



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Review of Employment Law: Ministerial
Briefing

14 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Basil McCrea (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Jim Allister
Mr Sydney Anderson
Mr Phil Flanagan
Mr David Hilditch
Mr Chris Lyttle
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

Dr Stephen Farry	Minister for Employment and Learning
Mr Tom Evans	Department for Employment and Learning

The Chairperson: We have with us Stephen Farry, the Minister, and Tom Evans, the deputy director of strategy, European and employment relations.

Incidentally, we have no Hansard at this meeting because the Committee for Social Development has sucked up all the resources. It is a bit of a pity that we have a Minister in for three sessions and we will have no record of it.

Mr Allister: What do you mean it has "sucked up all the resources"?

The Chairperson: There is only a certain amount of resource for Hansard. Typically, those who are considering legislation get first call on it. That Committee is sitting from 10.00 am to 5.00 pm on Tuesday, Wednesday and Thursday. I have raised the matter that I am not entirely happy with the fact. I just wondered if I could do so on behalf of the Committee; we really would like to have Hansard here when we have the Minister in future.

Mr Allister: Yes, because you never know what he would say.

Mr Flanagan: You would not forget, Jim.

The Chairperson: Can I have your agreement? I would like to bring that up with the appropriate authorities. Cathie, we did try quite strenuously, but I would express the Committee's disappointment and request that the matter is dealt with.

Minister, you are very welcome.

Dr Farry (The Minister for Employment and Learning): Good morning.

The Chairperson: Tom is with you as well. You are going to be with us for a few sessions.

Dr Farry: I guess so. I will set out our understanding. There are two formal agenda items. First, we have the review of employment law, and, after that, we have a separate session, which is an update on the new employment programme. We indicated as well that we are willing to do a further briefing arising from the announcements that were made by the Executive last week on special economic measures, given that a large number of those relate to the Department for Employment and Learning (DEL). We can go through each of those in turn, but for the first session, I have with me Tom from the employment law side.

You will be pleased to know that I am not going to make an opening statement. Hopefully, the statement that was made to the Assembly last week was sufficiently comprehensive. You all have copies of that. The position that we are in should be clear. We are happy to follow up with any questions. Obviously, there will also be a debate in the Assembly next week on the matter.

The Chairperson: Thank you for that. Given that we have quite a lot of work to do on that, I do not propose to make an opening statement either. We will move straight into questions.

Mr Ross: I recognise that we have a debate next week. Perhaps that is a better opportunity for members to put their views on the table. There seems to be a little bit of an impression that this is one side versus the other. Will you highlight some of the areas that are being taken forward in GB but that you are not going to take forward in Northern Ireland because there is a general agreement between employers or employment organisations and the unions, and perhaps other areas, that they are not necessary? Will you set out those first to see where the agreement is?

Dr Farry: No problem, Alastair. You are right to identify that this area can often be pitched as different interest groups having different perspectives and not agreeing. Although that is an inherent danger in the process, we have the opportunity at our starting point to seek to find consensus among the stakeholders. It is important to recognise that we have engagement among the stakeholders already. That is not just in respect of making responses to the initial discussion paper from the Department; we also have a stakeholder forum that is now under the auspices of the Labour Relations Agency (LRA). The business sector and the trade unions have reported that they believe the process to be a very worthwhile engagement. I am certainly of the mind that, in the event that agreement is found between the key social partners around issues, we will have to give very serious consideration to all of that.

You asked about what we are not doing that GB is doing and what we are potentially seeking to replicate. Obviously, you are familiar with the context: employment law is devolved to Northern Ireland. Indeed, as far as I am aware, that has been the situation since the early 1920s. We have had a different system. We have tended to mirror, to a large extent, what has happened in GB. There has been good reason for doing that; it means that there is a certain consistency for businesses that operate across different jurisdictions. However, we have not always sought to copy. I am of a mind that we now have to have a modern system for Northern Ireland and ensure that we can provide the best possible solutions that meet our own circumstances and address, in particular, the needs of business and how we grow the economy. We are certainly eager to learn positively from what happens in other jurisdictions but, ultimately, we will take our own decisions in Northern Ireland.

There are certain aspects that we are not taking forward in Northern Ireland. For example, the main Beecroft proposal about the compensated no-fault dismissal. We are not taking that forward, nor is Great Britain. There are areas that they have moved on. For example, chairs sitting alone in tribunals. Essentially, all the stakeholders in Northern Ireland were opposed to that. Our sense from the application in GB so far is that that has not really worked. Lay members bring a certain perspective to panels.

There are some reforms that we will want to consider in our own sense. For example, they have moved to the routing of claims through the Advisory, Conciliation and Arbitration Service (ACAS). One of the key issues that is very much on the table for us now is the option of routing all claims through the Labour Relations Agency, which is our equivalent. There are some areas in which they were considering taking forward some action. For example, the issue of protected conversations. That process has stalled. It is proving to be a fairly complex legal area. I am keen that we keep that on the

table in Northern Ireland to see, in that respect, whether we can be a trailblazer rather than simply copy what is happening elsewhere. Obviously, probably the most complex issue, and one that is maybe at the forefront for a lot of business representatives, is the change to the qualifying period for unfair dismissal. Again, that remains on the agenda. There are a range of competing arguments, which I tried to set out in last week's statement.

Mr Ross: With regard to unfair dismissal, obviously, if we were to have a different system from the rest of the UK, it would be very significant, and not only for inward investment and investment from America. Obviously, they have a very flexible system there. It is very important to those companies that they have the flexibility to do the hiring and firing and to be able to get rid of underperforming staff, and all the rest of it. When we are competing with other areas, and companies are deciding whether to go to Glasgow or Belfast, it is also important that having a different system does not make it more difficult for them. Is it fair to say that there have always been different qualifying periods? It was not always one year. Perhaps you could give us some background on the various differences that there have been over a longer period. There is even the argument that it would be better for workers if we were to have a longer qualifying period; it would mean that companies would not, perhaps, be as quick to get rid of them because they have not had long enough to bed in and have their performance fully considered.

Dr Farry: You are right to say that there are a number of different, competing arguments. We are acutely aware of what investors will say and, in particular, the nature of employment law. The labour market is one of many issues that investors will look at. Although I acknowledge that it is a consideration, there is also a danger of over-egging the importance of that compared with a number of other drivers, such as skills and, perhaps most notably at present, the level of corporation tax. There is a whole basket of factors that will determine investment decisions.

One key issue that we also need to be mindful of is, perhaps, the law of unintended consequences. You could see a situation in which business superficially wants to see a change to the qualifying period. However, in the application of that, if we did, indeed, move to that in due course, you could see a situation in which, rather than taking an unfair dismissal case because they no longer fall within the qualifying period, people with grievances or disputes could decide to shift the balance of their claims towards discrimination cases, which tend to be more complex and costly to defend. So, you could end up with a situation that actually becomes more onerous for business through the unintended consequence of something that you have done to try to make it easier for investors. So, there is a whole host of issues that we need to take into the round.

Over the next number of weeks, we want to consider various options as to how we can actually take that issue forward as part of formal consultation. It may not be a simple black-and-white issue of either extending it or not extending it. There may be options in between by which we could, perhaps, extend it for certain types of business — the main one being whether it is inward investment. We need to explore those issues to see whether that is actually viable in practice. We are mindful of trying to have a look at that.

You are also right to say that the issue has bounced up and down over the past number of years. There has been a certain tendency for it to mirror what has happened with regard to the nature of the Government in the UK. There has, at times, been a certain lag between Northern Ireland and the rest of the UK given the different jurisdictions.

Tom, as you are slightly older than me and have a longer memory, do you want to cite the evidence of what has happened?

Mr Tom Evans (Department for Employment and Learning): I think that it has changed eight times since around 1986. At one stage, fairly recently, the qualifying period was two years, and then it was reduced. There has been no evidence that the changes have had any impact on the levels of unfair dismissal claims. Any impacts were associated with the change in the economy — either an upturn or a downturn. We have talked to policy leads in the Department for Business, Innovation and Skills (BIS), and they are very aware of what the Minister has said about the danger of converting unfair dismissal cases into discrimination cases. In the recent statistics on single jurisdiction claims that go through a tribunal, only around 20% are for unfair dismissal. On a single jurisdiction claim, they can be disposed of fairly efficiently, both for the claimant and the respondent. If a lot of those cases were converted into discrimination cases, you would start to get three- or five-day hearings, a lot more witnesses and a lot more case-management discussions. It can actually be a significant draw, particularly on smaller employers, to cope with that. Those are the concerns. I think that the view

expressed by stakeholders was not just either/or; it was trying to put together some measured viewpoint on the real impact that it might have on businesses in Northern Ireland.

Mr Ross: As for the concerns about looking after the workforce, there is a fairly strong argument for jobs, is there not? The example of sales jobs has been used. If you have a qualifying period of a year, by the time a company takes on an employee and trains them — it might take the company three months to move them on if it is not going to keep them — that leaves only a short period in which to evaluate their performance. In those examples, a two-year qualifying period could be better for a member of staff or an employee. Is that not right? They would have a longer time to have their performance evaluated. It might encourage employers to keep a workforce rather than move employees on.

Dr Farry: We certainly accept that that is an argument and a consideration that we want to explore further. The contrary argument is that if a person is uncertain of their job security, they are less likely to spend what they earn and they will seek to save to protect themselves against unemployment. There may well be a public interest in asking them to spend in the local economy. Two, or perhaps more, counterarguments are made around that. Those are all valid arguments that we will want to assess and tease out in any formal consultation on, hopefully, a range of options.

Mr Allister: I want to follow up on the issue of the differential in the employment qualification period. You said, Tom, that, since 1986, you think that there have been eight changes. Are those eight changes in GB that were mirrored in Northern Ireland or eight changes in Northern Ireland?

Mr Evans: It started in the rest of the UK and was then mirrored in Northern Ireland.

Mr Allister: So, every time, we followed?

Mr Evans: We did.

Mr Allister: Minister, you have touched on this already, but perhaps you could provide a little more information. I do not think that the actual procedures — whether you have a single chairman or a panel or anything like that — are likely to impact on someone who is considering investment in Northern Ireland, but how far is the existence of a one-year period as opposed to a two-year period, or vice versa, a consideration for a potential investor? Have you taken the view of Invest NI on that?

Dr Farry: On the first point, which was about the qualification period, we would be happy to provide a table to the Committee in the next week or so that sets out the facts around the changes that have occurred over the past number of decades.

On the second point, which was about the evidence base and the perceptions of investors, to date, we have had a discussion paper in which the issue was flagged up. Business bodies and other stakeholders came forward with their views. Obviously, there is a contrary view to what the business community is saying, and we have to acknowledge that. It is fair to say that virtually all the business organisations support a raising of the threshold. It is also fair to say that that argument is not, at this stage, backed up by a very solid evidence base. To a large extent, it is based on a perception. In business confidence, of course, perceptions are sometimes as important as facts and the reality, so it is an issue. I have discussed the issue with Invest Northern Ireland and the Minister of Enterprise, Trade and Investment. From their perspective, they believe that it is an issue.

Mr Allister: An issue that would impact adversely if we did not follow GB?

Dr Farry: That is the argument that they make. It is also important that we put that in context. To reiterate what I said to Alastair, any company that is making an investment decision will look at a whole range of different factors. I was in Boston at the end of last week. The very strong message that came from companies that I talked to was that they were putting skills at the forefront of their decisions around investment. The issue of our labour laws was not raised with me directly, but I do not seek to deny that that is an issue; it clearly is.

Mr Allister: Clearly, Invest NI's considered opinion is that it is an issue.

Dr Farry: Yes. It is a factor among many that will influence companies' decisions about where they will locate.

There is a plan over the next number of weeks. We have highlighted this as an issue that has to be on the agenda. We are looking to put together a paper to go to the Executive. This will require legislation, so any formal public consultation on the issue will require Executive approval to proceed. The intention is that we take forward a paper on a number of areas that require legislation. Within that, we will seek to have either a clear proposal or a number of clear options that we will want to take formal opinions on. In that context, I hope that we will see a more formal evidence base coming forward from all the stakeholders.

Mr Allister: Given that procedure, even if the change were being made, it would be some distance into the future before it would be made.

Dr Farry: In the past, we have had different time lags in respect of what is happening in the rest of the UK. If a consultation paper were issued early in the new year, obviously, you are looking at a three-month consultation period and a period of analysis thereafter. You would then proceed to legislation. If it were decided that this was something that we wanted to do, the best-case scenario is that it would, potentially, be at least a year from this point before —

Mr Allister: So, whereas the change has happened already in GB, you are talking about a two-year time lag, maybe to the spring of 2014?

Dr Farry: Yes. We have had time lags in the past. This, of course, is premised on whether we find a consensus to take this forward. There is another hurdle in all this. It is not simply a case of deciding that we are going to do it and moving ahead. Given the particular nature of our institutions, we will need to find sufficient consensus to take the issue forward.

There is also the issue of whether, in practice, this is a critical factor. Arguments have been made that it is, but the evidence base behind that is still weak. Although people say that it is a major issue, it may be more an issue of perception than of reality. That is why we have to work through the issue. In particular, people should consider some of the counterarguments. For example, we have made the point about the displacement of cases from unfair dismissal to discrimination. That may be something that, in the round, is considered to be counterproductive.

Mr Allister: Maybe, of course, you will consider whether you should temper the facilities under the wide ambit of discrimination law.

Dr Farry: Those are other issues that we can come to as well. This is a wide-ranging employment review; the unfair dismissal issue is one of many. The meat of the review that we are taking forward is probably about trying to shift cases away from tribunals and more towards the various means of alternative dispute resolution.

Mr Allister: Do you anticipate any changes to the discrimination arrangements?

Dr Farry: Discrimination law is a matter for the Office of the First Minister and deputy First Minister.

The Chairperson: When you take the paper to the Executive, you could say that it is an all-encompassing approach to employment law and that you would like to look at that.

Dr Farry: Yes. It is worth highlighting that, in so far as members are making the case this morning for parity with the rest of the UK with respect to unfair dismissal, at present we do not have parity with respect to equality legislation and the Equality Act 2010. There are no plans in Northern Ireland at present for a single equality Bill and Act in due course. There are issues of law on which we are out of step with the rest of the UK. I appreciate that members will have different opinions on what happened in GB with their equality legislation, but different legal regimes with respect to discrimination also create issues for businesses that seek to work across boundaries because it becomes slightly more complex for human resources.

Mr Allister: Should we or should we not anticipate your consultation paper touching on issues about the ambit of discrimination law?

Dr Farry: To be realistic on the matter, I would probably caution about how far our consultation paper is going to go. I do not see a huge consensus emerging politically about how we would want to

change our equality laws and anti-discrimination law in Northern Ireland at present. I am just being realistic and honest with you, Jim.

Mr Allister: Interesting. Thank you.

Dr Farry: If you want to be a cheerleader for changing our equality laws, we will, of course, take that on board.

The Chairperson: The Committee might want to take a view on whether we need to review those laws. I have looked at the statistics from the Equality Commission, and a lot of the previous concerns have been addressed. Maybe it is time to look at whether we can achieve the same results with a lighter touch. I would not rule that out. Nobody is trying to move away from the principles of fair and equitable employment, but the issue here is that we are perhaps not helping the people we want to help. Anyway, that is just a point that we will mention.

Dr Farry: Although we might be limited in our direct capacity to change equality and discrimination legislation, one of the key themes of the review is making the tribunal system work better when cases, sadly, reach that level. How the law is applied is clearly a direct issue that we are already seeking to move ahead with with the tribunal rules committee.

Mr Flanagan: Minister, you are very welcome. I read through your statement to the House again last night, and it is very useful and informative. It paints a picture of where you are trying to take this issue. Ultimately, the debate so far has been led by the unfair dismissal stuff, and we are going to have a debate on that next week in the Chamber.

This is a welcome review, but my concern is that some of the actions are being taken for no other reason than simply because that is what is being done in Britain. There are also different opinions on the unfair dismissal stuff from workers' representatives and the business community. It is about finding that balance that you spoke about. That has to be the ultimate objective of the review.

You said that you will not change the consultation periods for collective redundancies. Are you minded to make any changes to that process at all?

Dr Farry: Essentially, we have set that issue aside for now as part of this stage of the review. There was not a huge appetite, including among business organisations, to change the consultation periods for collective redundancies at this stage. Frankly, in the current climate, where, sadly, a number of large-scale redundancies are happening, I do not think that the Assembly should make it a priority to make that process move more quickly. We will, potentially, want to return to that issue during this mandate after the bulk of the review is through, and there may be issues that we can pick up on then.

Phil, is there anything in particular that you feel —

Mr Flanagan: No. It was just that with a growing number of large redundancies being announced, I am particularly concerned about the number of workers who are finding it very difficult to access their P45s and the very basic state benefits and redundancy payments. Improvements need to be made to that whole system so that workers are not left out on a limb without any kind of support from the Government.

Dr Farry: That is probably more of an operational issue for us. We have the redundancy advice service, but as you would expect, that is under a fair degree of pressure at this stage. When large-scale redundancies occur, we are very willing to put in place clinics on-site and to work with companies to get access to the workers who are affected. We did that most recently with the Patton Group, and that service has now been extended and is open to any subcontractors affected by the spillover from that case. As we go on, we are happy to learn lessons about how we can do that better. If we need to look at the resourcing of the redundancy advice service, we will do so within existing baselines by shifting resources. We have that under constant review, for sure.

Mr Flanagan: Thanks, Minister.

Mr P Ramsey: Good morning, Minister. You are very welcome. I was interested to hear about the stakeholders' forum, and I would be keen to see how that is progressing between the employers and

the trade union movement. I am sure that there are some differences of opinion, but maybe you can keep us informed about that.

Minister, I raised a point in the Chamber that still concerns me. It is the immense pressure that will be put on the LRA as a result of the additional role that it will have to play. Do you believe that it has the capacity to deliver that role?

Dr Farry: Tom, do you want to say something about that?

Mr Evans: The point is well made. As the review moves forward, and we have an understanding of how the role of the LRA might change, we will need to do a resource assessment. The chief executive of ACAS came over and gave a lecture at Riddell Hall, and I had a word with him about this very issue. We are going to talk to the departmental officials responsible for the governance of ACAS, and to ACAS itself, to see how it is coping, with respect to resources, and what the additional resource pressures are. We will very much keep this under review.

We have quarterly governance meetings with the LRA at which we talk about these issues and we meet the agency's board, which is able to talk about the pressures. We are going to work very much hand in hand with the agency to see where the pressures are and to try to quantify them.

Mr P Ramsey: I want to ask a supplementary question. With the new programme coming in, has the LRA made any additional requests for funding?

Mr Evans: Not at this stage. We are very much at a steady state. The agency has told us that there may be extra pressures if, for instance, the routing of claims suddenly goes through. It is very difficult to assess the impact at this stage. That is why it is helpful that ACAS started that work some time ago. We are going to try to explore this with them. We are also going to explore what the impact has been on the number of cases going to tribunals because of the earlier conciliation and whether the Department of Justice and BIS are having any discussions about budget transfers where there are easements and pressures. We will look at those very issues.

Mr Lyttle: Minister, will you give us a bit more information about the work of the Department to identify support mechanisms to help small and medium-sized enterprises (SMEs) comply with employment law?

Dr Farry: Tom?

Mr Evans: It was mentioned in the Minister's statement that we have commissioned a research project to look at the difficulties that SMEs experience in handling employment law. That is coming to an end, and we are nearly at report stage. One of the preliminary findings is that many SMEs do not have a problem and are well-organised. However, a significant number find it difficult. One of the pieces of work was to look at the existing support provided by government and non-government in supporting that area and to see where that can best be used. When we get the recommendations, we will look at whether any additional support can be given.

We had a helpful meeting with Invest Northern Ireland officials on Monday. We discussed the issue that was raised in a previous member's question — Invest Northern Ireland and what it is doing — and we tried to give an understanding of what we are trying to achieve in Northern Ireland. Back in the 1990s, I remember that we talked about Northern Ireland having a very good industrial relations track record, and we also have a very good employment relations track record. We are now going to get access to Invest Northern Ireland's HR advisers, who advise a huge number of companies. We are trying to bring in a joined-up approach to see how they may arrange that. We will also use the recommendations from the research project to shape the support arrangements that could be provided.

The Chairperson: Minister, I have a couple of points. First, I am delighted that you asked your officials to commence work immediately on a research project for SMEs and that Tom has nearly reached the conclusion of that in a week. That is really good.

Mr Evans: No, that was an ongoing piece of work —

Dr Farry: Our efficiency knows no bounds.

The Chairperson: I have also had the chance to read the statement. I would say, in a fairly neutral way, that the statement bears reading in some detail to look at the structure of things. It is useful for us to be able to talk about a statement like this at Committee but it is more difficult for us to deal with that amount of substance in the House. It is not that what you put in it was not useful or interesting. Like Phil, I have had a chance to read it now. I see where the structure of what you were trying to say is different to what I anticipated. This is a genuinely non-aggressive statement: we might find a better way of dealing with it.

Dr Farry: We are encouraged to make major announcements in the Assembly. Indeed, Mr Allister, in particular, is very keen to remind us of our responsibilities in that regard. That remains the formal process by which we have to make major policy announcements, but we are keen to have this follow-up session with the Committee today to go through the statement and allow members time to digest things.

I hope that today is not the end of the engagement with the Committee on this subject. This project will be ongoing for the best part of the next year and beyond. We want to have ongoing dialogue with the Committee, whether in a general sense or on very specific items.

The Chairperson: I appreciate that. All I want to say to you is that in your attempt to engage with us, even if it is only the preliminary bit, we have more time to look at things when we are in Committee. I have other things that I want to talk to you about, but my observation is that when I looked at the structure of your statement, I saw that you gave background and then feedback, the discussion and what people had said. You then said, basically, that you heard what they said and that you were going to do what they asked you to do. You then highlighted some things that you were still not sure about. That was basically the structure that I took out of it after closer reading.

The trouble is that when information comes in a statement in the House, it is sometimes repetitive, at first glance, or in some areas we get a lot of detail, while in others we do not. I am only pointing out to you, respectfully, that we are more than happy for you to make statements to the House to talk about the key issues that you want to deal with, but that it needs to be done in a way that fits in with the Committee's remit as well, to talk to you about it. If we take it on board that we try to work together —

Dr Farry: Sure; that is fine.

The Chairperson: Some things were put into the statement but were not really dealt with. You mentioned a Better Regulation pilot on the Working Time Regulations and the Conduct of Employment Agencies and Employment Businesses Regulations. That rather seemed to be a bit of an orphan in the statement; it was not really referred to elsewhere.

Dr Farry: It was a theme that we raised in a discussion paper, if you recall. I think it was issued in May of this year. It is something that we are conscious of taking forward in parallel. This is not about reducing quality. We are conscious of the quantity that business is sometimes asked to deal with. It is not just an issue —

The Chairperson: What does a pilot look like, given that you have actually done this?

Dr Farry: Making a starting point.

Mr Evans: There is a commitment in the economic strategy to review all employment regulations, about 115, over the next three years. We picked what were fairly meaty regulations, particularly on working time and conduct, which employers and employee bodies said were quite burdensome. Those have been changed. The pilot is to explore whether we can identify unnecessary bureaucracy, consolidate 11 sets of regulations into a single set and work with the employer and employee bodies to produce that. The pilot will be about developing the mechanism to more efficiently review the remainder of the regulations that are on the statute book.

The Chairperson: Minister, will you set that out in a paper for us?

Dr Farry: Yes, of course.

The Chairperson: It does not have to be hugely complicated.

Phil said that there was a reluctance to deal with the consultation period for collective redundancies, presumably because of the large scale of redundancies that we have had. You said that you are going to return to it later in the mandate. Given that the timescale is going to be fairly tight — we are talking about one year or maybe two — might we not be better to put it into a consultation document earlier to find out what people say?

Dr Farry: It is not something that we view as being a priority at this stage. I am not sure whether it is something that is desirable for us to take forward at this point either. That is why it has been separated out. An argument has been made that reducing the qualification period for large-scale redundancies is in the interests of business and employees because it allows businesses to restructure more quickly if they are in difficulties. There is an argument, from the employee perspective, that if people are facing redundancy, they might wish to move on at the earliest opportunity by taking redundancy and seeking alternative employment.

I do not think that those arguments hold a lot of water, given our current economic climate. Frankly, when we engaged with stakeholders on the back of the discussion paper outcome, there was no real sign of an appetite for us to pursue it at this stage. For that reason, it has almost been left on the shelf, to an extent. When we get through everything else over the coming months and years, we will return to it and see whether there is a different appetite to look at it then.

The Chairperson: Is this similar to The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements?

Mr Evans: That legislation is UK-wide, so we were involved in a preliminary call for evidence initiated by the UK Department. We are working with officials. I think that there is an upcoming presentation from some of the team on that issue next week. We have to work to that timescale because we are not in control of the legislation.

The Chairperson: I have two more points. There was a discussion about pre-hearing deposits and suchlike. The statement mentioned that there might be greater use of pre-hearing deposits. Will you expand on that for me?

Dr Farry: Pre-hearing deposits can be accessed but they have been used sparingly. Either party in a dispute can ask for one. Indeed, I believe that tribunal chairpersons can ask for them. They are a means of testing people's determination to take cases in situations that may well be weak.

Mr Evans: The president and vice-president took action with the tribunal users' group, and they asked why parties did not use pre-hearing deposits more. They initiated action in which pre-hearing deposits have been used in greater numbers. It has very positive outcomes as regards case management. The only concern was that the respondents seem to be a little bit reticent about using it. The reality is that it is where one party thinks that the other has no strength of case and has not produced strong evidence in the claim or the response. That party can ask for a pre-deposit hearing. If the chairman says that there is not much evidence, the party can order a deposit of up to £500, which starts to put people on notice about the need to take the case seriously and to start producing substantive evidence to support their case whether they are a claimant or respondent.

The Chairperson: Perhaps you could produce a paper on that, given that there is a change. We would like to have a look at that.

Mr Allister: In that paper, could you identify the number of cases in which it has been used in respect of applicants and respondents as regards requiring deposits?

Dr Farry: Yes.

The Chairperson: My final point was raised by Mr Allister; it is about timescale. There is a concern, given that our economic fortunes are perilous at the moment. Maybe we might be able to move more quickly than other parts of the United Kingdom. I understand the Minister's point about the need to get political consensus, but consensus is not something that comes over time; it comes over argument. You put the argument out there and you can see whether you can build on it. Will you set out for us — not now, because you responded to Mr Allister — in a statement what you envisage the likely timescale for this to be? You have said that you might get to the Executive at such-and-such a time

and that you might get a consultation out. I would like to see what you anticipate the timescale to be, subject, of course, to other eventualities.

Dr Farry: I take your point on that, Chair. We acknowledge that this is an important issue. It feeds in as a factor in our economic recovery and in rebalancing the economy, and it has been cited as one of the key reform areas in the economic strategy. Having said that, the Department has not received many questions or comments from MLAs on the matter compared to some other areas. Hopefully, this will change significantly on the back of the statement and the commencement of the formal review.

Of course, we will give the Committee a written timetable so that you will have an idea of what we anticipate as the time scale. However, I stress that there has to be a major health warning in relation to that, as we are subject to all the various stages —

The Chairperson: We will take that as read. Will you tell us what you and the Department consider as the —

Dr Farry: The other point that I would make is that devolution often means that we are simply seeking to replicate what is happening elsewhere, with a time delay. That time delay is a concern for Members at times, and I can understand why. However, equally, it is important that we understand that devolution allows us to do things differently and, in practice, should allow us to do things better. We have the ability to be innovative in policymaking. Given that we have authority over a whole range of issues, the Department, the Executive and the Assembly should always be looking to see where we have the opportunity to lead. Hopefully, we will seek to do that through some of the reforms.

We are conscious that protected conversations have not been advanced as quickly in Great Britain as originally intended. Indeed, GB seems to be going cool on the idea. If we could reach some understanding here on how we could do it, we may be able to set an example and create a model that others may wish to consider.

The Chairperson: I agree. I am also interested in exploring compromised agreements.

Mr Evans: We are exploring different things from the rest of the UK. The Minister is asking the LRA to look at the feasibility of establishing an early neutral evaluation service for pre-claims. He has also asked it to act as a sort of filter mechanism in tribunal settings to improve how cases flow and are treated. Those came from an earlier review that we did on dispute resolution and were not contingent on the current UK reforms.

The Chairperson: Those are accepted, and we got the points you made. Without giving us every bit of paper you have ever had, it would be useful and interesting for us to see the research that the Minister commissioned on benchmarking international best practice and the correlation between the levels of employment and competitiveness. When will those reports be ready?

Mr Evans: The benchmarking one will be easier. We can start that, and we have started doing some work with New Zealand and places such as that. We will probably have to engage with the universities and other experts on the other piece of work. It is quite a unique piece of research, and even composing the terms of reference in a way that will generate a meaningful piece of research that will achieve some outcomes will be difficult. That one is a more longitudinal and a slightly longer-term process.

The Chairperson: Will you set out how you plan to take these forward? I agree with you. I looked at it and I thought that if you can get an answer to your second research project, you will probably get a Nobel Prize for Economics. We would like to be sighted on when there might be some work that we can look at.

Dr Farry: Sure; of course.

The Chairperson: As no one has any other issues, that brings this session to a close. Thank you very much.