



The Labour Relations Commission and the Rights Commissioner



Key Learning Outcomes

- The services of the Labour Relations Commission (LRC)
- How the Rights Commissioners deal with grievances
- A day in the life of a Rights Commissioner
- Examples of actual cases that have been successfully resolved by the Rights Commissioners.

Curriculum Links

Business
(Unit 1)

LCVP

Introduction

The Labour Relations Commission (LRC) was established on 21 January, 1991 under section 24 of the Industrial Relations Act, 1990 to “*promote the development and improvement of Irish industrial relations policies, procedures and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees*”.

The LRC provides:

- an industrial relations conciliation service;
- an industrial relations advisory, development and research service;
- a Rights Commissioner Service; and
- assistance to Joint Labour Committees and Joint Industrial Councils in the exercise of their functions.

THE IRISH TIMES

Business 2000

TENTH EDITION



The LRC also undertakes activities relating to the improvement of industrial relations practices.

Note: The Irish Times Business 2000 8th and 9th Editions provide more information on the history of industrial relations in Ireland, the services provided by the LRC and examples of the Commission's Conciliation services.

Workplace conflict

In the majority of workplaces, employers and employees work harmoniously together. However, from time to time, conflicts can arise that threaten the industrial relations climate. There are many potential sources of conflict in business, including:

- ▶ claims for improved working conditions
- ▶ claims for better pay and reward systems
- ▶ notification of redundancies
- ▶ discrimination or unfair dismissals
- ▶ disagreement on promotion of employees.

Potential conflict also arises from the need for workers to adapt to the changing nature of Ireland's workforce. As the number of women in the workforce continues to increase, so too does the potential for gender-related employment disputes. Accession to the EU has given the citizens of new member states the right to work in Ireland. This could increase the potential for race-related employment disputes.

Resolving conflict

When workplace conflict arises, it is important that it is resolved as quickly and as effectively as possible. The ways in which conflicts can be resolved are often categorised under two main headings:

1. Non-legislative methods:

These methods do not involve legal procedures and include:

- ▶ Discussions between management and workers with a view to finding a solution.
- ▶ The shop steward representing workers in an attempt to negotiate a solution.
- ▶ Trade union officials meeting with management to come to an agreement.

2. Legislative methods:

These methods involve some degree of legal procedures and include:

- ▶ The LRC may be asked by disputing parties to provide a conciliation service.
- ▶ A Rights Commissioner can investigate disputes referred to the Rights Commissioner Service. The Commissioners investigate disputes, grievances and claims made mostly by individuals or small groups of workers.
- ▶ The Labour Court is the court of last resort in industrial disputes. The decisions made by this Court are known as arbitrations.

In an ideal world, all workplace conflict would be resolved by non-legislative, local negotiation between workers and employers. Of course, in the real world this is not always possible, even after discussions between trade union officials and management. When this happens, the conflict may have to be resolved using one of the legislative methods. This is where the services of the LRC are so valuable – through its various services the LRC is effective in resolving these conflicts, meaning that the vast majority of cases never have to be heard by the Labour Court.

The main services offered by the LRC for the resolution of disputes are:

- ▶ an industrial relations Conciliation Service
- ▶ a Rights Commissioner Service
- ▶ a Workplace Mediation Service
- ▶ an Advisory Service.

Conciliation services assist the employers and the employees in resolving disputes themselves. The conciliation service is examined in the Irish Times Business 2000 9th Edition, with examples of cases that have been resolved using this Service.

Rights Commissioner Service

Who are they and what do they do?

Rights Commissioners are appointed by the Minister for Enterprise, Trade and Employment, on the recommendation of the Labour Relations Commission. There are currently eight Rights Commissioners, and they operate as a service of the LRC and are independent in their functions.

The table below shows the employment legislation under which most of the referrals to the Rights Commissioners are made.

Legislation	2001	2002	2003	2004	2005	Totals	%
Payment of Wages Act, 1991	1,125	1,177	1,285	1,538	1,875	7,000	28%
Industrial Relations Acts, 1969-1990	1,363	1,334	1,464	1,171	1,236	6,568	26%
Unfair Dismissals Acts, 1977-1993	632	868	846	808	823	3,977	16%
Organisation of Working Time Act, 1997	740	967	631	611	665	3,614	14%
Protection of Employees (Part-time Work) Act, 2001	27	1,092	10	85	75	1,289	5%
Terms of Employment (Information) Act, 1994	141	150	183	245	301	1,020	4%
Other Acts	128	104	318	291	623	1,464	6%
Totals	4,156	5,692	4,737	4,749	5,598	24,932	100%

Rights Commissioners investigate disputes, grievances and claims that individuals or small groups of workers refer under a broad range of employment legislation. The Rights Commissioners issue the findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation under which a case is referred.

Referring a case to the Rights Commissioner

Before an employee refers any case to the Rights Commissioner, they should first notify their employer of the complaint. Every effort should be made to settle the matter locally without recourse to a Rights Commissioner. If all local efforts fail, then the person completes a complaint form and sends it to the secretariat of the Rights Commissioners Service in the Labour Relations Commission. For legal reasons the complaint has to be submitted in writing to the Commission.

The Rights Commissioner Hearing

Following receipt of the complaint, the Rights Commissioner Service will arrange a hearing. It is up to the claimant and the employer to decide if they wish to be represented at the hearing. A trade union, employer organisation, solicitor, friend or family member may attend as the representative. Most people are not used to attending these types of formal hearings and may be quite nervous about the whole experience. Experience shows that it helps if each party brings a companion to the hearing whether as a representative or not.

The hearings before the Rights Commissioner take place in private except where the dispute has been referred under the Payment of Wages Act, 1991. Hearings under that Act may be held in public. Hearings are formal but not adversarial. Rights Commissioners do not allow mobile phones, tape recorders, cameras or other recording equipment to be used at their hearings.

Each side is given the chance to fully present their case. The Rights Commissioner's function is to issue decisions or recommendations based on the facts and evidence presented at a hearing. For this reason each participant must ensure that any relevant information (such as witnesses, payslips, correspondence, etc.), is available for the hearing. Written submissions are not needed but they are helpful to the participants and the Rights Commissioners in order to focus on the relevant points. It also helps the Rights Commissioners to have a record of the statements made at the hearing when considering his/her recommendation or decision following the hearing.

The Rights Commissioner's Recommendation

After the hearing, the Rights Commissioner will issue his/her recommendation. In some cases it is possible to settle disputes between the parties on the day of a hearing, with the assistance of the Rights Commissioner. In most cases, the Rights Commissioner will take some time to consider the facts presented and to prepare a report detailing his/her findings and recommendation.

A day in the life of a Rights Commissioner

My job as a Rights Commissioner centres on hearing complaints. Our hearings take place in conference rooms in the LRC or in meeting rooms in local hotels. On a typical day, I try to arrive at least a half-an-hour before my first hearing. In attendance at the hearing will be the parties to the complaint, their representatives and myself. Parties, on occasion, will also bring along witnesses to support their case.

Prior to formally starting a hearing I ask everyone to print their name on an Attendance Sheet to ensure that there is an accurate record of who attended the hearing.

I introduce myself to the parties and confirm the specific Act or Acts under which I will be hearing the complaint. I ask the claimant to present their case first. During the hearing each party will speak on a number of occasions as they respond to points raised by the other party. I also ask questions to clarify matters or confirm information so I have everything I need to make my decision.

The hearing ends when the parties are finished and I'm satisfied that I have a clear understanding of the complaint and of the cases being put by the parties.

Usually Rights Commissioners are scheduled to hear three cases a day. These are normally finished by about lunchtime.

After lunch myself and the secretary link up to agree the dates for future hearings. Another part of the job that has to be tackled each day is writing up my decisions and recommendations.

The participants may appeal against the Rights Commissioner's recommendation or decision, provided the appeal is lodged within the time limits set down in the legislation. Depending on which Act is involved, the appeal is heard either by the Labour Court or by the Employment Appeals Tribunal. Having heard the appeal, the Court or Tribunal will issue a decision which is binding on the parties to the dispute.



Case Study 1

Terms of Employment (Information) Act, 1994

John works as a General Operative in a warehouse.

John applied for the job having seen an advertisement in a local paper. He was interviewed in late January 2006 and subsequently received a letter offering him the job and confirming a start date in February 2006 and that he would be paid €300 per week. He would be required to work Monday to Friday and occasionally on Saturdays. The letter contained no other terms of John's employment.

In April 2006 John became concerned regarding his conditions as he had worked every Saturday since he had started employment and was still only being paid €300 per week. He raised his concerns with his Supervisor who agreed to look into the matter. The following week John's Supervisor informed him that the continuous Saturday work was only temporary and that his wage of €300 per week covered any additional hours he might have to work. John was unhappy with this response and made enquiries to determine what employment rights he had in the circumstances. He became aware that he was entitled to a written statement of his terms of employment within two months of his start date and that the job offer letter did not provide him with information his employer was obliged to provide.

Through his Supervisor John requested that his employer provide him with a written statement of his terms of employment. When he received no response to this request, he put his request in writing. His Supervisor subsequently informed him that his letter of offer set out his terms of employment.

John was dissatisfied with this response and made a complaint to a Rights Commissioner under the Terms of Employment (Information) Act, 1994.

Employer's Case

The employer did not dispute John's description of the events. The employer was a relatively small business and, as practice, it had not provided employees with written contracts setting out their terms of employment. It was their normal practice to offer a person a job setting out their salary and that any other matters relating to their terms and conditions were confirmed verbally.

The General Manager stated that since being notified of John's complaint, they had investigated the matter and now realised that they had not been complying with the terms of the Act.

Decision

The Rights Commissioner found in John's favour. The Rights Commissioner required the employer to provide John with a written statement of his terms of employment and ordered the employer to pay John compensation.

This decision was communicated to both parties in writing. Decisions under the Terms of Employment (Information) Act, 1994 may be appealed to the Employment Appeals Tribunal.

Case Study 2

Payment of Wages Act, 1991

The claimant was employed from November 2005 to March 2006.

The claimant's position was that he:

- should have been paid at the rate of €14.83 per hour;
- worked a 42.5 hour week and that he was not paid the appropriate overtime rate in respect of hours worked in excess of the basic 39 hour week;
- was not paid for public holidays 25th and 26th Dec. 2005 and 1st Jan. 2006 and that he did not receive the paid annual leave to which he was entitled;
- should have received one week's pay in lieu of notice;
- incurred work related expenses in respect of which the employer did not reimburse him.

The employer's position was that the claimant was paid the rate agreed with him. They also argued that the claimant was paid in respect of wages and holidays outstanding to him when his employment terminated. They also argued that he left their employment and disputed that any sum in respect of expenses were outstanding to the claimant.

Decision

Based on the evidence presented, the Rights Commissioner declared that the complaint was well founded in part, finding that the:

- claimant received no written statement of his terms and conditions of employment as required by the Terms of Employment (Information) Act, 1994 and no pay slips.
- claimant's employment was covered by statutory minimum rates of pay and conditions of employment laid down by the Registered Employment Agreement for his industry, including basic hours of work, overtime rates, subsistence allowances and annual leave.
- employer did not pay him the rate of pay properly due to him including overtime.
- employer did not compensate the claimant for three public holidays over the Christmas/New Year period 2005.
- claimant was entitled to compensation for annual leave entitlements that he had accrued.
- employer paid him €900 when his employment terminated and that figure had been taken into account against the holiday pay due to him.
- claimant terminated his employment himself and therefore was not entitled to wages in lieu of notice.
- Expenses are not regarded as wages under the Payment of Wages Act, 1991 and therefore was not well founded.

The Rights Commissioner ordered the employer to pay the claimant compensation within six weeks of the date of this decision. Decisions under the Payment of Wages Act, 1991 may be appealed to the Employment Appeals Tribunal.

Find out more

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