for claimants, and, indeed, possibly for respondents. I note that the Federation of Small Businesses (FSB) strongly supported such an initiative. For claimants, existing structures in the voluntary sector could provide a base.

As Ursula said, it is inevitable that some cases will not be resolved through targeted early intervention. What do we do then? The voluntary early or soft processes will not be a universal panacea; some cases will go to the next stage. If the only remaining option for those cases is the existing industrial tribunal system — we outlined to the Committee the problems and difficulties that claimants face with that system at a previous session — they will be in the same position that they would be if there is no reform of the process at this stage.

It is essential to provide a more efficient and informal forum to resolve disputes. There will always be a need for the legalistic, adversarial tribunal; however, that should be a last resort rather than the default option. Concerns have been expressed in responses that that will add another layer to the process. However, if we accept that the industrial tribunal cannot be removed, radically simplified or reformed, and that that layer is essential, a well-thought-out alternative may not be a bad idea. In fact, it might be the only viable approach. It is worth highlighting that the proposed framework is based on existing structures and resources, and we hope that the decrease in cases that go to tribunal will be reflected in reduced costs that offset the operation of alternative systems.

We are considering a twin-track approach: on one hand, the employment adjudicator; on the

other, early neutral evaluation. In broad terms, we envisage the role of an employment adjudicator as similar to the role of either an arbitrator, which is already present in the DEL system, a rights commissioner as in the Republic of Ireland or a small-claims judge. That offers a useful model and an accepted precedent of simplified procedure in this jurisdiction.

Civil claims up to the value of £3,000 are determined by a judge who sits on his own in chambers. The parties sit at the table; it is very informal. The judge takes an inquisitorial role, asks questions and directs the hearing, and in cases where one side is represented and the other is not, such a system limits the capacity for that to have a disproportionate effect on the outcome. Hearings are quick, and people feel that they have had their say and are happy to accept the resolution whether they win or lose. An equivalent system for employment disputes would be widely accepted and would give claimants a realistic chance to put their case. It would be cheap and expeditious for respondents and would allow the matter to be resolved without legal costs. In fact, such a system would be similar to how industrial tribunals were supposed to operate when they were set up originally.

If a claim has not been resolved through the early intervention system, the first step would be to use a claims filter system to decide which way claims will go. Our system could fit into the existing tribunal system. A tribunal chairman could consider the claim and, using his or her experience and an assessment of what is involved, decide whether it is suitable for the employment adjudicator or for early neutral evaluation. The employment adjudicator would be expected to deal with the large number of cases, such as disputes about unpaid wages, that could and should be resolved through a simple, quick hearing. For example, a dispute about a failure to pay £50 currently goes through the industrial tribunal process with all the associated cost and wasted effort. That is not a sensible approach.

The Labour Relations Agency already has a trained panel of arbitrators who, unfortunately, are underutilised because of how the system is set up. The new adjudication system could be administered through the Labour Relations Agency and could build on existing structures and resources. An adjudicator, like a small-claims judge, would run the case on inquisitorial grounds and aim to get to the bottom of the issues by questioning each side. That would result in quick decisions. Moreover, it would provide a quick, cheap result, and both sides could participate on an equal footing. People are crying out for an accessible system in which claimants can represent themselves. From a business point of view, employers would be broadly in favour of such a

system because it is quicker and more cost-effective.

It is interesting that 11 of the 18 consultation responses were in favour of expanding the Labour Relations Agency adjudication scheme, and 12 of the 18 responses were in favour of further consideration of a rights commissioner model. That reflects the desire for an accessible, quick, cheap alternative. However, some of the no votes might be due to the fact that the questions were directed at specific systems. Therefore, someone who had reservations about importing a system, such as the rights commissioner, from another jurisdiction might not have voted yes; whereas others might have had reservations about the current adjudication system in which there is no right of appeal.

Our proposed system would move away from the other labels and devise a bespoke term such as employment adjudicator; that would reflect a system that is accessible, quick and cheap, without the baggage of the other systems. Such a system would command widespread support.

For complicated cases that would be unsuitable for an employment adjudicator we recommend compulsory early neutral evaluation to allow both parties to receive a strong indication from an authoritative source as to the likely outcome if the case went to a full hearing. Such a steer should be enough to resolve most cases. That could be carried out through the existing tribunal system, as existing tribunal chairmen have the legal knowledge and experience to give such an indication. If most cases were resolved through the employment adjudicator or early neutral evaluation, resources would be freed up in the tribunal system, thus enabling tribunal chairmen to undertake that role. Early neutral evaluation is a logical extension of what tribunals already do in that they try to give an indication in case management discussions. However, tribunal chairmen are fettered by the neutrality that they must observe, and they might welcome the opportunity to take a more interventionist approach at that stage.

Complicated cases concerning an allegation of sexual harassment, for example, would not be susceptible to any of those approaches and would still be referred to a tribunal. Such cases need to be aired in a full tribunal hearing.

Adopting our proposed system would greatly reduce the number of cases that come before a full tribunal because the majority of claims would have been weeded out or resolved before reaching that stage. However, a free right of appeal to move to a full tribunal hearing should be

retained. On the other hand, there is no point in establishing a new system if it is ignored or used as a step for people to continue to a tribunal. Therefore, we suggest that the new system should include penalties, including the use of existing systems such as cost awards and adjustments of awards, to give the system the necessary teeth to make people think twice about proceeding against an evaluation or adjudication. Costs can be awarded up to £10,000, which is a significant disincentive. A strong system with built-in safeguards would foster acceptance from employees and employers and would weed out claims at an early stage.

I want to touch briefly on representation. In our early evidence to the Committee we set out the plight of people trying to present their own cases before tribunals. Put simply, a system in which one side commonly has a solicitor and a barrister to represent them before a formal court while the other side has no one is not totally fair.

To all intents and purposes, an industrial tribunal is a court; it is the employment court, and it is as difficult to negotiate and as complex and legalistic as any other court. Therefore, expecting someone to represent themselves before an industrial tribunal is a bit like asking someone who is not an accountant to carry out an audit, or someone who is not a doctor to diagnose and treat a medical condition. That is not too much of an exaggeration.

For cases that have to proceed to a tribunal, there must be increased representation to allow for meaningful access to justice. In our proposed model that could be achieved either through a very limited extension of the legal aid system or a free representation unit to cover meritorious cases. However, if there is not systemic reform — if there is no means of weeding out cases and cases continue to proceed automatically to tribunal — a glaring need for much more representation will remain.

We recognise that financial constraints operate on legal aid in the current climate, but lessons can be learnt from the Scottish legal aid system, which provides for legal aid for employment claims subject to a strict merits test: the three-step condition. If legal aid were extended and if cases were resolved through early intervention — through either the employment adjudicator or early neutral evaluation — and the application of a strict merits test, the number of cases that would require assistance would be correspondingly low. Such an extension would not cost as much as a general extension of legal aid and it would hopefully not be thought of in the same context.

The alternative way of bridging the representation gap is to allocate those resources to a free representation unit, which could be built on existing voluntary sector structures. If such a unit were considered viable, the early advice-giving role could be integrated into the service to provide a more efficient, one-stop approach.

The Chairperson:

Everyone appreciates the approach that the Department has taken to this legislation, because it has represented new thinking. However, I am struck by the fact that the Department did not go one step further and include the Law Centre on the steering group.

Mr D Murphy:

I cannot possibly comment.

The Chairperson:

Departmental officials are in the public gallery and will appear before the Committee later; we will discuss that with them then. You talked about a holistic approach and about how the best way to solve a problem early is to get all the stakeholders around the table. The diagram is quite interesting; have you given it to the Department?

Ms O'Hare:

We submitted it as part of our evidence.

The Chairperson:

Has the Department come back to you specifically on it?

Ms O'Hare:

We had a really good meeting with Tom Evans from the Department before Christmas, and we talked it through then. The Department has been working to move forward on the shape of the policy.

Mr D Murphy:

We also met the CBI. Although we were approaching the issue from different perspectives, there was a surprising degree of consensus about how a more efficient tribunal system would operate.

There is agreement that something needs to be done to streamline the tribunal system and address its inefficiencies.

The Chairperson:

A common-sense approach should be taken. For the record, I declare an interest as I am involved in an issue that may lead to a tribunal. I will not go into detail or say whether I am for or against it. However, if members believe that they are involved directly or indirectly in any such issue, they need to declare it, too.

Unfortunately, our session with the departmental officials will be held in closed session; it has to be that way because the Executive have not been informed. However, we will raise some of the issues with the officials.

I want to take the opportunity to thank Ursula and Daire. The Committee has benefited from the involvement of stakeholders and, in fairness, the Department at every stage of the process. It sends out a clear message that that is the proper way in which to conduct the legislative process from inception to outcome. If we work collectively at the beginning, there will be fewer problems at the end.

I will open the session up to members for their questions and comments. I also ask members to inform me of any relevant declarations of interest. I will take a list and then close it down. Members need to do that now, because I am conscious that we have three presentations to get through.

Mr Buchanan:

I welcome the root-and-branch review of the disputes resolution procedure, simply because it will reduce bureaucracy in the system and enable employers and, especially, employees to access information in a much simpler fashion. Can the proposals that you outlined in your model make progress? Have you any idea of how many disputes it would resolve early, without them having to go through the entire system?

Mr D Murphy:

Unfortunately, it is very difficult to make any sort of detailed estimate on that. One would hope that targeted early measures would have an effect. For example, the introduction of an

employment adjudicator, similar to a small claims judge, would enable people to get hearings on simple matters and bring about quick and cheap resolutions. People will generally not be inclined to proceed into the legalistic arena of the industrial tribunal. I know that statistics have been presented on the Rights Commissioner model in the South of Ireland, where, I think, only 9% of the findings were appealed, with only 2% of those being upheld. One would hope that both employers and employees would get used to the system and that there will be a culture change so that people accept the idea of earlier and more informal resolution.

Rev Dr Robert Coulter:

Thank you for coming. I congratulate you on the diagram; it is very helpful. Will you talk me through the stages of an appeal at the employment adjudicator level? What representation can be added at that stage? What would the cost be?

Mr D Murphy:

The employment adjudicator will make a quick decision on matters that are susceptible to such an approach. However, it is not realistic to expect employees and employers, who perhaps have more reservations, to accept that without a right of appeal. Therefore, we have included an open right of appeal, which will enable cases to move forward and be heard by an industrial tribunal.

We have, however, tried to build in safeguards and disincentives to prevent the employment adjudicator arrangement from being used as another layer, with people deciding that they are not happy with the adjudication and moving straight to an industrial tribunal. Tribunals will look at the outcome of adjudication cases. If someone has challenged the adjudicator on an issue and the tribunal reaches the same conclusion as the adjudicator, the tribunal can then penalise the person through an adjustment of the award that is given or received or by imposing legal cost orders on either party. Both of those systems already operate; there is already a cost regime in the industrial tribunal system that can handle such circumstances, and the adjustment of awards was brought in under the dispute resolution regulations. Hopefully, that will give the process enough teeth to ensure that people do not treat the employment adjudicator stage as just another step before moving automatically to the industrial tribunal stage.

There is a similar provision for early neutral evaluation. An evaluation will not be shown to the tribunal before it hears a case. However, after the case, the tribunal will look at the evaluation, and if someone has disregarded something and been unreasonable in pursuing the

case, that could be reflected in costs or in an adjustment of award.

I also mentioned representation at industrial tribunal. There will be cases that will, properly, have to be heard before an industrial tribunal. The people who try to represent themselves in those cases, which are very complicated legal cases, will find themselves in difficulty if something is not done to assist them and to increase the provision of representation. Under the proposed model, one would hope that the number of such cases would be much smaller, as many would be resolved before they reach the industrial tribunal stage.

Rev Dr Robert Coulter:

So, the appeal at the employment adjudicator level would not be an end in itself and the case would proceed to another stage?

Mr D Murphy:

The adjudicator would give his decision, but that can be appealed. The case would go into the existing industrial tribunal system, and there could be a full industrial tribunal hearing that would either uphold the adjudicator's decision or reach a different conclusion.

Rev Dr Robert Coulter:

Could a case be settled at the employment adjudicator level?

Mr D Murphy:

At all stages, we hope that there would be an emphasis on possible settlement, conciliation and mediation. Those routes should still be encouraged.

With regard to early neutral evaluation, if a tribunal chairperson can tell the parties involved about the weaknesses and strengths of a case and how he or she sees it going, that would, hopefully, enable the parties to go to the Labour Relations Agency, speak to a mediator or a conciliator and conclude a settlement. That would be the aspiration in a large number of cases.

Mr Butler:

There is an ingrained culture whereby most people do not want conciliation because they want to make a claim. How will that be addressed? In a previous presentation to the Committee, it was said that most people going through the system do not have any legal or financial support and pull

out of the process as a result. Is it because employers will not settle cases that there is a culture of trying to get one up on them and of trying to get a resolution through the industrial tribunal system? How are you going to change that ingrained culture?

Mr D Murphy:

Unfortunately, there is a somewhat ingrained culture at the moment. I do not want to make a broad-brush statement about all employers, but, in our experience, some employers, particularly large employers, and even some Departments, know that they have the legal resources to outweigh claimants who have no one on their side. There is no incentive for them or their representatives to engage in early conciliation, because the problem may go away or can be bought off for £500 down the line.

That was the basis of our reservation about concentrating solely on early processes. If there is no reform of the system, there is no incentive, and it might not make a meaningful difference. At the moment, that is one possible outcome — that people are simply frozen out by the system. The other possible outcome that employers would complain about is that they end up paying out money on cases that are weak or vexatious, both of which undoubtedly happen.

We feel that it is inherently unfair that cases are being decided not on how strong or weak they are, or how right or wrong they are, but because of the operation of, or defects in, the system. That must be addressed. Hopefully, the idea that a claimant can have an employment adjudication or an early neutral evaluation will improve accessibility and make for a fairer system throughout. That might promote a change of culture that will allow people to resolve their disputes at an earlier stage.

Mr Butler:

You may not have the answer to my next question. What changes resulted from the Gibbons review in Britain, and did it improve things?

Mr D Murphy:

I do not have any detailed information about that. I know that judicial mediation was one measure being trialled, with tribunal chairs performing mediation as part of a pilot study.

Mr Butler:

Is there any evidence of the impact of that?

Mr D Murphy:

There was some initial success.

Ms O'Hare:

The pilot study showed some degree of success, but I have not seen anything further to that.

Mr D Murphy:

That would possibly be similar to the idea in our model of tribunal chairs carrying out early neutral evaluation and giving more of a steer. In general, tribunal chairs and judges already try to do that, but they are fettered by having to remain neutral and by the need to ensure that they do not overstep the mark. In this case, a tribunal chair who is not going to hear the final hearing — and who, therefore, would not prejudice its outcome — would be free to give a forthright opinion as to how the case will go if it proceeds. Hopefully, that will put the parties in a better position to know how the case should be resolved.

The Chairperson:

I will probably ask the Department about the Gibbons review, too. It might be an idea to get some of that information.

Mr P Ramsey:

Daire and Ursula, you are very welcome. Thank you for your presentation, which was interesting and useful. For the record, the Law Centre does fantastic work in Derry, although the point was made that people cannot walk in off the street to its premises; they have to be referred, which is the difficulty.

We heard yesterday about a young pregnant Polish girl in Derry who has been literally bullied onto the street by her employer and has nowhere to go. You talked about a free representation unit and a one-stop shop. That terminology is very fashionable, but how do you create that? What is required financially to establish an independent one-stop shop that would be accessible across Northern Ireland? We cannot have just one office in Belfast; we need those facilities to be geographically distributed across Northern Ireland to ensure that everyone has access.

Does the Law Centre have an interest in providing such a service? Is there a model somewhere that provides that level of work? At one stage, we were to go down to Dublin to see a Rights Commissioner's hearing, but that trip did not materialise. It would be good to see how other models work and whether there is a better system. At the moment, there are increasing numbers of people, employees and migrant workers specifically, who are vulnerable and marginalised. I am interested, therefore, in hearing about how the one-stop-shop model might be taken forward to ensure that people have maximum representation.

Ms O'Hare:

I shall begin by addressing the issue of access to information and advice, and Daire will follow up on the other points. As you know, a number of organisations give employment-related advice and, when looking at the issue, we have been careful to develop systems that utilise and maximise existing resources. In other words, it is very important to work with what is already there. Given that a number of organisations already deliver advice, we need to look very carefully at how that advice comes together and how it is presented in a coherent manner. For instance, you talked about such advice being regionally dispersed, and it is important to consider that.

We and others — those who represent employees and those who represent employer organisations — have been very clear about the need for advice to be tailored to specific requirements, and, in the context of one-shop information delivery, it is important that we do not lose sight of that goal. The difference between information and advice is that information, such as a statement about employment law, is normally neutral, whereas advice is much more tailored to the needs of the individual, from wherever he or she emerges.

Mr D Murphy:

As Ursula said, there are a number of existing structures, including the Labour Relations Agency, the Citizens Advice network and other bodies in the voluntary advice sector, from which people can get, in the first place, information and, sometimes, advice. A one-stop shop would act as a gateway through which people could then be directed to the appropriate service.

Information can be given by bodies such as the Labour Relations Agency, but it is common for it to then refer people to us for advice about what to do or about the strengths or weaknesses of their case. In a more integrated approach, people would be pointed in the right direction to

determine whether they should go for conciliation or whether they should approach an agency that could provide them with advice. We have tried to draw that distinction between information and advice.

Receiving advice increases the potential to resolve a matter yourself at an early stage; you are informed when entering the process about alternative dispute resolution or the mediation process. Furthermore, if you are advised that your case does not have much chance of success, and you know that the person giving the advice is acting in your interests, you are more likely to be able to draw a line under the matter, achieve closure and walk away. In our experience, someone with a genuine sense of grievance who does not get such advice will probably end up initiating legal proceedings, which will drift along through the tribunal process, get him or her into difficulty, incur a lot of expense and cause problems for the employer. One would hope, therefore, that, in order to avoid the cost of setting up something completely new, a system will be drawn up with one gateway through which to direct people appropriately to existing agencies and resources.

Mr Hilditch:

I declare an interest as the chairman of my local authority's staffing subcommittee, which is involved in some tribunals. How will we achieve a level playing field so that people will be able to represent themselves against barristers? Where will the resources come from?

Mr D Murphy:

There are two ways to get that level playing field: either provide people with representation through legal aid or other representation services, or give them a forum in which they can represent themselves and there is equality of arms. We have tried to come up with a proposal that does both.

Appointing an employment adjudicator would reflect the original idea behind industrial tribunals, whereby a small employer is able to sit down with his or her employee, they put their respective cases, the adjudicator asks questions and probes the matter in the way in which a small claims judge might do, and then they arrive at a conclusion. It could all be done that quickly, without incurring huge expense, and people would feel that they had had a hearing and had resolved the matter.

On the other hand, there will be cases that have to go to tribunal, although, if the system is

suitably reformed, those numbers will be reduced. In such cases, there would still be a need for increased representation for the claimant. Presently, there is a stark inequality of arms. It is expecting a lot of someone who has no experience of the principles of European law, and so forth, to address a tribunal on such issues.

The Chairperson:

We were due to witness a case in Dublin, but the case was settled when we were on our way there.

Mr D Murphy:

That is a good sign.

The Chairperson:

It stopped us from witnessing what went on with the Rights Commissioner. I do not know how it was settled; it was nothing to do with us. It is useful to put these matters in the context of everyday life and remember that we are dealing with human beings. It is important that we get a view from the stakeholders, especially those who are at the coalface.

Thank you for briefing the Committee this morning and for staying in contact with us, and we will stay in contact with you.