

Joint Oireachtas Committee on Enterprise, Trade and Employment

Wednesday 25th November 2020

*Expert examination and review of laws on the Protection of Employee Interests
when Assets are separated from the Operating Entity - Cahill Duffy Report*

Opening Statement of Minister Damien English Minister of State

Dear Deputies and Senators,

You have invited me here today to discuss the implementation of the Cahill -Duffy Expert Report. I understand that you have recently discussed the report with the experts themselves.

I note that Ms Cahill and Mr Duffy set out the context and the parameters of the terms of reference for that report, which were quite narrow and specific. The specific scenario the report aims to address is where assets of a significant value are separated from the employer company – also known as the operating company and where the employer company subsequently enters into liquidation. The purpose of the recommendations is to better protect employees in circumstances whereby corporate restructuring is availed of in an effort to avoid the company having to meet its obligation to its employees.

The authors themselves emphasised that the recommendations are not based on the specific facts of any particular liquidation. It is also very important to bear in mind that the report's recommendations address a very hypothetical and highly unusual situation and do not address the generality of redundancies that arise in insolvency situations.

The report contained six proposals that the authors assert could potentially protect the interests of employees in circumstances where assets of significant value are separated, or where the separation of the assets is being contemplated, from the operating entity (i.e. the employer body). These proposals include:

- amending various sections of the Protection of Employment Act 1977 to ensure that employees will have the opportunity to consult with their employer for a period of not less than 30 days before any collective redundancy can take effect, whether the employer is insolvent or not,
- provisions to ensure that a related person must notify the employer if they are considering any action regarding an asset of significance that may result in collective redundancies,

- the possibility of injunction applications in certain circumstances,
- the provision of enhanced redundancy payments, and
- a mechanism for recovering an asset or proceeds of an asset in circumstances where the transfer of the asset had the effect of perpetrating a fraud on the employees.

The authors stress that the proposals made need to be considered in conjunction with each other, as no one proposal alone will provide solutions to the narrow focus in question. The experts also opined that the success of any proposals to deter or address what are sometimes called tactical insolvencies will be heavily dependent on the use that is made of existing statutory provisions, including sanctions. Part of our work now is to research why existing statutory remedies have not been availed of in certain circumstances and we are examining if there are better ways to enhance workers' rights in these situations.

There was a previous public consultation on this report, but no consensus was reached among the stakeholders in support of the implementation of these recommendations. This was largely due to the very narrow focus in which the recommendations were made.

As things now stand, both company law and employment rights-governing redundancy situations arising from corporate insolvencies-fall under my Department of Enterprise, Trade and Employment and officials are working together on the various cross-cutting policy issues that have been identified. The Cahill-Duffy recommendations concerning employment law, and other considerations on the company law side, are currently being revisited by, respectively, officials in consultation with stakeholders, and by the Company Law Review Group.

Both myself, and Minister Robert Troy, who has responsibility for company law, have initiated a process with union and employer representatives to establish what would make a real difference to employees who find themselves in a redundancy situation due to company insolvency. There are no quick solutions, but we are working to find consensus around where any gaps there might be and I would welcome any observations you have as a Committee.

The issues we are looking at concern:

- Employees access to information concerning the company's financial situation
- Consultation periods

- Employees' rights as creditors
- Asset transfer
- Treatment of collective agreements in Insolvencies
- The establishment of a stand-alone fund to handle ex-gratia payments in insolvency situations

I firmly believe that it is important to ensure that we have the most appropriate legislative infrastructure in place to ensure every worker's rights are protected in a redundancy process while recognising there are redundancies that arise in different corporate contexts. Some redundancies are about securing the company's survival while others, unfortunately, happen in the context of the company closing its doors for good.

It is my aim to amend legislative provisions where an improvement is required and where it is workable and effective.

Also, it is important to note, that any employee who is in insurable employment, regardless of whether the employer can afford to pay the statutory redundancy entitlements or not, is protected by the Social Insurance Fund.

Finally, and I know that persons seated in this room understand this challenge better than others, the State cannot create a system where one worker is treated more favourably than another worker in a similar situation.