

ANTI-DISCRIMINATION (PAY) ACT 1974

EQUALITY OFFICERS RECOMMENDATION NO: EP 10/1997

PARTIES

DEIRDRE SWEENEY

V

LABOUR RELATIONS COMMISSION

&

DEPARTMENT OF ENTERPRISE AND EMPLOYMENT

1. Dispute

1.1 This dispute concerns a claim by Ms Deirdre Sweeney, hereinafter referred to as the claimant, Head of Equality Service in the Labour Relations Commission, that she is entitled to the same rates of remuneration as that paid to the three named comparators, namely, Ray McGee, Director of Conciliation Services, Jim Palmer, Director of Administration and Sean Healy, Director of Advisory Services. All four are employed in the Labour Relations Commission. The claimant is employed at the Grade of Assistant Principal (General Service) and receives an allowance for higher duties. The three named comparators are all graded at Principal Officer (General Service). The claimant submitted her claim for equal pay on the 30th September 1994. As of the date of referral of the claim following were the relevant details of salary scale.

(i) Principal Officer Scale £34,167. ; £35,624 ; £37,073 ; £38,532 and £39,983.

Mr. Ray McGee (comparator) third point, £37,073

Mr. Sean Healy (comparator) third point, £37,073

Mr. Jim Palmer (comparator) fifth point £39,983.

(ii) Assistant Principal Scale

£25,606 ; £26,562 ; £27,510 ; £28,461 ; £29,405 ; £30,362

Ms Deirdre Sweeney (claimant) sixth point, £30,362

Head of Equality Service Allowance, £2,219 per annum.

2. Background

2.1 The claimant's referral of the claim to an equality officer arose following ongoing and protracted representations by her to the Chief Executive of the Labour Relations Commission regarding her claim for equal pay. The Equality Officer has had the benefit of seeing this correspondence and has also been advised that discussions took place between the Chief Executive of the Labour Relations Commission and the Department of Enterprise and Employment at which meetings the Labour Relations Commission endorsed and supported the claimant's claim for equal pay.

2.2 A preliminary joint hearing of the claim was heard on the 2nd September 1996. Present at the hearing were the claimant, representing herself Mr. Paul Bennett and Mr. Michael Green, representing the Department of Enterprise and Employment and Mr. Ciaran Mulvey, Chief Executive for the Labour Relations Commission.

At that hearing, the Department of Enterprise and Employment told the Equality Officer that it rejected the claim for equal pay. Mr. Mulvey, on behalf of the Labour Relations Commission raised a preliminary issue as to whether or not the LRC was properly joined as a party, as it was contended that it was not the employer of the claimant. It was pointed out that Staff were assigned (by the Department of Enterprise and Employment) to the Commission. In any event, the Labour Relations Commission at the preliminary joint hearing indicated to the Equality Officer that it was not disputing the claim of Ms Sweeney and that it had on a number of occasions indicated to the Department of Enterprise and Employment that it considered the work of the claimant to be of equal value to that of the comparators and consequently, that the claimant's grading should be similar to that of the three named Comparators.

In the course of the preliminary joint hearing the claimant re-stated her claim that she performed the same work as the comparators and /or that she performed work of a similar nature to that performed by the comparators and that any differences arose only infrequently and were of small importance and /or that she performed work which was equal in value to that performed by the comparators.

At the close of the preliminary hearing, submissions were requested from all three parties to include job descriptions. Further, at the request of the claimant, the Equality Officer directed that a copy of the review of the claimant's duties carried out by the Management Services Unit of the Department of Finance in 1995 be furnished to the Equality Officer also.

In due course the requested submissions were received by the Equality Officer from all parties and subsequently, work inspections, conducted by way of interview and perusal of documentation, were carried out by the Equality Officer in respect of the claimant and the three named comparators. A final hearing took place on the 10th February 1997 and in attendance on that day were the claimant, Mr. Mulvey for the Labour Relations Commission and Mr. Michael Green and Mr. Joe Quinn for the Department of Enterprise and Employment.

3. Summary of the Claimant's Submission

- 3.1** The claimant's contends that like work as defined by Section 3(a) (b) and (c) of the Anti-Discrimination (Pay) Act 1974 exists between each of the three named comparators and her. The claimant submits that what Section 3 (b) of the Act requires is an assessment of whether or not the differences in work performed by a claimant and a comparator are of

small importance in relation to the work as a whole, which question can be decided by reference to whether the differences warrant a difference in remuneration. The claimant quotes *Kavanagh v Toyota Motor Distributors Limited* EP 17/85 DEP 1/1986 in support of this. Further, she submits that deciding whether or not such differences are of small importance in relation to the work as a whole, must be a matter for judgement. The claimant submits that the question of whether or not the differences between the work performed by the claimant and the comparators are of small importance can only be addressed by examining the circumstances which relate to the grading structure in the Labour Relations Commission. The claimant submits that the Labour Relations Commission, established in 1991 set up four clearly identifiable areas within the Commission, each one headed up by a “Senior Manager”. In the case of three of these areas the “Senior Manager,” at the time of the lodgement of the claim under the 1974 Act, was on a salary scale of between £34,167 and £39,983 per annum. These three Managers are the named comparators in the present claim. The other Senior Manager, the claimant, was at the time on a salary scale of between £26,510 and £31,434 together with an Allowance of higher duties already referred to. Regarding this aspect of the Claimant’s case, the Equality Officer notes that the figures quoted (and already referred to in this recommendation) by the Department of Enterprise and Employment, as applying to Assistant Principal’s Scale applicable to the claimant, are somewhat different to those quoted by the claimant. For the purposes of this recommendation however the Equality Officer is accepting the figures quoted by the Department of Enterprise and Employment namely, that as of the 30th September 1994 the salary scale applicable for the claimant’s grade was between £25,606 and £30,362 together with the already referred to Allowance for higher duties. The claimant contends further that in relation to two of the four identifiable areas within the Labour Relations Commission, two of these areas, namely the Conciliation Service and the Advisory Service, deals specifically with Industrial Relations, a traditionally male area. The claimant submits that at the time of the lodging of the claimant’s claim, there were no females employed in this area. The Conciliation Services, the claimant contends, is all male and has only ever had one female working there at any time. The Equality Service by its very nature in dealing with cases involving sexual discrimination, is an area dealing with “women’s”

issues. The Claimant submits that the salary scales attached to these various posts within the Commission reflect stereotypical attitudes to “women’s” and “men’s” work and the pay that they should attract.

The Equality Officer was referred by the claimant to the European Court of Justice ruling in the case of *H.K. Forbund i Danmark v D.A. For Danfoss A/S* (1989) VCR 3199, where the Court held that the onus is clearly on the employer to justify practices which result in men on average getting paid more than women. Justifications, it is submitted, must be clear, transparent and relevant to the work performed and not conceptually vague or ambivalent in meaning. The claimant referred to the Court of Justice Ruling in *Enderby v Frenchay, Health Authority and Secretary of Health* (C-127/92) which held that it was not sufficient for an employer to show that significant pay differences between female dominated jobs and male dominated jobs arose for non discriminatory reasons. The employer must also show that such pay differences were based on objectively justified factors. It was submitted by the claimant that there are no objectively justified factors for the pay difference between herself and the comparators.

In relation to her claim for equal pay pursuant to Section 3 (c) of the Act, the claimant submits that Section 3(c) does not require that the demands of the work performed by the claimant should be precisely equal in mathematical terms to the demands of the work performed by each of the comparators. In reliance on this, the claimant relied on the judgement of the High Court in the case of *Murphy and Others v Bord Telecom* which stated that “the words equal in value should not be used so as to require a mathematical exactitude of equality, having regard to the statutory context in which they are used”. She submitted that, in deciding whether any difference in demands between the work performed by the claimant and each of the comparators is significant or insignificant, the Equality Officer should consider what level of difference in demands between the work of the comparators is regarded as insignificant in so far as they are all paid at the same rate.

The claimant submitted that the historical background to the head of Equality Service is not relevant to this claim. The claim relates to the work of the head of Equality Service and the Comparators within the Labour Relations Commission. The claim is that the Head of Equality was doing like work, within the meaning of Section 3 with the three comparators on the 30th September 1994 and for three years prior to this. All four persons were appointed to their positions by the Labour Relations Commission. The latter assigned each of them their duties and was instrumental in their obtaining rates of remuneration applicable to each post.

The claimant disputes that the evaluation carried out for and on behalf of the Department of Enterprise and Employment by the Management Services Unit of the Department of Finance in September 1995 is a valid evaluation on the basis that no such evaluation was carried out in respect of the comparators work. The claimant submits that this evaluation therefore was not carried out in accordance with the European Code of practice on Equal Pay. A code of Practice on the Implementation for Equal Pay for Work of Equal Value for Women and Men. The claimant maintains that no common standard was used in the 1995 evaluation. Nor has the Department of Enterprise and Employment in the said review compared the claimant's work with that of the comparators other than in relation to responsibility. The Claimant contends that the conclusions of the MSU regarding the extent

of her reporting responsibility to the Chief Executive tends to the suggestion that the considerable autonomy she has in comparison to the three comparators who have reporting

duties to the Chief Executive is therefore, by virtue of this autonomy, work of lesser value than that of the comparators. The claimant submits that, for the Equality Officer to accept this argument, would overturn all previous case law in the area and all known standards of job evaluation.

In relation to the submission of the LRC, while accepting that the latter does not dispute her claim, the claimant nevertheless in the course of the investigation, expressed concern at the delay involved in processing her claim. Moreover, regarding the query by the LRC as to the appropriateness of it being named as a respondent, the claimant submits that under the Industrial Relations Act 1990, the Commission appoints equality officers with the approval of the Minister for Enterprise and Employment. The claimant is an equality officer and was interviewed for her current position as Head of Equality by an interview board comprised mainly of Commission Members with one representative from the Department. She further submitted that the Commission decided on the duties of the claimant and each of the comparators and decided on the descriptions to be put on their appointments. The Claimant submits that she is employed as Head of Equality Service by the LRC as agent of the Minister for Enterprise and Employment. As such, it is submitted that the Labour Relations Commission is de facto party to her Contract of Employment.

Summary of the Department's Case

The Department takes as its starting point Section 2.3 of the Anti-Discrimination (Pay) Act 1974. This Section provides that “nothing in this Act shall prevent an employer from paying to his employees who are employed on like work in the same place different rates of remuneration on grounds other than sex”.

The Departments submits that the difference between the rates of pay paid to the claimant and the comparators is genuinely based on grounds other than sex. In reliance on this argument the Department contends that since 1981, when the Post of Head of Equality was first established, there have been four holders of the post, including the claimant, two of whom (the first two) were male. The Departments submits that at all times the rate of remuneration applying to the post has remained constant i.e. the salary of Assistant Principal plus an allowance for higher duties. It is

further contended that the post has been subject of two separate evaluations (1983 and 1995) both of which concluded that the rate of remuneration was appropriately set at this rate. The Department contends therefore that the different rate of remuneration paid to the Head of Equality was based on grounds other than sex. Thus, even if the claimant and the comparators are found to be employed on like work within the meaning of the Act (which the Department refutes) an entitlement to equal pay does not exist.

In addition to the general contention by the Department that the rates paid to the claimant and the comparators are based on grounds other than sex, the Department further submits that as far as the post of Director of Administration is concerned, letters dated the 16th July 1991 and 26th August 1991 establish that the rate payable to the comparator Mr. Palmer is “red circled”.

The Department refutes the claimant’s contention that she is performing like work as defined in Section 3 of the 1974 Act with any of the comparators. In relation to Section 3 (a) the Department contends that the claimant does not perform the same work as either of the three comparators nor are they interchangeable with the other in relation to the work. It is submitted on behalf of the Department that the Conciliation, Advisory and Equality Services are distinct Services within the Labour Relations Commission while the Director of Administration duties involve acting as Secretary to the Board of the Labour Relations Commission as well as directing the administrative support services for the LRC as a whole. The Department maintains that the Equality Service is detached somewhat from the Labour Relations Commission. This, the Department maintains is a reflection of the statutory independent nature of the Equality Service and the technical and confidential nature of much of its work. The Equality Service is entirely related to the sphere of enforcement of equality legislation. Neither the Conciliation Service nor the Advisory Service have a function in this area, nor does the Director of the Administration play any role.

In disputing the claimant’s contention that her work is similar in nature to that performed by the Comparators, the Department again submits that the Equality Service is somewhat detached from the LRC Service and from the Commission’s overall mission and style of operation. The

Department contends that the work of the claimant and the comparators (as set out in their job descriptions supplied by the Department) is not only totally dissimilar, but that the differences do not occur infrequently and are of significant importance in relation to the work as a whole.

The Department also rejects the claimant's contention that her work is equal in value to that of the comparators.

In support of the position it has adopted the Department relies on the conclusions arrived at by the Management Services Unit of the Department of Finance, which was carried out in 1995. The Department relies on the MSU Review, since same was carried out following instructions from the Department, after the claim for equal pay had been referred under the 1974 Act. The Department contends that the reason for the request for such review was to assist the Department to take a position regarding the claim under the Anti-Discrimination (Pay) Act 1974. The Department relies on the conclusions of the MSU Report i.e. that the claimant's post as Head of the Equality Service is correctly graded at Assistant Principal (General Service) with an allowance for higher duties. The Department further contends

that as the purpose of the MSU Report was to assist the Department it did not need to have regard to the 1974 Act criteria in making its assessment.

SUMMARY OF COMMISSION'S CASE

As noted, the Labour Relations Commission is conceding the claim under the 1974 Act. The Commission submits that, while it has taken this stance, it has been unsuccessful in its representations to have the post of Head of Equality

Service regraded from that of Assistant Principal (with allowance) to that of Principal Officer. The request for regrading, the Commission submits, has been sought formally and informally August 1993.

Investigation by the Equality Officer

The investigation began with the preliminary joint hearing already referred to and then continued with the receipt of submissions from all parties. The submissions from claimant and the Department of Enterprise and Employment included job descriptions for the claimant and the three comparators. In the course of the investigation work inspections were carried out by the Equality Officer by way of interview with the claimant and the three named comparators and there followed a final joint hearing on the 10th February 1997. The Equality Officer in the course of the investigation also sought various documentation all of which was duly furnished by the parties from whom the requests were made.

Conclusions of the Equality Officer

General

From the investigation conducted by the Equality Officer the following general points can be made.

The claimant and all three comparators are employed by the Labour Relations Commission which was set up in 1991. All four head Services (with some differences pertaining to Mr. Palmer, Comparator, as Head of Administration) established under the auspices of the LRC. The claimant

was recruited to her present position by way of competition. From May 1991 when the then Head of Equality Services departed to September 1991 the claimant was acting Head of Department. Following interview in or about August / September 1991 she was appointed Head of Equality Service effective from September 1991. The claimant came to the job of acting Head of Equality Service and full time Head of Equality Service as an Assistant Principal in the Equality Service. Prior to 1991 she was a senior equality officer and deputy Head of the Equality Service. Following her appointment as Head of Equality she received the allowance already referred to for higher duties, in addition to her salary as an Assistant Principal. In line with the norm operating in the civil Service the Claimant did not get a written description of her duties. All parties in the present case agreed that, by and large it could be said that the claimant's unit and indeed the units overseen by the three comparators could be described as self-contained units. Mr. McGee, a named comparator in this case holds the post of Director of Conciliation Services at Principal Officer level. He has so held it since 1991 after the Labour Relations Commission was set up. Mr. McGee came to the LRC from the Labour Court. Mr. Palmer, a named comparator in this case has held the position of Director of Administration and Secretary to the LRC since in or about August 1991. Previously this comparator held the post of Director of Conciliation /Chief

Conciliation Officer in the Labour Court. The third comparator Mr. Healy, joined the LRC in or about 1992 as Director of Advisory Services. He too had a background in industrial relations.

From a consideration of all the submissions made in this case both written and oral, the Equality Officer considers that the claim which forms the subject matter of this recommendation is as follows:

That the claimant is entitled to the same rate of remuneration as that paid to the comparators under Section 3 (a) (b) and (c) of the 1974 Act.

In her recommendation, the Equality Officer has taken into account all the submissions, both oral and written made by the parties together with the Equality Officer's observations and conclusions

(from the interviews conducted with the claimant and the comparators) regarding the work involved.

The Claimant's Work

Having carried out an inspection by way of interview with the claimant and having regard to the job description furnished both by the claimant and the Department of Enterprise and Employment regarding the claimant's work, I am satisfied that the following is a summary of the work that was being done by her at the time that this dispute was referred.

The work of the Equality Service concerns the administration of the Anti-Discrimination (Pay) Act 1974, the Employment Equality Act 1977 and the Pensions Act 1990. The Equality Service is a self contained independent service within the Labour Relations Commission. The duties of the post of Head of Equality may be categorised as follows .

- (a) The management of the work of the Service
- (b) Case Work
- (c) The review of Equality Legislation
- (d) Analysis of developments in the equality field both in Ireland and abroad.

In the carrying out of those duties the Head of Equality Service organises the work of the section and allocates cases to Equality Officers. Cases pursuant to the 1974 Act and the 1990 Act come directly to the Service and these cases are then allocated by the claimant , as Head of Equality, to the equality officers in her unit. There are three such equality officers, one at AP level and the other two at HEO Level. Cases under the 1977 Act are referred to the claimant by the Labour Court. Cases are assigned by the claimant to the equality officers on the basis of the latter's current work load. The claimant herself starts the process in respect of all claims under the 1977 Act by

gathering submissions. When submissions are received the claimant assesses the complexity of each case in question. The claimant then allocated the 1977 Act cases among the equality officers. The allocation is based on the need to ensure continuity and precedent. As of the 30th September 1994, no case had come to the Equality Services under the Pensions Act 1990. As Head of Equality, the claimant monitors all work in progress including the cases being undertaken by the three other equality officers. She is advised of the state of cases on an ongoing basis. As Head of Equality and in particular having regard to the fact that the Equality Service does not have access to legal personnel, the claimant has to advise the equality officers on precedent and procedures and on the information that will be necessary for the equality officer to reach a recommendation. Further, the claimant advises on difficult points of legal interpretation and reviews all recommendations at final draft stage to ensure conformity with both National and European Legislation. No recommendation from any equality officer issues until same is seen by the Claimant. In addition to this there is a daily reporting structure from the senior equality officer and the two other equality officers to the claimant as Head of Equality Service. At the time of referral there were some 203 cases under the Employment Equality Act 1977 and the anti-Discrimination (Pay) Act 1974 being considered by the Equality Service. 61 of these cases were under active investigation, 21 cases were awaiting initial submission from the claimant/respondent in each case, 22 cases were awaiting developments and there were some 99 marriage gratuity cases.

In addition to the management of the work of the Service which the Equality Officer concludes involves the claimant having to liaise on a daily basis with her staff and which from the submissions received and the investigation carried out, takes up a substantial portion of the claimant's time, the claimant also acts as an equality officer in respect of certain more complex or significant cases under the equality legislation. To this end, the claimant carries out investigations qua her role as equality officer and issues recommendations. I am satisfied that the work of the claimant in her role as an equality officer as of the 30th September 1994 was as follows:-

In a case of an 1974 Act equal pay claim, the claimant would organise a preliminary hearing within four weeks of the claim form being submitted to the Equality Service. At this hearing the parties would be requested to furnish submissions and would be given a period of time for the receipt of same. If the submissions are furnished within the agreed time the claimant as equality officer would take a week or so to consider same and then dates would be agreed for work inspections. In a case for example with 13 or 14 claimants, two weeks may be needed for work inspections. A work inspection could take up to three days a week and a full working day could be spent in the course of work inspections. The nature of the work inspection will be dependent on the type of employment involved and it may vary from day work to shift work.

Within a few weeks of the work inspections having been completed there would be a final hearing. Some weeks after the final hearing a recommendation issues to the parties. While the foregoing is an example of the time limits allowed by the Service on average for such a claim, there could often be situations where the claimant would have to pursue the parties for their submissions and in this regard the claimant would have issued standard letters and notices. The claimant, like every other equality officer is required to be extremely vigilant at hearings of cases and especially so in relation to 1977 Act referrals. Many matters which are raised at hearings may not have been adverted to in the submissions sent in by the parties, so as an equality officer, the claimant would have to ensure that the correct note is taken of all relevant submissions and arguments. In her work qua equality officer, the claimant has, in a great number of cases, to peruse judgements of both the Irish and European Courts. This is particularly so in relation to 1977 Act referrals. As an equality officer the claimant endeavours to ensure that the ECJ decisions are interpreted correctly so that the Labour Court on appeal will be satisfied to uphold the recommendations of the Equality Officer. The claimant in her work as an equality officer must also take cognisance of rules and procedure so that hearings are conducted in a proper manner, thus obviating the need for parties to challenge hearings by way of Judicial Review.

In relation to a 'non investigation' day the claimant's daily work load comprises a consideration of claims submitted both under the 1974 Act and the 1977 Act, the latter via referrals from the Labour Court. In the case of an equal pay claim, claimant passes same to a clerical assistant to open a file and index card. The case is then allocated a case number. Part of the claimant's day involves perusal of draft recommendations of equality officers and she would be expected to give her comments on same. Final recommendations are also perused by her. Advice from her may be necessary in relation to legal arguments arising in the course of hearings especially in equality cases under the 1977 Act. Time would also be spent by the claimant on her own equality files. On average the claimant would have less 'live' files than the other equality officers and the average she would have would be in or about 7 cases. The other equality officers would have in the region of 15 cases per equality officer. Part of the claimant's day would be spent in assigning cases to the equality officers and files would have to be reviewed to ensure that cases were distributed on a proper basis.

In the course of an " investigation day" the claimant's duties as an equality officer involves attending at, for example the factory in question to look at the day to day work of a claimant or a representative number of claimants as the case may be and the work of the comparators. In a case where there are a number of claimants doing different jobs all will have to be looked at. This also applies in the case of comparators with different jobs. Like hearings, note taking by equality officers is essential during work inspections and following such inspections the claimant has to update her file with notes made.

As Head of Equality the claimant is further charged with the training of equality officers. By and large it is on the job training. However the claimant puts together a working file of each equality officer and arranges for them to undertake Courses. These Courses are to assist equality officers in their job analysis skills in equal pay cases. From time to time claimant will meet all equality officers for the purposes of updating their knowledge of all relevant case law. Regarding the

monitoring of work in progress, an important aspect of the claimant's work, the claimant's involvement is on an advisory basis in relation to legal difficulties and technicalities and also in relation to advising the equality officers on how to conduct work inspections.

Part of the claimant's functions comprise also liaising with the Department of Equality and Law Reform for the purposes of advising in relation to proposals for amendments to equality legislation. She advises also the Labour Relations Commission and the Minister for Enterprise and Employment on legislative amendments as may pertain to the Equality Service. Claimant's views are often sought or canvassed by way of telephone discussions. Often a Memorandum originating in Government containing proposals for amendments to legislation would be sent to the claimant. She would then draw up comments and the claimant, together with the Chief Executive of the Labour Relations Commission, would go to the Department of Equality and Law Reform with an Officer of the Department of Enterprise and Employment in attendance and the claimant would then be required to give her comments on the proposals. Often the comments of the claimant would be submitted to the Department of Equality and Law Reform as the official submission of the Labour Relations Commission. Informal submissions are also made by the claimant to the Department of Equality and Law Reform. Advice by the claimant to the Labour Relations Commission and the Minister for Enterprise and Employment would be in relation to any repercussions regarding the Equality Service which could arise from amending legislation.

In her capacity as Head of Equality Services, the claimant also makes presentations to the Board of the Labour Relations Commission. Between February 1992 and September 1994 the Claimant had made three such Presentations.

As Head of Equality Services the claimant reports on a quarterly basis to the Chief Executive of the Labour Relations Commission. This reporting consists of the claimant sending to the Chief

Executive recommendations and referrals. There is no reporting in respect of individual cases given the independent nature of the Equality Service and indeed the strictures placed on the Equality Service by the legislation regarding the investigation of such claims.

In her capacity as Head of Equality Service the claimant is the representative of the Service and indeed of the Labour Relations Commission at various seminars and conferences on an on going basis.

While as head of Equality Services the claimant does not have an industrial relations function, a knowledge of industrial relations is required, particularly since many cases referred to equality officers are taken by unions on behalf of their members.

As Head of Equality the claimant can exercise some discretion in deciding whether or not to process a claim under the Anti-Discrimination (Pay) Act 1974. A decision not to process such a case could arise if a claim is submitted which clearly does not refer to the 1974 Act or where there are no comparators named. No such discretion arises in respect of 1977 Equality Act cases, all are receivable by the Equality Service. Thus, a recommendation has to issue under the Act whether or not there is a case. There has to be an investigation. Under the 1977 Act a variety of claims come before the Equality Service. Claims are made in respect of alleged discriminations in relation to access to employment, treatment of part-time workers, access to promotion, conduct of respective employers at interviews both for jobs and for promotions, redeployment and sexual harassment. Under the Employment Equality Act 1977 especially there is usually much discussion and submissions in respect of case law of the European Courts of Justice. ECJ cases are often referred to in the course of submissions and it falls to the claimant qua her role as equality officer and indeed when advising other equality officers, to consider each and every case cited by way of

precedent. Even in situations or claims where no ECJ case law is cited, the claimant will have to extract the relevant Case Law and indeed advise the other equality officers to do likewise.

There is a large body of ECJ case law in respect of job sharers, pregnancy and part-time workers. Part of the claimant's day would be spent reading such cases and working out what is being said. The claimant as equality officer therefore and indeed as Head of Equality has to be conversant with Irish Statute and Case Law, EC Directives and the aforementioned ECJ case law. In the course of this investigation the Equality Officer has had sight of recommendations issued by the claimant as an equality officer.

At the date of the claim, four people report to the claimant and as Head of the Equality Service. The claimant has an administrative function regarding the processing of leave applications. This aspect of the claimant's work would comprise as part of the routine exercised by her on a non-investigation day. The foregoing comprises the work carried out by the claimant as Head of Equality Service as found by the Equality Officer.

Mr. McGee's Work

Like the claimant, Mr. McGee too heads up his own unit within the Labour Relations Commission, namely as Director of Conciliation Services. This Comparator has held his post since December 1991. From a perusal of the oral and written submissions made in this case and from the observations and conclusions arrived at following interview with the comparator, the Equality Officer has concluded that the following comprises the work carried out by Mr. McGee.

As Director of the Conciliation Service, Mr. McGee engages in the processing of industrial disputes and, where necessary, the referral of cases to the Labour Court and thereafter dealing with the fall out of either Conciliation or Labour Court involvement. For the most part the comparator heads up a Service whose work is of an immediate nature and may often be on an

emergency basis. The primary function of the Conciliation Service is the prevention and settlement of industrial disputes. The basic concept of conciliation is the insertion of a mediator into the local bargaining process in order to help the parties. The overall remit of the Labour Relations Commission is for the improvement of the industrial relations.

As Director of Conciliation Services the comparator decides how and when to get involved in industrial disputes. For the most part, one or other of the parties in dispute will refer the matter to the Conciliation Service and on occasion the latter intervenes in a dispute of its own volition. That however is not the norm. There is an average 1,500 to 1,600 requests for conciliation per year. Once a referral is made a conciliation conference is set up. Each referral for conciliation comes before the comparator as Director of Conciliation. He then assigns cases to industrial relations officers. The comparator heads up a Service comprising ten industrial relations officers. Broadly speaking the duties of the Director of Conciliation are as follows:

1. Conciliation in Industrial Disputes when the comparator works as an industrial relations officer and this work would take up to 40% to 50% of the comparator's time.
2. The rest of his work comprises the administration of the Conciliation Service and liaison with employer and trade union representatives.

Regarding the comparator's work as an industrial relations officer, he gets involved in all types of cases particularly those which have a high profile and, in addition he has particular responsibility for banks and airports. Mr. McGee's work as an industrial relations officer is normally undertaken in the following way. Once a dispute has been referred to him, the comparator will speak to the parties to the dispute either separately or together. By liaising with the parties a date will be set for the conciliation conference, be it in Dublin or in the provinces. In attendance at the conciliation conference will be the company principals and company representatives. For the employees concerned there will be a union representative or representatives together with shop stewards. By

and large a conciliation conference will be set up where there is a dispute regarding a group of workers. Nevertheless, some 10% of all disputes involve single persons. A conciliation conference begins by way of joint session. Both parties outline their case to the comparator. Time is allowed for questions to be put by the parties to each other. The comparator then asks questions. Following that the parties are separated physically so that the comparator can liaise with them on an individual basis. Two out of every three cases are settled by this method. After the individual sessions, the parties are then brought together, the solution is recorded and that solution is later confirmed to the parties in writing by the comparator. Often a single dispute requires a number of meetings as the conference may have to be adjourned to ascertain certain matters. Very few cases are settled within one meeting. If after conciliation the case does not settle, then the parties to the dispute have the option of referring the matter to a full hearing of the Labour Court. The comparator in his capacity as industrial relations officer is the engine of this referral. To achieve this, the comparator writes a report of what has happened at conciliation and that is sent to the Labour Court. A referral to the Labour Court needs the consent of both parties. In the absence of such consent the dispute may revert back to conciliation. In the event of a referral to the Labour Court, the comparator's Report as industrial relations officer is treated as confidential. It is seen only by the Court. The form sending the matter to the Labour Court is signed by the comparator and by the Chief Executive of the Labour Relations Commission. As Head of Conciliation, the comparator sees every other case being conducted by the other industrial relations officers that go to the Labour Court. Once a case has been referred by the service to the Labour Court, the latter often reverts to the comparator before, during and after a Labour Court hearing.

In relation to his work other than that qua industrial relations officer, the comparator's time is taken up with the administration of the conciliation service. All disputes referred to the Service come to the comparator and all cases are assigned by him to the respective industrial relations officers. There is very little paper work involved in the referral of disputes to the Conciliation Service and by and large industrial relations officers go into conferences without knowing a great deal of background regarding the dispute. For Dublin cases the comparator simply assigns cases

to industrial relations officers. For the provinces the comparator assigns cases to the five industrial relations officers who are of Assistant Principal grade and they in turn have the responsibility for dividing the cases among themselves and the rest of the industrial relations officers who are of higher executive officer grade.

Generally speaking a file is opened up in respect of each referral made to the Service. This is not necessarily done by the comparator. After this, parties making a referral are often requested to put matters in writing for the attention of the comparator so he would set up the conference. Very rarely is there an on site investigation in respect of a dispute by the comparator. Nor does the comparator require the other industrial relations officers to carry out such site investigations. However at each stage of every case there is liaison between the industrial relations officer having seisin of the conciliation and the comparator, as Director of Conciliation Services. The comparator's work as Director of Conciliation and indeed as industrial relations officer may involve conciliation as (1) mediation, (2) arbitration, (3) facilitation and (4) the chairing of JTC's and JLC's. Regarding conciliation of conferences generally, the complexity of the case in issue will decide who is assigned a case. Cases may be assigned by the comparator to industrial relations officers on the basis of their expertise. The comparator's expertise is in the area of banks and airports and to a lesser extent docks. When the comparator conciliates he does so as an industrial relations officer and not as the Director of Conciliation.

This comparator reports to the Chief Executive of the Labour Relations Commission. He has a day to day involvement with the Chief Executive of the LRC and reports to the Chief Executive in relation to all industrial disputes and conciliation. Reports are compiled on an ongoing basis by the comparator for the Chief Executive to submit to the Labour Relations Commission. The comparator's report to the Chief Executive would be part of the latter's Report in general to the LRC. The comparator does not have a great deal of liaison with the Labour Relations Commission Board, other than to make Presentations on occasion. Between February 1992 and September 1994 the comparator appeared before the Labour Relations Commission on five occasions.

The comparator as Director of Conciliation Services liaises with employers organisations, trade unions and the Department of Enterprise and Employment. He meets representatives of the foregoing groups regularly who want briefings on the workings of the service. He administers the budget for the conciliation area within the Labour Relations Commission and allocates it on a regional basis. He has no responsibility for Clerical Staff other than a role in relation to discipline and annual leave.

Regarding Conciliation Policy, the comparator has ongoing discussions with the Chief Executive. To this end the comparator is involved in drawing up ground rules. While he reports to the Chief Executive the latter does not oversee the comparator as Director of the Conciliation Service. As an industrial relations officer the comparator does not have power to force a solution to the dispute referred. Nor does he have power to apply any sanctions for breach by any of the parties involved of any agreement arrived at through conciliation.

Once a referral is made from Conciliation to the Labour Court, again the Labour Court finding is not binding on the parties.

The comparator has on occasion to interact with the Director of Advisory Services and with the Director of Administration.

As Head of the Conciliation Service the comparator oversees training for industrial relations officers which training comprises the latter sitting in with experienced individuals and being sent by the comparator on training courses.

The foregoing is the Equality Officer's analysis of the work carried out by the comparator Ray McGee as Director of the Conciliation Service.

The claimant in the present case contends that she is doing like work within the meaning of the 1974 Act with Mr. McGee. Section 3 (a) of the Act states that two persons shall be regarded as employed on like work “where both perform the same work under the same or similar conditions or where each is in every respect interchangeable with the other in relation to the work”

In my opinion the claimant is not employed on like work within the meaning of Section 3(a) of the Act with Mr. McGee. She does not perform the same work as Mr. McGee and is in no way interchangeable with him in relation to his work.

Section 3(b) of the Act states that two persons shall be regarded as being on like work “where the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole.”

The Equality Officer has given careful consideration to the work carried out by the claimant and Mr. McGee with a view to establishing whether it can be said that they carry out work of a similar nature and any difference between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole.

The claimant urges the Equality Officer to consider her claim under Section 3(b) by addressing the question of whether or not the differences between the work performed by her and Mr. McGee are of small importance by examination of the circumstances which relate to the grading structure within the Labour Relations Commission.

Before however the Equality Officer embarks on an analysis of the differences in the work of the claimant and the comparator Mr. McGee, the Equality Officer must first be satisfied that the work of both “is of a similar nature”. No test or criteria is set down in the 1974 Act to aid the Equality

Officer in this task. However it is fair to conclude that work “of a similar nature” does not require, unlike Section 3(a), that it be the same work or that the work of the claimant be in every respect interchangeable with the work Mr. McGee or vice versa. The Equality Officer concludes that what is meant by work “of a similar nature” does not require that the claimant be able to do the work of Mr. McGee or indeed that he be able to do her work. Nevertheless, to fall within the ambit of Section 3(b) the Equality Officer is of the view that, at the very least, essential aspects of the work of both must be alike but not to the extent that the work of both be indistinguishable. It is in the context of this broad definition that the Equality Officer has compared the work done by the claimant and Mr. McGee. It follows that the Equality Officer must make the finding or not that the work of the Claimant “is of a similar nature to that performed by” Mr. McGee by reference to the submissions, job descriptions and other documentation furnished by the parties and by reference to the interviews conducted with the claimant and this comparator.

From the foregoing the following has been established by the Equality Officer: Both the claimant and Mr. McGee head their respective departments within the Labour Relations Commission, the claimant as Head of Equality Service and Mr. McGee as Director of Conciliation. These two services each provide a forum to which certain types of employment disputes are referred. Both spend a considerable part of their working life administering their respective departments which includes organising the work of their respective Sections and allocating cases and disputes to equality officers and industrial relations officers and, in addition, advising equality officers and industrial relations officers in relation to their work. In the case of Mr. McGee this involves his setting out the parameters in which the industrial relations officers are to operate and the stratagems which they should employ in the course of meetings. He is also involved in the preparation of reports by industrial relations officers to the Labour Court. In her capacity as Head of Equality, the claimant advises equality officers on hearings, work inspections, precedents and advises on points of legal interpretation and further, reviews all draft recommendations at final draft stage so as to ensure conformity with existing law. Both the claimant and Mr McGee have a training function for recruits to their respective departments and both facilitate new staff by giving

them on the job training and sending them on courses. Both the claimant and Mr. McGee, in addition to administering their respective services and overseeing the work of their respective staff, have their own case load. In the case of the claimant this entails her working as an equality officer once a dispute has been referred under the equality legislation. This work necessitates her organising preliminary joint hearings, requesting submissions and job descriptions from the parties, organising and overseeing work inspections and conducting final hearings, in fact all aspects of the type of work the processing of an Equality Case requires until same is concluded. By and large the claimant as Head of Equality processes more complex cases under the equality legislation. Mr. McGee in his capacity as industrial relations officer has special responsibilities for banks, airports and to a lesser extent docks. Other high profile cases come to him also. While volume wise Mr. McGee may well have a greater number of conciliation conferences than the claimant would have equality hearings, the Equality Officer must bear in mind that the processing of an equality case, especially one with a number of claimants and or comparators, may take considerably longer than dispute resolution by way of conciliation conference, even where the industrial relations dispute requires a number of conciliation meetings. Both the claimant and Mr. McGee, in their capacity as Head of Equality and Director of Conciliation respectively, have on occasion to make presentations to the Board of the Labour Relations Commission. Both too liaise with outside bodies such as visiting foreign delegations and both would contact their respective counterparts outside of Ireland with a view to keeping abreast of developments in their respective fields. From time to time both are required to meet representatives of Government Departments and Mr. McGee would have the further task of liaising with the Social Partners.

As Head of Equality the claimant reports on a quarterly basis to the Chief Executive of the Commission. These Reports are of a general nature. Mr. McGee meets the Chief Executive on a daily basis and is in his own words “at the beck and call of the Chief Executive day and night given the nature of his responsibilities”.

Both the claimant and Mr. McGee have minor personnel functions within their respective Departments namely processing annual leave applications and in Mr. McGee's case there is also a minor disciplinary role. As head of their respective sections both oversee the spending of the budget allocated to them by the Department of Enterprise and Employment.

Having compared the work of the claimant and Mr. McGee the conclusion of the Equality Officer is that they carry out work of a similar nature within the meaning of the Act.

Section 3 (b) permits differences between the jobs being compared so long as the differences occur infrequently or are of small importance in relation to the work as a whole.

It is clear that there are differences in the work of the claimant and this comparator. These differences refer mainly to the type of dispute both are required to adjudicate or conciliate on as the case may be. The question is whether or not these differences are of small importance in relation to the work as a whole. In *Kavanagh and Toyota Motor Distributors Limited* Ep 17/85 DEP 1/96 the Labour Court has held that the question of whether the differences in work performed by two persons are of small importance in relation to the work as a whole for the purposes of Section 3 (b) of the Act, should be decided by reference to whether the differences were sufficiently important to justify the payment of a higher rate in respect of one of the jobs concerned. Applying this test to the present case the Equality Officer has compared the work of Mr. McGee with that of another comparator, Mr. Healy. The latter, as Director of Advisory Services receives the same rate of remuneration as that paid to Mr. McGee. He too is graded at Principal Officer (General Service) level. Like the claimant and Mr. McGee, Mr. Healy heads a unit within the Labour Relations Commission. Like Mr. McGee he deals specifically with industrial relations matters. Unlike Mr. McGee however, Mr. Healy cannot be said to be in any involved in industrial relations dispute resolution. Rather, his is primarily an advisory and policy function. This entails carrying out reviews and studies of industrial relations in companies and undertaking project

work, sometimes at the behest of the Conciliation Service. It involves also compiling position papers on industrial relations trends and developments for the Chief Executive and the Board of the Labour Relations Commission. He is charged also with the general development of the Service. In its job description for Mr. McGee, the Department has placed emphasis, inter alia, on the responsibility that rests with Mr. McGee for the monitoring of the state of industrial relations on a country wide basis and it is further contended that should a dispute of national importance arise Mr. McGee, as Director of Conciliation, would be required to deal with such cases. The Equality Officer accepts that this forms a substantial part of Mr. McGee's work. Further, in addition to the latter's general monitoring functions regarding a Service that deals primarily with "live" disputes, he himself works as an industrial relations officer. The extent of this work has already been detailed in this recommendation. Mr. McGee oversees a relatively large staff, namely ten industrial relations officers, five at AP level and five at HEO level and six clerical staff, one at CO level and five at CA level. The claimant as Head of Equality oversees three equality officers, one at AP level and the other two at HEO level. Mr. Healy has a staff of three, one AP, one HEO and one CO.

In its job description for Mr. Healy the Equality Officer notes that the Department describes the service as a small strategic one with limited resources which service must be targeted to the area of greatest need in the industrial relations environment. Not every request for this service therefore will be accommodated. It is clear from the job descriptions furnished by the department for the claimant and Mr. McGee however that the Department accepts that the services administered by the claimant and Mr. McGee cannot be so restricted. The claimant is statute bound to investigate an equal pay or equality dispute once referred. Likewise Mr. McGee, once a matter has been referred to him, is bound in the interests of good industrial relations practice (the *raison d'être* of the LRC as advocated by the Department) to set up a conciliation conference or refer the dispute to the Labour Court. Despite the differences in the work carried out by Mr McGee and Mr. Healy and despite the difference in the size of the service they are charged with overseeing, both are paid the same rate of remuneration.

The Equality Officer is satisfied however from an examination of the claimant's work and that of Mr. Healy, that the latter cannot be said to carry out the range of duties demanded of the claimant as Head of Equality. Nor does Mr. Healy have power (unlike the claimant) to make binding recommendations in respect of any conclusions he may arrive at following reviews or project work carried out by him as Head of Advisory Services. It is also noted that the work of the Conciliation Service, while more extensive than that of the Advisory Service, does not allow for the making of binding recommendations on the parties who have referred an industrial relations dispute. The claimant, on the other hand, has power to make binding recommendations.

The Equality Officer therefore concludes that, as Mr. McGee is paid the same rate as Mr. Healy despite the additional demands of Mr. McGee's job (as found by the Equality Officer following perusal of the job descriptions submitted and the work interviews conducted) and as the claimant, as Head of Equality, is performing work as demanding as that being performed by Mr. Healy, the differences between the work of the claimant and Mr. McGee can only be regarded as of small importance in relation to their work as a whole.

Accordingly, the Equality Officer is satisfied that the claimant is employed on like work with Mr. McGee for the purposes of Section 3(b) of the Act.

Section 3 (c)

As the Equality Officer has found the claimant to be engaged in like work with Mr. McGee under Section 3 (b), an investigation pursuant to Section 3 (c) does not therefore arise.

Mr. Palmer's Work

The comparator, Jim Palmer holds the position of Director of Administration and Secretary to the Board of the Labour Relations Commission. From the submissions received, oral and written, the job descriptions furnished and from the interview held with Mr. Palmer, the Equality Officer has determined that the work performed by him consists of

1. The administration of the Commission budget.
2. The management and development of the Commissions computer system.
3. Personnel and general administration duties and
4. Acting as Secretary to the Labour Relations Commission Board.

The comparator's budgetary responsibilities comprise the administration of what is known as the non-pay budget allocated to the Commission by the Department of Enterprise and Employment. The comparator has direct control of this budget. The manner in which this budget is spent is within the discretion of Mr. Palmer. In terms of making a case to the Department for the Commissions budget allocation, the work of the comparator includes the compiling of estimates of expenditure to be incurred by the Commission in the following year. The budget is prepared on a preceding year basis.

Preparation of the Estimates of Expenditure takes approximately 5% of the comparator's time over the year roughly equivalent to 11 working days. Once this is prepared it is submitted to the Chief Executive and thereafter both attend before the Board of the Labour Relations Commission in order that the estimates of expenditure be approved. Thereafter, the estimates are furnished to the Department of Enterprise and Employment and ultimately to the Department of Finance. The comparator does not liaise with these Departments in respect of what has been furnished by the Commission.

Once the Commission's budget has been allocated by the Department, it falls to the comparator to allocate the non-pay budget amongst all of the Services in the Labour Relations Commission. While the budget allocated by the Department includes salaries and Rights Commissioners Fees, the task of paying such salaries and fees does not fall to the comparator, but rather is administered directly by the Department. Thus, what the Comparator has control of is a non-pay budget for the running of the whole of the Labour Relations Commission Services and a further budget allocated for computer requirements.

Out of the sum allocated for running expenses the comparator must make provision for travel and subsistence and general housekeeping. These headings are included in a list of approximately 15 headings the comparator makes when he prepares his proposals for the breakdown of the non-pay budget. He then allocates the travel and subsistence budget amongst the Advisory, Equality, Conciliation and Rights Commissioners Services. The allocation is a decision for the comparator and the Chief Executive. Once budgets are allocated to each of the services, the comparator monitors each Service in relation to their spending of the said budget. This is part of the daily work of the comparator. Mr. Palmer's work in relation to the budget involves also preparation of the yearly accounts. This work is commenced by him in January each year with the aid of an accountant. The books for the year ending are then prepared. The comparator must answer all questions coming from the accountant and once completed these audited accounts are then sent to the Labour Relations Commission Board for same to be approved for submission to the Comptroller and Auditor General. The comparator's work includes going through the accounts with staff from the Office of the Auditor General. Once the audit is completed the report of the Comptroller and Auditor General is attached to same and these are then sent to the Board of Labour Relations Commission. Ultimately the accounts are presented to the Department of Enterprise and Employment and then to both Houses of the Oireachtas.

Mr. Palmer's work involves also the monitoring of all payments made by and on behalf of the Labour Relations Commission. This is done on a monthly basis and figures are obtained from the computer and are then cross checked. Mr. Palmer is the physical paymaster for all of the Labour Relations Commission Services. A considerable amount of his time is taken up with this task. Cheques are issued every day by him. He does this by drawing on the bank account of the Labour Relations Commission which is funded on a monthly basis by the comparator issuing a letter to the Department drawing down cash from the non-pay budget allocated. The comparator is the authorizing officer for all payments up to £5,000. Cheques in excess of this amount require the signatures of the Chief Executive, the Chairperson of the Commission and a member of the said Commission. The procedures for the Commission payments were drafted by the comparator. All financial operations are governed by these procedures, subject to audit. Cheques are issued every day by the comparator in his capacity as Director of Administration. In terms of overall budgetary responsibilities, the task of Mr. Palmer is to ensure that the budget as allocated by the Department is properly administered by each of the Services and that the Commission as a whole does not exceed its budget. A financial report, compiled by the comparator is furnished each month to the LRC Board

The work of the comparator also involves ensuring that the computer system is up and running every day. He is charged with switching on the P.C. system and checking the network and backup. He prints off a report on a daily basis which records are kept by him for a month. Copies of the backups are sent every day to the Department of Enterprise and Employment. The comparator is charged also with addressing technical problems that may arise in the computer system. This he does on his own without technical support unless the matter is serious. The computer system itself was set up by Mr. Palmer and in so doing he liaises with the Directors of all the other Services, including the claimant. At the date of referral of this claim, he continued to be involved in the development and updating of the

computer system. In September 1994 the extent of computerisation within the Conciliation Service was restricted to computers being used by clerical staff and this was also the position in the Advisory Service. Within the Equality Service all equality officers and clerical staff had computers and the comparators work in this regard was to ensure that these computers met the needs of the Service. The development and management of the computer system is financed by the sums specifically allocated by the Department to the Director of Administration for Computers.

The comparator's personnel and general administration duties include making submissions to the Department for staff for the Advisory and Conciliation Services. He is also directly responsible for the staff of the Rights Commissioners Service and for the operation of that Service including staff problems. He administers the subsistence and travel budget for the Rights Commissioners Service.

Part of the comparator's work under this heading also includes looking after the office and general maintenance requirements of the whole of the Labour Relations Commission. This task is to ensure that the Commission as a whole runs effectively. His work in this respect includes ensuring that suitable accommodation and ancillary accommodation-related facilities are provided for Commission staff and in this respect enters into negotiations with the Department for such extra staff and accommodation as are required.

As Director of Administration the comparator keeps a data base on the whole of the Conciliation Service. He also maintains a data base on the Rights Commissioners Service and on financial matters. While input is done by clerical staff, it is overseen by the comparator. Part of his work involves the gathering of material for inclusion in the Labour Relations Commission brochure and in the annual report of that Body. He arranges for the

printing of the said report and liaises with the Heads of all other Services in regard to facing sheets.

The comparator as Director of Administration reports to the Chief Executive whom he meets on a daily basis. In this capacity also he interacts with the Heads of the other Services. Unlike Mr. McGee or Mr. Healy the comparator does not have contact with the Social Partners. From time to time he has contact with outside bodies for example LRA (Belfast) and ACAS (UK).

Work as Secretary to the Board of the Labour Relations Commission:

The comparator's work in this capacity involves the following:-

- (a) Drawing up of the agenda for meetings of the Board which occur monthly.
- (b) Keeping a record of discussions at Board Meetings and conveying decisions taken by the Board to relevant staff.

In his capacity as Secretary he liaises with the Chief Executive in relation to matters to be included on the agenda and further liaises with the Chief Executive in respect of the latter's monthly report to the Board. Also on the agenda for every Board Meeting will be a financial report. This is the report (already referred to) drawn up by Mr. Palmer in his role as Director of Administration. Mr. Palmer, in his capacity as Director for Administration may be questioned or indeed he himself may make representations in respect of the aforesaid financial report.

The comparator also is expected, in his capacity as Secretary to the Board, to attend meetings between the Board and the Labour Court and the Rights Commissioners Service. 15% of the Comparator's time is spent acting as Secretary to the Board.

The foregoing is the Equality Officer's analysis of the work carried out by the comparator Jim Palmer as Director of Administration and as Secretary to the Board of the Labour Relations Commission.

The claimant contends that she is performing like work within the meaning of the Act with Mr. Palmer.

Section 3(a) of the Act states that two persons shall be regarded as employed on like work where both perform the same work under the same or similar conditions or where each is in every respect interchangeable with the other in relation to the work.

In the opinion of the Equality Officer the claimant is not employed on like work within the meaning of Section 3(a).

Section 3(b) of the Act states that two persons shall be regarded as being on like work "where the work performed where one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole".

Regarding this sub-section the Equality Officer must decide whether the work of the claimant is of a similar nature to that performed by Mr. Palmer. No test or criteria is set down in the Act to aid the Equality Officer in this task. However it is fair to conclude that work "of a similar nature" does not require, unlike Section 3(a), that it be the same work or that the work of the claimant be in every respect interchangeable with the work of Mr. Palmer or visa versa. The Equality Officer concludes that what is meant by work "of a similar nature" does not require that the claimant be able to do the work of Mr. Palmer or indeed that he be able to do her work. Nevertheless, to fall within the ambit of Section 3(b)

the Equality Officer is of the view that, at the very least essential aspects of the work of both must be alike but not to the extent that the work of both be identical. It is in the context of this broad definition that the Equality Officer has compared the work done by the claimant and Mr. Palmer. Broadly speaking, the Equality Officer concludes that the majority of the work undertaken by Mr. Palmer relates to financial and technical matters. Roughly 50% of his time is spent preparing and managing finances for and on behalf of the Commission including compiling yearly estimates of expenditure, monthly profiles of expenditure and yearly accounts for inclusion in the appropriation account. A further 25% of his work, the Equality Officer concludes, relates to the development and management of IT Facilities within the Commission. He administers not only his own Service from a personnel point of view but also that of the other Services within the Commission. While the claimant has a personnel function it is a relatively minor one. Similarly, in relation to budgetary matters, the work of the claimant in this regard, namely administering the budget allocated to her division, does not bear any resemblance to the extent of the comparator's budgetary responsibilities. Like his personnel responsibilities, the comparator's budgetary duties encompass the whole of the Commission Services. The principal facets of the claimant's work on the other hand involve the overseeing of the work of equality officers who have special statutory functions relating to the hearing of equality disputes and issuing recommendations, in addition to she herself acting as an equality officer.

Overall, the Equality Officer concludes that the vast majority of the claimant's work cannot be said to be "of a similar nature" to that performed by Mr. Palmer. Having so found there is no requirement on the Equality Officer to assess the extent of the differences between the claimant and the comparator.

The claimant's contention under Section 3(b) therefore fails.

Section 3 (c) of the Act provides that two persons shall be regarded as employed on like work “where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions”.

Examining the claimant’s contention under this Section, the Equality Officer has taken into account every aspect of the work performed by the claimant and Mr. Palmer in relation to skill, physical and mental effort, responsibility and working conditions.

Skill

Mr. Palmer’s job as Director of Administration requires considerable financial acumen and technical skills. The effective running of all of the Labour Relations Commissions Services is to some extent dependent on his being able to make the case for funding for the

Commission. To this end he produces and analyses a considerable amount of financial data. He must be in a position to stand over the figures he produces and ultimately be able to account for the manner in which the budget he, as Director of Administration, has been allocated, has been distributed and spent. The comparator is required also to be totally conversant with all aspects of computer systems as he is responsible for the ongoing management of all IT facilities within the Commission. His work requires the ability to interact with individuals not just those within his own Service but also those individuals for whom he has personnel responsibilities across the Commission Service. The Equality Officer accepts that good inter personal skills are also required of him given that he is charged with the monitoring of the other Services in relation to how they spend the Budgets allocated to them. In his capacity as Secretary to the Board, good communication and note taking skills are essential given that as far as the former is concerned, the comparator is the person charged with relaying to all concerned decisions taken by the Board.

The Equality Officer is satisfied that the claimant's work requires and displays a knowledge and understanding of complex legislation and case law, National and European.

Considerable skill is required of the claimant in her capacity as an Equality Officer since this function requires her to display fairness, impartiality and tact, as well as legal skills already mentioned, in the conduct of an investigation. This is particularly so having regard to the duties and strictures placed on the claimant by statute and potentially by the High -

Court an investigation by an Equality Officer being open to challenge by way of Judicial Review. The claimant in both her capacity as an equality officer and head of Equality Services requires a considerable knowledge of industrial relations practices, job evaluation and analysis, wage rates, conditions of employment, personnel administration, and the organisational structures of the public and private sectors, as some or all of these factors will be present when the claimant is investigating a dispute under the Equal Pay Act or the Equality Act. Considerable drafting skills are required of the claimant as an equality officer so as to ensure that the matters put before her at an equality or equal pay hearing are properly set out in her recommendations and so as to ensure that the law as it stands at any given time is properly applied in all cases. Considerable skill too is required of the claimant in her capacity as Head of Equality when she has to oversee the work of other equality officers. An equality officer acts independently in the carrying out of an investigation. Thus, the Claimant is expected to be able to advise and oversee equality officers in relation to their investigation and recommendations without breaching the totally independent nature of each individual investigation. All in all, in relation both to her role as an equality officer and Head of Equality considerable analytical, legal and management skills are demanded of the claimant.

In summary, the Equality Officer is satisfied that the skills exercised by the comparator in the performance of his work are more than matched by the claimant in relation to the way she performs her work. I therefore conclude that the demands made on the claimant in terms of skill are equal to those made of Mr. Palmer.

Physical Effort

From the written and oral submissions made in this matter and having regard to the interviews carried out with the claimant and Mr. Palmer, the Equality Officer is satisfied that the demands on the claimant in terms of physical effort are greater than those made on the comparator. The Equality Officer so finds having regard to the fact that while both operate to a large extent from the same building and generally conduct their respective duties in an office or office-like environment, there is from time to time required of the claimant greater physical effort when she is acting as an equality officer. In the course of such work, the claimant on occasion is required to visit all types of work environments, from factories to service industries. Work inspections can require her to stand for long periods while observing the work of claimants and comparators. Additionally, she is required from time to time to travel outside the Equality Service itself in order to conduct investigations. There is no requirement on the comparator to travel for the purposes of carrying out his principal duties.

Mental Effort

The Equality Officer concludes that the work of both the claimant and Mr. Palmer requires considerable mental effort. This effort is required of Mr. Palmer in compiling the data necessary for the preparation of budget submissions, the administration of that budget once allocated, the ongoing monitoring of the individual budgets allocated to each service, the preparation of monthly accounts and the day to day responsibilities of being the pay master for the whole of the Commission Service. Similarly, mental effort is required of him in the preparation of the yearly accounts. The Equality Officer is also satisfied that the effective running and up grading of the IT Services within the Commission demands of the

comparator a good deal of mental effort both in analysing the computer needs of the Services and in addressing problems that may occur within the computer system from time to time. As Secretary to the Commission Board, mental effort is required of the comparator in the devising of the Board's agenda, the taking of minutes during the meetings, assisting the Chief Executive with his monthly report, addressing questions arising from the monthly financial report and latterly communicating the decisions of that body to all necessary persons.

What is demanded of the claimant in terms of mental effort is the ability, in her role as an equality officer in the first instance, to assimilate facts and then to judge and analyse submissions, both oral and written. This work and indeed her role as Head of Equality in overseeing the work of the other equality officers, requires the ability on her part to interpret complex issues both legally and factually. Given that note taking is essential to the conduct of hearings and work inspections, considerable mental effort is required of the claimant so as to be able to oversee the hearing / work inspection, while at the same time reduce to writing the salient facts and the legal arguments emerging from such hearings or work inspections. The Equality Officer is satisfied that substantial mental effort is required of the claimant when she, both as equality officer and Head of Equality advising and directing her staff, has to absorb often complex facts and legal submissions and then apply to each individual case the existing law as set out by statute or indeed as interpreted by the Labour Court, or the Superior Courts or the European Court of Justice, as the case may be. In particular, the Equality Officer is satisfied that the drafting of her own and indeed the reviewing of other recommendations requires considerable mental effort because the claimant must operate in the knowledge that equality and equal pay recommendations may well be reviewed by the Labour Court on appeal and may be potentially also be reviewed by the Superior Courts and the Court of Justice. All of this has to be done by the claimant without her having legal training and without her being able to call upon legal expertise.

The Equality Officer therefore concludes that in terms of mental effort the demands made on the claimant are equal to those made on Mr. Palmer.

Responsibility

As Director of Administration the comparator has overall responsibility for the administration of the Commissions budget and for the continuing development of the IT Services. The extent of the comparator's budgetary responsibilities has already been set out in this recommendation and need not be repeated here. Likewise, Mr. Palmer carries extensive responsibilities for the day to day running of the Labour Relations Commission, not only in respect of his budgetary and computer duties, but also in respect of the responsibility he incurs for ensuring adequate staffing levels and for the general maintenance and upkeep of all the Commission facilities. The Equality Officer notes in particular that one of Mr. Palmer's principal responsibilities is to ensure that in the first instance, the Commission is properly funded and secondly that once such funding has been allocated same is properly administered so that it can be properly accounted for at all levels. The Equality Officer notes too the responsibilities the comparator has as Secretary to the Board.

In overall terms, the Equality Officer is satisfied that the claimant's work carried a substantial level of responsibility. Having regard to the fact that the Equality Service exists as an independent unit within the Labour Relations Commission, the responsibility of ensuring that the Service is properly administered falls entirely on the shoulders of the claimant. In her own right as an equality officer and, equally importantly in her role as Head of Equality overseeing the work of other equality officers, the claimant has overall responsibility for ensuring that equality law, as it has been developed, is properly applied,

that precedents are followed and that in all applicable cases that the dicta of the High Court, Supreme Court or the Court of Justice as the case may be are properly understood by her staff. Moreover, considerable responsibility rests on the claimant in her role as an equality officer and also in her role as Head of Equality overseeing others, to ensure that all disputes referred to the Service are properly investigated in accordance with the rules and regulations laid down and in accordance with the rules of natural and constitutional Justice. In her day to day work the claimant both as an equality officer and as Head of Equality is dealing with matters that relate to individual rights and must do so in the knowledge that both from a substantive and procedural point of view her decisions in this context may be challenged. In the wider industrial relations context, the Equality Officer is also satisfied that demands made of the claimant in terms of responsibility are high given that recommendations issued by Equality Officers may have considerable financial and other implications for both employees and employers alike.

In assessing the demands made on the claimant in terms of responsibility, the Equality Officer notes that the claimant has no direct liaison with the Chief Executive of the Labour Relations Commission and note that her quarterly reports may often be furnished without the claimant actually meeting the Chief Executive. Indeed it has been conceded by the Department that the claimant has considerable autonomy in the running of the Equality Service. This is clearly proper having regard to the independent nature of the Equality Service overseen by the claimant. The Equality Officer is satisfied that the autonomy exercised by the Claimant, by its very nature, demands of her a high level of responsibility. Accordingly the Equality Officer is satisfied that in terms of responsibility the demands made of the claimant are equal in value to those demanded of Mr. Palmer.

Working Conditions:

Again, having regard to the nature of the work carried on by the claimant, particularly in relation to that aspect of her work which relates to equal pay hearing and work inspections, the Equality Officer is satisfied that the demands made on the claimant are greater than those made on Mr. Palmer. Such work inspections as already stated may often be lengthy particularly so where there are a large number of claimants and comparators involved. Further, the Equality Officer is satisfied that in her work generally the claimant encounters a great deal more conflict than Mr. Palmer would encounter in the course of his duties. Accordingly, the Equality Officer concludes that the demands made on the claimant in terms of working conditions more than match those made on Mr. Palmer.

In summary therefore the Equality Officer hereby concludes that in terms of the demands it make on the claimant in relation to skill, physical and mental effort, responsibility and working conditions, her work is equal in value to that performed by Mr. Palmer. Accordingly, the claimant is engaged in like work with Mr. Palmer under Section 3 (c) of the Act.

The claimant contends further that she performs like work within the meaning of the Act with Sean Healy, Director of Advisory Services within the Labour Relations Commission.

Mr. Healy's Work

From a consideration of the submissions and job descriptions furnished and from the interview conducted with this comparator and from a perusal of the documents submitted by him, the Equality Officer is satisfied that the work carried out by Mr. Healy at the time of the referral of this dispute was as follows:-

Mr. Healy in his capacity as Director of Advisory Services has as his central brief the prevention of industrial disputes by means of promoting, advocating and assisting with the development of good industrial relations practice and procedures. This work is undertaken by him and the Service he oversees in the following manner-

1. Directing the work of the Service which entails carrying out reviews and studies of industrial relations.
2. Undertaking project work.
3. Co-ordinating and developing policy initiatives for or at the behest of the Chief Executive of the Board of the Labour Relation Commission.
4. Generally developing the Service.

The comparator carries out reviews of industrial relations practices in high profile industries and services. He does this in his capacity as Director of Advisory Services. Further, this type of work is allocated by him also to his staff, one of whom is a senior advisory officer and the other known as an advisory officer. The comparator and indeed the staff he oversees get involved in project work and the carrying out of reviews in a number of ways. Involvement may be at the request of a company or union or it may arise following discussion at a conciliation conference. Similarly, a Labour Court recommendation may suggest that the parties might benefit from the Service. The Conciliation Service together

with the Chief Executive may direct that the comparator get involved in specific site or project work, following a perusal of the frequent user statistics compiled by the Conciliation and Rights Commissioners Services. All of the assignments are undertaken with the agreement of the parties concerned.

From whomever a request for the Advisory Service to get involved is made, the manner in which such reviews and project work is undertaken is as follows:

The comparator meets with senior management and the union initially. This initial contact may be at the highest level both in the union and in the company involved. The parties are met separately and the difficulties are discussed. The review or project work itself is conducted on site. The decision as to who would be interviewed rests entirely with the comparator. The next step undertaken by the comparator when carrying out this work is to

meet the union representation in the Company and the line management. This is done before any on the job interviewing is commenced. Who will be interviewed is entirely a matter for the comparator. On-site interviews are conducted in a confidential manner. The object of such interviews is to gauge the climate of industrial relations in the company in question.

The duration of the on site interview is determined by the comparator. In the course of such interview questions are asked by him and in addition, he records the views of those being interviewed as well as the answers to his own questions. Once the site interviews are complete the comparator's next function is to return to headquarters and prepare a report.

The comparator has developed the format for such reports, which format is also used by the other advisory officers. The content of every report is broken down as follows.

- (a) An introduction which will contain the terms of reference agreed with the parties for the particular study / project.
- (b) The methodology employed by the Service in the course of its work.
- (c) Any associated factors.
- (d) Background.
- (e) The commentary from the different constituencies.
- (f) The observations made by the comparator
- (g) The comparator's conclusions and recommendations for the parties.

The report once compiled is furnished to the parties and to the Chief Executive and Board Members of the Labour Relations Commission. It is not circulated to the Heads of the other Services in the Commission but may be made available to them on request. The Equality Officer during this investigation sought and received copies of the type of report the comparator compiles after he has completed interviews. The recommendations contained in any report are not binding on the parties to whom they are addressed. The comparator has a function in monitoring the implementation of recommendations and this is done by him through informal contact with the parties involved and on occasion by company visits.

When reports have been produced, the comparator may become involved in the establishment of joint employer / employee working parties with a view to achieving agreement on implementing any changes referred to in the report.

As stated, project work undertaken by the other advisory officers is overseen by the comparator and all reports prepared by them following such project work are seen by the comparator before they are issued. All such reports including those prepared by the comparator himself are seen by the Chief Executive before they are issued.

In addition to the project work described above, the comparator's work also involves the production of position papers that are of interest to the Chief Executive and the Commission Board and this work is done either at the request of the Chief Executive or on the comparator's own initiative. On occasions the comparator prepares particular papers on particular topics. The policy initiatives may come about following a study by the comparator of trends in other jurisdictions.

The comparator's work also includes involvement in the preparation of Codes of practice. This is done in conjunction with the Labour Relations Commission Board. Once compiled, the usage of such codes of practice in industrial relations matters is monitored by the

comparator. To this end, one of the comparator's functions is monitoring the Code of Practice on Dispute Settling Procedures which Code was drawn up prior to the comparator being appointed Director of Advisory Services.

From the job descriptions furnished and the interview with the comparator, the Equality Officer concludes that some 60% of the comparator's time is spend undertaking review / project work. The balance of his time is spent in co-ordinating and preparing policy initiatives and directing the work of the Advisory Service generally. Regarding the latter, the comparator's task is to review the reports drawn up by his staff. It is the comparator who allocates the project work involving on-site investigations to the other advisory officers.

Regarding administration of his Service generally, this involves the comparator preparing material for inclusion in the Annual Report of the Labour Relations Commission.

Apart from contact during site investigations / interviews, the comparator has contact in a general way with the Social Partners. He liaises also with other outside bodies such as Higher Education Institutions, in particular those who provide human resources and industrial relations courses. Contact may be initiated either by the comparator or by the institution itself.

As Director of Advisory Services, the comparator gives on the job training to his staff. Such training as is given by him concerns the manner in which on site investigations / interviews for the purposes of reviews / project work are to be conducted. Training in interpersonal skills and interview skills are not afforded to the staff by the comparator personally. Rather such training is arranged by him for the staff.

Mr. Healy has some minor personnel responsibilities as Director of Advisory Services and this is mainly confined to reviewing staff holidays and leave entitlements. The comparator's administrative functions include the administering of the budget allocated to the Service. The comparator has no other financial responsibilities.

The comparator reports to the Chief Executive. He does not however have a day to day involvement with the Chief Executive. Reporting is done by way of a weekly report. The comparator has no formal liaison with the Head of Equality or the Director of Administration regarding policy matters. There is liaison with the Director of Conciliation Services. On occasion the comparator makes presentations to the Commission Board and between September 1992 and September 1994, the comparator made three such presentations.

The foregoing is the Equality Officer's analysis of the work carried out by the comparator Sean Healy as Director of Advisory Service as of September 1994.

The Equality Officer has considered the claim that Ms Sweeney is doing like work with Mr. Healy as defined by Section 3(a) of the Act. In the opinion of the Equality Officer, the claimant is not employed on like work within the meaning of Section 3(a). She does not perform the same work as Mr. Healy and the work of one is in no way interchangeable with the other.

Section 3(b) provides that two persons shall be regarded as being on like work "where the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole". The Equality Officer has compared the work of the claimant and Mr. Healy with a view to assessing whether or not the work of both "is of a similar nature". The Equality Officer has considered the submissions, job descriptions and other documentation furnished by the

parties and the Equality Officer has had the benefit of interview with both. From the foregoing the following has been established: both the claimant and Mr. Healy head their respective Services within the Labour Relations Commission, the claimant as Head of Equality Service and Mr. Healy as Director of Advisory Services. Having compared the principal aspects of the work undertaken by each, the conclusion of the Equality Officer is the work performed by both is not “of a similar nature”. This conclusion has been arrived at having regard to the following -

The work of the claimant, as an equality officer and as Head of Equality directing others, concerns the investigation of disputes referred to the Service pursuant to the provisions of Equality Legislation. The comparator on the other hand, cannot be said to be in any way involved in the adjudication of industrial disputes whether individual or group. Rather, the underlying function of the Service overseen by the comparator is to provide guidance and assistance to employers and trade unions. The principal purpose of the service is the prevention of disputes by promoting good industrial relations policies. The Service overseen by the comparator is as its name suggests, advisory. The Service overseen by the claimant and indeed the work undertaken by the claimant is done pursuant to statutory provisions and guidelines. Similarly, specific disputes in the industrial relations context are referred to the Director of Conciliation for arbitration, mediation or facilitation. This process has already been described elsewhere in this Recommendation. While therefore the

Equality Officer has found the work of the claimant and Mr. McGee similar in that they are both involved in the processing of employment disputes (albeit in different contexts) it is the conclusion of the Equality Officer that since neither Mr. Healy nor the service he oversees can be described as an adjudicating or conciliating body, it follows that the work of the claimant and this comparator is not work “of a similar nature” for the purpose of the Act. Having so found, a consideration of the other factors set out in Section 3 (b) does not arise.

Section 3(c)

The claimant contends that she performs like work within the meaning of Section 3(c) of the Act with Mr. Healy.

The Equality Officer has taken into account every aspect of the work performed by the claimant and Mr. Healy in relation to skill, physical and mental effort, responsibility and working conditions.

Skill

Both the claimant and Mr. Healy display a high level of expertise in the performance of their duties. The claimant's work requires a knowledge and understanding of complex legislation and case law, both Irish and European. She requires a wide knowledge of industrial relations in the broad sense. An ability to evaluate and analyse information and facts is an integral part of her work, both as an equality officer and as Head of Equality. Mr. Healy requires, for the purposes of his work, an in-depth knowledge of industrial relations. He too is required to evaluate and analyse information for the purpose of drafting advisory reports. In their roles as Head of Equality and Director of Advisory Services respectively, both require good administration and personnel skills as both are engaged in the allocation of work to those reporting to them. Both the claimant and Mr. Healy deal with people outside of their Departments, the claimant in her capacity as equality officer investigating disputes under the equality legislation and also in her general role as Head of Equality. Mr. Healy too is engaged on an ongoing basis in dealing with employer and employee representatives as well as meeting line management and employees in the course of the studies / projects undertaken by his Advisory Service.

Considerable skill is demanded of the claimant in her capacity as an equality officer since this function requires her to display fairness, impartiality and tact in the course of an investigation, and it requires her to be vigilant regarding procedures during and in the course of an equality investigation, both at the hearing stage and at the work inspection stage. This is particularly so having regard to the independent nature of the Equality Service and having regard to the fact that what she is investigating is a “rights” dispute. At all times the claimant must be conscious of the strictures placed on her as an equality officer by statute and the High Court - an investigation by an equality officer being open to judicial review. Mr. Healy in this respect is not so burdened since the parameters of any project work undertaken by him is by and large set by the parties. Neither the manner in which the comparator carries out his work nor the conclusions arrived at by him are subject to review by any authority, judicial or otherwise. This is marked contrast to the claimant whose recommendations may be subject to appeal to the Labour Court and indeed may ultimately be reviewed by the Superior Courts. Thus, considerable skill is required of the claimant not just in the course of an equality investigation but in particular as far as the writing up of recommendations is concerned. The Equality Officer is of the opinion that the management skills required of the claimant are considerable having regard to the fact that she as Head of Equality has to oversee the recommendations of other equality officers and she must do this without breaching the essentially independent nature of an equality investigation. From an analysis of Mr. Healy’s job description and having regard to the interview conducted with him the Equality Officer is satisfied that the management skills which the comparator has to exercise in his capacity as Director of Advisory Services are not as extensive as those demanded of the claimant. While the Equality Officer accepts that the *raison d’être* behind the setting up of the Advisory Service within the Labour Relations Commission demands of the comparator that he has the skill necessary to assist in the promotion of good industrial relations policies, it is the conclusion of the Equality Officer that overall, the demands made of the claimant in terms of skill are greater than those made of Mr. Healy.

Physical Effort

From the written and oral submissions in this case and having regard to the interviews conducted with the claimant and Mr. Healy, the Equality Officer is satisfied that the demands made on the claimant in terms of physical effort is equal to if not greater than those made on Mr. Healy. The Equality Officer so finds having regard to the fact that while both operate to a large extent within an office or office like environment there is from time to time required of the claimant greater physical effort when she is conducting work inspections in the course of an equality investigation. The Equality Officer accepts that Mr. Healy too must conduct part of his work on site, but unlike the claimant Mr. Healy's on-site work normally takes the form of interviews. The claimant, on the other hand, may often be required to stand for long periods of time in factory or other work environments doing work inspections so as to be in a position to properly assess whether or not there is like work between a claimant and a comparator. Accordingly, the Equality Officer finds that in terms of physical effort, there are greater demands made on the claimant.

Mental Effort

The Equality Officer concludes that the work of both the claimant and Mr. Healy requires mental effort. This effort is required of Mr. Healy when he is setting up and undertaking, in particular, project work and when he has to chair joint working groups. The Equality Officer has seen the type of report that is produced by Mr. Healy in the course of his work as an advisory officer and likewise, the Equality Officer is aware of the mental effort which goes into the investigating of an equality claim and the subsequent drafting of recommendations. What is demanded of the claimant in terms of mental effort is the ability to assimilate facts and then to judge and analyse oral and written submissions. Her work as an equality officer and indeed her overall work as Head of Equality overseeing others, demands of her the ability to interpret complex issues both legally and factually. Given that

note taking is essential in the conduct of equality hearings and during work inspections, the claimant is required to give great attention to detail. It is also necessary for the claimant to be able to reduce to writing the salient facts and arguments emerging from an equal pay or an equality investigation. The claimant expends mental effort in analysing case law both Irish and European so as to be in a position to properly apply the law to disputes being referred to her. Again she must operate in the knowledge that equality recommendations are subject to appeal to the Labour Court and potentially subject to review by the Superior Courts. Likewise, Mr. Healy must expend considerable mental effort in reducing to writing the material and information gathered by him in the course of his project work in companies and it is accepted that, in the employment concerned, where project work has been undertaken, the advancement of good industrial relations practices may be dependent on the manner in which he has analysed the information he has obtained and arrived at his conclusions and recommendations.

Having compared the claimant and the comparator in terms of overall administration of their respective Services, the Equality Officer concludes that the mental effort required of both in this respect and in dealing with personnel matters is broadly similar. Overall however the Equality Officer considers that the mental effort required of the claimant is equal to that required of Mr. Healy.

Responsibility

The Equality Officer notes that Mr. Healy is charged with the overall responsibility of running the Advisory Service. He is charged with the efficient and effective operation of the Service and the quality of the reports that are drawn up both by himself and by the other advisory officers. He must ensure so far as he can that the issuing by him of advisory reports, following on-site interviews and the establishment of joint employer / employee

working parties achieve the objective of such exercises, namely the betterment of the industrial relations climate in the company or employment reviewed. He has responsibility also for the reviewing of conciliation statistics so that frequent users of the Conciliation Service can be identified and the reasons for such frequent use ascertained.

As Head of the Advisory Service the comparator administers the budget allocated to his Service which is by and large for travel and subsistence. He has minor personnel and administrative responsibilities similar to the claimant regarding staff holidays and other leave entitlements. The comparator reports to the Chief Executive. He does not have day to day contact with him but liaises with the Chief Executive by way of weekly reports. The Equality Officer notes also that before any report drawn up after project work has been undertaken is issued to the parties, same is seen by the Chief Executive.

Having regard to the fact that the Equality Service exists as an independent unit within the Labour Relations Commission, the responsibility of ensuring that the Service is properly administered falls entirely upon the claimant. In her own right as an equality officer and equally importantly in her role as Head of Equality overseeing the work of other equality officers, the claimant has overall responsibility for ensuring that equality law as it has been developed is properly applied, the precedents are followed and that the dicta of the High Court, Supreme Court or the Court of Justice as the case may be is properly understood by her staff. From a wider industrial relations context, the Equality Officer is also satisfied that the claimant has a responsibility to ensure that the law pertaining to equality is properly understood and applied both by her and her staff given that recommendations issued by equality officers may have considerable financial and other implications for both employees and employers alike. The claimant has exclusive responsibility for the running of the Equality Service. She has no direct liaison with the Chief Executive of the Labour Relations Commission. She does not report to him in the manner in which Mr. Healy reports to the Chief Executive. While she is obliged to furnish quarterly reports they are always of a

general nature and it may well be that these are furnished without the claimant actually meeting the Chief executive. Indeed, it has been conceded by the Department that the claimant has considerable autonomy in the running of the Equality Service. Accordingly, the Equality Officer is satisfied that in terms of responsibility the demands made of the claimant are equal in value to those made of Mr. Healy.

Working Conditions

Having regard to the nature of the work carried out by the claimant compared to that carried out by Mr. Healy, the Equality Officer is satisfied that in terms of working conditions, the demands made on the claimant are to some extent greater than those made on Mr. Healy.

This is so having regard to the obligations placed on the claimant from time to time to carry out work inspections in equal pay claims . Work inspections may often take place in factories and often at unsociable hours if for example the claimant is required to compare claimants and comparators who are on shift work.

Summary

Having regard to all of the foregoing matters that the 1974 Act dictates be examined in considering a claim pursuant to Section 3 (c), the Equality Officer hereby concludes that in terms of the demands it makes on the claimant in relation to skill, physical and mental effort, responsibility and working conditions, her work is equal in value to that performed by Mr. Healy. Accordingly, the claimant is engaged in like work with Mr. Healy.

The Department's Defence

Section 2 (3) of the 1974 Act provides that “nothing in this Act shall prevent an employer from paying to his employees who are employed on like work in the same place difference rates of remuneration on grounds other than sex “.

Having found that the claimant is engaged in like work with all three named comparators the Equality Officer must decide whether, as argued by the Department, the claimant is paid a different rate of remuneration “on grounds other than sex”. A finding of “like work” establishes prima facie evidence of discrimination. Accordingly, the Equality Officer takes as her starting point the decision of the Court of Justice in Enderby v Frenchay Health Authority and Secretary of State for Health (1993) IRLR 591 wherein the Court of Justice has stated that “where there is a prima facie case of discrimination, Article 119 of the EEC Treaty requires the employer to show that the difference in pay is based on objectively justified factors unrelated to any discrimination on grounds of sex “. It is against this that the arguments advanced by the Department in this case must be measured.

These arguments have already been set out elsewhere in this recommendation, as have the response of the claimant thereto.

Firstly, the Department seeks to justify the difference in pay on historical grounds. It is common case that the first two holders of the post of Head of Equality were male. When the Equality Service was first established two equal pay officers at HEO level were appointed to process equal pay cases. The first male holder of the Head of Equality post was appointed in 1978, following a review of the staffing requirements of the Labour Court. In 1979 the staffing levels of the Equality Service were further increased by the allocation of two further equality officers, one at AP level and one at HEO level. By 1979 therefore there were two

APs one of whom was designated Head of Equality with an additional allowance and three equality officers at HEO level. The first Head of Equality remained in the post until August 1983 when he was replaced by another male. In November 1984, the first female holder of the post was appointed. She remained as Head of Equality until her departure in May 1991. She was ultimately succeeded as Head of Equality by the claimant. The latter was recruited by way of limited competition. She was recruited not into the Labour Court, but rather into the Labour Relations Commission, the body established under the Industrial Relations Act 1990 and the body who under that Act had now been given statutory responsibility for the appointment of equality officers. The Equality Service itself was transferred to the Labour Relations Commission in January 1991. The claimant was appointed as Head of Equality by the Labour Relations Commission in September 1991. Similarly, all three comparators in the present case were appointed to their respective posts by the Labour Relations Commission. Responsibility for the Conciliation Service, like the Equality Service transferred to the Labour Relations Commission in 1991. The Industrial Relations Act, 1990 provided for the establishment of an Advisory Service which introduced a new dimension to Irish industrial relations practices. Likewise, though not provided for in the 1990 Act, the post of Director of Administration was created only after the establishment of the Labour Relations Commission.

Having regard to all these factors therefore, the Equality Officer is satisfied that as far as the present claim is concerned, the appropriate time frame against which to consider whether there is justification for the difference in pay on grounds other than sex is from the time the Labour Relations Commission was established. In essence, the Rights Commissioners Service apart, four distinct Services exist within the Labour Relations Commission. All of these Services are headed by an individual, three of whom are male. These three individuals are the comparators in the present case. The fourth is the claimant. She is paid less than her three counterparts. This is what the Department has to justify. The Equality Officer has had sight of correspondence that passed in 1991 between the then Department of Labour and

various individuals, which correspondence concerns staffing requirements of the newly established Labour Relations Commission. At some point in 1991 it had been decided that the soon to be appointed Chief Conciliation Officer / Director of Conciliation Services would be so appointed subject to his having responsibility for the Equality Service. This was contained in a letter dated 16th July 1991 and again referred to in a further letter of the 26th August 1991 from the Department of Labour to the Chief Executive of the Labour

Relations Commission. These letters followed upon the already issued circular of the 30th May 1991 announcing the vacancy for the post of Head of the Equality Service. In this latter document however there is no reference to the fact that responsibility for the Equality Service would lie with the Chief Conciliation Officer / Director of Conciliation. Rather, the circular quite clearly spells out that responsibility for the overall performance and

effectiveness of the Equality Service was to be part of the duties of the newly appointed Head of Equality. Moreover, the Head of Equality was to be accountable to the Labour Relations Commission for the efficiency and quality of the Equality Service. From the investigation carried out by the Equality Officer in this case, she is satisfied that at no time either in 1991 or since has the Director of Conciliation Services had responsibility for Equality. Moreover, the aforementioned correspondence suggests that the grade at which the new Chief Conciliation Officer / Director of Conciliation would be appointed was dependent on his having responsibility for the Equality Service. The Equality Officer notes however that no documentation has been furnished by the Department to show whether or not a review of the grading structure attached to the Director of Conciliation Services was ever carried out, given that he never assumed any responsibility for the Equality Service.

The Equality Officer therefore decides that, on the balance of probability, no such review of the Conciliation Service has ever been carried out.

It is common case that a review of the claimant's post was carried out by the Department following submission of her equal pay claim. The Department relies on the findings of the 1995 review carried out by the Management Services Unit of the Department of Finance in

support of its argument that the rate of remuneration paid to the claimant is based on grounds other than sex. This review, the Department says, justifies the rate of remuneration paid to the claimant. The conclusion of the Management Services Unit evaluation was that the post of Head of the Equality Service was correctly graded at Assistant Principal (General Service) with an allowance for higher duties. The Department also relies on the findings of the previous survey conducted in 1983 which again concluded that the post of Head of Equality was correctly graded at Assistant Principal level but recommended that the allowance attaching to this post be increased. In the view of the Equality Officer it is the 1995 evaluation which must be assessed here given that the Equality Officer has already found that the time frame against which the Department's arguments justifying the difference in pay between the claimant and the comparators must be measured, commences from the establishment of the Labour Relations Commission.

The Equality Officer has considered the contents of the 1995 evaluation and she has had regard to the submissions made by the claimant in respect thereto.

The Management Services Unit began by interviewing the claimant in relation to her work as Head of Equality and then setting out a description of her duties and work as Head of Equality in writing. This description is comprised in Chapter 3 of the survey. The MSU then went on to examine the duties and responsibilities of the claimant in the light of the following factors-

- (a) The complexity of the work
- (b) The level of contacts the claimant has within and without the Labour Relations Commission.
- (c) The scope given to her for the use of initiative and managerial skills.
- (d) The ramifications of decisions made by her or staff reporting to her.
- (e) The degree of involvement on her part in the formulation of policy.
- (f) The number of staff reporting to her.

- (g) The level of discretion enjoyed by the claimant in the disposal of monies.

The evaluation of the claimant by the MSU concluded inter alia that:

“From an examination of the work involved in individual cases, we have no hesitation in stating that the task of adjudicating on claims is sufficiently demanding to be of HEO / AP standard (depending on the complexity of individual cases). In addition, the supervisory duties of the post holder (particularly the exercise of the tact, judgement and interpersonal skills required) together with the constraints presented by the system of appeal to the Labour Court and the interest of many bodies in the recommendations of the service, warrant the granting of an allowance to him/her for duties over and above the norm for Assistant Principal (General Service), as at present”.

The MSU then went on to outline the objections it found to the claimant being awarded any higher status. The objections were as follows:-

- (a) The lack of frequent contact by the claimant with the Chief Executive of the Board of the Labour Relations Commission, which lack of contact the MSU found could be construed as meaning that the work of the Equality Service had fewer ramifications in the industrial relations area than the conciliation or advisory areas.
- (b) The fact that the Equality Service operated as a practically autonomous unit within the Labour Relations Commission.
- (c) The length of time the Equality Legislation has been on the Statute Book.
- (d) The essentially reactive role of the claimant and of Equality Service as a whole.

- (e) The subsidiary role played by the claimant in policy formulation together with the claimant's lack of contact with the Chief Executive and the Board of the Commission.

The Equality Officer notes that in carrying out its survey, the Management Services Unit spoke to the three comparators named by the claimant in her equality claim. The Equality Officer has had sight of the notes made by MSU in respect of such interviews. The notes describe in brief the duties and responsibilities of each of the comparators. These descriptions were not included in the survey prepared by the MSU in September 1995. There is only passing reference in the survey to the work performed by each of the comparators. Neither in the survey furnished by the MSU to the Department nor in the notes of the interviews conducted by it with the comparators, (furnished to the Equality Officer) is there any examination by the MSU of the duties and responsibilities of the comparators in light of

- (a) the complexity of the work undertaken by each
- (b) the level of contact which they have with persons within and outside of the Labour Relations Commission
- (c) the scope given to them for the use of initiative and managerial skills
- (d) the ramifications of decisions made by them or the staff reporting to them
- (e) the degree of involvement on their part on the formulation of policy
- (f) the number of staff reporting to them
- (g) the level of discretion enjoyed by them in the disposal of monies.

As previously stated, these were the factors against which the claimant's work and responsibilities were considered. Given that the Department commissioned the MSU evaluation of the claimant's work after an equality claim had been submitted by her, the Equality Officer finds it surprising that such an evaluation was carried out without any consideration of the work undertaken by the named comparators in this case. Consequently, the argument of the Department that the claimant's rate of pay is based on grounds other than sex has to be assessed having regard to the

shortcomings of the 1995 evaluation. Moreover, since the Equality Officer has found that a common standard was not used to measure the work of the claimant and the comparators it therefore follows that the conclusions arrived at by the Management Services Unit cannot assist the Department in relation to that part of the Department's argument which seeks to highlight the particular skills and abilities it says are demanded of Mr. McGee and Mr. Healy. It is the view of the Equality Officer that, had a proper evaluation been carried out it would have found that, like the claimant's work, the work of Mr. McGee as Director of Conciliation is essentially reactive in nature. The Equality Officer finds this also to be case with Mr. Healy's work. The Equality Officer highlights this because the essentially reactive nature of the claimant's work was listed by the MSU as one of the objections to the post being re-graded. Likewise, there is no reference in the 1995 evaluation to what demands, if any, are made on all or any of the comparators in terms of legislative change and policy. Again, these are factors relied on by the MSU as valid objections against the Head of Equality post being up graded. The Equality Officer notes however that the MSU were prepared to concede that, notwithstanding the limited role play by the claimant in the formulation of policy, a case could be made for up grading the claimant if she were responsible for a sizeable block of staff and / or expenditure. The 1995 survey however found the staff reporting to the claimant to be small in number and that she had very little discretion in the disposal of monies. Had the MSU or the Department undertaken a survey of the other Heads of Service within the Labour Relations Commission it would have found that the position of the claimant in terms of staff numbers and monetary discretion is no different to that of Mr. Healy, Director of Advisory Services. Nor is there any difference between the claimant and Mr. McGee in terms of monetary discretion. The Equality Officer also notes that in its job description for Mr. Healy, the Department lists his duties regarding policy initiatives as being channelled to surveying frequent users of the Conciliation Service. There is no evidence from his job description nor from the investigation carried out by the Equality Officer that Mr. Healy has the type of input into national policy and legislation that the MSU survey says the claimant lacks.

In the 1995 survey, upon which the Department relies, there is one aspect of the claimant's work

that is compared with the three comparators in this case. The independent nature of the Service the claimant oversees is highlighted in the survey and the conclusion arrived at is that, by virtue of this independence, the Equality Service operates as a practically autonomous unit within the Labour Relations Commission, which requires the detailed attention of neither of the Chief Executive nor the Board. The Management Services Unit has also concluded that, as the Conciliation Service and the Advisory Service lie at the core of the Commissions functions, with the Equality Service being practically autonomous, this (in the view of the MSU) could be construed as meaning that the work of the Equality Service has fewer ramifications in the Industrial Relations area than either of the two Services mentioned. It is common case that, unlike the aforementioned Conciliation and Advisory Service Directors, the claimant does not report to the Chief Executive or to the Board and it is acknowledged that she has overall responsibility for the running of the Equality Service. If the Department therefore is relying on a suggestion in the MSU survey that, by virtue of her level of responsibility within the Commission Services her work is somehow lesser in value than that of the other Directors, then it is the view of the Equality Officer that this cannot be a tenable position. Conversely, if what is being suggested by the MSU is that by virtue of her level of responsibility the claimant's work is "higher in value" to that of the comparators, then the Equality Officer would find such a proposition equally untenable having regard to the judgement of the European Court of Justice in Murphy v An Bord Telecom wherein the Court of Justice ruled that "Article 119 of the EEC Treaty must be interpreted as covering the case where a worker who relies on that provision to obtain equal pay within the meaning thereof is engaged in work of higher value than that of the person with whom a comparison is to be made". Since that was the ruling of the Court of Justice in **Murphy** regarding "like work" it is the view of the Equality Officer that it must follow also that the employers defence under Community Law that the difference in pay "is due to circumstances other than the sex of the worker" cannot be invoked where what is being relied on as justification for lower pay is the fact that an employee's work involves a level of responsibility greater than that of those who are paid more than her.

Having regard to all of the foregoing, the question must be asked whether, in this case, the Department has proved that the claimant is paid less than her three male counterparts, not because of her sex, but rather because of a ground other than sex. The issue is whether the grounds put forward by the Department can be objectively justified. It is the finding of the Equality Officer that the grounds put forward by the Department, as considered and examined above, are not the objectively justified factors required by Irish and EC Law. In the absence of any justifying factors like skill, ability or experience for a grading system the Department cannot seek to rely on grading differences as justification where, in the employment concerned, namely the Labour Relations Commission, all of those employed at the higher grade are male. In what has been advanced by the Department by way of defence, the Equality Officer cannot find as proved that “grounds other than sex” were the reasons for the payment of a lesser rate of remuneration to the claimant.

In coming to this conclusion the Equality Officer has considered the argument made by the Department relating specifically to Mr. Palmer, Director of Administration that his job is “red circled”. The Equality Officer has seen the correspondence from the Department of Finance to the Secretary of the Department of Labour dated 16th July 1991 wherein it is stated that the then Chief Conciliation Officer Mr. Palmer was to be transferred as Secretary to the Commission. This latter position was to be graded at AP Level but Mr. Palmer was to retain his pay scale of Principal Officer on a personal basis. This could well amount to justifying factors for Mr. Palmer being paid more than the claimant since the contents of the letter of the 16th July 1991 suggest that Mr. Palmer was being transferred from his position of Chief Conciliation Officer at Principal Officer level to the post of Secretary to the Commission which post was graded at AP level. However, the matter does not end there since, from the letter dated 26th August 1991 from the Department of Labour to the Chief Executive of the Labour Relations Commission it is clear that Mr. Palmer would now not only be transferred to the post of Secretary to the Commission but also as Director of Administration within the Labour Relations Commission. Moreover, in that letter there is confirmation that, following an appeal by the Labour Relations Commission, the post to which Mr. Palmer was transferred was regraded to Principal Officer level. Such up grading came with the

proviso that the grading would be subject to review when the post of Director of Administration next becomes vacant. To date this has not happened. It is clear that in 1991 the Department was happy to regrade the post of Secretary / Director of Administration to Principal Officer level. It is equally clear that Mr. Palmer is being paid for the work he is now doing both as Secretary to the Commission and Director of Administration Services. It is the view of the Equality Officer that his rate of pay is in no way dependent on the job that Mr. Palmer was doing prior to his being transferred from Conciliation to his present position. The Equality Officer has also had regard to the fact that neither in the 1995 survey compiled by the Management Service Unit nor in the job description for Mr. Palmer furnished by the Department is there a case made out that the post of Director of Administration / Secretary to the Commission will be graded downwards at any time in the future. Having regard to all of these factors therefore and in particular having regard to the contents of the letter of the 26th August 1991 the Equality Officer is satisfied that the remuneration paid to Mr. Palmer is not paid to him on a personal basis. Consequently, the Department's argument in this respect fails.

Recommendation

In view of the conclusions of the Equality Officer that the claimant is engaged on like work with all three named comparators and in view of the rejection by the Equality Officer of the Department's argument that the claimant's rate of remuneration is based on grounds other than sex, the Equality Officer therefore recommends that in accordance with Section 8(5) of the Act the claimant Ms Sweeney be paid the same rate of pay as the comparators with effect from the 30th September 1991.

Mary Faherty, Equality Officer,

15th August 1997