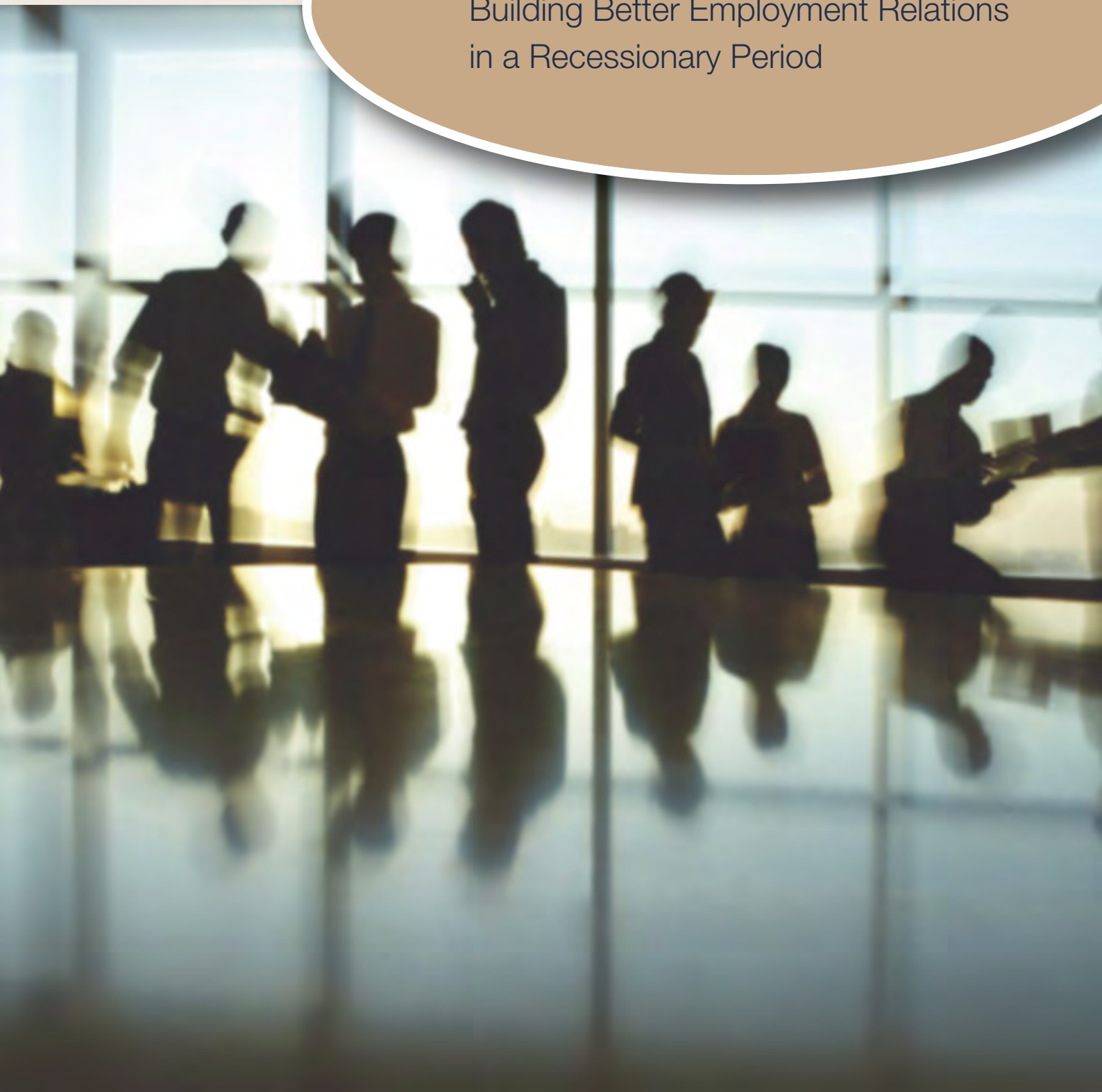




Labour Relations Commission

Strategic Plan 2011-2013

Building Better Employment Relations
in a Recessionary Period





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Foreword

Chairman/Chief Executive

Strategy Statements 2011-2013

Building Better Employment Relations in a Recessionary Period.

This is the fifth strategy statement issued by the Commission since its establishment in 1991.

The Irish economy is experiencing unprecedented challenges in terms of the outcome from both the global macro-economic turmoil and our domestic contribution to that landscape. The rapid deterioration in our economic fortunes and the subsequent effects upon employment, business contraction and reductions in public expenditure and services creates considerable tests choices for all citizens of our country.

The Commission itself has been involved at every level in assisting Government, employers, employees, and their representative bodies in seeking solutions to ensure stability in our industrial relations and the positive and constructive management of the diverse range of talent that constitutes our national human resources.

Over the last two years the Commission has responded in various ways in order to mitigate the impact of the recession by assisting our clients in reaching mutual agreements in response to difficult and severe trading and fiscal circumstances. Earlier this year, the Commission brokered successfully a new "Public Service Agreement 2010-2014" which if implemented and with mutual co-operation will deliver significant reforms in all of our public services and secure pay moderation, industrial peace and reward in that sector. In many private and public sector enterprises significant business reconfiguration and change have been concluded through the appropriate utilisation of the services of the Commission in achieving complex collective agreements.

In addition, with the support and participation of IBEC, ICTU and the CIPD, the Commission with the assistance of Professor Bill Roche (UCD) and Professor Paul Teague (QUB) is undertaking a major and focussed research programme on "Managing Human Resources in a Recessionary Period."

The outcomes from this research and the information gleaned from the involvement of many companies and

their employees will be published and its lessons disseminated.

This allied to other recent research undertaken by the Commission in multinational companies and in the area of employment law should provide a wide and relevant body of knowledge, information and analysis of human resource issues at enterprise level and the appropriate mechanisms for positive employee engagement.

The Commission is extremely conscious of the enormous increase in the level of the referral to the employment rights despite resolution services in recent years. In co-operation with the Minister for Labour Affairs and the Department of Enterprise, Trade and Innovation and the other statutory agencies various options are being assessed and evaluated in order to bring greater synergies between the statutory bodies in order to remove employment law anomalies, procedural delays and administrative complexities. This matter requires urgent action in order to provide clarity, effective administration and the elimination of confusion in accessing these services the result of which can only provide a benefit in better service for clients and their representatives.

The Commission will be 20 years in existence in 2011. It has operated before in difficult economic times and has always enjoyed the solid support of the Government, businesses, unions and their representative bodies. It is in these constituencies that the Commission places its faith in supporting our strategic objectives and their co-operation with us in maximising the opportunities for progress, throughout the totality of our social and economic fabric.

Together we can work to make Ireland increase its working and enterprise capacity and through our combined efforts restore our prosperity and assist in contributing to a fair and just society.

Breege O'Donoghue
Chair

Kieran Mulvey
Chief Executive

July 2010



Chapter One

The Current Environment *Defining the Challenges*

Introduction

The changing and highly fluid external environment provides the context for the Commission's **Strategic Plan 2011-2013** by defining the challenges to which the Commission must respond. In many ways the external environment is marked by a disjuncture with the largely stable and predictable pay, industrial relations and human resource management arrangements that pertained in the social partnership era, first during the economic crisis of the late 1980s and early 1990s, but continuing into the long and largely uninterrupted period of economic growth from the mid 1990s to 2007. The nature and rapidity of change in the economic and fiscal environment of employment relations have been remarkable. There was a 10 per cent contraction of GNP in 2009, close on a 3 per cent fall in export activity and a 14 per cent fall in the volume of retail sales (6.8 per cent if motor sales are excluded). The fiscal deficit is expected to exceed 13 per cent of GDP in 2010, while the level of public debt continues to rise. The level of unemployment has reached 13.7 per cent and is expected by some commentators to rise above this. Most sectors of the economy are in recession and the State continues to intervene to support the banking system, with significant fiscal implications. Against this background the conduct of employment relations in unionised and non-union firms and in the public and private sectors has been changing radically and in highly fluid ways. The following major facets of ongoing change present significant challenges to the work of the Commission.





Collective Bargaining in the Recession

With the Government's and IBEC's insistence in late 2008 that the pay terms of the **Transitional Agreement** negotiated in September of that year could no longer apply, pay determination in Ireland operated without the jointly agreed pay norms that had existed for more than 20 years. While collective bargaining has since proceeded without the overarching frameworks that had existed since 1987, the nature and focus of collective bargaining has also changed in many employments. Since the 1990s pay bargaining across the private and public sectors focused in the main on improvements in pay and conditions. Improved terms and conditions were sometimes tied to changes in work practices or measures to promote public service modernisation. Against the background of a benign economic and fiscal environment, industrial conflict and disputes fell to historically low levels and the parties to collective bargaining availed to an increasing extent of the services of the State's institutions for conflict resolution.

The Private Sector

With the onset of the international recession in the second half of 2008 the focus of collective bargaining shifted in many enterprises and workplaces from bargaining over improvement in pay and conditions to bargaining over concessions to pay and conditions and working practices. Concession bargaining involves firms facing difficult commercial conditions persuading both their workforces and their representative bodies to agree to concessions in terms and conditions of employment and work practices in return for enhanced employment security or even the continuing viability of the business. This often means a rigorous focus by employers on managing pay and headcount, which may involve freezes in either pay or bonuses (the position in

most firms), or bonus or pay reductions.

Concession bargaining is not universally prevalent: various studies and reviews indicate that pay increases have also been part of the picture, but only in a small minority of firms. Revised pension arrangements are also among the measures introduced in the recession. Headcount management has commonly involved the adoption of measures to reduce employment: compulsory and voluntary redundancies, short-time working and career-breaks are among the measures commonly deployed. Measures such as these have sometimes been introduced in successive waves and are commonly part of comprehensive and radical programmes of restructuring that also include work practice changes, IR&HR policy and system reviews, rationalisation of business divisions and of production or service provision facilities.

Firms and unions in general have conducted their mutual dealings pragmatically against such a background. Packages of pay and headcount concessions and restructuring programmes have been agreed in many unionised and non-union firms in the private sector and in commercial semi-state companies. In firms where collective bargaining occurs, employers often insist on shorter cycles of negotiations than in the past. Unions have commonly accommodated to stricter time-lines, while sometimes complaining of the unwillingness of employers to respect existing agreements. They have also complained of being excluded from the consideration of options for responding to the recession, or even of having to threaten industrial action to open real negotiations.

Ireland's pay competitiveness relative to its main trading partners has improved, both in manufacturing and across the economy as a whole.¹ While industrial conflict has increased from the historically low levels of the 1990s and the pre-recession 2000s, industrial relations

¹ Central Bank Quarterly Bulletin, Quarter 1, April 2010



remain largely stable. Large industrial disputes, such as that between construction firms and unions in 2009, or intense disputes that have spilled over into sit-ins or demonstrations, have occurred infrequently. The parties have widely resorted to the services of the LRC and the Labour Court in industrial disputes. A perceived deficit in bargaining skills caused by the limited experience by negotiators on both sides of bargaining at firm level or over concessions has been a subject of commentary in the unionised sector. As reported in Annual Reports of the LRC, complex, multi-faceted disputes, requiring intensive and highly skilled conciliation activity, had already become familiar to the Commission during the boom years. Now disputes of this kind have become a hallmark of the recession, with additional challenges arising from the compacted time-lines and acute threats to business survival and to jobs that they now commonly involve. The bargaining and change agendas that have been a feature of employment relations in non-union and unionised firms since 2008 seem set to predominate for the remainder of the recession and into the economic recovery phase. In significant numbers of instances, the parties are likely to continue to require the intensive forms of conciliation that have been a feature of recent years.

The Public Service

Concession bargaining affected the public service at something of a lag from experience in the private sector and - to date - with considerable difficulty and conflict. In a context marked by fiscal crisis and continuing pressure on public spending and the public service paybill, concession bargaining in the public service has proved more challenging than in the private sector. A series of engagements between the Government, officials and public service unions failed to find an agreed basis for measures that would reduce the public service paybill, resulting in the unilateral imposition of the pensions levy in 2009 and of pay cuts in 2010. The one-day stoppage by public service unions in November 2009 accounted for 72 per cent of the 329,676 working days lost through strikes in 2009.

Various forms of industrial action stopping short of work stoppages or involving limited and rolling stoppages have been a feature of public service industrial relations in 2010. The failure of the Government and public service unions in December 2009 to agree measures to reduce the public service paybill heralded the breakdown of social partnership. In the new environment and without any accord in prospect, public service employers canvassed the adoption of a more assertive posture in their relations with unions and their members, pointing towards significant change in the character of public service industrial relations and the likelihood of widespread and intense industrial conflict. In parallel with this development, the Government declared its firm commitment to accelerating public service modernisation in the context of plans for significant reductions in public service numbers and continuing reductions in the public service paybill over the medium-term. Against this background and escalating disruption in public service delivery, the Commission took the initiative in brokering an accord between the parties. The **Public Service Agreement 2010-2014** provides a framework for the conduct of public service industrial relations and pay bargaining in the context of public service modernisation up to 2014.

Bipartite Accords in the Private Sector and Public Services

While formal tripartite engagement between employers, unions and the Government ended in 2009, the legacy of more than 20 years of social partnership enabled the parties to negotiate two bipartite agreements, the **IBEC and ICTU National Protocol for the Orderly Conduct of Industrial Relations and Local Bargaining in the Private Sector**, and the **Public Service Agreement 2010-2014**.

The IBEC-ICTU Protocol

The **IBEC-ICTU Protocol** contains a set of agreed principles and priorities with regard to promoting

economic recovery and conducting local bargaining. Foremost is a common commitment to maximize sustainable employment. The parties give effect to this priority in local bargaining by acknowledging that the 'economic, commercial, employment and competitiveness circumstances of firms are legitimate considerations in any discussion of claims for adjustment to pay or terms and conditions of employment'. The protocol also endorses orderly industrial relations and adherence to established collective agreements. Finally it sets out a procedure for dealing with the resolution of any disputes that arise in local bargaining. The parties are expected to observe locally agreed disputes procedure and to utilise the service of the LRC and the Labour Court. The accord further envisages the establishment of a tripartite structure to oversee the operation of the protocol, the delivery of industrial peace and good industrial relations, and to consider any procedural matters that arise.

The existence of the Protocol means that agreed broad guiding parameters now exist in the private sector with respect to changes in pay and conditions and with respect to dispute resolution. The tripartite structure envisaged may play a role akin to that of the National Implementation Body under social partnership by encouraging the parties involved in disputes to avail of the services of the LRC and the Labour Court. The existence

of the protocol cements the role of the LRC and the Labour Court as the acknowledged pivotal bodies for dispute resolution in local bargaining. The principles in the Protocol guiding changes in pay and conditions may presage the occurrence of multi-stranded local agreements both during the recession and as the economy recovers. Where agreement cannot be reached, disagreements centred on complex packages of issues might again be expected to represent the pattern for disputes referred to the LRC and the Labour Court.

The Public Service Agreement

The **Public Service Agreement 2010-2014** represents a watershed in public service industrial relations. The general measures set down in the agreement and the measures outlined in the agreements for different public service sectors envisage radical changes in work practices and the introduction of a gain-sharing programme that may lead to the restoration of public service pay and salaries, contingent on verified cost savings being achieved. The LRC and the Labour Court, as well as the Conciliation and Arbitration Schemes, are the agreed mechanisms for resolving disputes that arise surrounding the implementation of the measures contained in the agreement. Given the nature and scope of the proposed changes in service delivery and





associated work practices, public service managers and trade unions will be faced by challenges of a scale never before encountered in the Irish public service in modern times. While the agreement makes provision for an Implementation Body charged with driving the agreed transformation agenda, with resolving implantation difficulties and verifying savings, it seems likely that the LRC will also be called on to facilitate solutions to implementation disputes that again may involve packages of measures. Moreover, the time-frame set down for dispute resolution is tight: implementation disputes are to be resolved within 4 weeks.

The Agreement avoids the possibility of intense industrial conflict in response to Government measures to contain public spending and to deliver public services in a context of declining public service employment. Such outcomes will also present demands on the LRC to provide a conciliation service in a setting where there are agreed principles might exist to guide dispute resolution. The Commission will remain pivotal to dispute resolution in the public service, but it faces a more demanding role both in terms of the scale and complexity of the interventions likely to arise.

Union Perceptions

The economic and fiscal crisis and the debacle surrounding the public service pay talks in 2009 witnessed a new level of intensity in media commentary on industrial relations. Much of this commentary was interpreted by trade union leaders and activists and by many public service employees as overtly hostile. While opinion poll data showed no long run decline in trust or confidence in unions or their leaders prior to the advent of the recession, the ferment in media commentary, the breakdown of social partnership and pay cuts appear to have convinced some union leaders and activists that unions now operate in a highly hostile

environment. Ongoing research for the LRC indicates that trade union officials on the ground commonly perceive employers to be seeking reductions in pay and conditions that are disproportionate to the commercial pressures faced in the recession. ICTU has sought to open a debate on the future of the trade union movement in the new environment now prevailing.

Sections of the trade union movement, including activists, might well become subject to something of a 'siege mentality' in response to recent developments, and more prone to adopt militant and confrontational postures. It is clear from debates on the Public Service Agreement and more generally that the responses of union activists and members to developments in pay and industrial relations are now inextricably linked with anger over the economic and banking crisis and with criticism of the Government's handling of these crises. These developments introduce a new and volatile element into industrial relations in both the public and private sectors, making it harder to broker and to gain acceptance for collective agreements and for change programmes, especially perhaps in the public service.





Chapter Two

Emerging International Trends

How will they impinge on industrial relations environment

International Developments

International developments impinging on the industrial relations environment will be considered under three headings: first, the situation in the Euro zone and involving its core institutions, second, the consolidation process that appears evident in key industrial sectors, including some in which Ireland has attracted significant foreign direct investment, and third, the significance of competitiveness for the renewal and development of mandates in the Irish operations of multinational companies. Each will be considered in turn and in outline.



Industrial Relations and International Investor Confidence

While the cuts in public service pay unilaterally imposed by the Government in 2010 continue to be highly contested and controversial within Ireland, international commentary and the reaction of the financial markets have been highly positive. The measures undertaken have been seen to represent a determined and significant fiscal corrective. What the reaction of the financial, and specifically of the bonds markets, indicates is that the conduct of pay determination and industrial relations, especially in the public sector, is now a significant influence on a country's credit-rating and hence on the cost of borrowing and the resulting scale of public debt. The Public Service Pay Agreement, if ratified, seems likely to increase international investment confidence, provided that no slippage is evident between the measures agreed, the savings generated and any restoration of public service pay. The non-ratification of the Agreement, or a rejection of the agreement on a significant scale by unions in some areas of the public service, are likely to damage investment confidence and increase the cost of borrowing. Investment confidence in the private sector should also be increased by the negotiation and implementation of the IBEC-ICTU Protocol and by the gains that have been achieved in pay competitiveness. In general the financial and fiscal crises that have occurred in countries within the Euro area and the evolving crisis in the single currency itself appear to have magnified the effects on borrowing and foreign direct investment of the manner in which industrial relations are conducted and pay is determined. The level and trend of industrial conflict seems particularly pertinent in this context. The challenge facing Ireland is to recreate the stability and predictability long associated with the operation of social partnership institutions and agreements. The work of the LRC in both the private and public sectors is demonstrably central to this challenge.



International assessments of Ireland will also impinge directly on the day-to-day conduct of industrial relations. The cost and level of government borrowing, the conformance of budgetary and fiscal policy with EU and ECB rules and the existence of regulatory constraints on measures available to Government to assist businesses facing commercial pressures and threats have direct effects that are already apparent in Ireland. Government is likely to face hard constraints on fiscal and other measures for the foreseeable future, with direct implications for pay determination and industrial relations in the public sector. The trend of pay-cost competitiveness will be an important influence on the performance of the private sector, both as an exporter of goods and services and as a location for FDI. In this respect, the trend in private sector pay and in the value of the Euro should assist business performance, while the trend in pay should also improve Ireland's competitiveness as a location for FDI.

Consolidation Processes in Dynamic Sectors

Recent developments point to significant processes of consolidation in key sectors such as pharmaceuticals and healthcare devices and food, sometimes predating the recession. These sectors are characterised by significant if variable levels of unionisation. While consolidation through mergers and relocating production commonly involves job losses and redundancies, local plants' competitiveness and industrial relations climate are also important attributes in their capacities to survive or benefit from consolidation. Ongoing restructuring, sometimes linked with EU-instigated policies and measures, is also a feature of the aviation, transport and energy sectors. These sectors involve major employers, long viewed as benchmarks of good industrial relations, and are

also significant in their influence on national competitiveness. The LRC has facilitated agreement in these sectors and has assisted the efforts of the parties to manage ongoing change successfully. Work in these highly fluid sectors will remain an important feature of the Commission's activity in the medium-term.

Mandate Renewal and Development

It is known from research, including research supported by the LRC, that industrial relations and HR arrangements are a significant influence on the capacity of the Irish plants of multinational companies to renew and develop their local mandates within parent companies. The recession and related processes of consolidation appear in some instances to have intensified competition for mandate in multinational companies. Pay competitiveness and pay flexibility are important contributors to the competitiveness of plants within their parent group. Also important are operational flexibility and the speed with which employment relations arrangements can accommodate ongoing changes in products and production processes. These are areas in which the LRC can facilitate agreement, and their growing significance for FDI point to an image of good industrial relations which the Commission can promulgate through its constituent services.

Growing Diversity in Employment Relations Models

For more than two decades industrial relations arrangements within and across different sectors, including arrangements for resolving conflict, have shown signs of divergence. Ireland is not alone in this trend but it has been noted by commentators as a marked feature of the Irish industrial relations and human resource management landscape. No one model of industrial relations or human

resource management now dominates the landscape, nor is there any generally accepted or unitary vision of good industrial relations or HRM. In the area of conflict resolution, an analysis of data collected in the 2008 LRC Survey of Conflict Management in Firms in Ireland, revealed the existence across firms of different and distinct systems of practices for resolving conflict involving groups of employees.² About one third of firms made some significant use of alternative dispute resolution (ADR) practices such as facilitated or assisted negotiations, interest-based bargaining, brainstorming and intensive communications around change programmes. These types of ADR practices are found in both non-union and unionised firms, but in somewhat different constellations in each case, and only a small minority of unionised firms appear to have grafted collective ADR practices onto traditional disputes procedures. At the other end of the spectrum some 40 per cent of firms seem to make minimal formal provision for the resolution of disputes. The survey data reveal that the diffusion of ADR practices for resolving disputes involving individual employees is much more limited and little pattern seems evident in the practices that are found.

It is likely that the recession will contribute to further diversity in industrial relations and HRM arrangements. In general, employers have gained power and leverage in the recession and might be motivated by commercial challenges further to customise their HR and industrial relations arrangements to the commercial circumstances of their firms. Within the public service the implementation of the Public Service Agreement could also lead to less uniformity in pay, HR and industrial relations practices across the public service, as different public service agencies seek to align their employment relations arrangements with agency missions and business plans. Many countries have moved much further in this direction than Ireland. Calls for a more proactive and strategic approach to human resource management in the Irish public service seem to presage a move towards a more devolved and less uniform model of HRM.

The LRC now provides services in an industrial relations landscape with significantly different HR and industrial relations models and with different and evolving guiding visions of good industrial relations. Part of this diversity involves different types of conflict management and conflict resolution practices.

Where the LRC is strategically placed

By international standards, the LRC provides a level, range and scope of services which is not commonly found together in comparable state dispute resolution organisations. Many of the range of services provided are usually dispersed across a number of statutory

dispute resolution bodies, the judicial system or are non-existent.

The high level of involvement of the Commission in key dispute resolution interventions makes it almost unique in the community of state dispute resolution bodies either at national, federal or local level in other jurisdictions. What distinguishes Ireland is the non-judicial approach to dispute resolution and prevention, the coverage of both private and public sector employment sectors, and the involvement of the Commission services in both collective and individual disputes and its statutory responsibilities for both a broad range of collective and individual employment rights and the promotion of good industrial relations.

Throughout the European Union and the wider English speaking jurisdictions - USA, Canada, New Zealand, Australia and South Africa - a varied system of dispute resolution is in operation. In most cases significant statutory and structural changes are in process in these jurisdictions.



² Roche, W.K. and Teague, P., 'Firms and Innovative Conflict Management Systems in Ireland', forthcoming in the *British Journal of Industrial Relations*.



Chapter Three

Strategic Objectives *Engaging on the Best Practice Agenda*

Strategic Objectives

- 1. Getting through the Recession**
- 2. Developing Dispute Resolution Capacity**
- 3. Focusing on the Employment Rights Agenda**
- 4. Participating in the Public Service Reform Agenda**
- 5. Promoting Dispute Resolution Prevention and Management/Employee Engagement**



The Commission operates within the context of an overall national strategic objective of sustaining and creating employment potentials, supporting measures for public service reform and delivery and maintaining industrial peace.

The Board of the Commission in support of national economic policy consider that the strategic objectives should inform and direct its services over the next 18 months to 3 year period. It may be necessary to review these objectives given the volatile nature of both national and global economic developments over the coming years.

Implementation of the strategic objectives will form part of the Annual Business Plan of the Commission and which are approved and reviewed at regular intervals by the Board in July and December of each year. These will be adapted and developed in the context of emerging trends and will be the touchstone upon which progress on these objectives will ultimately be assessed.

The Senior Management Team will consider the most optimum utilisation of its existing human resources within its services in order to most effectively deliver on the Strategic Objectives set out above. This will involve continuing the considerable synergy between the business and operational plans of the Conciliation and Advisory Service where many joint activities are in progress. In the area of employment rights it is envisaged that the Rights Commissioner Service will continue its close liaison with NERA and the Department of Enterprise, Trade and Innovation in regard to streamlining employment rights investigative procedures and processes.



Objective 1

Getting through the Recession

Through focused and applied research and in collaboration with the Social Partners, develop a response towards championing those facets of employment relations which can sustain employment in the recession and build new capacities for sustainable employment growth in the future and across all sectors of the economy.



As described earlier the immediate world of both human resource management and adaptation invariably ends in a process of change and potentially the availing of dispute resolution services. The impact of the recession on the work environment in all sectors, services and enterprises is multi-faceted and extensive. In order to assess the degree and level of change the Commission earlier this year requested Professor William Roche (UCD) and Professor Paul Teague (QUB) to undertake a study on “Managing Human Resources in a Recession”.

This study involves a steering group of representatives from IBEC, ICTU and the CIPD. In addition to focus group meetings with management and union representatives in various enterprises in a number of regional centres, a national survey will also be undertaken to evaluate work practice, change management developments/ pay and bonus payment systems, measures to control or reduce headcount, staff training/ redeployment and employee engagement. The views of non-union multinational enterprises are also being elicited. The outcome of this major study will be available by year end and will be utilised to formulate and shape future employer/management engagement policies.

In the interim period it is fervently hoped that the “green shoots of recovery” become a firm reality and that the current indicators of some growth in the economy will be realised and that unemployment will stabilise. Competitiveness, public sector reform and creating employment opportunities remain key economic objectives.





Objective 2

Developing Dispute Resolution Capacity

The Commission is committed towards providing a diverse suite of dispute resolution services in order to meet a rapidly changing business (public and private) employment market and where the nature and extent of the employment relationship is undergoing radical change and which requires an innovative and professional response from all interested parties in their approaches to employee engagement, dispute resolution and successful services and enterprise requirements.



The resilience of the Social Partnership model and its best practice should not be lost. The recently concluded “Public Service Agreement 2010-2014” and the “IBEC/ICTU Protocol” have, in part, sustained the underlying concept of positive social partner engagement around potential dispute flashpoints and the necessity to develop a unified response towards the threats and opportunities presented by our current economic/social circumstances.

The “Implementation Body” for the Public Service Agreement will have key objectives to achieve whilst the ICTU/IBEC protocol ensures a continuous level of contact at key levels between management and unions in key sectors, enterprises and services. Maintaining industrial peace is a key component of national investment strategy over the next number of years. Given the international economic and trading pressures this aspect of our economic practice and our willingness to combat our key competitive challenges will be closely scrutinised internationally when decisions on investment are being considered.

The Commission over the years has developed considerable expertise in various forms of dispute resolution from conciliation to mediation and from ADR to Arbitration. It has a considerable knowledge and experience in many major sectors of the Irish private sector and state services economy and has a highly successful track record in resolving potential and actual disputes in key industries and services over the last 20 years.

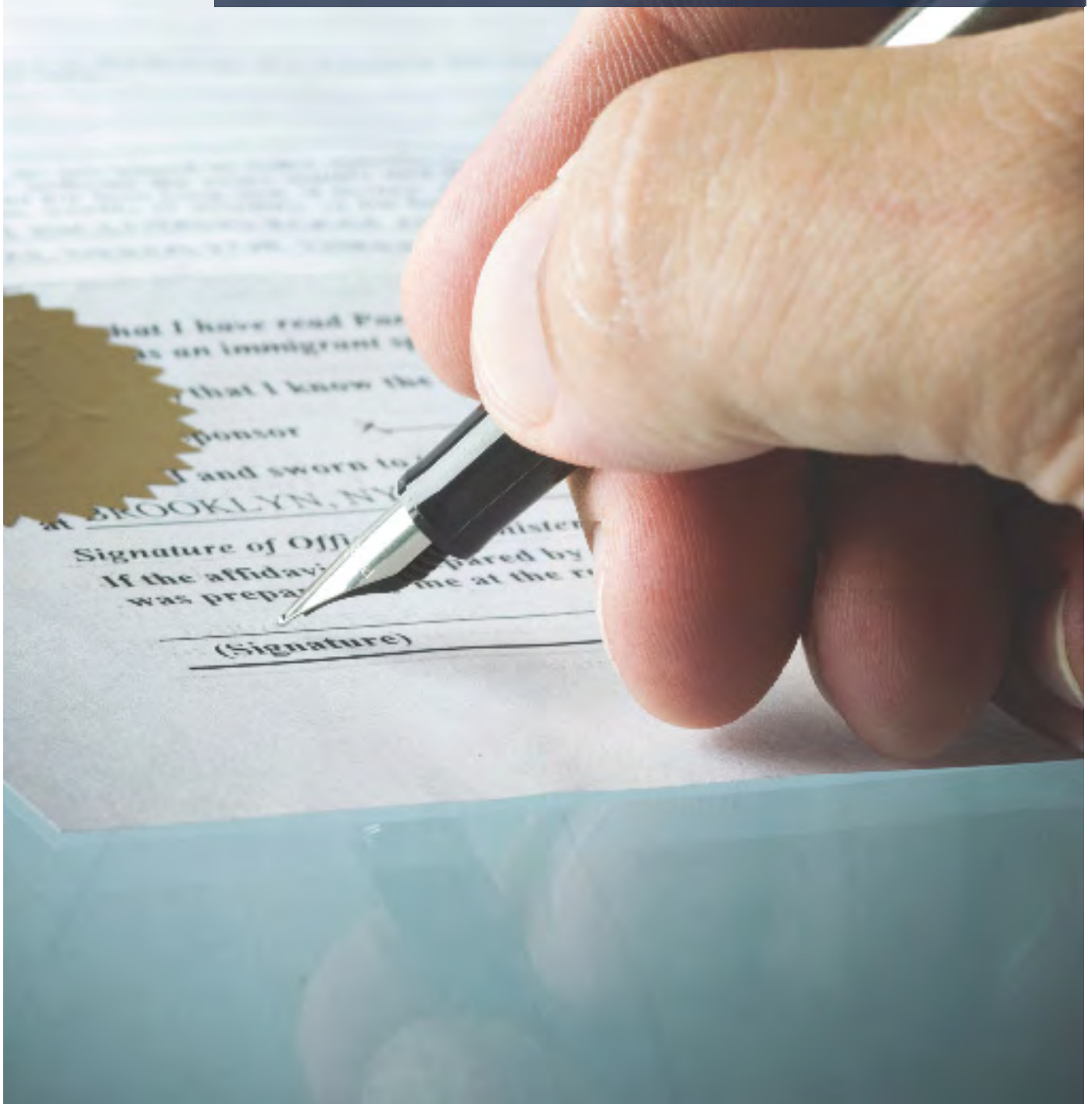
Most major collective bargaining agendas in today’s industrial relations landscape range from pay to pensions, retrenchment to redundancy, work practice reform to enterprise reconfiguration, and atypical work arrangements to employment law protections. The Commission is conscious of the need to retain this expertise and to continue to develop its services in a rapidly changing employment and enterprise market. Adaptability and availability are key components in the provision of services to employees and unions and by extension to other clients.



Objective 3

Focusing on the Employment Rights Agenda

Collaborate with the Department and other employment rights agencies in order to streamline the investigation and adjudication procedures of employment rights complaints and to promote the amendment where necessary, of anomalies in employment legislation and the most effective use of the employment rights dispute resolution bodies.





The last major “Review on the Functions of the Employment Rights Bodies” reported in April 2004. The “explosion” in both employment rights referrals and the increasing use of employment rights bodies for “collective” dispute resolution matters requires urgent attention. The Commission in seeking to address these issues and has, with the support of the Department of Enterprise, Trade and Innovation, commissioned Tony Kerr (Law Faculty/ UCD) to undertake a study of current employment legislation in order to address anomalies within the corpus of employment law as they relate to the legislation itself and the “authority” of employment rights bodies in their application of the relevant law. This study is specifically designed to assist in bringing a greater degree of uniformity to the system.

Some observations have been made in recent years in regard to both the provisions of employment law and the jurisdictions of the Labour Court, the Employment Appeals Tribunal, the Rights Commissioners (LRC), the Equality Tribunal and the National Employment Rights Authority. Most recently, the current Minister for Labour Affairs has initiated a review of administrative practices and procedures of the different bodies with a view towards streamlining the systems of referral, complaint, investigation, adjudication, penalties, enforcement and the synergies which could be achieved in processing employment rights investigations.

Of primary concern must be the fulfilment to everyone’s satisfaction (claimant/employer) that this process of investigation of an alleged complaint is well grounded, processed as expeditiously as possible, and that decisions are issued within a reasonable timeframe. Central to these concerns is ensuring the non-duplication of limited resources,

streamlining the process, including centralisation, if necessary, of all complaints/referrals and ensuring finality to the process in terms of adjudication and enforcement whilst retaining the best of current practices and procedures.

Are there alternative administrative mechanisms available to achieve these objectives and are there requirements for legislative change? These are questions that have a degree of urgency and are not the sole prerogative for the Commission to decide as they are within the policy and legislative remit of the Government and involve other employment rights agencies, including National Employment Rights Authority, the Labour Court, the Employment Appeals Tribunal and the Equality Tribunal.

The Commission is of the view however that the current system needs fundamental review. The level of referrals are continuing to rise exponentially with resultant significant delays in the processing of cases to the detriment of both claimant/employer and their continuing “confusion and cost overlap” that both claimants and employers make reference to in the representations and observations on the duplication and time involved in attending hearings.



Objective 4

Participating in the Public Sector Reform Agenda

Advocate and support structural reform of the current industrial dispute resolution system in order to increase their efficacy and efficiency for clients, in all sectors of the economy, and to maximise the appropriate use of limited resources and provide “value for money” in the context of timely, effective and user-friendly services.



The past two decades, and particularly during the years of Social Partnership, a number of new industrial relations institutions have emerged in response to developing employment related trends, dispute resolution and new legal provisions in the area of employment and workplace provision and safeguards.

The McCarthy Report – “On Public Sector Numbers and Expenditure Programmes” July 2009 (p85/86) referred to the duplication and overlap in the dispute resolution/investigation/good practice promotion of the various employment relations statutory authorities – a total exchequer commitment then of almost €52m. It envisaged savings of over €8m through the rationalisation of the above agencies.

Reforming our industrial relations institutions continues to be under review and has been the subject of increasing comment in recent times. It should be informed primarily in the context that by reforming the system the creation of a more coherent, client focused and cost effective infrastructure is achieved whilst retaining best practice and tried and proven models of successful dispute resolution that have employer body and union support.

The Commission is supportive of bringing a greater degree of structural and operational coherence to the current system in the interests of the users of industrial relations/employment rights services.

While this is primarily the remit of the Government, the dispute resolution agencies themselves should contribute positively to such a debate. This requires also the involvement of the representative social partners and those continually using the services of these bodies – unions, employers and the legal profession.

It is imperative that we retain the best of the system while ensuring necessary reforms are considered, assessed, and implemented where desirable and required.





Objective 5

Promoting Dispute Resolution Prevention and Management/Employee Engagement

Utilising modern communication technology to enhance, evaluate and promote “best practice” policies on employment relations/employee engagement in all aspects of the Irish economy.



The Industrial Relations Act, 1990 vested in the Commission “general responsibility for promoting the improvement of industrial relations”. Since its inception the Commission has undertaken a number of activities of both a “best practice” promotional and applied research programme. The primary responsibility for these activities with the Advisory Service.

In recent years this “best practice” promotional activity has included the utilisation of various external programmes, seminars, codes, sectoral studies, employment rights information activities, training for clients and ADR promotion. Through its assessment of the “Frequent User” review it has engaged with management and unions to better utilise internal dispute machinery or redesign and refocus it to meet emerging changes in the enterprise and services. Informing and delivering knowledge, experience and the best of international trends in change management, dispute resolution, employer-employee engagement has been a specific aspect of the Commissions’ seminar and symposia programmes over the years. It has commissioned and published a considerable quantum of research on these issues in partnership with all of our University institutions.

The Commission is of the view that a return to this focus over the period of this strategic plan is required in order to meet the impact of the recession and the future potential structure, shape, composition and dynamics of the human resource community as it copes with new and difficult challenges.

There are four key areas involved:

- **Large Private/Public Sector Enterprises**
- **Public Services (including the Voluntary Sector)**
- **SME’s**
- **Non-Unionised Enterprises**

All of the Commissions’ services, taken collectively, have had some involvement with all of the above sectors – some with greater interface than others. Lessons, evidence, policy and experience which may emerge from the current research projects and past experience will require to be disseminated on a larger level than hitherto by the Commission. The messages from the above outcomes will have to be designed in such a way as to be relevant to the different enterprise sectors. In the case of large unionised enterprises the level of Commission involvement will be distinctly different to that of the SME employer whose needs are wholly different and may amount to more practical guidance on recruitment, employer engagement, employment rights, and the best use of the Codes of Practice.

The Commission therefore will require of its services a greater analysis of current trends, issues and developments. In tandem with other relevant agencies a greater level of knowledge and information transfer is necessary. Communication technology (website usage) is one of the primary and best methods of providing information, knowledge, analysis, support and appropriate linkages with relevant agencies/organisations. This is potentially one of the key areas by which all those involved in key strategic decision making relating to our employment needs can disseminate information to their management, workforce and representative organisations/members. To achieve such an outcome consideration should be given by the Department of Enterprise, Trade and Innovation to a collaborative project on this issue between the agencies under its remit.



Chapter Four

The Commission and its Services: 2011-2013 Action Plans *Provision, Quality and Service Delivery*

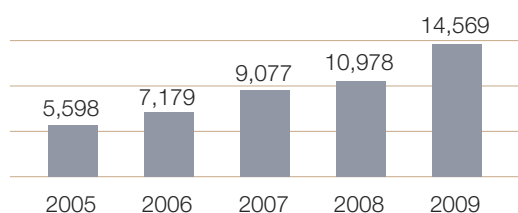
Overview

The Commission is entering the 20th year of its operation since its establishment under the Industrial Relations Act, 1990. Within that period it has been at the forefront of providing a wide and diverse level of industrial relations/human resource services to both the public and private sectors and to indigenous and multinational enterprises. It had played also a crucial role in buttressing the key provisions of the various Social Partnership agreements over the last two decades. Though the Conciliation Service tends to attract considerable publicity given the high public/media profile of some disputes, the Advisory Service had a pivotal role in providing many of the key industrial relation reviews of key enterprises/services, applied research, seminars and publications on national and international dispute resolution/human resource management trends and in social partner agreement to a significant portfolio of Codes of Practice on diverse employment related work practices. The Advisory Service is a key component of the Commissions' "Better Work Practices" strategy.

The expansion in Employment Rights legislation has had a major impact on all employment rights resolution bodies – most notably on the Rights Commissioner Service of the Commission.

The impact of the recession had led to a significant increase in referrals to the Service (61% in 2009 over 2007).

Growth in referrals to the Rights Commissioner Service



This aspect, allied to the increasing range and scope of domestic employment law and European Directives, has led to a schedule management problem for the effective processing of cases within guaranteed timeframes. The available human resources for representative bodies, the moratorium on staff replacements in the Service and the increasing use of legal representation have created complex and unacceptable delay in ensuring speedy access to services and the completion of hearings and cases. The Commission continues to evaluate the difficulties created by the increase in referrals and is seeking actively in co-operation with other agencies and the Department to address these difficulties.

The Commission is a statutory agency and as such must implement the highest standards in corporate governance. The Commission has over the years ensured that it adheres to the most appropriate standards in its Reports to the Minister, its Board procedures, staff/management protocols, internal and external audit functions and the application of the codes of practice, rules and regulations for civil and public servants. These standards continue to change and develop from time to time and the Commission is firmly committed towards ensuring it maintains the highest standards in all corporate governance matters, including both internal and external audits.

Most recently the Commission, through its Chief Executive, Director of Conciliation and senior officers played a crucial role in negotiating a new Public Sector Agreement for the period to 2010-2014. It continues also, to engage with significant success, in resolving many major change management, pay, redundancy and pension matters with major employers in both the private and public commercial sectors.

The Conciliation Service

The Conciliation Service of the Commission has proven itself capable of resolving the most intractable of industrial disputes over the last two decades. It has established and retained the professional respect of its clients on all sides of the employment spectrum.

It has, in difficult staffing periods, maintained a core of dedicated Conciliation Officers and who collectively have many years of experience in the resolution of both public and private sector disputes.

The service maintains a close liaison with the Department of Enterprise, Trade and Innovation and (where appropriate) the Labour Court on matters of mutual interest and on disputes which require the intervention of both the Commission and the Court.

The Conciliation environment

- Operating in a “new” environment – without the backdrop of social partnership but with Public Sector Pay and Transformation deal and Private Sector IBEC / ICTU protocol.
- Fall off in referral rates in first five months of 2010 – no fall off in meetings – disputes are becoming more complex and protracted.
- Experienced team with developed skills and knowledge of parties, dynamics etc of the environment.

Immediate Issues

- Private sector outlook post “T2016”.
- Private sector outlook in light of current economic environment.
- Public sector reform post ‘Croke Park’.
- Potential access by Civil Service and other groups to Conciliation / wider Public Sector involvement.
- HSE environment – Integration agenda, ‘Croke Park’, budget issues.
- Pension issues across the Public, Private and Commercial State sectors.



- Utilisation of Assessors for enterprise financial assessment.
- Development/maintenance of the Workplace Mediation Service.
- Liaison with Advisory Division on development of effective approach to marketing of Conciliation and Workplace Mediation Service.
- Continued knowledge acquisition on pensions, enterprise change management, employment law and labour market trends.

Action

- Priority for Potential disputes of national interest.
- Liaison with Government/IBEC/ICTU.
- Continuing engagement with employers/ unions/government at central level on their views/perceptions.
- Focus on efficiency of Administrative systems.
- Focus on Officer support in delivery of effective conciliation – peer review, performance management etc.
- Focus on knowledge of international best practice including training in new dispute resolution techniques, e.g. interest based bargaining facilitation.
- Focus on refinement of management information flows.
- Focus on timeliness of Service responses to requests for conciliation, referrals to Labour Court etc.
- Succession and recruitment planning.

The Advisory Service

The Advisory Services' primary strategic remit is developing and disseminating best employment relations practices. Its key functions are assisting enterprise meetings/staff representatives in reviewing their internal relationship engagements and in charting with them effective and improved procedures/structures for dispute resolution and related issues, consultation and partnership. It has an extensive track record in both private and public sector services/enterprises and in sectoral reviews.

It has responsibility for the research, publication, and seminar programmes of the Commission. Recent major research/publication activities of the Commission have included;

- **“Managing Workplace Conflict in Ireland”**,
- **“Human Resource Practices in Multinational Companies in Ireland”**.

In recent years it has developed an information/seminar programme for small and medium enterprises, developed codes of practice and co-operated with the National College of Ireland in various training programmes. This latter role has been extended considerably with significant in-company training programmes on dispute resolution. The demand for these programmes is likely to increase over the next number of years and the Advisory Service has received already an extremely positive response to their programmes on grievance/disciplinary

procedures, teamworking, communication and consultation, ADR and negotiation skills. The Service is currently involved in three major research projects;

- **“Human Resource Management in the Recession”**,
- **“Review of Employment Rights Legislation”**,
- **“Workplace Conflict Management in non-union Multinational Companies”**.

All of the above research projects, upon completion, will inform new potential changes to our approaches to broader employment relations issues and contribute Commission policy in the future. Broader social partner/ interested party support will be elicited to promote and develop positive proposals/ recommendations which may emerge from these studies. This will be a high priority target for the service in 2011.

Both the Advisory and Conciliation Services have developed and maintained a service to clients in the area of Mediation and Alternative Dispute Resolution. The provision of this service continues to be reviewed in the context of the resources available.



Key strategic and operational concerns and issues for the service will be;

- Maintaining sufficient human resources to meet a varying demand for its diffuse range of services.
- Informing, disseminating, and obtaining support for the implementation of the constructive and positive messages and outcomes from its research programmes.
- Meeting the requests for assistance in enterprise/sectoral reviews.
- Workplace Mediation provision.
- Provision of Training programmes.
- Managing the research programmes of the Commission.

Action

- Devise a marketing strategy, in conjunction with Conciliation Service, around the provision of all services i.e. conciliation, advisory, mediation, training etc. and disseminate widely.
- Continue to develop the capacity to deliver training, on a cross-Divisional basis, around Grievance and Discipline, Negotiation Skills, Communication and Consultation, Teamworking etc – particularly to SME's and sectoral groups.
- Revise Codes of Practice/prepare best practice guides in user friendly language.
- Examine the outcomes/recommendations of the various research studies currently underway.
- Continue engagement with Department regarding the maintenance of staffing levels.
- Continuous development of all staff through training and knowledge acquisition.
- Monitor the provision of service with reduced staff numbers.

The Rights Commissioner Service

The Rights Commissioner Service is part of a complex structure of employment law and the requirement for resolving individuals small group employment grievances. At the commencement of the last Strategic Plan the annual level of referrals to the Service was 10,900. It now stands at almost 15,000 and increasing. The challenge in meeting the scheduling and investigative requirement of this level of referrals has been of considerable concern to the Board.

This increase in referrals, allied to the moratorium on staff replacements has led to an unacceptable delay in processing cases to conclusion. In 2009 alone over 2,200 adjournments had to be granted due to the unavailability of one or other of the parties on the dates for hearing provided.

An additional problem for the Commission is that it must grant a hearing for each case submitted based solely on the information contained in the referral forms.

A profile of claimants for the period (Oct – Dec 2008) is probably a fair representation of the current nature of claimants/ claims.

- **89.5% were not in employment at the time of the claim**
- **46% were citizens of countries other than Ireland**
- **29% made multiple claims under various legislative provisions**
- **The major industrial sectors represented were Construction, Hotels and Restaurants, Wholesale and Retail. Transport and Cleaning/ Domestic staff.**

There has been also a significant increase in referrals under the “Payment of Wages Act, 1991” – over 3000 (2009/2010). A considerable number of these claims arise from the disputed outcome of collective bargaining processes in major unionised employments and related its increments, bonuses, performance payments or a multiple of employment rights issues.

As instanced earlier, the Minister for Labour Affairs has established a working group from the employment rights dispute resolution bodies to identify mechanisms by which current overlaps and duplications can be addressed and a better synergy in administrative arrangements be put in place to address current inadequacies within the system.



Key strategic and operational benchmarks will include:

- The extent and degree to which the administrative human resources, Rights Commissioner, and I.T. systems can deal expediently with cases and reduce timeframe/backlog.
- Co-operate in and advocate the necessary changes required to create a singular “first instance” referral/investigative system for employment rights referrals.
- Assist and co-operate in achieving synergies between the Department and employment rights investigative bodies that avoid overlaps, duplication, “dispute shopping” and legislative anomalies.
- Restore more client focussed procedures to avoid unnecessary scheduling difficulties through regular meetings with major users of the service.
- Continue to analyse the level of case referral and management in order to identify trends and outcomes so as to inform future policy and legislation change.
- Increase the use of I.T. in order to develop quicker response times and inter-agency co-operation.

The Corporate Services Division

The Corporate Services Division of the LRC is responsible for all matters falling within the general remit of (a) human and infrastructural support and (b) corporate governance.

In terms of the human and infrastructural support the Commission will continue to engage with the Department to seek the financial and staffing resources necessary for the delivery of the various objectives already outlined. The environment is immensely challenging, at present, and is unlikely to 'improve' in the short term. In the matter of response from the Department it has to be accepted that the Commission Services are essential to industrial peace and that its employment rights services are extremely important to claimants. There are demands from other bodies that have also to be afforded reasonable consideration.

With regard to compliance with the various relevant aspects of the Code of Practice for the Governance of State Bodies the Commission has always sought to ensure that the highest standard in respect of its financial management or the array of procedural and operational controls that are required are satisfied. The Commission will maintain that high level of compliance and in that regard has commenced the process of incorporating and implementing the additional enhancements arising from the review of the Code recently published by the Department of Finance.

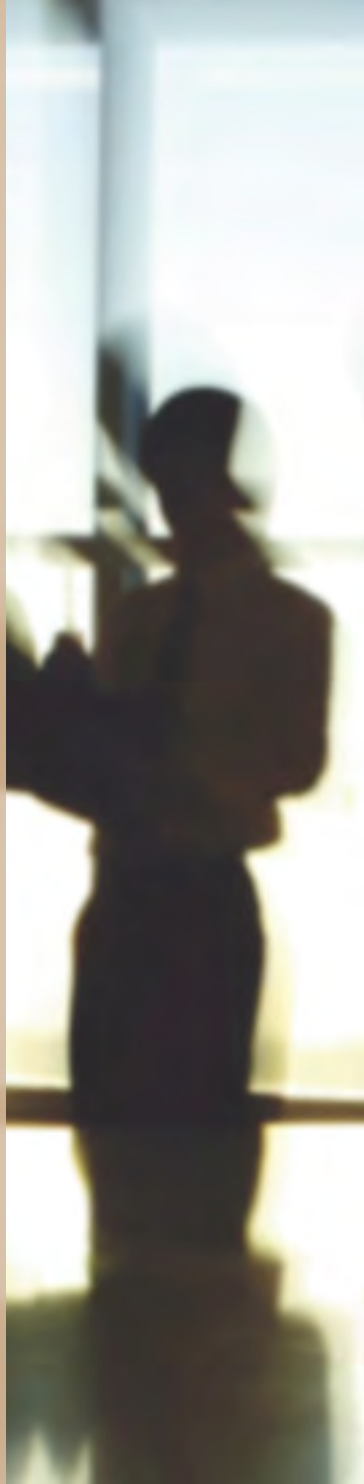
The Commission has appointed an Audit Committee as part of the ongoing systematic review of the control environment and governance procedures within the Commission. That Committee, will report to and advise the Accounting Officer and the Board on internal control matters. The Internal Audit function is outsourced to an independent practitioner and her proposed Audit plans are considered and approved by the Committee as required and in the context of a structured programme of activity that ensures every relevant aspect of Commission activity is examined over a predefined timescale and cycle.



In their respective roles the Audit Committee, and the Internal Auditor will examine and review compliance with the Code of Governance in respect of:

- the Effectiveness of the System of Financial Internal Control
 - Payroll, Treasury, Budgeting, Revenue and Management Accounts processing
- General Procurement and Fixed Asset management
- Computer Systems Controls
- Legal Compliance
- Business Continuity / Disaster Recovery
- Business Risk and Register
- Ethics Compliance.

The overall budget of the Commission and its management is subject to amend annual audit by the Office of the Comptroller and Auditor General.





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