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Resolving workplace disputes in Ireland: The role of the Labour Relations Commission

Paul Teague

April 2013

Governance
and Tripartism
Department

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Foreword

Conflict is inevitable in workplace relations. Establishing institutions and practices that are able to manage workplace conflict effectively is therefore an integral dimension of any workplace relations system. However, the nature of workplace relations and workplace conflict is changing. For example, as trade union density has declined, work-related disputes have become increasingly individualised, rendering institutions built on the expectation of collective disputes struggling under the resulting workload. Broader legislative and economic developments have also affected the nature of disputes, with many countries reporting a sharp increase in the number of rights disputes (and termination-related rights disputes in particular) proportionate to the number of interest disputes. Such changes can pose significant challenges to those charged with managing workplace disputes, and may demand a range of policy adjustments at an institutional or legislative level.

This paper is one in a series of national studies that examine how certain high-performing dispute resolution institutions have responded to the changing nature of workplace disputes with a view to informing future developments in dispute resolution policy. Undertaken on behalf of the ILO by leading regional experts, each paper in the series looks at the evolution of a national dispute resolution institution. Highlighting the key challenges the institution has faced and the ways in which it has responded, the papers offer a nuanced understanding of the achievements and continued weaknesses of the system in question.

In this paper, Professor Paul Teague (Queens University Belfast) examines the dispute resolution and prevention activities delivered by the Labour Relations Commission in Ireland. Through an in-depth analysis of the Commission's conciliation, advisory, rights and mediation services, Professor Teague details how the Commission has been compelled to rethink even some of its most fundamental organizing principles in order to respond to wider social, legal and economic developments. However, it is to the Commission's willingness to revisit policies, experiment with new techniques and subject itself to continued scrutiny, along with its high standards of competency and deep knowledge of the industrial relations landscape, that Teague attributes its success and on-going relevance in the face of widespread reform of Ireland's employment dispute resolution system.

As well as outlining the overriding *modus operandi* of the Commission, Teague also identifies a number of particularly successful initiatives that are likely to be of interest to stakeholders involved in dispute resolution around the world. He concludes by underlining the proactive stance required of the Commission to promote the promulgation of public norms and standards with regard to workplace conflict.

The working papers of the Governance and Tripartism Department are intended to encourage an exchange of ideas and are not final documents. The views expressed are the responsibility of the author and do not necessarily represent those of the ILO. I am grateful to Professor Teague for undertaking the study and commend it to all readers interested in labour dispute resolution.

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Introduction

Workplace conflict, how it manifests itself and how it is managed is a core part of employment and industrial relations. A strong view in the literature is that organizations are likely to pay a high cost if problems are not solved effectively (Ury et al 1989). At the extreme, days can be lost due to some form of industrial action, but more plausibly sickness and absenteeism rates may increase, and management-employee relations may become strained if not embittered. Disharmony at the workplace may even impede organizations from creating adaptable structures to succeed in today's challenging business environment. An equally prevalent argument in the literature is that organizations should develop effective conflict management arrangements that are able to resolve disputes quickly and as close as possible to where these arise (Costantino and Sickles Merchant 1996). The consensus is that those organizations with effective dispute resolution systems are more likely to have employees who feel they have dignity and justice at work and are more committed to the mission of the organization.

Few would dissent from these arguments. Yet the problem is that not all organizations are effective at resolving workplace disputes and problems. As a result, it is important that conflict management is managed. Governments are loath to stand idly by and let industrial conflict or even any form of disharmony at work run its course. Such a stance would be high-risk because strife between employers and employees in one firm could have a contagious effect, triggering conflict in other firms. Even if spillovers of this kind did not happen, an atmosphere of contestation and lack of trust may come to pervade relations between employers and unions across an economy. Thus, to ensure that industrial conflict is addressed quickly and effectively, governments in most Anglo-Saxon countries at least have established public dispute resolution agencies. Across countries, these agencies vary in number and in what they do, but usually they include a body dedicated to delivering a range of services aimed at resolving and preventing disputes. The organizational characteristics of these dispute resolution agencies vary as they are rooted in the industrial relations system to which they belong. Normally, however, these bodies offer forms of conciliation, mediation and arbitration in their endeavours to maintain a low conflict employment and industrial relations environment. Thus, public dispute resolution bodies play an important role in creating stable and orderly relations at work.

The efficacy of the public dispute resolution system in Ireland has been the subject of intense scrutiny in recent years. Concerns about the fragmented, complex and costly nature of the current framework have been met by a proposal for a major reform of the national workplace relations system. Central to the proposed reform is the establishment of a new dispute resolution institution, the Workplace Relations Commission (WRC). The WRC will incorporate the functions of four existing dispute resolution institutions, including the Labour Relations Commission (LRC) (Bruton 2012: 6).

In light of the imminent changes to Ireland's dispute resolution services, the opportunity is taken to reflect on the organizational characteristics of the LRC that have enabled it to evolve, over just twenty years of operation, into the main public dispute resolution agency in Ireland. Consideration is also given to the challenges the LRC has faced, and what the WRC will need to improve on in employment relations.

This paper examines the range of dispute resolution and prevention activities currently delivered by the LRC. The argument developed is that the LRC is a high performing organization, successfully able to stay in touch with changing employment and industrial relations times to deliver a portfolio of services that positively contributes to the effective resolution of workplace problems.

The paper is organized as follows. The first section sets the context for the study by outlining the main contours of the Irish employment and industrial relations system. After

an initial overview of the organization, the second section provides an in-depth examination of the LRC's three main divisions – the Conciliation Service Division, the Advisory Services Division and the Rights Commissioner Service – that are responsible for delivering the bulk of its services and programmes, as well as an examination of the new Workplace Mediation Service. The third section examines the relationship between the LRC and the 20-year national social partnership regime that existed in the country until 2009. The fourth section assesses the challenges faced by the LRC and considers what has to be done to maintain the relevance and effectiveness of the services the LRC currently provides. The fifth section then sets out the conclusions, which bring together the arguments of the paper.

1. The employment and industrial relations system in Ireland

Historically, the key organizing principle of the Irish system of industrial relations has been voluntarism (Gunnigle et al, 2002). A voluntary system of industrial relations is premised on freedom of contract and freedom of association, and in terms of the British/Irish tradition, is based on free collective bargaining on the one hand and relative legal abstention in industrial relations on the other. At the same time, the voluntary tradition never meant a total rejection of public intervention or labour law, but merely a preference for joint trade union and employer regulation of employment relations. The three principal features of voluntarism identified by Marchington et al (2006: p.45) were: (1) non-legally binding collective agreements; (2) voluntary union recognition by employers; (3) a light, voluntary framework of state-provided supplementary dispute resolution facilities, with no governmental powers to order suspension of industrial action or impose cooling off periods.

This view of Irish industrial relations being voluntarist in character is captured in a 2003 Government report. "The basic approach to industrial relations in Ireland is one of voluntarism, whereby the law will not seek to impose a solution on the parties to a dispute, but will, where appropriate, assist them in arriving at a solution." The report goes on to state that "there has been a consensus that the terms and conditions of employment of workers shall, in general, be determined by the collective bargaining process between an employer or employers' association and one or more trade unions or staff associations. This process can cover the entire range of issues arising from the employment relationship."

In creating a voluntarist system of industrial relations, Irish governments, in conjunction with trade unions and employers, were simply following a pathway travelled by other Anglo-Saxon countries (Howells 2005). The significance of the voluntarist system was that it assigned trade unions a special public status and ensured that collective bargaining played an important role not only in establishing the rights and rules through which people were incorporated into the labour market, but also in shaping the expectations and obligations that employees, employers and societies had for work and employment relationships (Edwards 1992). In a sense, voluntarism gave rise to a particular form of economic citizenship which worked from a (quasi) collective contract towards the status of individuals: on the basis of a collective bargain between employers and workers, which balanced conflicting interests at the aggregate level, rights and obligations were ascribed to individual workers and enterprises in a way which tended to exclude serious conflict or ensured that it was addressed through agreed collective procedures (Teague 1999). It was this collective model of economic citizenship that energised the forward march of labour and allowed trade unions to act as the guarantor of collective rights.

The Irish voluntarist system came into full bloom in the aftermath of the 2nd World War when there had been heavy restrictions on collective bargaining. In 1946, the

Industrial Relations Act was enacted with the aim of assisting employers and trade unions resolve disputes concerning the fixing of terms and conditions of employment by legitimizing the widespread use of free collective bargaining. A key feature of the legislation, which Roche (1997:34) described as “a watershed in Irish industrial relations”, was the creation of an institutional framework for voluntarist industrial relations. Probably the main institutional innovation of the Act was the establishment of a Labour Court, which included a State-backed conciliation service. The purpose of the Labour Court was to assist trade unions and employers reach industrial relations agreements when negotiations had reached an impasse. In particular, the Act created a two-stage process for the Court to resolve referred disputes. First, the Court would appoint a Conciliation Officer (a Civil Servant from the then Department of Industry and Commerce working within the ambit of the Court) to work with the parties to resolve the dispute. If disputes could not be resolved at this conciliation stage, the Court would then start an investigation which would lead to a recommendation about how to reach an agreement.

The 1946 Industrial Relations Act provided support for collective bargaining in two further ways (Wallace et al 2004). First, it stipulated that employment agreements could be registered with the Court. Employment agreements, which could be concluded by parties who were “substantially representative” of employers and workers in a sector, established minimum rates of pay and working conditions. When registered with the Court, employment agreements became legally binding on all employers in the sector. In addition to sector-level employment agreements, the Court could also register company-level employment agreements which had the effect of binding employers and trade unions to specific substantive and procedural arrangements. Second, the Act established Joint Labour Committees (JLCs) to fix minimum terms and conditions of employment in particular sectors. Any agreement concluded by a JLC could be endorsed by the Labour Court in the form of a legally binding Employment Regulation Order. This machinery effectively regulated pay and working conditions in particular sectors that were traditionally less organized and has been used in such areas as hotels, catering, contract cleaning, law clerks, agricultural workers and the security industry.

Thus, the 1946 Industrial Relations Act gave licence to the widespread use of free collective bargaining that would allow trade unions and employers to conclude their own agreements with minimal State interference. The Labour Court was set up to be the institutional anchor of this voluntarist industrial relations system. Over the following two decades, the Court became ensconced in the Irish industrial relations system. Occasionally, there were concerns about the need for the Court to process cases more expeditiously and questions were raised about the appropriateness of the Court dealing with individual employment rights cases via conciliation. But these amounted to little more than a desire to fine-tune a relatively young organization. For the most part, the Court worked diligently to uphold voluntarist industrial relations in the country. Thus, Ireland followed other Anglo-Saxon countries in creating a ‘web of rules’, to use Dunlop’s (1958) words, to guide the operation of voluntarism. Supplementary institutions, such as the Rights Commissioners and the Employment Appeals Tribunal, were also created to oversee the enactment of this ‘web of rules’.

Yet the principle of voluntarist industrial relations came under significant and sustained pressure in the 1970s and 1980s (Hardiman 1988). The incidence of industrial action, both official and unofficial, reached unprecedented levels, which appeared to question whether employers and trade unions left to their own devices could actually peacefully conclude collective agreements. Even the Labour Court found it difficult to bring about industrial relations order as a relatively high number of its recommendations to solve disputes were rejected by the parties. Although the State wanted to continue supporting “free collective bargaining”, it faced increasing demands, not least from employers’ organizations, to address industrial relations disorder. Thus, just when voluntarism reached its apex, it displayed an inability to create industrial relations order. Voluntarist industrial relations had given rise to strong adversarial attitudes between

employers and employees, leading to widespread strikes, go-slows, work-to-rule, bans on overtime or other high profile actions.

The late seventies and early eighties were the high point of trade unions acting as a countervailing force to employers within a system of free collective bargaining. Since then there have been four important changes to the structure and conduct of Irish industrial relations which have led to the weakening of voluntarism as the organizing principle of Irish industrial relations. The first of these developments was the establishment of a national system of social partnership that reigned in the country for more than twenty years. The culmination of persistent efforts to move away from industrial relations disorder towards more stable, cooperative relations between employers and unions (Wall 2004), national social partnership involved government, employers and trade unions concluding tripartite national agreements every 2-3 years.

Between 1987 and 2009, national social partnership performed a number of important economic and political functions. First, it governed the wage bargaining process through the conclusion of centralised pay agreement that normally lasted either two or three years. For most of the period, these centralised pay deals led to pay moderation that contributed massively to the overall competitiveness of the extremely open Irish economy (Teague and Donaghey 2009). Second, national social partnership brought a large measure of stability to Irish employment relations, reversing the previous trend of highly confrontational employer-trade union relationships. It would be foolhardy to claim that social partnership eliminated the strong ‘them and us’ mentality that had prevailed between employers and unions (D’Art and Turner 2002). Nevertheless, it did have the effect of pushing adversarialism to the margins of the employment and industrial relations system. The prize provided to employers and trade unions for presiding over employment relations stability was significant influence over public policy: during the partnership years government was most reluctant to introduce any measure that was opposed by either employers or unions (Roche 2007).

Importantly, national social partnership was a heavily centralised arrangement. Apart from the odd initiative here and there, such as efforts to promote enterprise partnerships in the mid-to-late nineties, there was little attempt to influence in any serious way employment and industrial relations inside firms. In this respect, Irish social partnership stood apart from traditional corporatist industrial relations structures as practised in continental Europe. A defining feature of these structures was how national and company-level arrangements (works councils, for example) interlocked to influence, if not guide, interactions between trade unions and employers at all levels of the industrial relations system (Streeck 1991). Thus in Germany, for example, the system of work councils interacted with the national training system, sectoral-level collective bargaining structures as well as a stakeholder financial system to create a highly coordinated economic system. In Ireland, social partnership overarched the industrial relations system without impeding, to any significant degree, the activities of industrial relations actors – trade unions, employers and so on – at the enterprise level (Teague and Hahn 2010). In the late 1990s and early 2000s, attempts were made to promote workplace partnerships in both the public and private sectors, but few meaningful arrangements were set up. For the most part, the shared understandings and compromises forged between employers and trade unions within national social partnership were not replicated at the workplace. Social partnership brought some centralization but little coordination to Irish employment and industrial relations. The social partnership system came to an end in 2009 as it was unable to maintain its coherence under the weight of the deep economic crisis that has pushed the country into a tailspin. In truth, the social partnership had been in difficulty for some time and neither the government nor employers considered it a viable institutional arrangement to navigate the country through a full blown economic crisis.

A second important development contributing to the weakening of voluntarism as the organizing principle of Irish industrial relations has been the introduction of a large

body of legislation on individual employment rights (Teague 2005). Table 1 sets out the main pieces of legislation that have been adopted since 1990. It shows that there has been extensive legal activity on the governance of the employment relationship, mostly on individual employment rights, most of it inspired by EU Directives and Court of Justice rulings. As a result of this flurry of legislative action, the employment relationship is now more heavily regulated than ever before.

Table 1
Labour laws adopted since 1990

- Industrial Relations Act, 1990 – updates and amends previous industrial relations legislation.
- Payment of Wages Act, 1991 – covers methods of payment, allowable deductions and employee information in relation to wages by means of a payslip.
- Unfair Dismissals Act, 1993 – updates and amends previous legislation dating from 1977.
- Maternity Protection Act, 1994 – replaced previous legislation and covers matters such as maternity leave, the right to return to work after such leave and health/safety during and immediately after the pregnancy.
- Terms of Employment (Information) Act, 1994 – updated previous legislation relating to the provision by employers to employees of information on such matters as job description, rate of pay and hours of work.
- Adoptive Leave Act, 1995 – provides for leave from employment principally by the adoptive mother and for her right to return to work following such leave.
- Protection of Young Persons (Employment) Act, 1996 – replaced previous legislation dating from 1977 and regulates the employment and working conditions of children and young persons.
- Organisation of Working Time Act, 1997 – regulates a variety of employment conditions including maximum working hours, night work, annual and public holiday leave.
- Parental Leave Act, 1998 – provides for a period of unpaid leave for parents to care for their children and for a limited right to paid leave in circumstances of serious family illness.
- Employment Equality Act, 1998 – prohibits discrimination in a range of employment-related areas. The prohibited grounds of discrimination are gender, marital status, family status, age, race, religious belief, disability, sexual orientation and membership of the Traveller community. The Act also prohibits sexual and other harassment.
- National Minimum Wage Act, 2000 – introduces an enforceable national minimum wage.
- Carer's Leave Act, 2001 – this provides for an entitlement for employees to avail of temporary unpaid carer's leave to enable them to care personally for persons who require full-time care and attention.
- Protection of Employees (Part-Time Work) Act, 2001 – this replaces the Worker Protection (Regular Part-Time Employees) Act, 1991. It provides for the removal of discrimination against part-time workers where such exists. It aims to improve the quality of part-time work, to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner that takes account of the needs of employers and workers. It guarantees that part-time workers may not be treated less favourably than full-time workers.
- Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations, 2001 – this obliges employers to keep a record of the number of hours worked by employees on a daily and weekly basis, to keep records of leave granted to employees in each week as annual leave or as public holidays and details of the payments in respect of this leave. Employers must also keep weekly records of starting and finishing times of employees.
- Industrial Relations Act 2001 and Industrial Relations Act (Miscellaneous Provisions) 2004 – the 2001 Act establishes a series of procedures that trade unions can use to progress 'a right to bargain' claim for employees in non-unionised companies. The 2004 Act revised and simplified these procedures.
- Employees (Provision of Information and Consultation) Act 2005: this provides for the establishment of a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees. The Bill gives employers the option of concluding agreements before a date to be prescribed following enactment of the Bill. It also places the onus on employees to trigger a request that an employer sets up an information and consultation procedure.
- Protection of Employment (Exceptional Collective Redundancies and related Matters) Act 2007 – this legislation establishes a redundancy panel to consider certain proposed collective redundancies. The Act also removes the upper age limit for entitlement to redundancy payments.

The trade union movement supported the passing of individual rights legislation, which in their view did not challenge the basic principle of voluntarism which underlined the industrial relations system. Unions were and remain quite prepared to accept a role for the law in the case of individual rights but harbour suspicions, for historical reasons, of legal changes where collective rights are involved. The robustness of this position is open to question as the significant growth in the volume and complexity of employment legislation is likely to have important consequences for the character of industrial relations (Estlund 2005). First, an increasing range of industrial relations activity is in some way regulated by the law. Second, more aspects of industrial relations begin to be solved by or with reference to employment legislation. Third, the legal profession becomes increasingly involved in the processing and settling of workplace grievances. Fourth, a process is created which involves people interacting with employment and industrial relations issues as legal subjects and not as members of a collective institution such as a trade union (Teague 2007).

A third development that has functioned to erode voluntarism has been the growth of the non-union multinational sector, and non-union firms more generally. Like all developed economies, the organizational character of non-union firms is fairly diverse. Some are relatively small-scale operations which usually follow highly informal approaches to the management of the employment relationship. Others are much larger in scale and tend to adopt more formal HR practices. Some large non-union firms can be fairly robust in their opposition to trade unions. Others adopt a more phlegmatic attitude to a trade union organizing threat, believing that by forging a high commitment, consensus-based HR system inside the organization, employees will show no interest in joining a union. Thus, the non-union sector consists of a wide variety of HRM regimes.

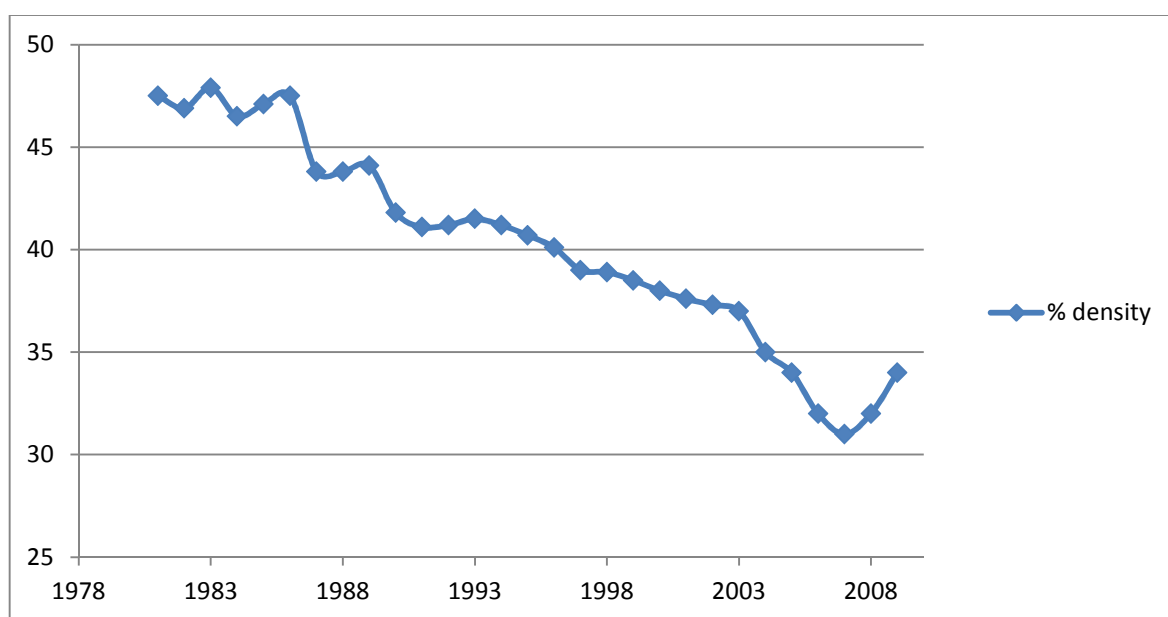
A distinctive feature of the non-union sector in Ireland is the role played by multinational companies (MNCs) in shaping its scale and character (Gunnigle et al 2009). Ireland began its long affair with multinationals in the 1960s in the wake of a radical economic policy shift away from protectionism towards economic openness. Bringing multinationals to the country was seen as a viable way of leapfrogging intermediary stages of industrialisation so that Ireland could quickly become a place for advanced manufacturing activity. The new policy had an impact almost immediately as a significant number of multinationals established subsidiaries in the 1960s. These pioneer MNC subsidiaries did not pose a challenge to the established voluntarist system of industrial relations. Perhaps because they were in low value added sectors, many of the new multinationals arriving had no difficulty recognizing trade unions and engaging in collective bargaining (Kelly and Brannick 1985).

But in the 1970s inward investment started travelling up the value-added chain leading to significant numbers of multinationals in high valued added sectors locating in the country. These subsidiaries were of a different complexion from those that arrived in Ireland a decade earlier. Many prided themselves on being non-union, embracing new forms of human resource management that stood apart from conventional approaches to managing the employment relationship (Geary and Roche 2001). For the first time, a gap opened up between the voluntarist character of Irish industrial relations and the employment practices of multinational subsidiaries. Ever since this divide has grown larger. Although the debate about the precise impact of MNCs on the Irish industrial relations system is lively and ongoing, the dominant view is that multinationals, mainly USA in origin, have been consistently diffusing, over the past two decades, human resource management policies that were different from Irish industrial relations practices and traditions (Gunnigle et al 2006). More specifically, non-union MNC subsidiaries have been seen as following innovative ‘soft’ HRM policies designed to assist employees upgrade their skills and competences, develop highly committed, engaged employees and ensure that each employee performs to the best of their ability (Roche 1998). These sophisticated, state-of-the-art HRM policies are considered to be a far cry from the adversarial arms-length collective bargaining that appeared to be the norm in the heyday of

voluntarist industrial relations. Not only that, the policies and practices of non-union multinationals have been considered to be spilling over and influencing the behaviour of domestically-owned firms, whether these are unionised or not. The result of this spillover dynamic – intended or otherwise – has been viewed as eating into the organizational foundations of voluntarism.

Together, the emergence of national social partnership, the growth of individual employment rights legislation and the arrival of large numbers of non-union multinationals had the effect of withering away voluntarist industrial relations. The fourth important development compounding this erosion has been the almost continuous decline of trade union density since the 1980s until about 2007. In recent years, as Figure 1 shows, there has been an increase in density rates, but it is questionable whether this turnaround marks an end to the long-term trend. For the most part, the recent increase in density levels is due to non-union employees losing their jobs at a faster rate than unionised employees and not to any change in attitudes or behaviour of the Irish workforce. Thus, the story of trade union decline still holds. If the period of social partnership (1987-2009) is specifically examined, trade union density has fallen from 43.8 per cent to 35 per cent, which is mostly seen as the result of structural change, particularly the move away from manufacturing to services. Trade union density in the private sector is down to 20 per cent. Virtually all economic sectors have experienced a decline in trade union membership. The heaviest membership losses have occurred in three sectors: other production industries; construction; and transport, storage and communications. However, the rate of decline has been much slower in the public sector, with density levels remaining at 75 per cent. The only exception to the overall trend is the agriculture, forestry and fishing sector, where membership remained more or less the same; however, membership in this sector has always been low. In every occupational category, apart from the associate professional and technical group, union members are now outnumbered by non-members, in some cases by a factor of 2:1. Overall, as measured by trade union density levels, the past two decades have been a cold climate for trade unions (Donaghey and Teague 2007). At the same time, Ireland is some distance away from ‘employment and industrial relations without trade unions’. Trade unions continue to play an important role in not only setting the industrial relations agenda, but also in upholding the employment rights of many working people in Ireland.

Figure 1
Trade union density, 1980–2009



Source: Central Statistics Office, Ireland

Thus, over the past few decades a number of centrifugal forces have weakened voluntarism as the institutional exoskeleton of Irish industrial relations. Few would dissent from Roche's observation that there has been a fragmentation of industrial relations in Ireland. Interactions between employers and employees are no longer housed within a coherent industrial relations framework. Different pockets of the economy are organized according to different employment and industrial relations rules. This fragmented industrial relations environment creates new challenges for the public dispute resolution agencies, not least the LRC. In the new complex industrial relations situation, a modern workplace relations institution must be able deliver flexible, efficient and effective service. It must be able to offer multiple channels for the resolution of disputes, to blur the boundaries between dispute resolution and prevention, and to actively promote cooperative employment and industrial relations in contrasting organizational contexts. In the sections that follow we assess the extent to which the LRC has performed this role. But before we can begin this task it is necessary to outline the range of bodies that together make up the public employment dispute resolution system in Ireland.

1.1 The Irish employment dispute resolution regime

The Irish employment dispute resolution system is currently made up of a variety of agencies. The oldest dispute resolution body is the Labour Court, a tripartite industrial relations tribunal and not a court of law. It was set up in 1946 and provides a range of services for the resolution of collective and individual employment disputes: (1) it hears both sides in trade disputes and then issues Recommendations setting out its opinion on the dispute and the terms on which it should be settled. While these Recommendations are not binding on the parties concerned, the parties are expected to give serious consideration to them. Ultimately, however, responsibility for the settlement of a dispute rests with the parties; (2) in relation to cases involving breaches of registered employment agreements, the Labour Court makes legally binding orders; (3) also, the Court's determinations under the Employment Equality, Pensions and Organisation of Working Time, National Minimum Wage, Industrial Relations (Amendment), Protection of Employees (Part-Time Work), Protection of Employees (Fixed-Term Work) and Safety, Health and Welfare at Work Acts are legally binding.

Another body is the Employment Appeals Tribunal, a statutory body initially set up to adjudicate on redundancy disputes, but whose scope has been considerably extended as a result of legislation. The Tribunal now adjudicates on employment disputes under 19 different statutes. As a semi-judicial body designed to provide an informal and speedy procedure for individuals to vindicate their employment rights, the Tribunal does not get involved in collective industrial relations problems. This is the main difference between the Tribunal and the Labour Court, but the two bodies have overlapping responsibilities in relation to individual employment rights

The Labour Relations Commission, which is examined in full below, provides a range of services to promote effective resolution of workplace disputes as well as stable, high quality employment relations. It offers a free and informal conciliation service to help employers and employees resolve disputes. It also has a range of advisory and development services designed to encourage organizations to follow best practice employment and industrial relations activities. Another agency is the Rights Commissioners Service, which was established in 1969 and is now housed within the LRC. Rights Commissioners help solve employment disputes and grievances raised either by individuals or small groups of employees: these disputes can relate either to industrial relations problems or statutory employment rights. Thirteen pieces of employment legislation give Rights Commissioners an active role in the settlement in disputes.

The Equality Tribunal was set up in 1999 and is a quasi-judicial body that can either mediate or investigate and then rule on cases of alleged discrimination. The Tribunal has competence to act in nine prohibited grounds of discrimination. The Tribunal was established because the Government considered that a specialised agency was required to properly ensure compliance with the increasingly complex body of equality legislation. The Equality Authority sits alongside the Equality Tribunal and has the remit to promote all facets of employment equality. It undertakes a variety of activities to assess the extent to which employment practices and labour market dynamics impede equality at work.

Standing in close proximity to these main dispute resolution agencies is the National Employment Rights Agency. It is responsible for the enforcement of employment legislation. The unit carries out its responsibilities in two ways. One is by responding to complaints from the public concerning alleged infringements of employment rights. The other is by carrying out spot inspections to ensure that firms, particularly those in vulnerable sectors, are complying with employment regulations. Finally, there is the Health and Safety Authority which is responsible for overseeing the implementation of legislation in this area, carrying out investigations when accidents at work occur and a variety of activities designed to promote safe working environments.

Overall, this institutional system to some extent conforms to the public employment dispute resolution systems found in other Anglo-Saxon countries. Typically, these systems are marked with a degree of fragmentation with responsibilities dispersed across a number of agencies. There is institutional support to help trade unions and employers resolve their differences and methods of adjudication are in place to rule in cases of alleged breaches of collective agreements. There is provision to hear cases on alleged infringements of employment rights: quasi-judicial bodies have been set up to provide an accessible, speedy and informal means of resolving employment disputes. Employment standard-setting and enforcement is usually organized on the basis of responding to a complaint and then penalties are given to those deemed to be in violation of the law. The Labour Relations Commission plays a key, if not dominant, role in this employment dispute system. It is to the activities of that agency that the paper now turns.

2. The Labour Relations Commission

The Labour Relations Commission (LRC) was established under the Industrial Relations Act 1990 with the broad statutory responsibility for “promoting the improvement of industrial relations”. The motivation behind this piece of legislation was to remove the conciliation and other problem-solving functions from the Labour Court so that it could focus on its enforcement role and to establish a dedicated agency for the prevention and speedy resolution of employment disputes. In other words, Government wanted to make reform so that the industrial relations system would function in a less adversarial manner. The new Commission was viewed as operating as the new institutional fulcrum for voluntarism, providing a battery of problem-solving services to trade unions and employers when negotiations ran into difficulties. The Commission has a chief executive, approximately forty-five staff and a eight person board with employer, trade union and independent representation, only one of whom (the chairperson) is a women. In addition, the Commission manages fourteen Rights Commissioners, four of whom are women.

In seeking to fulfil its statutory role, the LRC considers its mission to be: “the development and improvement of Irish industrial relations policies and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees.” (Labour Relations Commission 2005)

This encompassing mandate has ensured that although the resolution of collective disputes has always been a core activity, the work of the LRC has not been confined to the provision of this key service. Indeed since its establishment the Commission has

successfully and gradually evolved into a key public institution for the resolution of employment disputes and the promotion of cooperative, stable management-union/employee interactions within the Irish labour market.

In addition to a Corporate Services Division, the Commission has three main service divisions namely, the Conciliation Service Division; the Advisory and Research Service Division and the Rights Commissioner's Service Division. Together, these three divisions have been responsible for the development and delivery of a broad range of flexible and innovative services, initiatives and programmes that has enabled the LRC to develop an integrated and flexible conflict prevention and dispute management system. This flexible system is underpinned by a number of key principles set out in Table 2. The exact nature of the work of the three main services of the Commission is set out below.

Table 2
Key principles of the LRC's conflict prevention and dispute management system

The provision of a full suite of dispute resolution procedures	An emphasis on resolving disputes close to the point of origin
Affording employees appropriate access to public bodies that handle complaints regarding infringements to employment rights	A proactive approach to dispute prevention and/or resolution
The promotion of joint action and collaborative problem solving by managers, employees and trade unions	An emphasis on upgrading employment and industrial relations practices and procedures in organizations with poor employment dispute records
The development, promotion and review, in consultation with the social partners, of Codes of Good Practice	The development of procedures that provide an option for agreed arbitration and adjudication on issues incorporating both disputes of interest and employment rights

Source: Author's classification composed from LRC publications

2.1 Conciliation: A flexible and tailored dispute resolution service

The Conciliation Service Division, consisting of 13 conciliators and 6 support staff, seeks to provide an impartial, fast, effective and high quality conciliation service to employers, employees and unions in both the public and private sectors. The provision of this dispute resolution service has been the cornerstone of the LRC's work since its establishment and arguably for many constituencies – the social partners, politicians, individual employers and trade unions – it defines the identity of the organization. The conciliation process provided by the Commission, which can be characterised as a 'facilitated search for agreement', normally sees an industrial relations officer (IRO), acting as an independent and impartial chair. Their main role is to frame negotiations and discussions between the representatives of employers and employees in a way that facilitates the parties to reach a mutually acceptable agreement. The Conciliation Service Division is structured into four geographical regions outside Dublin together with a National Public Sector Unit which was set up in 2004.

There is a strong emphasis on team working within the Division with monthly meetings to review recent activities, share experiences and monitor trends and developments within the labour market. In seeking to contribute to the provision of an integrated conflict management service, there also has been an increased emphasis on cross-divisional collaboration and activity. For example, officials from the Advisory Service are participating in the Conciliation Service's Working Together Projects while officers from the Conciliation Service are involved in the Training and Development activities which are coordinated by the Advisory Division. Moreover, this interaction has

been formally institutionalised with the establishment of the Workplace Mediation Service (see below). Additionally, the Conciliation Service has sought to exploit the potential of information and communication technology to both improve the quality of service delivery and to make accessing the service more user friendly. In this regard, an important innovation was the development in 2005 of an online referral system whereby customers can apply online for the assistance of the service.

The conciliation process delivered by the Division usually begins with a Conciliation Conference, which involves an initial joint meeting and then separate individual meetings, all chaired by an IRO. The process is free, non-legalistic and informal. Critically, it is also wholly voluntary as it can only begin with the consent of both parties to a dispute and there is no binding or compulsory element as a settlement must be based on mutual consent. In effect there are only two possible outcomes to a Conciliation Conference, namely the settlement of a dispute or continuing disagreement and in the latter context the parties can refer the dispute to the Labour Court for recommendation.

Table 3
General non-binding dispute resolution processes

Procedure	Description
Preventive dispute resolution	Averting conflict at work by creating procedures that promote cooperative management-employee interactions. Preventive dispute resolution may not actually stop disputes, but it provides a mechanism for channelling disputes into problem solving processes.
Early neutral evaluation	Where a third party neutral reviews aspects of a dispute and renders an advisory opinion as to the likely outcome.
Expert fact finding	Where a third party neutral examines or appraises the facts of a particular matter and makes a finding or conclusion. This procedure may be binding or non-binding depending upon the parties.
Facilitation	Where a third party neutral assists disputants in reaching a satisfactory resolution to the matter at issue. The neutral has no authority to impose a solution.
Conciliation	To reconcile or appease in an act of good will with the assistance of a third party neutral
Mediation	A voluntary process where a third party neutral, acceptable to the disputants, assists the parties in resolving a mutual problem, exploring options for resolution which focuses on the future relationship of the parties. The neutral is neither a decision maker nor an expert adviser.
Non-binding arbitration	The third party neutral may advise on a possible settlement, but recommendation is not binding on the parties.

Source: Table composed by author

In the literature on dispute resolution it is commonplace to suggest that a definitive or delineated set of mechanisms or practices, mostly captured in Table 3, can be employed to settle workplace conflict. Although there is a long standing tradition within the Irish dispute resolution machinery of providing a conciliation service to resolve collective disputes, the professional conciliators within the Commission have never felt tied to any prescribed list of practices or type of behaviours when addressing workplace dispute. Instead, the philosophy of the Commission has been to develop a flexible and tailored service that is capable of drawing on and adapting a range of approaches from across the continuum of dispute resolution processes in seeking to assist the parties in reaching a mutually acceptable agreement.

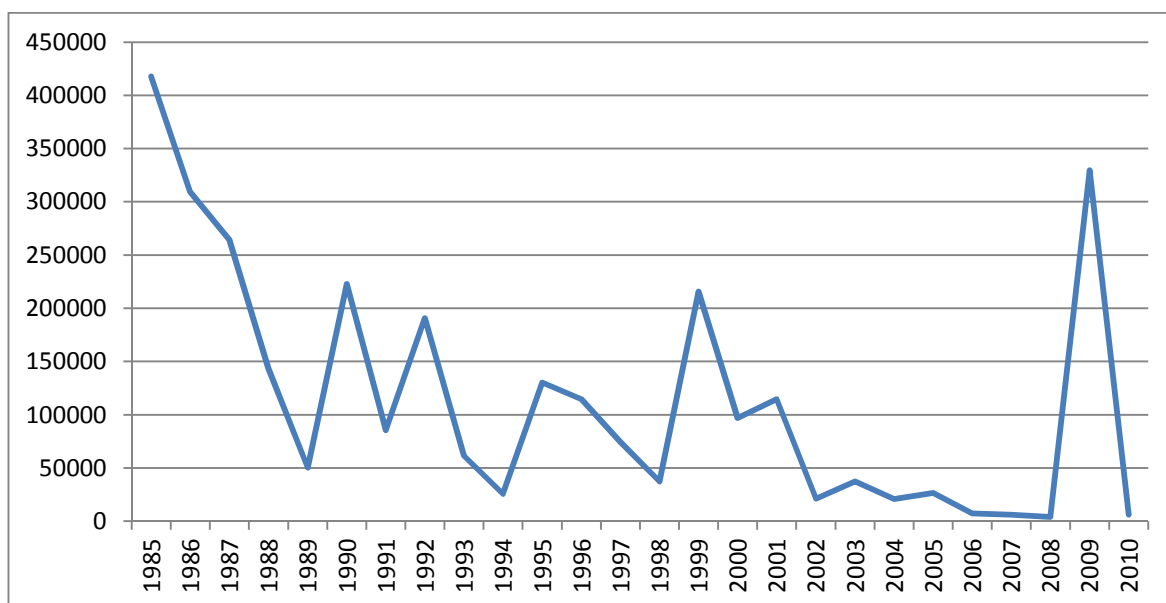
For example, depending on the context, an IRO may adopt a very structured and interventionist stance in seeking to encourage the parties to reach agreement. Equally in other situations the style adopted may be more akin to mediation, or as one official

characterised it as ‘mediation with an interventionist edge’. Interestingly, although in many ways the tone, setting, language and mechanics of the conciliation process convey a traditional, even adversarial, industrial relations bargaining context, equally it is imbued with a flexible problem solving ethos which recognises that due process and meaningful dialogue are the main routes to effective dispute resolution.

2.1.1 Key trends in conciliation activities of the LRC

Figure 2 shows that Ireland has left behind the large scale industrial relations unrest of the late 1970s and early 1980s. Over the past 25 years, apart from occasional annual spikes, there has been relatively low levels of industrial action (the large spike in 2009 can be explained by coordinated national action by trade unions against government plans to bail out banks). During the past decade, the incidence of collective industrial disputes was generally at record low levels, which broadly corresponds with international trends: nowhere in the advanced economies is strike action a prominent feature of the industrial relations scene.

Figure 2
Annual days lost due to industrial action, 1985–2010

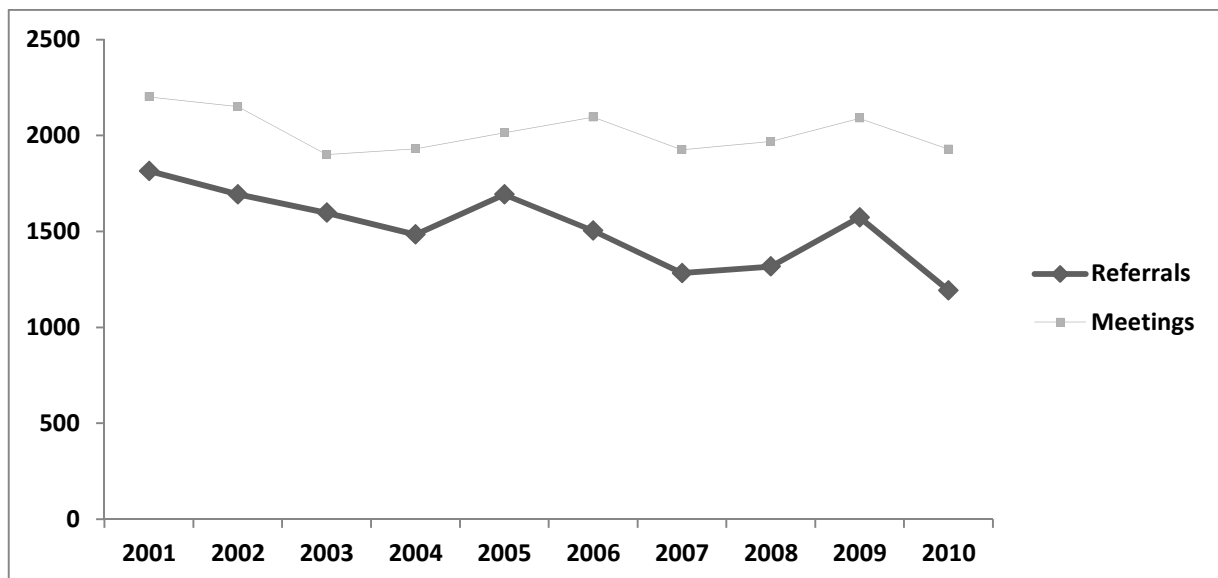


Source: Central Statistics Office, Ireland

Yet despite the emergence of relative industrial peace, there remains a high level of demand for the services of the Conciliation Division from across a fairly broad range of sectors, see Figure 3. In 2010, a total of 1,193 collective disputes were referred to the Conciliation Service, which although representing a 24 per cent decline on the 2009 figure, is still a high number. Moreover, the Conciliation Division chaired 1,783 conciliation conferences over the course of 2010. Thus, the workload of the Conciliation Division, particularly in terms of formal meetings convened, has remained fairly consistent over the years. At one level, a combination of intensified competition, increased internationalisation, deregulation and the relentless pace of technological change suggests that a significant number of workplace disputes are still being generated even though overt forms of industrial action may be falling. Typically, the Conciliation Service deals with disputes relating to: claims for improvements in pay and conditions; disciplinary cases that are being addressed by collective industrial relations processes; grading issues; and company or workplace restructuring plans, all of which are traditional staples of collective industrial relations problems. At the same time, the high number of referrals suggests that the quality of local engagement may be deficient in one way or another. To address this

perceived weakness, the LRC has highlighted the need to focus attention on improving the in-house capacity of organizations for preventing and resolving disputes as close as possible to the point of origin.

Figure 3
Conciliation Service activity, 2001–2010



Source: LRC Annual Reports

2.1.2 The Conciliation Service in action

The three boxes below contain short case studies of three high profile industrial disputes that happened in recent years and in which the LRC played a key role in finding a negotiation solution.

Box 1 The LRC and the Aer Lingus cabin crew dispute

Aer Lingus, Ireland's former state-owned national airline, has struggled to sustain profitability since its privatisation. In 2009, the company reported an operating loss of €81 million. In response to this poor performance, senior management announced that it would have to implement a radical cost reduction plan. After extensive discussions with all the relevant unions at the LRC in early 2010, a proposed plan known as Project Greenfield was thrashed out.

Project Greenfield was ambitious as it sought to slash €97 million from the airline's operating costs through a programme of voluntary redundancies, pay cuts, a three-year pay freeze, new rosters and new work practices. No doubt reluctantly, most of the trade unions at Aer Lingus voted to accept the plan. However, one group of staff, cabin crew, members of the IMPACT trade union, rejected the agreement, arguing that the changes set out in the restructuring plan went too far. Cabin crew employees were particularly unhappy with proposed changes to rosters and work practices. This stance by cabin crew members put the entire plan in jeopardy. As a result, extensive bilateral talks under the stewardship of the LRC were held at which cabin crew employees received 'deeper clarification in certain areas'. Cabin crew staff voted again on the plan, only this time backing it with a 93 per cent.

But virtually from the start the new rosters and work practices proved difficult to implement. Project Greenfield had finally been fully endorsed by early summer 2010, but by October of that year, IMPACT had started a limited, but escalating, campaign of industrial action on the roster issue. The matter reached a head in early 2011, when management unilaterally introduced new rosters and associated rules for cabin crew. In response, the cabin crew refused to operate the new rosters and as a result a full scale employment dispute erupted inside the organization.

Management countered the union action by removing over 170 cabin crew off the payroll for refusing to work the new schedules. In addition, it threatened to dismiss them if they did not sign an undertaking to work the rosters. IMPACT responded by increasing its industrial action, including strike action, leading to flight cancellations and a blaze

of bad publicity for the company at a time the company least needed it. Moreover, both sides were determined not to back down, thereby increasing the prospects of a highly damaging industrial relations stand-off, which neither side could afford.

To avert such a catastrophic outcome, the LRC on its own initiative intervened, urging both sides to begin talks under its stewardship to find a way out of the impasse. After much behind the scenes cajoling, both sides agreed to meet at the LRC offices. These were difficult, bruising negotiations to manage – at the start both sides refused to be in the same room each other. But slowly the LRC team established a rapport between the two sides and a set of proposals to be the basis of discussions on the way forward. After two weeks of protracted negotiations the LRC was able to guide the parties to an agreed settlement on 80 per cent of the grievances.

The other '20 per cent' of the dispute was referred to the Aer Lingus' industrial relations arbitrator, Kieran Mulvey, who is also the Chief Executive of the LRC. Before issuing his binding decision, Mulvey had extensive discussions with the Conciliation team at the LRC. Finally, when his binding arbitration was made management and unions agreed to accept it. This brought the dispute to an end.

Without the work of the LRC, this dispute would mostly have escalated into prolonged, highly damaging strike action, which even could have threatened the survival of the company. The LRC was able to pull both sides back from the abyss.

Source: LRC reports and interviews

Box 2

LRC and reforming pensions at the Bank of Ireland

The Bank of Ireland is the premier financial institution in the country. In October 2006, the Bank announced that it was going to introduce a new 'hybrid' pension scheme for new employees. Whereas its longstanding defined benefit (DB) pension scheme would remain for existing employees, the new scheme would combine the DB system with elements of what is known as a defined contribution (DC) scheme.

The main unions recognised at the Bank, the IBOA and UNITE, reacted with fury to this announcement. It argued that as one of the most successful and profitable companies in the country, the Bank could easily afford to retain its DB scheme for new staff. It also argued that the Bank's unilateral decision was a breach of existing negotiation procedures and established collective agreements. The unions declared in response that it would ballot members for strike action.

In an effort to avert industrial action, the dispute was referred by the trade unions to the LRC, but after two Conciliation Conferences, it was evident to LRC that the views of both sides were so entrenched that the only viable avenue open was to pass the case to the Labour Court, the country's main arbitration and adjudication body. The Labour Court after a complex investigation and hearing issued a Recommendation which criticized the Bank for not using its established internal negotiating machinery to seek changes to its DB pension scheme. At the same time, the Recommendation acknowledged that management had legitimate concerns about the long term viability of DB pension scheme and that the unions had equally valid concerns about the future livelihoods of their members. The Court recommended that the parties get round the negotiating table to thrash out their differences.

Both parties accepted the Labour Court's Recommendation. They also agreed to use the LRC as the third-party to oversee the negotiations. Tom Pomphrett, Deputy Director of the Conciliation Division, took responsibility for the case. Before starting negotiations proper between the parties, Pomphrett spent considerable time with both parties not only to get familiar with their positions, but to get a sense of the reservation points of both sides – the point at which a party is unlikely to go. In addition, Pomphrett networked widely to see how similar disputes about pensions were addressed in the financial services industries and closely related sectors.

This preliminary work was deemed essential by Pomphrett for two reasons. One was that it allowed him to get an insight into key issues such as the desire on both sides to resolve the dispute amicably, whether a negotiated solution could be framed as a win-win settlement and whether the LRC would ultimately need the assistance of another dispute resolution body like the Labour Court to secure a settlement. In other words, Pomphrett was able to develop a roadmap for the negotiations. The other reason was that it allowed him to set the agenda for the negotiations in a manner so that difficult, contentious matters were not discussed at the beginning.

Negotiations started and unsurprisingly proved difficult. But the LRC team worked continuously with each side to ensure that both remained committed to achieving a negotiated solution even though discussions on a particular did not fully go their way. Finally, a settlement was reached which involved the Bank agreeing to introduce a revised hybrid pension plan at a later date. The union was not fully happy having to give up the DB scheme for new entrants, but calculated that it would be unable to negotiate a better deal in the circumstances.

Source: LRC reports and interviews

Box 3

LRC and the Irish Ferries dispute

Perhaps the most high profile and bitter industrial dispute in Ireland over the past two disputes involved Irish Ferries in 2005. The dispute began in September 2005 when Irish Ferries unilaterally proposed to make a third of its workforce, about 600 seafarers, redundant, replacing them with lower-paid workers from central and eastern Europe. In addition, the company wanted to reflag its vessels to Cyprus at the same time. The company said it had to take such drastic action as its survival was at stake.

This decision by the company gained immediate national prominence as the company was seen as ruthlessly seeking to replace people working under Irish employment law with people working under no national employment law – a form of social dumping. Although representing ship officers only, a minority of the workforce, the trade union SIPTU, announced that it would strongly oppose the company's plan. It referred the matter to the Labour Court, claiming that the company had breached a Registered Employment Agreement – a form of legally-binding collective agreement. The Labour Court found in favour of the union in a Recommendation that encouraged the company to enter into negotiations about the plan. But the company rejected the Recommendation and said it would not comply with it.

The dispute was dramatically escalated when with the use of security guards, the company brought agency crews aboard Irish Ferries vessels. SIPTU with the support of other unions ratcheted up its industrial action, which led to Irish Ferries vessels being moored up for three weeks in Irish and Welsh Ports. Meanwhile the exchanges between the company and the unions became increasing vitriolic. A national demonstration organized by the unions saw 40,000 people march opposing the company's plan.

All the signs were that a prolonged, bitter dispute was in the making. Moreover, the escalation of the dispute happened just as talks had started on the conclusion of a new national social partnership agreement. The consensus view was that the dispute had the potential to derail the talks as it highlighted a number of critical issues for the future of industrial relations in Ireland such as the level of acrimony between the involved parties. Thus finding a way to solve the deadlock became a manner of urgency for employers and trade unions at the national levels.

The LRC was one of the first organizations to understand the large negative spillover effects of the dispute on the industrial relations environment. As a result, it invited the two sides to its offices for exploratory talks about how the dispute could be resolved through negotiations. Both sides were inclined to reject the invitation, but came under enormous behind-the-scenes pressure not to do so. Finally, the company and the union consented reluctantly to enter LRC-assisted talks.

At the start of the talks, the union took the initiative and put forward an offer saying it would agree to a package of €2.4m savings on the loss-making Rosslare to Cherbourg route, which was at the centre of the dispute. This proposal infuriated the management team who were seeking savings of €15 million. As a result, the talks broke down with each side accusing the other of bad faith.

This clash set back the possibilities of a negotiated settlement to the dispute. But the LRC persisted with its contacts with both sides and persuaded them to return to the negotiating table. This time round the LRC adopted a pro-active approach, having developed a tightly structured framework for the negotiations in advance. After 20 hours of continuous negotiations the two sides reached an agreement.

The main thrust of the agreement was that Irish Ferries got the 'green light' to outsource crews and to reflag its vessels to Cyprus, which enabled the company to secure cost savings amounting to €11.5 million. For its part, the union secured Irish minimum wage standards for the new, predominantly Latvian workforce and an agreement that pay and conditions would be maintained for the existing seafarers, who choose to remain with the company. Other parts of the deal related to the level of redundancy pay received by seafarers leaving the company and to the creation of a procedure for unions to talk to the new workforce about benefits of membership. Both parties expressed satisfaction that an agreement had been reached and that the dispute was over.

This was a difficult agreement to broker given the very charged subject nature of the dispute. But the LRC stayed with this consistent approach of preparing meticulously for the negotiations to frame the agenda in a way that would encourage dialogue, working continually with both sides and above all ensuring that discussions remained calm and friendly. In steering the parties to an agreement, the LRC not only brought to an end a serious industrial relations dispute, but removed a serious blockage to the signing of a new national social partnership agreement.

Source: LRC reports and interviews

2.1.3 Assisting public service modernisation

An important and growing area of the Conciliation Division's work is assisting public sector modernisation. Since the creation of the LRC, the division has had responsibility of chairing various national level negotiation bodies in health, local government, education and the prison service. The remit of these formal national level arrangements has been to conclude collective agreements relating to pay and working conditions in various parts of

the public sector as well as the extent and nature of public sector reform. In carrying out this activity, the division has continually fostered interest-based collective bargaining as opposed to adversarial collective bargaining. Table 4 sets out the main differences between adversarial and interest-based bargaining behaviour. Adversarial bargaining is about 'hard', sometimes confrontational, interactions between employers and employees: the assumption is that the interests of employers and employees are in competition which encourages a head-to-head tussle in a nakedly instrumental bargaining contest (Barrett and O'Dowd 2006). Interest based bargaining, on the other hand, encourages a more cooperative approach to the settling of employment and industrial relations matters. It is about following a set of techniques and processes that leads to settlements that incorporate the interests of all parties (Walton et al, 1994). The assumption is that while management and workers may not always see eye-to-eye, they have more in common than is often assumed and can work out their differences through dialogue and mutual adjustment. Collaboration and joint action are the bywords of interest-based bargaining (Cutcher-Gershenfeld 2003).

Encouraging interest-based bargaining has led to more cooperative forms of trade union-employer interactions at national level across various parts of the public sector. For example, the Health Service National Joint Council (NJC) is widely recognised for effectively addressing contentious and complex issues through constructive dialogue. Thus, with varying degrees of success, the Conciliation Division has been orchestrating more collaborative forms of industrial relations in the public sector. Whether this cooperation has trickled down beyond the national level is a moot point as the conciliation service has noticed a discernible increase in the number of referrals from across the public sector even though different parts of the public sector such as teaching, the civil service and so on would have in-house conciliation and arbitration procedures. Over the past five years, the public sector has accounted for 36 per cent of all dispute referrals and 41 per cent of all conciliation conferences convened at the LRC. This trend reflects the challenges faced by employers and trade unions due to increased pressures to modernise public services. As a result, it is now evident that the Conciliation Service is providing a wider range of services for public sector workers and agencies than was originally envisaged under the Industrial Relations Act 1990. A National Public Sector Unit was created within the Conciliation Division in response to this development. This unit focuses most of its work resolving outstanding issues relating to the introduction of new work practices, or the employment-related consequences of public sector restructuring and reorganization – outsourcing, for example. It is also working to diffuse the principles of interest-bargaining at ground level within the public sector.

Table 4
Adversarial bargaining v. interest-based bargaining behaviour

Adversarial bargaining	Interest-based bargaining
Establish targets in advance	Assess all stakeholder interests in advance
Overstate opening positions	Convert positional demands from constituents into interests
Mobilise support amongst constituents	Frame issues based on interests
Appoint the key spokespeople	Avoid positional statements
Divide and conquer the other side	Use subcommittees and taskforces for joint data collection and analysis
Give as little as possible for what you get	Generate as many options as possible on each issue
Always keep the other side off balance	Take on the constraints of your counterparts
Never 'bargain against yourself'	Ensure constituents are educated and knowledgeable on the issues.

Adversarial bargaining	Interest-based bargaining
Use coercive forms of power where appropriate	Troubleshoot agreement
An agreement reluctantly accepted is a sign of success	An agreement fully supported by all sides is a sign of success.

Adopted from Cutcher-Gershenfeld 2003

2.1.4 Joint Labour Committees and Joint Industrial Councils

Industrial Relations Officers from the Conciliation Service also act as the chairpersons to a number of Joint Labour Committees (JLCs) and Joint Industrial Councils (JICs) which operate under the aegis of the Labour Court. The function of Joint Labour Committees is to provide an agreed minimum standard of pay and conditions within a designated economic sector/occupation while the Joint Industrial Councils have a more specific focus on promoting harmonious industrial relations and on dispute resolution. Although the influence of these institutional mechanisms has declined considerably in recent decades, they can still potentially make an important contribution to orderly industrial relations in certain sectors. For example, in response to the increasing frequency of industrial action in their sector, the Construction Industry National Joint Council established the Construction Industry Disputes Tribunal as an effective 'fast track' procedure for dealing with local and national issues. The Conciliation Division was the main architect of this procedure and a conciliation officer is its chairperson. By providing its imprimatur, the conciliation has increased the legitimacy of the procedure among employers and trade unions. As a result, the procedure is regularly used to address mostly small scale industrial relations problems and disputes

2.1.5 Preventing disputes

Although the core function of the Conciliation Service is the resolution of collective disputes, it now takes a more active interest in the prevention of disputes. To a large extent, interest in preventive forms of dispute resolution is a by-product of the close engagement the LRC maintains with the UK's main employment dispute resolution agency, the Arbitration, Conciliation and Advisory Service (ACAS). Every year the two bodies formally meet to discuss trends in employment dispute resolution and to learn from each other more generally. Members of the Conciliation Service of the LRC became very interested in a range of initiatives which ACAS had launched mostly in the National Health Service and local government to promote cooperative industrial relations and to prevent disagreements descending into outright conflict. The Conciliation Service concluded that it would be a good idea to introduce similar initiatives in Ireland and thus launched Working Together Projects in the public service. The objective of these Working Together Projects is to develop proactive conflict management activities that will enhance the quality and effectiveness of manager-employee interactions in organizations. After intensive dialogue with senior employers and trade unionists in order to secure commitment, a small number of projects were established in various parts of the public sector. The focus of the projects is very much on prevention, involving the use of innovative approaches that can assist employees and managers in managing and anticipating change and in establishing mechanisms designed to enhance their problem solving capacity at the workplace. The role of the Conciliation Service is to provide expert support and guidance and to respond in a customised fashion to particular needs of a project. This experimental action reflects a greater emphasis in the service to adopt a more proactive approach towards the prevention of disputes rather than to help solve them when they arise.

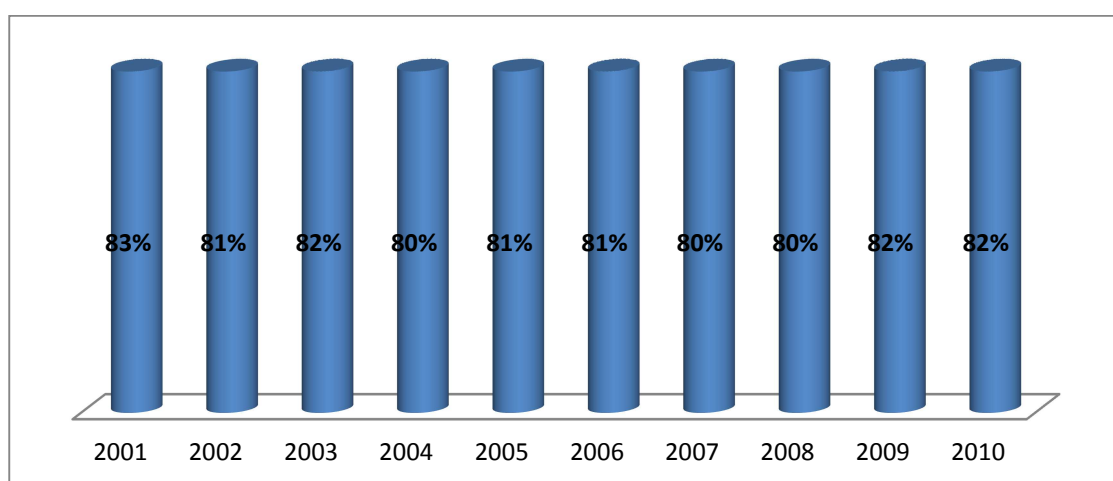
Another innovatory initiative launched by the Conciliation Service to step up its preventive dispute resolution activities has been its Frequent Users Initiative. A problem

commonly identified in the dispute resolution literature is that when organizations are provided a free, easily accessible service to help solve industrial relations problems they become dependent on the service: this is known as the ‘narcotic effect’ (Dunlop 1984). In evaluating its work activities, the Conciliation Service identified a group of ‘heavy users’ of its services: firms that had become over reliant on its services to broker collective bargaining agreements. Thus, interventions by the Conciliation Service were having the perverse effect of solving industrial relations problems in the short-term, but at the same time weakening further the internal capabilities of organizations to settle disputes on their own. In conjunction with other parts the LRC, the conciliation division developed the Frequent Users Initiative, which involved working with identified firms to wean them off its services. This involved helping the organizations establish internal processes and procedures to strengthen employment involvement in decision-making and to encourage orderly collective bargaining negotiations. The overall thrust of the initiative is to build up the ability of organizations to resolve disputes internally without the assistance of third-party intervention. The initiative has been generally successful as it has significantly reduced the number of repeat uses of the Conciliation Service. But to get to this stage required sustained effort by conciliation officers of the LRC.

2.1.6 Conciliation as people-based activity

Since the early 1990s, the LRC has consistently being able to provide a highly effective conciliation service. Figure 4 shows that the conciliation service has been able to settle 80 per cent or more referrals annually over the past ten years, which by any standard is an impressive performance. This ability to resolve disputes usually to the satisfaction of all parties has clearly contributed to the considerable standing and credibility that the Conciliation Service enjoys amongst the social partners, individual employers, trade unions, employees and politicians. Indeed the continuing strong commitment on the part of both employer organizations and trade unions to the resolution of disputes through voluntary engagement with a third party is testament to the reputation enjoyed by the Conciliation Service. This high standing was reaffirmed in the LRC User Satisfaction Survey where 89 per cent of respondents stipulated that they were either very satisfied or satisfied with the Conciliation Service.

Figure 4
Conciliation Service settlement rate, 2001–2010



Source: LRC Annual Reports

The LRC’s continued capacity to provide such a high quality conciliation service is heavily dependent on the skills, competencies and experience of its staff. Indeed the Director of the Service has characterised conciliation as a “people-based activity”. All of the conciliators have a high level of expertise in a range of conciliation and mediation

techniques combined with a deep knowledge of the industrial relations landscape – that is the parties, the issues, the processes. They have also over time built up strong highly personalised relationships with the principle actors in the labour market based on their capacity to resolve disputes effectively. From the outset, the Conciliation Service certainly benefited from the fact that its initial complement of staff came from the then Department of Labour and as such they were very much ‘embedded’ in the rough and tumble of collective based industrial relations. Interestingly, a considerable cadre of the original staff remains with the organization which has certainly been important in terms of the conciliation service’s ability to settle such a high proportion of referrals. The quality of the conciliation staff also reflects the Commission’s continued investment in training and career development. Significantly in Customer Users Surveys, both employers and trade unions consistently alluded to the facilitation skills, flexibility, reputation, knowledge and commitment of the staff as being among the key strengths of the Conciliation Service.

2.1.7 A long-term solutions focus

Recently, the Conciliation Service has decided to step up its preventive dispute resolution activity by developing ‘a longer term solutions-orientated focus’ that will encourage organizations to adopt policies and practices aimed at upgrading in-house conflict management procedures. Aside from contributing to the strategic objective of encouraging parties to resolve disputes close to the point of origin, this approach also has the potential to transform organizational practices, improve employment and industrial relations and reduce reliance on third party intervention. In promoting this innovative approach, the Service is aware that conciliation provides them with a unique and privileged form of engagement in which there is an opportunity to drive forward longer term strategic solutions rather than merely seeking to respond to parties on an ad hoc basis as disputes arise.

This initiative is still in its embryonic stage and the Conciliation Service is currently planning intensive in-house deliberations involving the Advisory Service team around the challenges and opportunities associated with developing a longer term solutions orientated focus. For example, staff the Division is aware that this approach could create situations in which parties are exposed to approaches and proposals for which they are not yet ready. Mediating this balance between resolving disputes and encouraging long term solutions will be critical. At the same time, the Conciliation Service is determined to push ahead with the initiative as it holds out significant potential benefits in terms of the impact on the quality of industrial relations within client organizations. Thus, although dispute resolution will remain a core feature of the Conciliation Division’s work, it is likely that in the future it will carry out a more diversified and integrated set of activities that are linked to the statutory mandate of the Commission.

2.2 The Advisory Service Division: Promoting cooperative industrial relations

The Advisory Service Division of the LRC works with employers, employees and trade unions in non-dispute situations to assist them in developing effective employment and industrial relations practices, procedures and structures capable of fostering sustainable, cooperative and mutually beneficial relationships. Since its establishment in 1992, the Advisory Service has gradually evolved from basically providing one core service – industrial relations diagnostic audits – to the delivery of a range of activities that are designed to promote, develop and implement best industrial relations policies, practices and procedures.

In this regard, it is important to emphasise the experimental dimension to the Division’s work. In the past – mainly the sixties and seventies – the working assumption of public dispute resolution agencies was to adopt a ‘neutral’ stance when supporting the

orderly conduct of voluntary collective bargaining. This ‘neutrality’ principle involved public dispute resolution agencies standing above employer and employee interactions, intervening only when relationships between the two became embittered for one reason or another. It was assumed that this approach would protect an agency from accusations that it was biased towards either employers or employees. On the surface, the argument in support of the neutrality principle seems convincing, but on closer examination this approach has a downside. In particular, by adopting a neutral stance, dispute resolution agencies may permit industrial relations to become too adversarial. In some situations, the result of adversarial industrial relations is that dispute resolution agencies can even become entangled in bargaining games played by employers and trade unions (Dunlop and Zack 1997). Thus, rather than standing above employer-trade union bargaining, the dispute resolution agencies are captured by these interactions.

The working assumption of the Advisory Service of the LRC was that a ‘them and us’ industrial relations mentality needed to be challenged by developing a range of activities designed to encourage more cooperative, consensus based interactions between employers and employees. However, in the beginning, the service was unsure about what precisely it should be doing to advance this pro-active problem-solving role. As a result, it opted to ‘play safe’ and follow the pioneering work of ACAS (UK) of undertaking diagnostic reviews of the employment and industrial relations environment in organizations. Before it could develop more innovative activities, the staff of the service concluded that they would have to move beyond the skills and experience they had accrued doing conciliation and facilitation work. These new competencies have been acquired through a combination of in-house training, exposure to international best practice, a strong element of learning by monitoring and reviewing their practices in action. It was also apparent that the Advisory Service Division had to overcome a degree of reticence from client organizations who were not convinced that a statutory public dispute resolution agency should be undertaking activity aimed at fostering cooperative relationships with employers and employees. Gradually, however, the Advisory Service has forged a strong identity for building and maintaining positive partnership style relationships at the workplace and to nurture mutual gains industrial relations in organizations, which help advance enterprise performance and employee well-being at the same time.

At any one time, the division pursues multiple initiatives to promote collaborative industrial relations. It is responsible for: (1) the development and promulgation of Codes of Practice and the delivery of enterprise-level projects such as IR audits; (2) the LRC’s research and information activities, including managing all internal and external ICT related initiatives; (3) assessing the effectiveness of the Commission’s Services, surveying customer satisfaction levels and related activities.

2.2.1 Industrial relations reviews and audits

In the first few years of the LRC’s existence, the Advisory Service’s primary role was to complete diagnostic reviews in firms experiencing industrial relation difficulties. A diagnostic review involves a thorough audit of existing industrial relations practices and procedures and a survey of the views of all the relevant stakeholders in an enterprise. The purpose is to identify the root causes of prevailing organizational industrial relations problems. A confidential report is produced containing conclusions and recommendations that set out the practices and procedures required to improve industrial relations. As a new service, conducting diagnostic reviews was important for the Advisory Service Division as it allowed strong relationships to be built with both individual companies and trade unions, which in turn enhanced the legitimacy of its pro-active work to develop collaborative relations at the workplace.

After a period of time, a view emerged across the division that diagnostic reviews, although useful, were perhaps too reactive and simply led to firms being provided with a relatively limited menu of recommendations to address identified industrial relations

problems. Thus, it was decided to augment diagnostic reviews by offering organizations an additional post-report monitoring and support service, which would involve staff of the division taking an active role in the implementation of recommendations. An important feature of this new service was the Advisory Service establishing and chairing a Joint Working Party comprised of company and employee representatives to oversee the successful implementation of recommendations. The active engagement of advisory division staff in working parties was considered important to ensure that organizations did not slide back into industrial relations conflict and more positively to kick start a process that would encourage more cooperative engagement between management and employees, with both taking ownership of agreed solutions to workplace difficulties. Creating joint working parties can be viewed as an attempt by the Division to build in a stronger preventative mediation/facilitation dimension into its diagnostic work with organizations, which was consistent with the overall goals of the LRC.

The Advisory Division has continually sought to upgrade its service. In 2005, a new computer based toolkit for the speedy gathering and analysis of information from groups of people, known as Re-Solve, was introduced as a standard part of the diagnostic review process. Aside from speed, the main advantage of Re-Solve is that it promotes collaboration in situations where time, distance, cost and personal and group dynamics prevent people getting together. Additionally, it also assists the monitoring of progress within an organization. One company that used Re-Solve as part of an industrial relations review was of the opinion that the process facilitated the parties moving quickly to an agreed joint agenda focused on improving working relations. The LRC is beginning to use the technology more widely to support other activities such as interest-based bargaining and dispute resolution.

In 2004, a study evaluated the reviews that had been conducted by the Advisory Division (see Cronin, 2004). The objective of this research was to gain insights into the strengths and weaknesses of this process in a manner that would be helpful to practitioners and lead to improving the quality of service. To evaluate the impact of the diagnostic reviews, a small representative survey was carried out on firms that had used the service. The survey found that 54 per cent of respondents perceived that the review process had resulted in some improvements in industrial relations, while 45.4 per cent suggested that significant improvements had occurred. The impartial, confidential and non-confrontational nature of diagnostic reviews was identified as the main reasons why this service had such a positive impact. Overall, the study concluded that the diagnostic review process had functioned as an effective mechanism for both opening up communications and dialogue within organizations experiencing IR difficulties and creating the conditions for joint problem solving.

2.2.2 Codes of Practice

Another important strand of the Advisory Service's work is the development and promulgation of statutory Codes of Practice in accordance with Section 42 of the Industrial Relations Act 1990. The objective of these statutory instruments is to set out recommended good/best practice in relation to a particular employment/workplace issue or a particular provision of an employment law. Two main factors have driven the development of these particular statutory instruments. One has been agreements reached through tripartite discussions under the national social partnership. In particular, four specific codes of practice, including the *Enhanced Code of Practice on Voluntary Dispute Resolution*, were written in response to commitments set out in a number of national social partner agreements. The other has been employment legislation. Several codes have emerged directly from requirements in specific employment legislation as in the case, for example, of the *Code of Practice on Sunday Working in the Retail Trade*.

The preparation of a Code involves staff from the advisory division working closely with the social partners and, where required, other affected stakeholders, to prepare a

consensus based draft code, which is then forwarded to the Minister for Enterprise, Trade and Employment who designates it as a statutory Code of Practice. The drafting of codes can be challenging as the issues being addressed are frequently contentious and the source of disagreement between trade unions and employers. It is a testimony to the problem-solving skills of the advisory division that they successfully secured the adoption of ten statutory codes over a ten year period from 1992-2002.

- *Code of Practice on Dispute Procedures including Procedures in Essential Services*
- *Code of Practice on Voluntary Dispute Resolution*
- *Enhanced Code of Practice on Voluntary Dispute Resolution*
- *Code of Practice on Victimisation*
- *Code of Practice on Grievance and Disciplinary Procedures*
- *Code of Practice on Duties and Responsibilities of Employee Representatives and the Protection and Facilities to be Afforded them by their Employer*
- *Code of Practice Detailing Procedures for Addressing Bullying in the Workplace*
- *Code of Practice on Compensatory Rest Periods*
- *Code of Practice on Sunday Working in the Retail Trade*
- *Code of Practice on Access to Part-Time Work*

The various codes operate as soft regulatory instruments. Improvements are sought to particular employment practices by providing detailed guidance on what constitutes recommended good practice. Where a Code is directly linked to specific employment legislation, the emphasis on adopting good practice is complemented by a focus on encouraging compliance with certain provisions of the relevant legislation. For example, *The Code of Practice on Sunday Working in the Retail Trade* seeks to assist employers, employees and their representatives in observing the provisions of the Organisation of Working Time Act, 1997. This twin emphasis on putting in place practices or procedures that encourage legislative compliance – thereby avoiding referral to a public agency – and promulgating good employment practices to foster better relations between employees and management at the workplace ensures that the Codes are in effect a form of preventative mediation or facilitation. The experience of the Advisory Service is that where organizations adopt Codes, it facilitates a process of improving internal employment and industrial relations practices, structures and procedures. Additionally, although the Codes do not have the force of law, they can be taken into account in the course of proceedings before the Labour Court, the Employment Appeals Tribunal and the Equality Tribunal.

In terms of effectiveness, a LRC survey in the mid-2000s of industrial relations practitioners – employers and trade unionists – who had used the Commission's services revealed that the various Codes were widely used and highly regarded. The vast majority of practitioners surveyed were aware of the various Codes (94 per cent) and, significantly, 86 per cent of respondents indicated that they made use of them. The most widely used Codes were those relating to grievance and discipline; bullying and harassment; duties and responsibilities of employee representatives and dispute resolution and procedures in essential services. There was also a strong consensus amongst respondents (80 per cent) that these statutory instruments are an effective mechanism for promoting the adoption of good practice in the management of industrial relations. Interestingly, the survey also revealed a demand amongst practitioners for the preparation of new Codes of Practice on issues such as cultural diversity, family-friendly work arrangements and transfer of undertakings.

One shortcoming that emerged from the survey was that practitioners thought that codes could be promoted more effectively. The advisory service has acted upon this finding by developing a Code of Practice service guide. Support material has been put on the LRC web site and the guides are actively promoted in all seminars and workshops that are designed to encourage the adoption of good practice employment relations. Although Codes of Practice have evolved in a somewhat ad hoc and reactive manner, they are indicative of the growing reach of statutory instruments in relation to workplace issues, albeit in the form of a type of soft regulation. As a result, the usage of such instruments will probably continue to expand in the medium term at least.

2.2.3 The Advisory Service and the trade union recognition problem

An on-going source of tension between trade unions, employers and Government is the absence of effective trade union recognition laws and procedures (Gunnigle 2000). Ireland is the exception amongst Anglo-Saxon countries in that there are no legal rules that establish procedures relating to trade union recognition. Traditionally, it was the Labour Court that dealt with union recognition cases by issuing a non-binding recommendation on how to resolve a dispute about recognition. Typically, the Court made recommendations that supported employee demands for union recognition. However, Gunnigle (2000) argues that a sizable number of employers did not comply with these recommendations because they faced no effective legal or public sanctions. The main reason why no effective sanction could be introduced was that employers have a constitutional right of free association, which has prevented Governments passing legislation that would have obliged them to recognise a trade union if certain procedures or conditions were met.

Over the years, this matter has consistently rankled with trade unions. In an effort to address the problem, a High Level Group on Trade Union Recognition was set up in 2000 to devise a solution to the problem (Dobbin, 2005). It proposed a new two part procedure to address employer and trade union concerns about union recognition. The first part recommended that the Labour Relations Commission establish a Code of Conduct on Voluntary Dispute Resolution. The LRC supported this recommendation and introduced such a code in October 2000. The code created a new procedure for resolving union recognition disputes. It starts when a union makes a claim on the company that relates not to recognition, but to an employment and industrial relations matter, for example, improved pay and conditions. If the company refuses to recognize the claim and collective bargaining does not occur, the claim can be referred to the LRC. The LRC first brings together the disputing parties in an effort to reach a voluntary settlement. If no resolution occurs the LRC can make its own proposals. But if these fail to produce a settlement, the parties are asked to enter a mutually agreed “cooling-off period”, which normally lasts for about 6 months. During the cooling-off period, the LRC may engage expert assistance, including the involvement of the Irish Congress of Trade Unions (ICTU) and the Irish Business and Employers Federation (IBEC), to help solve the dispute. If the cooling-off period ends without the dispute being resolved, the LRC disengages from the process.

The second part of the High-Level Group’s Report sets out the procedures to be followed in this deadlock situation. It is also the procedure invoked when an employer or union refuses to use the voluntary dispute resolution code. These procedures formed the basis of the Industrial Relations (Amendment) Act 2001. When the parties refuse to participate in the LRC’s voluntary code, the Act allows the case to be heard by the Labour Court. Normally, the Court hearing results in a non-binding recommendation on the substantive matters of the dispute: recommendations of the Labour Court cannot mandate collective bargaining between a union and employer. If this recommendation does not lead to a settlement, either party can ask the Labour Court for a determination which more or less repeats the contents of the recommendation, but also opens up two other possible resolution procedures. Under the first option, the union waits for 12 months for the determination to be implemented. If this does not happen, the party can go to the Circuit

Court to have the determination legally enforced. Under the alternative option, known as the fast-track procedure, either party to the dispute can seek a review of the determination after three months. Provided that the circumstances of the case have not radically changed, the review simply reaffirms the initial determination. If the decision of the review is not followed within six weeks, the case can be brought before the Circuit Court for a legally binding “enforcement order”.

Some unions were unhappy with the 2001 Act, as it did not introduce any new regulation on trade union recognition disputes and also because the procedures created were much too cumbersome (D’art and Turner, 2005). The focus was more or less on procedural matters, with the Act introducing a “right to bargain” rather than a proper recognition procedure. This dissatisfaction led to heated exchanges between the social partners in the negotiations leading to the 2003 social partnership agreement, *Sustaining Progress*. This quarrel ended with the social partnership revising the procedures that had been established by the 2001 Industrial Relations Act. Under the new agreement, government provided the LRC and the Labour Court with extra resources to ensure that trade union recognition dispute cases were settled within a maximum time frame of 34 weeks instead of the two year period that was the norm under the 2001 Act. Under the new arrangements the voluntary stage at which the LRC seeks to obtain a voluntary agreement lasts only six weeks. If no agreement is reached then the case goes automatically to the Labour Court which is obliged to issue a recommendation within a three week period. A trade union then has four weeks to seek a binding determination which ultimately can be legally enforceable. Another part of the new package was a new victimization code that clarified the meaning of the term. The new code is designed to help the LRC and the Labour Court when addressing cases involving allegations of victimization against individuals involved in union organizing activity. These changes were made law in the 2004 Industrial Relations Act.

The Advisory Service Division (ASD) of the LRC was assigned responsibility for processing referrals to the LRC under these procedures as it was seen to be better placed to deal with non-union firms. These were difficult enough cases to resolve for two reasons. First of all, unlike most other problem-solving activity in which the Commission is engaged, the employers involved in these referrals were reluctant participants. Secondly, the employment and industrial relations history of the companies involved was usually acrimonious, which made the realization of a negotiated settlement within the stipulated six week period a difficult enough task. The Advisory Service coped admirably well with these challenges. For example, in 2005, it handled seventy-five cases involving 403 issues, of these 202 issues were resolved at the LRC stage with the remainder – 203 issues – being referred to the Labour Court. Given the time delays associated with the initial Voluntary Dispute Resolution Code, the introduction of delimited time frames in 2004 improved the process as it focused minds on both the employer and trade union sides. From the Commission’s perspective, this process was moderately successful. There was a degree of concern regarding the relatively high number of issues being referred to the Labour Court, though given the difficult institutional context in which these issues are being processed, the resolution rate achieved at the LRC was commendable.

Although the procedures established in 2001 and subsequently revised in 2004 did not directly relate to trade union recognition, they enabled a trade union to raise an employment and industrial relations grievance such as a claim for improved pay and conditions in a non-union organization. Effectively it created a form of ‘shadow’ collective bargaining in the non-union sector that led to improved pay and conditions for employees (Higgins, 2005). The negotiation skills of the Advisory Service alongside the decisions of the Labour Court were key factors in the creation of this situation. However, this development was stopped in its tracks by a ruling of the Supreme Court in a *cause celebre* involving Ryanair. Ever since 1998 there had been a trade union recognition dispute between the airline and its pilots. A number of high level initiatives were made to resolve the dispute without much success. At the end of 2005, the Labour Court at a preliminary

hearing ruled that a trade dispute existed between Ryanair and Impact, which opened the door for the Court to use the provisions of the 2001 and 2004 Industrial Relations Acts. Almost immediately, the airline referred the matter to the High Court. But it ruled that the Labour Court had the jurisdiction to address the case. The company reacted to this decision by referring the matter to the Supreme Court. The decision of the Supreme Court went in favour of the company as it ruled that the trade unions had no case as Ryanair's Employee Representative Committees were deemed to be a form of 'collective bargaining' within the company.

The upshot of this ruling was that the vast majority of non-union firms would be able to escape the remit of the Industrial Relations Acts, 2001-2004 if an employer has in place some form of permanent machinery or procedure whereby independent representatives or workers can negotiate collectively with the employer with a view to reaching agreement. Unsurprisingly, after 2006 referrals under these Acts to the Advisory Service of the LRC more or less dried up. There were mixed feelings to this chain of events inside the Advisory Service. On the one hand, there was disappointment that a seemingly workable, although imperfect, solution that had been found to the thorny question of trade union recognition had been left in tatters. On the other hand, there was some relief because the processing of the referrals that had made under the 2001/2004 Acts were hugely time consuming and had started to dominate the work of the Division. With the procedures of the Act falling into abeyance, the Advisory Service was released to step up its work on preventive dispute resolution.

2.2.4 Providing advice and training and development

Over the years, the Advisory Service has ratcheted up its preventative mediation work with organizations that wanted to enhance their capacity for dealing with industrial relations issues even though they did not face any immediate industrial relations problems: they sought to build up their problem-solving capacity in anticipation of potential problems ahead. Thus, organizations viewed the Advisory Service as a source of advice and expertise on a wide range of employment matters, including the development of disputes and grievances procedures, the adoption of new work practices and procedures to help manage structural change. The provision of detailed quality advice on request to both employers and trade unions (together or separately) or employers alone (where there is no union recognised in the workplace) on good practice is now an integral element of the Division's work. Depending on the issue involved, this advice may focus on encouraging organizations to adopt relevant codes of practice or it may involve more direct forms of assistance, which entail the Advisory Service working with employers and trade unions on industrial relations experiments such as the introduction of interest-based bargaining and/or joint problem solving. The Advisory Service does not provide off-the-shelf solutions to organizational problems, but seeks to work with the relevant stakeholders to design customised approaches that enhance organizational performance, improve the employment and industrial relations culture, generate mutual gains and assist in employment creation and retention.

Complementing this advice activity, the service has been engaged in training and development initiatives. In response to the findings of a Customer User Survey LRC in 2005, the advisory team developed for the first time a limited training and development service to deliver specialised programmes in the following areas:

- Conflict prevention/resolution and employee relations challenges for employee representatives and employees
- Conflict prevention/resolution and employee relations challenges for managers
- Skills development and general information for employee representatives elected for the purposes of the Employees (Provision of Information and Consultation) Act 2006

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- General information for managers and employee representatives on the Employees (Provision of Information and Consultation) Act 2006 and
 - Implementing and maintaining effective communication strategies

The Advisory Service is responsible for coordinating this new service though the actual training is delivered by experienced cross-functional teams. There is a strong emphasis on providing customised and tailored training; for example, one programme in conflict management was developed for Directors of Nursing at the request of the Irish Nurses Organisation. Given the potential resource implications, the emphasis to date has been on providing a limited but focused high quality training programme. In particular, there has been a strong emphasis on programmes that can enhance certain core competencies and contribute to the Commission's strategic objective of supporting enterprises to develop stronger innovative and flexible in-house conflict management systems.

2.2.5 Building research capacity

The Advisory Service has a longstanding commitment to promoting high quality research on employment relations, not least to allow the Commission make more informed, evidence-based decisions about its activities. In recent years, there has been an increased emphasis on identifying priority areas for collaboration in undertaking projects with both other relevant public and professional agencies and third level academic institutions. Recent examples of the research projects sponsored by the LRC and managed by the Advisory Service include:

- A survey of HRM practices in multinational companies
- Examining the Efficiency and Effectiveness of Employment Dispute Resolution Agencies
- A Survey of Workplace Conflict Management Practices in Ireland
- Conflict Management Systems in Subsidiaries of Non-Union Multinational Organisation located in Ireland
- Managing and Representing People in the Recession

The Advisory Service organizes at least one major conference a year to disseminate the key findings of research reports. To provide a flavour of the research that is conducted, Table 5 sets out the main findings of the recently concluded research study on Managing and Representing People in the Recession. In addition, the Service also organizes smaller scale workshops and seminars on its research related work. The key objective is to ensure that employment and industrial relations research obtains the widest possible audience. But the research work has also an important practical element to it as it contributes to the review of the Commission's existing policies and the development of new initiatives. For example, the research on the efficiency and effectiveness of Employment Dispute Agencies led to the establishment of a new mediation service. Similarly, the findings from the project Conflict Management Systems in non-union MNC subsidiaries is leading to the LRC to develop a new policy approach to the foreign direct investment sector in Ireland.

Table 5
Managing and representing people in the recession: Key findings

Most effective HR Practices	HR Response Programmes
When asked to identify the most effective HR practices in managing the recession, most frequently identified were: ▪ Communication & information disclosure ▪ Efficiencies and cost control ▪ Engagement & consultation These practices also among those strongly associated in focus groups and case studies with 'good human resource management' in the recession. Relations with trade unions ▪ The majority of firms appear to consider the participation and contribution of unions during the recession in a fairly positive way. ▪ More than six out of ten firms stated that they had actively engaged with unions in developing HR options with which to respond to the recession. ▪ Almost six out of ten firms disagreed that the actions required to respond to the recession have been so urgent that there has been little time to consult or negotiate with trade unions.	▪ Multi-stranded hard HR retrenchment programmes adopted in about 1 in 2 workplaces & similar incidence of mainly pay-freeze focused response programmes ▪ But employers in general seeking to balance hard and soft practices: ▪ 7 out of 10 firms combine hard retrenchment programmes with a range of soft HR practices that include more emphasis on communications, employee engagement measures and the involvement of employees in developing response measures ▪ 3 out of 10 firms combine hard retrenchment programmes primarily with more emphasis on communications. Human resources in the recession: Some key conclusions ▪ Employers commonly adopting multi-stranded HR response programmes geared to reducing payroll costs but also seeking to preserve motivation and commitment. ▪ Leaner but more influential HR functions. ▪ Unions facing unprecedented challenges. ▪ Is the recession breaking the mould of established patterns of work and employment?

Source: Adopted from Roche et al 2011

High quality research combined with the extensive practical experience of staff in the Advisory Service provides a reservoir of knowledge to support the ongoing evaluation of existing policy services and initiatives. The Advisory Service team is eager to improve continually the quality and effectiveness of the LRC's range of policy services and initiatives. The insights and learning from research and its practical activities helps the LRC remain relevant by ensuring that services and initiatives reflect the ongoing dynamics of workplace change and labour force development. With the increased pace of change in recent years, the importance of supporting leading edge research in priority areas related to the core work of the Commission has arguably increased.

2.2.6 Awareness raising and information provision

A further important area of work for the Advisory Service is raising awareness and providing information about the functions of the LRC. These activities have been an evergreen in the Service's portfolio of activities. Initiatives in the areas of advice and information have recently included:

- **LRC Service Guides** – a new suite of information literature has been written in the form of Information Packs and seven stand-alone information leaflets have been developed.
- **Corporate DVD and CD-ROM** – a film on DVD has been produced describing the work of the LRC and explaining how the organization's services can help firms improve their management of the employment relationship and resolve employment and industrial relations problems.

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- **Workshops and conferences** – a series of regional seminars were organized specifically for the SME sector to explain how the Commission could work with small firms to upgrade their people management expertise.
 - **Web site** – As part of the implementation of the Commission's ICT Strategy and Plan, considerable improvements were made to the content, navigation and image of the LRC's web site. All of the commission's publications are available on the web site and since 2005 it is now possible to apply online for the assistance of the Conciliation Service.

The Advisory Service has sought to disseminate its material widely and in particular to reach out beyond its traditional client base; for example, material has been distributed through the network of Citizen Information Centres across the country. Similarly, in response to the emergence of a more diverse workforce and in particular the increased numbers of migrant workers accessing the Rights Commissioner Service, the division has sought to build up stronger linkages with bodies such as the Migrant Rights Information Centre. It has also made its material available in a number of different languages. Additionally, multi-media packs have been distributed to all second and third level schools and colleges. Together, these various initiatives represent a considerable improvement in the LRC's advocacy and awareness-raising activity.

Given the developmental nature of its work, the Advisory Service does not have the overt type of performance indicators that are available to the Conciliation Service to measure the success or otherwise of its work. However, various surveys of clients suggest that the Advisory Service of the LRC has a number of perceived strengths, including a quality and professional work programme, highly skilled and experienced staff and a capacity to address entrenched positions, build trust and assist parties in reaching a resolution. Thus, the Advisory Service has gradually developed a comprehensive set of activities, programmes and services aimed at promoting improvements in employment and industrial relations practices and procedures. In particular, it has developed a strong focus on preventative mediation as part of the overall developmental focus. The continuing high level of referrals to the statutory dispute resolution agencies suggests that the need for these services remains undiminished.

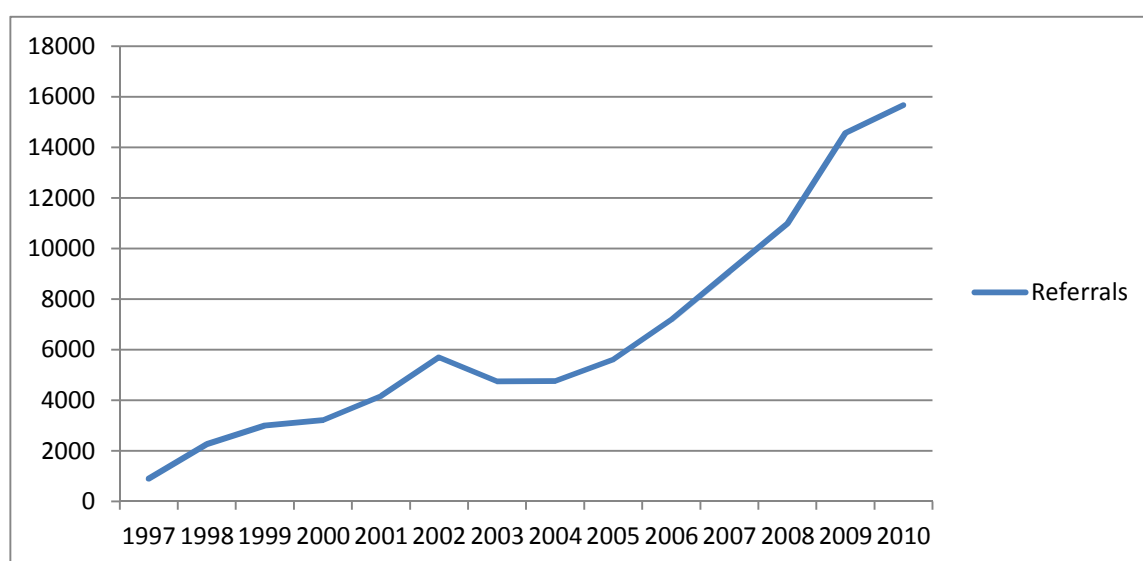
2.3 The Rights Commissioner Service

The third main service of the LRC is the Rights Commissioner Service, which was established by the Industrial Relations Act 1969 to provide a third party procedure to help solve employment disputes and grievances raised by individuals or small groups of workers. At the start, it was envisaged that the service would largely perform a problem solving role by helping to settle deadlocked small scale collective disputes in a non-legalistic manner. The rationale for creating the service was to ensure that relatively minor collective disputes did not escalate into large scale stand-offs between employers and trade unions. In the period since its establishment however, the role, function and indeed importance of the Rights Commissioners Service has changed significantly. Although Rights Commissioners have retained their problem-solving function, they have gradually acquired a more encompassing quasi-judicial role in respect of employment rights. No less than nineteen pieces of legislation give Commissioners an active role in the settlement of disputes – in 1995 only three pieces of legislation impinged on the work of the service. Thus, Rights Commissioners now have the double-barrelled role of problem solving and vindicating mostly individual employment rights.

The result has been a massive increase in the number of referrals to the service over the last decade or so. Figure 5 below shows that in 1997 less than 1,000 referrals were received by the Rights Commissioner Service, but in 2010 the number is near 16,000. Thus, there has been a near exponential increase in the number of cases being dealt with by Rights Commissioners, making it probably the most significant employment dispute

resolution agency in the country. To cope with this massive increase in workload, the number of Rights Commissioners has increased from five to seventeen in the past ten years. Because the service has evolved into such a busy and important dispute resolution body, a detailed examination is made of its work below. The purpose of this analysis is to get a better insight into the type of employment problems addressed by the Commissioners, the type of people who bring claims – the sector in which they work, their gender and so on – and the manner in which referrals are addressed. To carry out this analysis, a random sample of 3798 cases, or 2882 claimants was randomly compiled from all cases referred in 2006. The sample represented approximately two-thirds of all cases for 2006, providing is sufficiently large enough sample to give confidence that the findings of the sample are representative of the cases for that year. Before the findings of this analysis are set out, it is important to say more about the nature of the Rights Commissioners Service.

Figure 5
Referrals to the Rights Commissioners



Source: LRC Annual Reports

Rights Commissioners are appointed by the Minister of Enterprise, Trade and Employment having been nominated by either the ICTU or IBEC on the basis of their experience and expertise in the employment/industrial relations arena. Although Rights Commissioners are supported and managed by the LRC, they are not employees of the organization and are formally independent. Although Rights Commissioners are drawn from either a trade union or employer background, once appointed they act in an independent manner when undertaking their statutory duties. Each Rights Commissioner must possess an extensive knowledge of industrial relations processes as well as a range of dispute resolution competencies – investigation, negotiation, facilitation and mediation. They also have to be familiar with employment legislation, which has increased in volume and complexity, although they do have access to legal support and advice if required.

A Commissioner becomes involved in an employment dispute when a claimant requests their intervention under a particular piece of legislation. On notification of the claim to the respondent by the Rights Commissioner service, the parties will be encouraged to settle their dispute which is indicative of the strong problem solving ethos that has characterised the service since its establishment. If a settlement is not possible at this stage, it is the responsibility of the Rights Commissioner to conduct an investigation and gather as much information as possible, including the holding of a hearing.

The hearings, which are normally presided over by a single Rights Commissioner, are formal but non-adversarial in character. They are not a court of law and as such there is no cross-examination process. At a hearing each party is given the opportunity to present their case, often with the support of a written submission. Even though Rights Commissioners are increasingly dealing with claims pertaining to employment rights, they continue to adopt a pragmatic, problem solving approach to this process. Following the completion of this process, the Rights Commissioners will issue their outcome in the form of either decisions or recommendations, depending on the legislation under which the case is referred. All recommendations are binding on the parties and are legally enforceable unless made under the Industrial Relations Acts, 1969-2001. The whole process from lodging a claim to the issuing of a decision takes on average about four months.

Thus the Rights Commissioners service is a relatively unique institution in that it seeks to combine a problem-solving role and an adjudication role. It has the convening power of a public institution to oblige parties involved in cases of industrial relations conflict or alleged breaches of employment rights to attend meetings that aim to settle the problem. It has authority to decide the winners and losers in cases, but it prefers for the parties, under their guidance, to devise their own solution to a problem. The service is easy to access – there are no formal procedures that stand in the way of people using the service: employees do not have to communicate first with their employers before taking a case to the Rights Commissioners. Its relative autonomy from the other more formal dispute resolution agencies has enhanced its reputation for being an informal and speedy service. The fact that the Rights Commissioners are appointed from the ranks of the social partners gives the service credibility among employers and employees within organizations. All in all, its presence affirms the importance of having a public institutional presence to solve small scale collective industrial relations and individual employment problems as well as to address alleged breaches of employment rights: the probability is that many of these issues would go undetected if the service did not exist.

2.3.1 The work of the Rights Commissioners

To examine the work of Rights Commissioners in detail, information was taken from the 3798 case files that were examined on ten variables – Act; Sector; Gender of claimant; Nationality of claimant; Salary of claimant; Representation of claimant; Representation of respondent; Outcome; Level of Compensation; Where no decision was given, the reason why. In six out of the ten variables – Sector; Gender of claimant; Nationality of claimant; Salary of claimant; Outcome; Where no decision was given, the reason why – the data was simply not available for all cases studied. Although, as will be identified later, very few cases reach a hearing stage, data was collected on all cases submitted to the Rights Commissioner Service, whether they make the hearing stage or not.

Claims to the Rights Commissioners were found particularly in three industries – construction; wholesale and retail trade; and hotels and restaurants. These make up 41.7 per cent of cases referred to the Rights Commissioners. The three sectors represent areas of work where many jobs are low skilled or precarious and perhaps even both. In addition, they are sectors where trade union membership is low and collective bargaining weak. Employees in the construction and hotel and restaurants sectors are disproportionately likely to bring cases before the Rights Commissioners, compared to the total employment for each respective sector.

The gender of the claimant was determined relatively straightforwardly most of the time from the case-file. This analysis found that 58.5 per cent of cases were brought by male claimants, although men constituted only 49.63 per cent of the workforce in Ireland in 2006. Female claimants brought 40.4 per cent of cases, while a further 1.1 per cent of cases were brought by collective bodies. Irish nationals who bring cases before the Rights Commissioners are disproportionately likely to be female, while non-Irish claimants are disproportionately likely to be male. Female claimants are, on average, lower paid than

their male counterparts (€422.19 per week and €508.00 per week respectively). Male claimants are most likely to be employed in the construction (28.1 per cent); wholesale and retail trade (10.3 per cent); and the manufacturing (10.0 per cent) sectors, while female claimants are most likely to be found in the health and social work sector (20.9 per cent), wholesale and retail trade (15.6 per cent) and hotel and restaurants (14.4 per cent) sectors. Table 7 shows that for every 3 female claimants, resolving their dispute without a formal decision being made by the Rights Commissioners, only two male claimants will not require a decision. Where a case requires a decision the odds of the case being found in favour of the employer are 25 per cent higher where the claimant is female than where the claimant is male, although this difference is not significant.

The nationality of the claimant was established by using the origins of the surname of the claimant as a proxy. To reduce the mistakes in nationality and to enable statistical analysis, claimants were grouped into Anglo-Irish and non-Anglo-Irish. Those claimants grouped in the Anglophone category had surnames with Anglo-Irish origins (namely those surnames which originate from countries such as Ireland, the United Kingdom, and the United States etc.). In contrast, the non-Anglophone countries would cover surnames of any other origin. It is acknowledged that this approach is not foolproof, as certain claimants may be miscategorised (such as second generation immigrants or married women), however this method has been used effectively as a proxy elsewhere (Harzing 2001). The vast majority (74.59 per cent) of non-Anglophones fell into the Eastern European category. A disproportionately large number of cases originate from non-Anglophone claimants. In particular, Table 6 shows that nearly 30 per cent of cases in the sample were brought by migrant workers, even though they made up only 11 per cent of the Irish labour market in 2006. As with gender, Table 7 reveals that significant and notable relationships existed between nationality and whether a decision was required, and whom the decision favoured. Table 7 indicates that Anglophone claimants are 22 per cent more likely to resolve their dispute through the initial problem solving process organized by the Rights Commissioner than non-Anglophone claimants. This suggests that claimants with a better understanding of the Rights Commissioner process (i.e. those who originate from Ireland) make more use of problem solving opportunities. Of the cases that required a decision, 'Anglophone' claims are approximately three times more likely to be found in favour of employers compared to non-Anglophone claims.

Table 6
Profile of referrals to Rights Commissioners

		Was a decision required?		Who was the decision in favour of?				Rights-based or issue based claim		
		No	Yes	No	No	Yes	No	No	Yes	No
Gender	Female	1460	394	1066	394	277	117	1469	1163	306
	Male	2219	743	1476	743	517	226	2296	1933	363
Anglo-Irish versus non-Anglo-Irish	Anglo-Irish	2454	772	1682	772	493	279	2491	1882	609
	Non-Anglo-Irish	1222	363	859	363	299	64	1271	1211	60
Does the employee have representation?	Employee has representation	2498	778	1720	778	525	253	2563	1972	591
	Employee has no representation	1181	359	822	359	269	90	1201	1124	78
Does the employer have representation?	Employer has representation	1008	385	623	385	224	161	1044	887	157
	Employer has no representation	2671	752	1919	752	570	182	2721	2209	512

Source: Teague and Hahn (forthcoming)

Table 7
Statistical analysis of referrals to the Rights Commissioners

	Was a decision required?		Who was the decision in favour of?		Rights-based or issue based claim	
	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)
Gender(1)	.000	.708	.119	1.253	.500	1.065
AngversNonAng(1)	.012	1.221	.000	.347	.000	.139
EERepvNorep(1)	.738	.974	.024	.711	.000	.193
ERRepvNOREp(1)	.000	1.588	.000	.473	.001	1.437
Constant	.000	1.885	.410	.886	.000	.355
Nagelkerke R Square	.022		.102		.199	

Source: Teague and Hahn forthcoming

The majority of claimants fall below the average weekly salary, with the modal salary band for these claimants being €301 – €400 per week. The national average weekly wage at the time was €767.00, while the average weekly salary of the claimant was €475.47, demonstrating that employees with lower skilled jobs and perhaps with limited bargaining power were disproportionately likely to use the Rights Commissioner Service.

Table 6 shows that employees were twice more likely to choose to have representation in the Rights Commissioners process than to represent themselves. The reverse trend is found for employers, who were over twice more likely not to choose representation. Trade unions play an important role in bringing cases to the Rights Commissioners: about 73.6 per cent of those employees with representation (48.8 per cent of the total sample of employees) bringing cases to Rights Commissioners use trade union representation. In the case of employers, the most common form of representation is a solicitor, suggesting that, at least on the employers' side, there has been some degree of

legalisation of the service. But overall the Rights Commissioners service seems to have avoided the heavy legalisation that has affected other employment rights bodies, most notably the Labour Court. Table 7 indicates, somewhat surprisingly, that the odds of a case being found in favour of the employer were 30 per cent higher when the employee had representation. It is difficult to know what lies behind this peculiar statistic. It may be that employees are more likely to seek representation in cases in which they are not confident of winning. In contrast, where an employer chooses to have representation, the decision was over twice as likely to be in favour of the employer. The expertise, usually of a solicitor, may be the deciding factor in these cases.

A distinction is made in the literature on workplace conflict between ‘rights-based’ disputes and ‘interest-based’ disputes. Rights-based disputes normally refer to workplace problems that relate to employment rights established by legislation whereas interest-based disputes usually arise in the context of industrial relations activity – an alleged breach of a collective agreement, for example. Using the Industrial Relations Acts as a proxy for ‘interest-based’ disputes, Table 6 reveals that those claimants with representation or those who were Anglophone are over five times more likely to bring an interest-based case than those without representation or those who are non-Anglophone. This suggests that the dramatic increase in rights-based cases going before the Rights Commissioners has been fuelled at least in part by the high number of migrant labour arriving in Ireland from the mid-90s until the late 2000s.

2.3.2 The distinctive capabilities of the Rights Commissioners

This assessment of the work of the Rights Commissioners Service suggests that it plays a hugely important role in the resolution of small scale collective industrial relations and individual employment disputes. First of all, it appears to be particularly in tune with modern forms of workplace conflict. As was highlighted earlier, a key trend in Ireland and elsewhere has been the big shift from large-scale industrial conflict, involving strikes and other forms of industrial action, to small scale workplace disputes. Many of these small scale disputes have a rights-based dimension due largely to the significant growth of employment legislation over the past fifteen years. The Rights Commissioners service has a number of features that allows it to address right-based conflict at the workplace effectively.

In particular, it possesses a convening power that obliges employers to answer claims of breaches of employment rights and standards. Thus, it has legal backbone. Yet, it prefers to carry out its tasks in an informal manner, which means that the service is not too legalistic. Rights Commissioners usually try and solve cases through what Dorf (2003) calls a ‘disentrenching capacity’. Employees and employers are first encouraged to solve their problems by themselves in a manner consistent with the law. Both parties normally use this opportunity as they know that the Rights Commissioners can impose a penalty default – the situation where a party (or parties) faces sanctions that potentially makes them worse off and certainly no better off than if they had brokered their own agreement. Being able to vindicate employment rights by problem solving allows the Rights Commissioners to uphold labour standards and solve employment problems without being too bureaucratic or legalistic.

Another attractive feature of the service is that it appears to reach those working in low paid areas of the labour market more than any other employment rights body: the majority of referrals to the Rights Commissioners involve relatively low wage employees, working in sectors where a sizable number of jobs are precarious. In addition, the service deals with a large number of cases from migrants, on a scale that is disproportionately higher than other Irish dispute resolution bodies. No big claims can be made that migrant and low wage workers find it easy to access Rights Commissioners as the size of the potential pool of cases that could be lodged with the service is unknown. Nevertheless, the

Rights Commissioners service appears to work in a way that allows less well-off and marginal groups to vindicate their employment rights in an effective way. Without the service, it is likely that fewer breaches of employment rights would be addressed. These impressive attributes suggest that Rights Commissioners can connect better with different parts of the labour market than other employment rights bodies.

A third feature of the Rights Commissioner Service is that it is relatively easy to access both by trade unions and individuals. The data shows that trade unions represented claimants in about three quarters of the referrals that involved the use of representation. With solicitors only representing 18 per cent of claimants and 14 per cent of respondents, it would appear that the Rights Commissioner Service has avoided the heavy legalization that is associated with other employment rights and dispute resolution bodies in Ireland elsewhere. These findings suggest that the service is not too legalistic and enjoys the support of trade unions, both of which are attractive institutional qualities. At the same time, those without any formal representation also appear able to access the service. A notable finding is that about a third of complainants elect not to have representation when bringing a case to the Rights Commissioners, nearly double the number of those who use solicitors. Moreover, lack of representation does not seem to have had much of an adverse impact on the outcome of such a case. In fact, the data indicates that where a complainant appoints representation, this may impact the likelihood of the case being found in their favour. Being able to deal with collective industrial relations institutions and individuals at the same time suggests that the service has sufficient flexibility to deal with the diversity of work experiences in modern labour markets.

The ability to problem-solve and to vindicate rights suggests that the Irish Rights Commissioner Service views the enforcement of employment legislation as both a *legal* and a *social* process: Rights Commissioners are legalistic and putative when necessary but also accommodative and supportive of informal solutions to problems. This is a very positive feature of the Rights Commissioners Service. Some years ago, James Wilson (1969) wrote an influential study called *Varieties of Police Behaviour*. In this study, he showed that it is misleading to think that the main responsibility of police officers is to enforce the law. Instead, he argued that their main role is to maintain social order. In other words, police officers use discretion and flexibility when enforcing the law. In a similar way, Rights Commissioners are not primarily interested in the mechanistic enforcement of employment legislation; they are keener on maintaining employment and industrial relations order by seeking to resolve employment disputes through problem-solving processes. Thus, the Rights Commission service acts like a ‘street-level bureaucracy’ (Lipsky 1980). A street-level bureaucracy is an organization where front-line workers enjoy considerable autonomy when carrying out work tasks (teachers, police officers and social workers, for example). These workers require discretion and autonomy as they work in complex situations that are not conducive to the application of prescriptive rules. They often make decisions that involve packaging together multiple objectives in a highly contingent manner. Rights Commissioners enjoy such levels of discretion when carrying out their tasks – they decide when to enforce the law and when to problem-solve, when an informal deal is acceptable and when it is not. These organizational attributes prevent the service becoming too formal and legalistic, which could well weaken its labour market reach. They also lead to the service being highly suitable to modern labour market times. Other countries could learn much from this service.

2.4 The Workplace Mediation Service

In late 2005, the Labour Relations Commission launched, on a pilot basis, its new Workplace Mediation Service, aimed at providing an effective and tailored response to particular types of issues and disputes that are emerging within workplaces in Ireland. The LRC characterised this new Workplace Mediation Service as a “*voluntary, confidential process that allows two or more disputing parties to resolve their conflict in a mutually*

agreeable way with the help of a neutral third party, a mediator.” This new service is viewed as being suitable to addressing disputes involving individual or small groups of workers and in particular will target complex disputes that require sensitive and dedicated assistance in seeking a resolution. This would include disputes such as:

- Interpersonal differences, conflicts, difficulties in working together
- A breakdown in working relationships
- Issues arising from grievance and disciplinary procedures (particularly before it becomes a formal matter) and
- Industrial relations issues that have not been the subject of referral to the Rights Commissioner Service, Conciliation Service or another statutory dispute resolution agency.

The key driving force for the development of the Workplace Mediation Service was a perception amongst experienced staff that the growing individualisation of disputes combined with the increased incidence of workplace problems of a highly personal nature, was potentially creating demand for a new dispute resolution service. A Government sponsored report in 2006 *The Expert Review Group on Bullying and Harassment*, which argued that the public dispute resolution system needed to focus more on highly interpersonal disputes, often involving high levels of emotional investment, further nudged the LRC towards creating a mediation service. After relatively extensive discussions internally and with other external agencies, a detailed proposal emerged for the establishment of a dedicated Workplace Mediation Service. However, at board level there was an initial degree of hesitancy about adopting the proposal due to concerns that it might divert resources away from already overstretched core services. But these concerns were allayed and the Workplace Mediation Service was set up.

It was decided to implement the new service on an inter-divisional basis to draw on the wide ranging skills and experience of practitioners from both the Conciliation and Advisory Services. Table 8 sets out the key design principles of the new service, which were considered to be in tune with best mediation practice. Eight staff volunteered to make up the new mediation team and a customised and comprehensive training programme was devised for this group, including exposure to the experience of other agencies who had introduced mediation programmes, in particular the Equality Tribunal (Ireland) and ACAS (UK). The strong focus on training and learning continued into the pilot roll out phase, with the team holding regular meetings to share experiences, highlight problems and identify good practice. Although time consuming, these sessions were seen as an opportunity to shape and improve the quality of the service. Since the creation of the service, all the members of the team have successfully participated in a professionally accredited advanced mediation training programme.

Table 8
Design principles for the Workplace Mediation Service

- **Voluntary** – mediation can only take place if both sides agree and any party is free to withdraw at any stage
- **Confidential** – the process is private and confidential unless the parties otherwise agree
- **Solutions focused** – the purpose of the process is to reach a workable and mutually agreeable solution to a conflict or issue of difference
- **Impartial** – the mediator is impartial and does not take sides
- **Informal and user friendly** – the service is designed to foster trust and rapport with all parties
- **Fast** – it takes place as soon as schedules permit

Source Teague 2005

In rolling out the service, the LRC had to overcome a degree of reticence from trade union officials who were suspicious that the mediation programme would undermine other more traditional forms of dispute management. Thus, the mediation team spent some time outlining to the social partners the benefits of mediation and how this form of dispute resolution did not crowd out others practices such as facilitation, conciliation or even arbitration. In particular, they highlighted how mediation may be a more suitable procedure to address the growing number of bullying and harassment cases that trade union officials are addressing. Table 9 sets out the many benefits that can be derived from mediating workplace disputes. Thus, creating this new service needed considerable organizational effort to not only create the internal capabilities to deliver a user friendly mediation programme, but also to persuade key stakeholders about the potential of mediation.

The mediation service is still relatively new as it has only been fully operational for three years. So far the number of referrals to the service has been relatively low. In 2010, the mediation team received 38 referrals, which involved convening 105 mediation meetings during the year: the previous year the team dealt with a similar number of referrals, but were engaged in 149 meetings, which, on the surface at least, suggests that staff are becoming more experienced at delivering an informal but speedy service. The vast majority of cases are from the public sector and as would be expected are mostly interpersonal in character, relating mostly to issues such as behaviour, role and status within the workplace. They have also been primarily individual, one-to-one, disputes, though a small number have involved up to four parties. There is as yet no firm evidence as to why the public sector has dominated referrals, but it must be a cause for concern that so few cases are coming from the private sector.

One of the motivations for creating the service was to develop stronger connections with private sector workplace where employment and industrial relations are increasingly individualised in character. Although it is early days, these initial motivations have yet to be fully captured. Moreover, the mediation team are realizing that mediation can be labour intensive, which suggests that the service may not be able to deal with a really high number of referrals. Thus, it cannot be said that the mediation service has an unmitigated success, even though the team has brought to a successful conclusion the problems that have been referred to it. The teething problems being encountered by the service is reflective of a deeper challenge facing the LRC, which is how to remain a relevant and connected dispute resolution agency at a time when employment and industrial relations have become less collective and more individualised. This is an issue that will be more fully discussed in a later section.

Table 9
Potential benefits of the Workplace Mediation Service

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- It provides an opportunity for those involved to address the issues, explore options and reach a workable outcome through a mutually agreeable course of action.
 - It creates a safe place for people to have their say and be heard which is important in disputes which are not only personal but in which there is often a high level of emotional investment.
 - The service is informal, user friendly and non-adversarial which is particularly advantageous when the parties have none or limited experience of dispute resolution agencies.
 - The service is quick as with immediate assignment, the mediator can speak to the parties and have a meeting within two weeks. This is extremely fast compared to other dispute resolution processes as for example it takes on average four months for the Rights Commissioners to hear a case.
 - There is potential for a high success rate in terms of the resolution of workplace disputes.
 - This service can generate both innovative and customised solutions to workplace disputes.
 - There is a strong focus on re-establishing normal working relationships which research suggests is an outcome that the majority of parties want in seeking to resolve such disputes.
 - This process does not duplicate other dispute resolution services and as a one stop shop for these issues there is no scope for the parties to shop around the various public agencies.
 - Finally even if the mediation process is unsuccessful there is the opportunity for the mediator to assist the parties in agreeing a joint way forward in relation to the issues in question.

Source: Teague 2005

3. The Labour Relations Commission in the social partnership years

The national social partnership in Ireland that existed in Ireland between 1987-2009 stood in defiance of most of the literature on the institutional pre-conditions for national concertation on wage bargaining; Ireland with its strong Anglo-Saxon industrial relations traditions was considered ill-suited to mimicking North European forms of neo-corporatism. The LRC was one of the institutional bulwarks that supported the longevity of social partnership. Industrial relations stability whether or not a national social partnership framework is in place does not happen by serendipity, but through on-going institutional activity. On a number of occasions, the LRC successfully resolved high profile disputes that had the potential to unravel support for national social partnership. The LRC also played an active formal role in the implementation of many national social partnership agreements. For instance, the 2003-2005 *Sustaining Progress Agreement* afforded the Conciliation Service a designated role in an agreed set of detailed mechanisms for the orderly resolution of disputes in instances of:

- The employer pleads inability to pay the terms of the agreement
- The employer seeks cost offsetting measures to implement a pay award
- Disagreement around the issue of “normal” ongoing change
- Alleged breaches of the agreement and
- Change in the Civil and Public Service.

In relation to pay-related disputes, a set of consecutive mechanisms for resolving grievances was established that included attempts at local resolution; referral if necessary to the LRC for conciliation; the engagement by the Commission of an independent assessor to report on the economic, commercial and employment circumstances of the enterprise; further engagement with the Conciliation Service and finally referral if necessary to the Labour Court for the dispute to be arbitrated. The Conciliation was given a similarly central role in the procedures established to resolved disputes relating to

‘normal ongoing change’, alleged breaches of the agreement and disagreement over matters covered by the agreement. Finally, the Conciliation Service was also requested to facilitate disputes within the Civil and Public Service relating to the verification of workplace change so that the pay increases set out in the agreement could be awarded to employees. By the end of the agreement in 2005, the Commission had dealt with eighty-seven pay related cases, twenty-three cases relating to either ongoing change or alleged breach of the agreement and five cases concerned with verification of change in the Civil and Public Service. Most of these cases were successfully resolved at conciliation stage with LRC staff.

The role played by the LRC under *Sustaining Progress* was replicated in other national agreements. Thus, it can be considered as one of the institutional problem-solvers for national social partnership. On a continual basis and below the radar of publicity, the expertise of the conciliation staff was brought to bear on relatively small scale firm-specific problems that would have disrupted the successful implementation of national agreements. As a result, the LRC played an important role in maintaining the regime of social partnership over its twenty year life span. Yet social partnership was not altogether kind to the LRC. Thus, national social partnership, particularly the role played by the National Implementation Body (NIB), had the unintended consequence of somewhat diminishing the LRC’s role as the main dispute resolution agency in the country. Although informally operating on an ad hoc basis for some time, the NIB was assigned a formal role in the 2000-2003 national social agreement, *Programme for Prosperity and Fairness*. The membership of this influential body was the Secretary to the Cabinet, effectively the top Irish civil servant, the Director of IBEC and the General Secretary of ICTU. Its main remit was to ensure that all the signatories to a national social agreement would adhere to its peace clause, a set of procedures to be followed if a disagreement or dispute were to arise. In practice, the NIB was to act in a manner known in the literature as a settlement master. Usually, settlement masters are seen as individual/s or a body that work to avert a looming dispute, intervene to prevent a dispute escalating or supervise the implementation of a settlement. They are essentially pro-active trouble-shooters, although they are normally not an integrated part of any formal dispute resolution machinery, but operate informally. During the early 2000s, the NIB played a direct role in a number of high profile disputes. In 2001, for example, an acrimonious dispute had erupted at Aer Lingus, the state-owned airline, involving cabin crew. The dispute had halted flights and threatened to unravel a complex multi-union/management plan for the restructuring of the airline. The NIB intervened which had the effect of getting the parties talking again and an agreement was soon reached.

A body such as the NIB can play a constructive role in dispute resolution. Being able to exercise a degree of moral authority, the NIB, on several different occasions, has been able to persuade disputing parties to modify their stances and to change the manner in which they interact with each other. The result was that disputes were either averted or settled quickly. But in playing this role, a shadow was cast over the organizational status of the LRC as the pre-eminent body for the resolution of employment disputes in the country. In several disputes, the LRC was cast as playing a second fiddle role to the NIB, assigned to carrying out the nitty-gritty conciliation work after the NIB had intervened to frame how the dispute could be settled. The LRC did not in any way react negatively to this situation. Although professional pride had been bruised, the organization did not waiver in carrying out its assigned tasks to support social partnership.

Under social partnership, the LRC also witnessed its ability to initiate and to influence policy weakened. As the main body responsible for the promulgation of good industrial relations in the country, LRC would have expected to play – and did play before social partnership – a leading role in the formulation of relevant policy. But this role was squeezed as the main institutional organs of social partnership – the Taoiseach’s (Prime Minister’s) Office, in collaboration with the employers’ organizations and trade unions – started to take the lead role in the design of public policies for employment relations.

Moreover, by assigning them special public status, social partnership increased the ability of trade unions and employers to influence – in most cases veto – proposed employment and industrial relations reforms. On several occasions, proposed reforms to the public dispute resolution machinery, which would have improved its overall efficiency, were side-lined due to opposition from either trade unions or employer organizations, or more commonly by both operating in concert. In other words, one of the less discussed aspects of social partnership is that it can act as a drag on innovative policy-making as either trade unions or employers' organizations are more likely to act to defend established arrangements. During the social partnership years, the LRC was unable to implement a number of proposed internal organizational reforms because the social partners blocked the initiatives.

A compelling argument can be made that social partnership played an important economic and social role in Ireland even though it was not strong enough to prevent the financialisation mentality that not only gripped Irish banks, but also key aspects of government economic policy in the 2000s. Unable to act as the vehicle for the formulation of a socially acceptable austerity programme, social partnership became a victim of the economic crisis that still pervades the country. Ironically, the collapse of social partnership is not all bad news for the LRC as the institutional space has opened up for it to restore its position as the leading agency not only to ensure the effective resolution of employment disputes, but also to guide the future direction of cooperative industrial relations in the country. The indications are that the organization left little time in capturing this vacant institutional space.

In particular, the LRC played a key role in the conclusion of a public sector collective agreement between government and trade unions to introduce a range of austerity measures in the context of modernising the public sector in Ireland. It may be useful to outline the background to this deal explain why it is important. During 2008-2010 the Irish Government injected €46.3bn, amounting to nearly 30 per cent of GDP, directly into Irish banks to keep them afloat, which caused the Irish public debt-GDP ratio to rocket to 115 per cent. But in moving to stave off a banking crisis, the Government had created a sovereign debt problem. As a result, Government was obliged to rein in soaring public debt. A battery of fiscal austerity measures was introduced. Public expenditure programmes were cut and the pay and pensions of public sector employees were reduced by about 15 per cent. Taxes were increased across the board. Through the social partnership machinery, the trade unions sought to obtain agreement for a Social Solidarity Pact to spread the costs of economic entrenchment fairly across Irish society. But this initiative failed and in the process caused the collapse of the entire social partnership in 2009.

Implementing fiscal austerity in the absence of social consensus opened the prospect of bitter industrial relations disputes, particularly in the public sector, which would have damaged Ireland's international reputation as an open, business-friendly responsible country. Realising the country was drifting into a period of potential serious industrial unrest, the chief executive of the LRC, Kieran Mulvey, in early 2009, made a number of speeches and public statements arguing that the government and trade unions should sit down together and thrash out a collective agreement on public sector restructuring and modernisation. After much behind the scenes manoeuvring, both parties to meet at Croke Park, the home of the Gaelic Athletic Association, Ireland's main sporting organization to negotiate a new public sector agreement. The LRC sponsored the talks and the negotiations were conducted under its stewardship. This was a high risk initiative for the LRC because if the talks had failed, its credibility as a broker of industrial relations agreement would have been damaged. However, after two months of protracted and heated negotiations the government and the public sector unions concluded a deal, known as the Croke Park Agreement in 2010.

Under the agreement the trade unions accepted a four-year pay freeze. In addition, they signed up for a major ‘transformation’ programme aimed at bringing about major productivity improvements and efficiencies. They also made a broad commitment to maintain industrial peace. For its part, the government agreed not to implement compulsory redundancies and to maintain existing pension arrangements. The agreement also held out the prospect of a limited reversal of pay reductions that had been introduced the previous year. A National Implementation Board was set up to oversee the application of the deal within various parts of the public sector. New dispute resolution mechanisms were also created to arbitrate any dispute about the nature and extent of the organizational transformation programme. The agreement was a major achievement for it averted, at least in the short-term, the prospect for industrial, even wider civil, unrest. Moreover, it meant that the cuts in public sector activity demanded by the IMF, which by now had entered Ireland, would not be imposed unilaterally, but would be the subject to negotiations.

The LRC was widely praised for its role in the conclusion of the Croke Park Agreement, not simply for overseeing the difficult negotiations, but also for initiating the process. As a result, it has re-gained its position as the leading, agenda-setting public body for the conduct of industrial relations and the resolution of employment disputes. Playing a role in ensuring that public sector restructuring is conducted in an orderly manner will ensure that the LRC will have a prominent national profile for some time to come. But the organization faces a number of other challenges to remain meaningfully connected to the dynamics of the Irish employment system. Some of these are set out below.

4. Facing the future

4.1 Leading organizational change in the dispute resolution system

This paper has argued that the LRC is an high performing organization as not only is it able to deliver a range of services efficiently and effectively, but it also has an internal capacity to update its functions in line with changes in the wider employment relations. However, the Irish dispute resolution system as a whole is usually not seen in such a positive way. The widely shared view is that the system has suffered for some time from a range of shortcomings. No action was taken to address this problem until recently when the new Government announced that a major restructuring of the system was imminent. The proposed reforms are likely to see the LRC being replaced by a new Workplace Relations Commission (WRC) structure, which will become the main institutional anchor for the entire dispute resolution system. The new WRC will continue delivering the main services provided at the moment by the LRC. The only two innovations that are likely to be introduced is a more streamlined service to deal with employment complaints and a more integrated management structure to oversee the arbitration function currently being carried out by the Rights Commissioners. But overall the WRC will have the responsibility for mapping out a new pathway for cooperative employment industrial relations in Ireland. But before more is said on this point, greater explanation is required as to why the Irish dispute resolution system is considered not fit for purpose.

The overall dispute resolution system is commonly viewed as suffering from a number of problems. One is that employees seeking to vindicate their employment rights face a bewildering array of options. Employees have to navigate their way through about 30 different pieces of employment law and a multitude of statutory instruments. They have to choose between about five different redress/enforcement bodies and interact with at least six web sites. They have to select the most appropriate form to fill in from a possible list of 35. And for their troubles, they could experience a waiting time of anything up to 80 weeks, depending on which route is taken. Thus the system has become too complex

and onerous. These shortcomings have led to the system malfunctioning in one way or another. The confusing array of channels to progress a dispute has given rise to duplication and overlap of functions between the dispute resolution agencies, causing what is known as ‘agency shopping’ by claimants. The multiplicity of forms that exist not only results in employees making a number of claims, but also in claims being referred to the wrong agency or under the wrong statute. Compounding this problem, the dispute resolution agencies use a wide range of different practices, procedures and often inconsistent time limits to progress referrals. Different appeal avenues exist for elements of the same case involving the same employee and employer.

A consensus has emerged about the nature of the reforms needed to upgrade the system. It is widely accepted that the system needs a simpler structure, making it easier for employees and employers to navigate. Most expert commentators are also of the view that there needs to be a single body dealing with workplace grievances and disputes in the first instance – and this is likely to happen with the LRC being metamorphosed into the Workplace Relations Commission and the Labour Court being reconstituted. These reforms will see the existing functions of the Employment Appeals Tribunal and the Equality Tribunal as well as the Employment Rights Authority and Safety Authority being transferred to either the new Workplace Relations Commission or the revamped Labour Court. These bodies will then be dissolved. In addition, a new single point of entry is likely to be created for all users of the dispute resolution/employment rights machinery. Cases would be logged in a uniform, standardised way with basic information relating to the facts of the case provided from the start. Active case management would lead to an early intervention through offering information, mediation, conciliation or some attempt to resolve the issue – or, ultimately, an inspection or hearing along the lines of a Rights Commissioner hearing at present.

These reforms amount to the biggest overhaul of the employment dispute resolution system for more than a generation. Under the new structure, the LRC, re-branded as the Workplace Relations Commission (WRC), will become the dominant agency of the entire dispute resolution system. Although its mainstay activities – conciliation, mediation, problem solving and so on – will remain unchanged, the new structure is likely to result in it acquiring important new responsibilities such as the enforcement of employment legislation, including employment inspections. These new responsibilities will emerge because the reform proposals will lead to employment inspection and dispute resolution activities being carried out by the same public agency.

This wider portfolio of activities throws up a range of organizational challenges. For example, the new WRC will no doubt seek to cultivate an organizational identity that projects the image of it being internally well integrated and cohesive. At the same time, it will be important for the new agency to keep apart its dispute resolution and inspection-related activities. If the agency obtains a reputation for being more of an enforcer of legislation rather than a problem-solving, then firms may become reluctant to use its dispute resolution services. Thus, in the immediate future, the LRC faces a series of tricky enough internal organizational challenges. The extent to which the new structure will genuinely lead to qualitative improvements in the Irish dispute resolution system, largely depends on the choices and decisions made by the LRC.

4.2 Promoting innovative conflict management practices

Although it is likely to be pre-occupied with internal organizational matters, it is important that the LRC also maintains an external focus. A key area to which it will have to give particular attention is innovative conflict management systems. A recent comprehensive study of the conflict management policies followed by firms in Ireland revealed a low uptake of new Alternative Dispute Resolution (ADR)-related practices to resolve

workplace problems. The research defined ADR-related conflict management fairly broadly to capture developments relating to both individual and group-based workplace problems. Table 10 sets out the exact ADR practices that were surveyed by the research and how these relate to more conventional policies. The research revealed that few firms were diffusing these ADR practices and to the extent innovation was happening it was in the unionised sector.

In particular, with regard to specific ADR mechanisms for managing individual grievances, the survey found that open door policies were the only practice that was used to any significant extent, with about half of firms (52.7 per cent) saying that they used this practice. The other ADR practices for handling grievances involving individual employees that were surveyed – employee hotlines; employee advocates; management review panels; company ombudspersons; and peer review panel – are used by less than one in ten respondents. The use of ADR mechanisms for resolving group-based disputes is more widespread. A third of respondents employ ‘brainstorming’, problem-solving and related techniques while a quarter of respondents utilize intensive formal communication regarding impending change with groups of employees with a view to avoiding disharmony or conflict. But the overall picture is of little innovation in relation to the management of workplace conflict.

It may be that firms are sticking with tried-and-tested practices for resolving disputes or to put it slightly differently, HR managers may be ‘satisficing’, to use Herbert Simon’s (1955) classic term, by maintaining conflict management practices that are satisfactory rather than optimal. They may consider the costs associated with finding out about innovative conflict management too high or calculate that there is no pressing case for change as existing conflict management practices broadly perform the tasks that they were put in place to do. Thus, they put up with conflict management practices and processes that are recognized as second best. The other factor is that some HR managers keen on adopting innovative people management policies may have a strong preference for developing practices that directly promote mutuality and common purpose between managers and employees rather than for new conflict management practices. Workplace conflict is usually seen by HR managers with this outlook in a wholly negative light, a symptom of management failure with the potential to corrode good working relationships in the organization and in the process to damage business performance. Adopting innovative conflict management practices, at least in any systematic sense, is seen as tantamount to institutionalizing the acceptability of conflict. Even the language of conflict management is shunned by these HR managers as its use is seen, in some subliminal way, as creating a more permissive organizational environment for the emergence of conflict. Thus, the forces of inertia and aversion may be working together to stunt the use of innovative conflict management practices at the workplace in Ireland.

A task of the LRC will be to challenge these forces of inertia and aversion. In particular, the Commission consistently needs to promulgate the view that conflict management is as important to the effective management of people as pay, recruitment and selection and training and development. It should be promoting the view that a workplace conflict management system can only be considered effective if it satisfies the substantive, procedural and psychological interests of the parties involved in a dispute or problem. Substantive interests essentially refer to the extent to which the outcomes of the conflict resolution process is proportionate to the nature of the problem that is being addressed and the extent to which the parties involved in the dispute have not had to expend excessive resources in terms of time and money in the settling of the dispute. Procedural interests consist of several principles that are more concerned with process and procedure than with the end result. First, the conflict management system should have a set of decision-making rules and procedural rules that are fair. Second, the fair rules of decision and procedure should be pre-fixed and pre-announced. Third, these decision-making and procedural rules must be transparently applied. Fourth, these decision-making and procedural rules should be consistently applied. Psychological interests relate to the extent to which parties to a

conflict feel that the procedures used to address the conflict were fair and that they were treated with dignity and respect during the process.

In other words, in the context of an ever increasing fragmentation of Irish industrial relations, the LRC needs to promote the view that firms should be adopting comprehensive policies for the prevention and resolution of workplace conflict. It needs to take an active approach to the promulgation of public norms and standards with regard to workplace conflict. Importantly, these public norms should not be about trying to defend old-style voluntarism, which suggests that workplace problems can only be fairly resolved through collective processes which give centre stage to trade unions. Instead, public norms for workplace conflict should be about ensuring that both union and non-union firms adhere to the principles of fairness and equity when addressing employment grievances and disputes.

For example, studies on ethics and workplace conflict management suggest that there is limited use of external third parties to assist in the resolution of employment disputes in organizations. Nevertheless, where an employer seeks the assistance of an external party, they will typically turn to a consultant with a management background to deliver the intervention. In Ireland a private industry of ADR providers is emerging with no common framework, methodology or standards. Former HR managers and trade union officials, retired members of the State third party community and some former public servants are offering an array of private fee paying dispute resolution services which are emerging as a critical part of the dispute resolution infrastructure in Ireland. The Mediators Institute of Ireland has developed an “Organisational and Workplace Chapter” in response to the growing demand for alternative services in this area and has promulgated professional standards for their members. However, some consultants offer their services as direct representatives of employers and employees and as independent investigators, mediators or arbitrators (i.e. the same person is offering their services in all of these categories if requested to do so).

This raises questions about the perceived integrity of the alternative private system particularly when one considers that the State provided system does not suffer from the same weaknesses. While the full incidence of private alternatives is difficult to measure, anecdotal evidence would suggest they are flourishing with multiple actors providers operating in a largely unregulated fashion. For these reasons there is merit in the new LRC developing a code of practice or protocol to govern such providers. Thus, the public dispute resolution agencies should be ensuring that the private market for workplace conflict management is governed by ethical standards. In the absence of these standards, there is no guarantee that employees exposed to private third party consultants will obtain either procedural or substantive justice.

The LRC also needs to increase its educational and training provision on conflict management. For example, training programmes could be devised for line managers to help them develop effective sensing mechanisms to anticipate problems, build rapport and develop positive and healthy working relationships with employees. A programme of this kind would be directly beneficial to firms as employees are far more likely to raise issues with line managers who possess a range of conflict management competences. Moreover, workplace conflict is more likely to get resolved as close as possible to their point of origin, a key objective of non-unionised multinational companies. Developing educational and training conflict management programmes that have traction with HR Managers is likely to help the LRC build connections with the non-union sector in the sector. So far the LRC have not been able to build extensive sustainable links with non-unionised firms. The organization has organized awareness and advocacy meetings for the SME firms that are not unionised, but have not been fully successful. Designing customised training programmes that meets the diverse needs of firms in what is now a fragmented employment and industrial relations system is likely to be a more productive track.

Table 10
Innovative ADR conflict management practices

	Conventional	ADR
Conflict Involving:	▪ Formal written grievance & disciplinary procedures involving progressively higher levels of management in resolving disputes	▪ Open-door policies ▪ 'Speak-up' & related systems ▪ Ombudsman ▪ External and internal experts/mediators ▪ Review panels of managers or peers ▪ Employee advocates ▪ Arbitration
Conflict Involving:	▪ Formal written disputes procedures involving progressively higher levels of management in resolving disputes. ▪ Resort at final stage where deadlock remains to state-provided agencies for conciliation and adjudication (in Ireland, Rights Commissioners, the Labour Relations Commission and Labour Court)	▪ Assisted bargaining/mediation within procedure to avoid impasse ▪ 'Brainstorming' & related techniques ▪ 'Interest-based bargaining' with facilitation ▪ Private arbitration ▪ Intensive communications surrounding change management

Source: Roche and Teague 2011

Conclusions

This paper has highlighted and examined the broad range of activities, services and programmes delivered by LRC as it seeks to provide an effective, flexible and integrated conflict management system. The willingness and capacity of the LRC to provide its large portfolio of activities, which, critically, continues to enjoy a high level of support amongst its key stakeholders – the government, employers and trade unions – is attributable to a number of interrelated factors and characteristics. One important factor has been the LRC's encompassing statutory mandate that has afforded it the institutional scope to increase gradually its focus on dispute prevention and improving the quality of employment and industrial relations whilst continuing to deliver a high quality and effective dispute resolution service. Although resolving disputes remains a core activity, it is now undertaken as part of a more diversified and integrated set of initiatives, services and programmes that seek to promote the development and improvement of Irish employment relations, policies and practices. Thus, an integral feature of the LRC's evolution as a public agency concerned with conflict management has been the increased emphasis on the symbiotic and complementary relationship between the dispute prevention and dispute resolution activities.

As the institutional character of the new dispute resolution system unfolds the complementarity between dispute prevention and resolution is likely to strengthen. In organizational terms, this will mean that although both the Conciliation and the Advisory Service will continue to focus on certain core activities and have specific skills and competencies, inter-divisional and cross-functional cooperation will become more pronounced. Although there has always been a degree of informal interaction between these two divisions, it is likely to become a more prevalent and formalised feature of the work of the Commission. The Commission's capacity to deliver what is an increasingly broad range of quality services is heavily dependent on the high levels of skill, experience and commitment demonstrated by its staff. In particular the LRC staff display a high level

of competency in a range of dispute resolution/prevention techniques and approaches that is combined with a deep seated knowledge of the industrial relations landscape and extensive contacts with the principle actors in the labour market.

Although evidently aware of the differences between various dispute resolution approaches – conciliation, facilitation, arbitration, mediation etc. – the LRC’s officers in practice do not operate within any strictly delineated definition of the skills and behaviours associated with a particular approach. The different dispute resolution approaches are seen as constituting an a la carte menu from which officers can pick and choose as appropriate. This pragmatic problem solving philosophy has certainly enhanced the capacity of the Commission to provide a flexible, innovative and effective service to clients. The evolution of the LRC has also been characterised by an important degree of innovation and experimentation. The establishment of the Advisory Service had an experimental dimension to it from the outset and indeed its early years were actually characterised by a degree of uncertainty as to its precise role and identity. This element of innovation and experimentation has continued and is exemplified by the development of the Working Together Projects and the Workplace Mediation Service. This ethos of experimentation will have to be evident as the organization faces up to meet the impending challenges that will arise due to the restructuring of the overall dispute resolution system.

Finally the Commission is strongly of the view that the key to its success in delivering effectively on its statutory functions is that its services remain relevant to the modern Irish economy and in particular are capable of responding to the speed and dynamics of change within the labour market and the workplace. The LRC, therefore, is committed to ongoing reviews of its services, working practice and organizational capacity with a view to adaptation, experimentation and development in order to meet the changing needs of employers, employees and their representatives. The Commission effectively undertakes a whole range of activities to ensure that it remains both effective and relevant including:

- undertaking client customer satisfaction surveys to identify client needs and concerns;
- collaborating with other public agencies and third level institutions to build research capacity;
- emphasis on shared learning and exposure to international best practice;
- ongoing review of its services, working practice and organizational capacity;
- encouraging staff to experiment and develop new initiatives, and
- ongoing investment in staff training and career development.

But even high performing organizations face threats that can potentially undermine their effectiveness. The LRC is no exception to this rule. There are a number of challenges that the organization will have to address if it is to retain its capacity to deliver a high quality service. Consider, for example, the human capital challenges facing the organization. The LRC is highly dependent on the skills and experience of its staff. Given the more complex and legalistic environment in which it now operates and the emergence of an increasing number of disputes concerning protracted and highly specialised issues like pensions, there is a concern that a continued reliance on recruitment from the parent department (Department of Jobs, Enterprise, and Innovation) combined with ongoing investment in staff training and development will be insufficient to equip the service with the range of skills it requires going forward. Thus, there may be merit in the organization moving to a more open form of recruitment so that individuals with specialist skills and/or considerable experience in industrial relations/HR can be hired.

All in all, the LRC is a high performing organization that enjoys a reputation for resolving disputes in a fair and fast manner. Two key ingredients lie behind its success.

One is that the LRC seeks continuously to modernise its internal organizational capabilities to keep pace with wider developments in the Irish labour market. Secondly, it has consistently framed the resolution of disputes as part of an ongoing process of building co-operative relationships between employees and employers. In other words, the LRC seeks above all to be a problem-solving agency committed to delivering a battery of interdependent programmes and services in a user-friendly manner. These twin assets of organizational innovation and pragmatic problem-solving will be tested in forthcoming years as the Irish Government sets about recasting the public employment dispute resolution system. Although the LRC will eventually be subsumed by the WRC, the adaptations the organization makes in the next few years will determine the success or otherwise of the overall set of reforms currently being enacted. If past performance is a predictor of the future, then Ireland is on the threshold of creating a public employment dispute resolution system suitable for modern work and employment regimes, and the dispute resolution services developed by the LRC will be at its helm.

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