DÁIL ÉIREANN

AN COMHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Máirt, 31 Eanáir 2017

Tuesday, 31 January 2017

The Joint Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Senator Paul Gavan,
Deputy Tom Neville,	Senator James Reilly.
Deputy Maurice Quinlivan,	
Deputy Noel Rock,	
Deputy Bríd Smith,	

DEPUTY MARY BUTLER IN THE CHAIR.

Business of Joint Committee

Chairman: Apologies have been received from Senator Aidan Davitt who is in Brussels on committee business. I propose that we go into private session. Is that agreed? Agreed.

The joint committee went into private session at 4.05 p.m. and resumed in public session at 4.20 p.m.

Banded Hours Contract Bill 2016 [Private Members]: Discussion

Chairman: I remind members, visitors and those in the Gallery to ensure their mobile phones are switched off or in airplane mode for the duration of this meeting as they interfere with the broadcasting equipment, even when on silent mode. I welcome my constituency colleague, Deputy David Cullinane, and his adviser, Dr. Conor McCabe to the meeting to begin our hearings on the Banded Hours Contract Bill 2016, which was deferred for 12 months by resolution of the Dáil of 7 July 2016 to allow this committee to carry out scrutiny of the Bill, to consider submissions and to hold hearings.

By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that where possible they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that members should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I invite Deputy Cullinane to make his presentation.

Deputy David Cullinane: Go raibh maith agat a Chathaoirleach. It is very strange for me to be on this side of the room but new politics is throwing up new situations. I am pleased to be here and happy that the joint committee is examining this issue.

The exploitation of people on low hour contracts, especially in the retail sector but also across many other sectors is an important issue. This Bill will allow workers to apply for a contract that is reflective of their actual working week. Unfortunately we have far too many instances of workers who were on contracts of 15 hours or less for ten years, working 30 and 40 hours week in and week out. This is a way for some companies to exploit their workers.

This Bill offers a solution. It seeks to provide that a worker or his or her trade union representative or a representative acting on his or her behalf is entitled after six months of continuous employment with his or her employer to make a request in writing to be moved to a weekly band of hours, reflective of his or her actual working week, as set out in the Bill. Under the existing legislation, Protection of Employees (Part-Time Work) Act 2001, there is no obligation on an employer to consider such a request. It does not allow workers to demand additional hours. It merely gives a contractual basis to the actual existing working week relationship that

is already in place. The Bill provides that the employer must comply or set out that it is not economically feasible. The employer must demonstrate that the business is experiencing severe financial difficulties, such that there would be a substantial risk that the workers would be made redundant if the hours were granted, the sustainability of the business would be adversely affected or the business could not sustain the increased level of hours. In the event that a worker disagrees with the employer's refusal on the grounds set out in the legislation, the complaints procedure would be through the Workplace Relations Commission.

The Bill also includes an obligation on the employer to inform all employees of the overall availability of working hours by displaying this information in a prominent position in the place of employment. The Bill is earnest in its intent and would fix a problem which many low paid workers and workers who are on low hour if and when contracts in this State. More specifically it looks to the business model built on a system of low hour contracts. It is simply unjustifiable for employers to keep the bulk of their staff on close to full-time hours but signed up to part-time contracts, as it pushes these people into poverty and into a position where they cannot plan for their families and their futures. It creates undue hardship to mothers who struggle to deal with child care arrangements and families cannot be sure of what they will earn from one end of the month to the other. It is used by some employers as a punitive technique - complain and one's hours will be cut with no legal recourse. It should be noted that research by EUROSTAT, the Nevin Economic Research Institute and others shows that people on low hours or temporary contracts are more at risk of being low paid. We also know that precarious working conditions are on the increase across a rising number of sectors, including the Civil Service, nursing and teaching. There is an onus on the State to regulate the labour market and ensure that workers' rights, in terms of pay and conditions are protected in law. The idea that the market must be free to compete without undue interference ignores the reasonable voice of workers and the right to be treated with respect and dignity. Low pay, precarious working hours and the chipping away of workers' rights are bad for the economy and for society. We could paper the walls of this committee room with the amount of research reports which consistently show the link between precarious work, precarious hours, if and when contracts, zero hour contracts and the growth of inequality. An unregulated labour market is in nobody's interests. It dehumanises workers, puts huge pressure on the State in terms of social transfers, reduced people's disposable income and impoverishes households and children. This is absolutely unnecessary and serves an employment model whereby employers want to have it both ways. On the one hand they want to use the full weight of their power and political influence to skew the balance of power in their favour by refusing workers real and meaningful access to collective bargaining, while on the other they argue against protective, statutory measures around pay and conditions to set a basic threshold of decency.

Go raibh maith agat. I look forward to any questions that members have.

Chairman: I thank Deputy Cullinane. I call Deputy Quinlivan.

Deputy Maurice Quinlivan: I supported this Bill in the Dáil and I support it going forward. It is not an abstract concept, we have all dealt with people who are on low contract hours and have precarious work. We met some of them at the briefing in the AV room. One could not but be moved by the personal testimonies of people, how it affects them at work, how if they made a complaint their hours were cut and how they were not able to get loans or access basic services because they had no defined income. I have met a lot of stakeholders from the unions and the business community. I would like the Deputy to address some queries from the business community.

The Bill is basically to deal with "if and when" contracts. Can he explain to the committee how this will work? I know from dealing with workers' representatives, especially the Mandate trade union, that they are fully supportive of this Bill and wish to see it enacted. Members of the Government have said in the past that workers on 15 to 20 hours would get additional work. Is this the case with this Bill? My understanding is that many companies, especially in the retail sector, use banded hours already. Can the Deputy comment on that?

Deputy David Cullinane: The Bill sets out in section 3 how this would work in practice. As Deputy Quinlivan said, and as I hope all members will agree, the situation at the moment is entirely unreasonable. There are many workers in this State who are working 30 or 40 hours a week for some companies, often for five years, ten years or more, yet their contracts are for ten or 15 hours a week. The Bill essentially allows workers to have contracts which are reflective of the actual hours that they do. It allows for the Workplace Relations Commission to be the adjudicating body in this regard. At the moment we have situations where people are stuck in low hour contracts but are actually doing more hours for year upon year, but they have no recourse to ask for their contracts to be changed. The Bill allows for the employee to make a reasonable request of their employer, if after six months the average hours worked are less than what is in their contract, to move into the band that is reflective of their actual hours. If that is refused then there must be reasonable grounds for a refusal, which are set out in the Bill. It then goes to the Workplace Relations Commission which adjudicates on it. Obviously it would have to look at a whole range of issues.

In respect of some of the criticism of the Bill, no Bill is without its shortcomings. We did say on Second Stage that if people were genuinely supportive of the broad thrust of the Bill, but had concerns around some elements, that we would be open to amendments on Committee Stage. If there are any criticisms of the interpretations of different elements of the Bill rather than its substance, then I obviously want to hear those. We are very much open to supporting amendments in that regard. We are very clear, and were very clear on Second Stage, that this Bill does not allow workers to ask for an increase in their hours. That is an entirely different issue, one that this committee should perhaps consider. The issue of people who are on low hour contracts and who want to work more hours is a separate issue, but we are very clear about what this Bill does. All the Bill does is it allows workers, who have been working for an average of 30 or 40 hours per week for six months or more in this State, to have contracts that are reflective of the hours that they do. There are lots of other issues such as zero hour contracts, precarious work and requests for additional hours. They are all very reasonable issues and would be good issues for this committee to deal with, but they are not what this Bill seeks to address. It simply seeks to address the issue of "if and when" contracts.

It is true that Tesco, Penneys and Marks and Spencer have, through dialogue with Mandate, Unite and other trade unions, agreed to use these banded hour contracts. They do use them and, in fact, have moved from banded hour contracts to more secure contracts, which is what we want. I hope that everybody here wants a situation where workers have proper terms and conditions of employment and proper contracts which are fair and which reflect the hours that they do. I hope I have addressed the questions that were asked but I want to be very clear because it has been raised on Second Stage by some who have opposed the Bill, that this Bill is about allowing workers to request additional hours. It does not allow this and that is certainly not the intention of the Bill.

Chairman: If I may I would like to ask the Deputy a question on section 5, which is about displaying notices in the workplace indicating the number of hours being allocated to workers

in the forthcoming week or month and which band those hours would fall under. Could the Deputy explain that in more detail or tease it out a little bit because there was a perception that it could be difficult on some employers that would employ quite a lot of people to follow through on that?

Deputy David Cullinane: This would apply to people who are on low hour contracts. In many companies we already have situations where rosters of workers' hours are displayed. We have it in many different workplaces. One of the concerns that has been raised was the impact that this would have on small employers, that if one employs fewer than five people, it might be difficult. I do not accept that but that was one of the concerns. Other people have raised concerns relating to larger employers. I do not believe it is unreasonable to ask an employer to give notice to workers of the hours that they do. One of the issues that was raised with us by the trade unions involved was that we have a situation where workers simply do not know what hours they are working from one week to the next.

We have also had evidence of exploitation presented to this committee and to other committees in the past by workers of some retail companies, stating that if workers request more hours or if they talk or raise issues about their terms and conditions of employment, they face a punitive sanction by their employer. One of those sanctions is that their hours could be cut. It is unreasonable that that is the case. It is reasonable that workers would know from week to week what their hours are. If people have concerns around how onerous they believe this might be for some employers then, again, I ask them to bring forward amendments to deal with some of the anomalies that they see, but the principle of workers knowing what their hours will be from week, where there is certainty of hours, is a reasonable request. It allows people to plan for child care and all of those issues.

Chairman: I would like more clarity about these display notices. In any big shop, Dunnes, Penneys or Debenhams for example, there might be 40 or 50 people full-time and there might be some people on contract hours or on zero hours. Does that recommendation within the Bill apply to every single person working within a company or only those on low hours, zero hours or banded hours? Does it affect every single member of staff in, for example, a factory with 800 workers?

Deputy David Cullinane: We should be aware of the distinction. There are some contracts and some workers who know what their hours are on a weekly basis. They are on fixed hours. They know that they start at 8.30 a.m. and that they finish at 5.30 p.m., Monday to Friday. In those circumstances there is no need to display their hours. In situations where a worker does not know his or her hours from week to week, there are already mechanisms in place where employers will communicate what those hours are. There has to be, otherwise how would an employee know what hours they do?

The problem is that, very often, the workers get the notice too late and it does not allow them to plan for the week ahead. In situations where there are no set hours, but there is a number of hours although the times may vary, all we are asking is that notices be placed in a manner and form which is appropriate to both the employer and the employee. That can be worked out in a reasonable way at a local level. This is one of the many issues that came up. It is not the biggest issue. The biggest issue by far was the low hour contracts and the fact that many of these workers are on contracts which are not reflective of the hours that they do. The problem is, not so much that they are not getting the hours, but that when they raise concerns about different aspects of their employment they can then be subject to sanction by some unscrupulous employers. I have to say the vast majority of employers are not unscrupulous, and do not engage in

these sharp practices, but we have a responsibility to put in place legislation to protect workers from those who do.

Deputy Bríd Smith: I thank the Deputy for introducing the Bill. It is a very useful important and useful Bill. The Deputy says, and I agree with him, that it is quite simple. Keeping it simple is important because I note from the IBEC submission that it is trying to surround it in a lot of complexity so as to suggest that it will be a hard thing to achieve. It is interesting to think about how the workplace and work practices have changed. In the 1800s when kids were sent up chimneys, employers complained when the trade unions tried to end the abuse of child labour in factories. Employers, therefore, are always going to complain about changes to working hours for workers, regardless of their age or personal circumstances.

I think it has been outlined - it is true - that pushing workers into precarious if-and-when or zero-hour contracts deprives them of any hope of a decent life. They will not be able to take out a loan and know when to arrange child care. It can cause an enormous amount of stress. There are some occupations - this will come up in the context of Bus Éireann - where one has to have what is called a spare cohort of staff in order that if somebody dies during the night or someone cannot make it in to work, there will be staff who can be relied on to fill in where essential services need to be provided, including ambulance, nursing and transport services, etc. The industries in which such practices are followed are probably the weakest in terms of union organisation and clearly the ones in which workers are most vulnerable. In the accommodation sector and hostelries, etc. there is a very high number of women who are generally not unionised or organised. When we looks at the figures for these sectors we see there was a huge increase in profits following the crash to 2014 but an even sharper increase between 2014 and 2017. During the same period the use of if-and-when and zero-hour contracts went from a figure 2% to a magnificent 10% of the workforce.

It is the same old mantra - employers never waste a good crisis. I contend that in arguing against Deputy David Cullinane's Bill the employers are not just saying, "We had to deal with a crisis;" rather they want to make them a permanent feature of the workforce and become quite defensive in trying to stop any interference. Is there any place for tackling not just if-and-when contracts but companies such as Deliveroo which offer bogus self-employment and which state, "You are not an employee, but these are your hours?" One then has to scrap and compete with others to be able to work them. That is an issue we should be taking on also.

Deputy David Cullinane: I understand the employer organisations are in Leinster House today and I am sure, therefore, that we will hear from them. I have not seen their opening statements on what they have to say about the Bill, but I have heard from them in the past when it was discussed on Second Stage. There is an attempt to over-complicate what is a very simple Bill, for which there are reasons from their perspective. It is welcome, however, that they are here and engaging on the issue, but I hope they will engage in good faith and that if they find flaws in the Bill, as they do, they will understand they have a responsibility to provide what they see as an alternative. If there is a problem - obviously there is - what they do in cases where workers are working 30 or 40 hours a week but do not have contracts which are reflective of these hours? How do they see the Oireachtas dealing with this issue? As I said, the Bill is very simple in its intent.

There are a range of other issues to be addressed in relation to workers rights and if-and-when contracts. There is also the issue of zero-hour contracts which has been raised by Teachta Niall Collins and which was raised by his party leader in the Dáil today. We would support the banning of such contracts. However, the University of Limerick study showed that it only

represented a tiny percentage of the problem. While it would be good, it would do nothing for those stuck in if-and-when contracts. There are other issues to do with precarious work, in respect of which I agree there is a strong gender bias in terms of low pay, about which there is no doubt. All of these issues are worthy of consideration. However, I do not want any of this to complicate what we are trying to do in this instance. What we are trying to do, as I have said repeatedly, is, very simply, to allow a worker to have a contract which is reflective of the hours he or she works.

My final point to members of the committee and also to business groups which have a difficulty with the concept behind the Bill is that I am not against flexible contracts. There is a need for such contracts and there are workers who enjoy their benefits, but that is not what is at the heart of the Bill. We have seen industrial disputes in a number of retail sectors and many here, from all parties and none, have sympathised with the workers involved and stood with them on the picket line and said we have to do something about the issue. This is a chance to do something about it. It is a chance to bring forward a Bill, as simple as it is, to provide some assurance for those to whom we are listening that we are dealing with the issue.

Deputy Niall Collins: As Deputy David Cullinane knows, we are embarking on an engagement process with all stakeholders to try to inform ourselves and get a handle on the problem. We know that there have been some high profile disputes. Can the numbers of workers in the labour force who are actually impacted on by these practices which are being used by unscrupulous employers be quantified? If we had a handle on the numbers involved, it would help and go a long way towards informing us on the issue. The University of Limerick study shone a light on the detail needed. How many disputes before the Workplace Relations Commission involve the issue of banded hours?

Deputy David Cullinane: There is none because there is no right to request to be placed on a banded hours contract. They are not recognised in law. What we have is a voluntary arrangement with some employers - I have given some examples - negotiated with the trade unions. In the past they operated low-hour contracts under which some of their employees were to work ten or 15 hours contracts, but they ended up doing more. Folloiwng negotiations with the trade unions, they have now moved to banded hours on a voluntary basis. The short answer to the question is that an employee has no right to request that he or she be moved into a band reflective of the hours he or she works. That is the primary reason we are introducing the Bill. If it was passed, an employee would be able to take a case to the Workplace Relations Commission.

There are data available from EUROSTAT and the Central Statistics Office which indicate that one in five workers, or 20%, are in low paid jobs. There are some data available for if-and-when contracts, including in the the University of Limerick study, but they are quite light. That raises an issue about the level of interest of the State in dealing with the issue. One of the good things about the University of Limerick study is that it does shine a spotlight on it. The Mandate trade union has also carried out some research and its own study. I do not have the figures to hand, but we can get them. I am sure Teachta Niall Collins, as a Teachta representing workers, has received representations from people involved in different sectors, not just the retail sector, who are victims of the abuse of low-hour contracts. I take the point on the lack of data and think the Government agencies need to do more work to provide us with the detail which would help the committee to do its work. I am also hoping we will hear from the trade union representative groups, as well as the employer groups.

Deputy Bríd Smith: They are actually coming in.

Deputy David Cullinane: Yes, Mandate is. They will have a lot of the data needed.

Deputy Niall Collins: I would like to hear Deputy David Cullinane's view on the following, as the person who is sponsoring the Bill. The Deputy said it when we debated it earlier and it is in his opening statement that the "employer must demonstrate that the business is experiencing severe financial difficulties, such that there would be a substantial risk...". The employer would have to provide notification of severe financial difficulties. Can the Deputy see any other way of putting that into effect rather than an employer posting in a public place? I am thinking of small and medium-sized enterprises, SMEs. They have to look at their credit ratings. They have to look at business risk, the risk of damage to their reputation and all that goes with a business, which I am sure the Deputy understands. Is there any other way to do this apart from citing severe financial difficulties? Has that been explored? Does the Deputy see the point I am trying to make?

Deputy David Cullinane: I do. I am not in favour of any legislation which places a difficulty on employers, especially small employers. We were very conscious when drafting this Bill that it seeks to achieve a balance. At the moment there is no balance, because workers do not have the right to have a contract reflective of their hours. Only in circumstances where an employer refuses to grant permission, at the request of the employee, for the person to have a contract reflective of their hours, would it go before the Workplace Relations Commission in the first place. To me, that would be highly unusual. If people are working for 30 or 40 hours over a period of six months - I know the Government has said that timeframe is too short - or longer they should have a contract that reflects that. We should move to a situation where workers working an average number of hours over an agreed time period have that reflected. If an employer refuses, there must be good grounds for a refusal. In any situation, and it is not just this situation, where there is conflict between an employee and employer, there must be adjudication.

The Workplace Relations Commission was set up with the support of all members of this committee and all parties and none because we need industrial conflict resolution processes. I do not believe it is unfair or unreasonable that the Workplace Relations Commission would be asked to adjudicate. I do not believe that it is unfair or unreasonable that an employer would have to give a good reason, because we are not saying that they can give a bad reason, as to why they would not accede to the request that is made. In any event, just to be very clear, all we are saying here is that the industrial relations body, which is the Workplace Relations Commission, would be the adjudicating body.

If anybody here, including Teachta Collins, feels that there is a better way of doing it that would be less onerous on an employer, we are all ears. We will support any amendments which are tabled that would improve the Bill. The Deputy made the point in his Second Stage contribution, and I want to welcome it, that he supported the broad thrust of the Bill, and what we were trying to do. I acknowledge and respect the Deputy has genuine concerns about the impact that it could have on small businesses or businesses generally. If there is a different way, we would work with members of this committee to make that happen. We have to be reasonable as well and acknowledge that there must be adjudication processes. There must be some conditionality otherwise a Bill or measure would not be worth the paper it is written on. We must have some level of conditionality and we have sought to be as fair as possible in our Bill. If there are alternative ways, I would like to hear them, and I am sure my own party members in this committee would be supportive of amendments that make sense in that regard.

Deputy Niall Collins: If a Minister or Government Department was sponsoring legislation,

there would be a regulatory impact assessment, which should be carried out on most legislation. We are partly doing that here by way of this exercise. Have the Deputy or the people who helped him with the Bill - Mandate or whoever - considered the potential impact on small business and small employers *vis-à-vis* the big people? Big businesses can look after themselves and they are the problem, as we know. I have not had much evidence or much contact from employees of small businesses on this issue, but as the Deputy knows, if legislation is enacted, if it applies to one, it applies to all. That is part of the circle that we are going to have to try to square. The Deputy would appreciate that point. What are the Deputy's thoughts on that in terms of a small employer trying to keep itself going with all the pressures of being an SME in the current environment and economy? It is a real issue for all of us.

Deputy David Cullinane: There are examples in other pieces of legislation where there are opt-outs for companies which employ fewer than five people. That is something this committee could consider. One is talking about whether this puts any additional burden on businesses or will cause any difficulties for them. I accept the Deputy's line of questioning because I acknowledge that any legislation that passes could have an impact on business. We must be conscious of the impact it has on them as employers and the ability of the companies to be sustainable. In reality, it does not place any additional financial burden on any company, because they are already giving the workers the hours that they do. If we were dealing with the issue of banning zero hour contracts and the broader issues of precarious work, I could see then how the impact on businesses would be much greater. In a situation where the same employers are already giving the workers the hours they are doing anyway, it could be 30 or 40 hours, and all they are doing is giving them a contract reflecting that, that does not put any extra burden on them. That is the point I am making. I cannot stress enough the simplicity of what this does, and the fact that it does not really put any huge burden on employers.

As I said, there are potential opt-outs that have been used in other Bills that the committee could look at. Is it fair that somebody who is employed by an employer who employs fewer than five people could end up forever and a day stuck on these low hour contracts? That is a matter on which members should form their own opinions.

Deputy Niall Collins: The issue of the tourist industry and the seasonal nature of some employment has been raised. Can I get the Deputy's take on that, and the six month period referenced in the Bill?

Deputy David Cullinane: This arose on Second Stage. I am not sure of any season that lasts six months. The reason that we picked six months is that it does take into account seasonal work. For example, a Christmas period would normally be a six to eight week period. I know that some people have said that six months is too short. If that is the case, they can put forward amendments to extend the time period. Personally, I believe that six months is reasonable to get a sense of the average hours worked. In fact, it is the recommendation that is made in the University of Limerick report. They are the people who looked at this. On page 124 of the report, recommendation 4(ii), it states:

> For employees with a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.

That recommendation t is exactly what this Bill does in a nutshell. One can have a debate on it, on the six months and so on, but UL also looked at the seasonal element and felt that six

months was a reasonable time period. I believe it is reasonable but obviously if the committee feels it is unreasonable, it can extend the timeframe if it so chooses.

Deputy Tom Neville: Many of my questions have been answered already. I am drawing on my own experience, because I have worked zero hour contracts. I worked on the management side in hospitality for many years around the world and also in Ireland. I was the person who did rosters for people. I also had experience of working in new businesses, and growing a business from zero to whatever number of employees. I want to know if there has been any thought process around that part of the economic sector where these new businesses move from the bedroom to the boardroom or the bedroom to the office where a business actually grows.

There is also the matter of someone who comes on board at the initial stage. I know myself from experience that I had to put in a lot of hours at the start of the business, and my hours calmed down as the business progressed, so I was working 60 hours a week, and then it calmed down to 40, 30 or 20 hours a week. Has there been any consideration of that, in terms of the six month period, or have there been any studies around how long the average is for a new business to get to that threshold where things do calm down? It may be longer than six or eight months, so somebody has to put in the extra work. In my case, we were putting it in without being paid, because the kickback was to have the job down the line anyway. Also, what implications would this have for people who work one job 30 to 35 hours a week and casual work on top of that? What are the implications for a person who might work one or two nights in a bar where they would be on call to provide cover, for a friend, a member of staff, or an employer? It is a flexible arrangement. If a person has this flexible pattern of working one or two nights a week for a period of six months, what implications will that have? I know from personal studies that people enjoy the casual nature of being called to work and the flexibility of that works for them. I would appreciate an answer on that.

Deputy David Cullinane: I thank Teachta Neville. I will deal with the final point first, only the employee can make a request, so that in circumstances where a worker enjoys a flexible contract or is quite happy with their arrangement, there is no change in circumstances. It is only in situations where communication breaks down between the employee and the employer that a request can be made by the employee. The Deputy is correct that there are circumstances where employees enjoy flexible contracts and can work a number of different jobs and may not want to move into a band of hours. This would only apply in circumstances where an employee wants to move into a band and have a contract that reflects his or her hours of work.

There are genuine reasons people would want a contract that reflects the hours they work. Deputy Quinlivan touched on this point. Many of these workers, notwithstanding the exploitation and threats from some employers which hang over their heads if they raise concerns about their issues, if one goes for a loan or wishes to get a mortgage to buy a home, the banks look for one's contract. One can give them P.60s, which show that you have worked 30 or 40 hours a week for the year, but if the contract is for 15 hours a week, that is what they base their decision on. That has real consequences for people. We have heard at first hand from people who have suffered as a consequence.

The Deputy asked about the consequences of the timeframe for new businesses. Again, this will only happen where there is a breakdown in communication and the issue is adjudicated upon by the Workplace Relations Commission. I am sure that if an employer was able to make the case that as a new start-up business, the viability of the company was dependent on flexibility in respect of the hours and that the hours would reduce when it was up and running, the Workplace Relations Commission is reasonable and has shown itself to be reasonable. The

employer would have an opportunity to set out its case and if it the case that the small business needs people doing additional hours in order to get the business up and running, but the hours will reduce over time, the employer would make that argument and I would hope in those circumstances the Workplace Relations Commission would adjudicate fairly.

Deputy Tom Neville: Deputy Cullinane stated that a business has to set out the financial evidence of why the banded hours contract cannot be put in place. Has it been teased out exactly what this means? Does it have to produce a set of accounts?

Deputy David Cullinane: That would be the normal practice in the situation. That would be a matter for the Workplace Relations Commission. If a company were to say it is economically unviable for me to do this but they are actually employing people for those hours anyway, then the responsibility would be on them to prove that they could not do this economically. How that is worked out would be an issue for adjudication by the Workplace Relations Commission.

Deputy Tom Neville: My reservations would be based on the difficulty to forecast the level of business month by month for the first 12 months in business. I have seen cases where one gets a big contract and the following month very little, it is peaks and troughs. I would be concerned about the administrative burden this places on the business in trying to prove whether it is financially viable or not. I ask that this would be highlighted and taken on board.

Deputy David Cullinane: That is a matter for this committee. First, a case cannot be taken by a person until he or she has been working six months. At the very minimum, it would be six months before an employee could request that his or her contract would reflect the hours he or she works.

The issues that Deputy Neville raised can be teased out and amendments tabled. These are rare examples of difficulties. I do not want those issues to take away from the reality. The vast majority of employers are decent and have worked with trade unions who represent their employees. They give workers secure and proper contracts. For those employers who refuse to engage with trade unions, or to engage with their employees on these if and when contracts, leading to industrial disputes because of the serious nature of these contracts, one has to have some mechanism in place. Banded hours contracts have worked across a number of different sectors and companies have put them in place used voluntarily. In that context the examples that Deputy Neville cited are the exception.

The Bill addresses the companies that are exploiting their workers and are refusing to give workers contracts which reflect the hours they work. If there are unintended consequences in this Bill, and there could be, then it is the work of the members of the committee, working with my colleagues to amend the Bill sufficiently. If members agree in principle with the Bill, which people say they do, then there is no reason the Bill cannot progress.

Deputy Tom Neville: That is the reason I welcome the discussion we are having today.

Deputy David Cullinane: I thank the Deputy.

Senator Paul Gavan: I congratulate Deputy Cullinane for initiating the Bill. It is important. It is, as he stressed, a very simple Bill at heart. All that is being asked for is that the actual hours that people work are reflected in their contracts.

As a union official until recently, I can say from first hand experience that almost all private

nursing homes, large sectors of retail and all hotels - and I can state categorically it is the case with every hotel in Limerick - depend almost exclusively on if and when contracts for their work. The same applies in the fast food sector. Let me quantify the numbers; at least 300,000 workers are currently under the yoke of if and when contracts. It is that significant. Sinn Féin, the Labour Party, Fianna Fáil Party and, to be fair, elements of the Fine Gael Party have recognised the need for this Bill. Members may be surprised to hear that one of the witnesses we will hear from shortly declares that this proposed legislation is being presented to address a non-existent problem. I would like to give Deputy Cullinane the opportunity to comment on that because they will not get an opportunity to comment after he has left. I find it stunning that anyone who knows anything about how business operates in this country could say that when we have a wide consensus on this issue, that it is a non-existent problem.

Perhaps it might be useful if Deputy Cullinane were to explain the point he made that the issue is about balance. I think he mentioned that there is a lack of balance at present.

Deputy David Cullinane: In response to Senator Gavan citing the remark on the non-existent problem, I have not seen that but I have heard that said by some employer organisations in the past. I was an Oireachtas Member who worked with Members from all parties and none during my last term to develop a report on low pay supported by all parties. When I engaged with some of the employer organisations, and I did so in good faith, they were very good at telling us where there is no problem from their perspective but where we know there are problems and when they acknowledge there is a problem, they were not very good at coming up with solutions. In respect of the issue of low hour contracts, if and when contracts, is the University of Limerick study wrong? When I stood on picket lines with workers who were affected by this, was this my imagination or were they real people? We have had many discussions in the Dáil on precarious work and if and when contracts; we all deal with people they affect. This is a real problem that does not just apply to the retail sector but across a number of sectors. Those of us who are privileged to be in full-time employment and to have decent salaries and decent contracts must remember there are many who do not and we have a responsibility to address those problems.

Some who are critical of the Bill talk about the need for the proposed legislation to achieve balance. The Bill is the balance. That is the point. There is no balance currently as there is no recourse for employees. I would ask anybody, whether it is an Oireachtas Member, an employer or an employer organisation, why some people who are working 30 or 40 hours per week for a sustained period are not entitled to a contract reflective of the hours they do. What is so wrong with that? If they can tell me what is wrong with that, they should also tell the people affected by this. They should listen to those workers who are genuinely affected by it.

I will let the employer organisations speak for themselves. I have at all times sought to deal constructively with both the trade unions and employers in dealing with these types of problems. I encourage them, if they feel this is not a solution, to tell me what is the solution. Everybody seems to always have an alternative solution to the one presented. This is an earnest attempt to deal with a very real problem.

Senator James Reilly: I welcome our guest. I hope what I am hearing from the Deputy is what the Bill intends and could not be misconstrued. This only applies to cases where people have over the previous six months - perhaps that is too short and it will be a year - been working consistently longer hours than what is stated in the contract. In those circumstances, the worker can ask for a contract that more realistically reflects increased hours. It is not a case of looking for increased hours regardless of whether those hours are available. Much of the argu-

ment put forward has considered what is done if the party is not in financial difficulty. Does the party wait until it is in financial difficulty before it can prove it cannot give the extra hours and if the work is not there, must extra work be created? The Bill states very clearly that it must be proven that the work has been consistently there for a period.

Nobody here disagrees with the principle that workers should be remunerated accordingly and should not be abused. It is the abuse of the flexibility that this Bill seeks to address. There is a bit more work to do. The Minister is clearly coming with her own proposals on this so I presume this will be in committee for some time and we will have the opportunity to tease out all these issues. I do not have any specific questions but I wanted to get clarity on the issue because some of the notes available to us indicate something slightly different.

Deputy David Cullinane: That is probably the best articulation of the Bill I have heard so far so I thank the Senator for it. It is exactly what the Bill intends to do. There are all sorts of arguments that were introduced to this debate that had nothing to do with what the Bill seeks to do. The Senator may have heard me making the point earlier that there are issues around where workers can and should be able to demand extra hours. The Bill does not deal with that. There are issues around zero-hour contracts but the Bill does not deal with it. There are issues relating to precarious work in general and the growth of the sector. The committee dealt with it before and I drew up a report on behalf of this committee.

The Senator is right in saying that this is all the Bill seeks to do. If people feel the Bill does something else, it should be pointed out to us. If they feel there are flaws in the Bill, they should be pointed out to us. We are very clear. All we want the Bill to do is deal with the issue in circumstances where a person works 30 or 40 hours per week for six months. We suggest this length of time, as does the University of Limerick, although some say it should be a longer period. Whatever period is agreed, the average hours can be worked out and that is what the contract should reflect. The Bill does not seek to do any more and if people feel it does or that there are unintended consequences arising from any element therein, they should be pointed out in the text of the Bill. We will work with Members to strengthen the Bill.

Chairman: I thank the Deputy and his adviser, Dr. McCabe, for coming here today to engage with the committee. The committee has agreed to meet a wide range of stakeholders on the Bill and report to the Dáil. I presume if we need the Deputy to appear before us again, he would be willing to do that.

Deputy David Cullinane: Absolutely.

Chairman: I thank the Deputy.

Sitting suspended at 5.15 p.m. and resumed at 5.18 p.m.

Chairman: I remind members, visitors and those in the Gallery to ensure their mobile phones are switched off or in aeroplane mode for the duration of this meeting as they interfere with the broadcasting equipment, even when on silent mode. I welcome Mr. Neil McDonnell, chief executive of the Irish Small and Medium Enterprises Association, ISME, and Mr. John Barry of the management support service of ISME; Ms Maeve McElwee, director of employer services and Ms Nichola Harkin, employment law solicitor, of IBEC; and Mr. Ian Talbot, chief executive officer and Mr. Mark O'Mahony, director of policy and communications, of Chambers Ireland. This is the second session of this meeting on the Banded Hours Contract Bill 2016.

By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the committee to cease giving evidence relating to a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that where possible they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that members should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I remind the guests that the presentation should be no more than five minutes in duration if possible and the presentations submitted by today's attendees have been circulated to members. I ask Mr. McDonnell to make his presentation to the committee.

Mr. Neil McDonnell: We will not read either the submission originally made to the Minister on foot of the consultation or our response to the committee on foot of the consultation. I simply will summarise ISME's response to the five particular questions we were asked. I am accompanied by my colleague, Mr. John Barry, who is a member of the national council. Mr. Barry also runs a human resources consultancy so he can speak as an employer and as an adviser to employers should members wish to put any questions to him.

In response to the five particular questions that the committee asked, the first relates to the prevalence of zero-hour contracts. Our response last year was that the University of Limerick study establishes no evidence of prevalence. I am sorry if that sounds like a mouthful but, as employers, we feel that we are entitled to ask the industrial relations machinery of the State to establish the size of the problem before the State enacts legislation or a Member brings forward a Private Members' Bill to address it. As to whether this form of contract should be banned, we do not believe it should because there is a desire on the part of employees and employers that it should remain in place in certain circumstances. That is not to say that we support any form of abuse of contracts of this nature where it does occur.

ISME was asked to comment on the flexibilities described in the Bill. We consider the obligations imposed on employers in this Bill to be excessive, especially the requirement for the employer to estimate all the hours for the week or month ahead and to display these in the Irish and English languages. We ask the committee to note that - by comparison with the requirements in place under the Safety, Health and Welfare at Work Act 2005 and the Organisation of Working Time Act 1997 - those obligations go considerably beyond what is already provided for.

We were also asked to comment on whether workers should be allowed to request minimum hours. Consistent with how we answered the fifth question, we take the view that any legislative response to this problem must be informed by evidence. When we see the evidence of what is happening, we will react fairly to it. First, there should be an evidence-based analysis of the treatment of workers who are on zero-hour or low-hour contracts. Second, there should be an evidence-based analysis detailing the failures of the current controls that exist under the Organisation of Working Time Act 1997 and of the enforcement measures that are in place. This analysis should specifically look at the enforcement measures that are available to the Workplace Relations Commission, WRC, and how those who used to be National Employment Rights Authority, NERA, inspectors but who are now WRC inspectors are failing to address

this problem. There is an obligation on Government and on the members of the committee. We want a regulatory impact assessment to be carried out before the Bill is progressed.

We do not believe that the remit of the Low Pay Commission should be expanded in order to permit a review of these proposals. We would like to discover where current legislation is failing or where it is falling down in the context of enforcement. I would make the general observation that there is a tendency for the House to respond to an identified problem in the workplace by introducing legislation rather than by seeking to understand why the available enforcement measures do not address the problem at hand. If current enforcement is failing, why do the Members of the Houses believe that introducing more legislation is going to fix the issue? Look first at what is going wrong and then tell us how the gap needs to be bridged with new legislation. Let us be honest, employers typically fall in to two categories; those employers who observe and comply with employment law and those employers who do not. If the Houses legislate without understanding what it is they are legislating for, they are simply increasing the gap between compliant and non-compliant employers and we do not believe anything would be achieved by doing so. Non-compliant employers are going to ignore any new legislation unless enforcement of the legislation is ensured. These are the observations of ISME and we are happy to take any questions the members of the committee may wish to pose.

Chairman: I thank Mr. McDonnell. I now invite Ms McElwee to make her presentation.

Ms Maeve McElwee: I thank the Chairman for the invitation to make a presentation to the committee. The Irish Business and Employers' Confederation, IBEC, represents more than 7,500 businesses operating in Ireland, from the very largest to the very smallest. In sharing our thoughts on the Bill, I do not intend to go through the detail of our submission or the answers, which have been circulated to members, nor do we intend to get into any theoretical or ideological discourse. We shall highlight the issue of why we do not believe this Bill is going to work in the spirit in which it is intended. We believe that we understand the intention of the Bill is to encourage secure employment. Regrettably, we do not feel that this legislation is going to satisfy that desire. We are of the view that it has the potential to undermine more and secure employment.

We shall look at a couple of examples of the realities of how people work and the flexibilities that are required on a day-to-day basis. Consider the position regarding technology companies such as start-ups, whereby we are trying to encourage more entrepreneurship and engagement. We see situations where people look for the next new client and for opportunities. As they pitch for that business, they have an opportunity to perhaps take somebody on with a certain number of hours but the employer has no idea what the commitment is going to be or whether that contract is going to come to fruition. The restrictions proposed in this proposed legislation with regard to flexibility are such that, rather than adding more hours that may not be flexible in the longer term, an employer is much more likely to look at a contracting-out situation as opposed to hiring more employees.

I will give another example regarding flexibility. As we move towards more flexible working opportunities, people are looking for more opportunities to balance their work and personal lives. Let us consider, for example, the necessity of the maternity leave contract. This is a situation where a person is paid a top-up by her employer. It may be a small employment, a great job and the employer may be keen to have that person back on foot of the investment made in her. Over the course of the maternity leave, somewhere between eight and 12 months potentially, colleagues take up the work. When that person comes to return to work eight or 12 months later, we would have a situation whereby the proposed legislation, in its current for,

might actually have the opposite effect. As a result, those flexibilities to allow people to engage and take more time off - and to balance the latter - would not be sufficiently elastic to allow those opportunities to come through. Another example is students who work and have very flexible opportunities to be able to offer their labour to the market. An employer is going to look at a situation and say they can offer certain hours now. Unfortunately, the past hours are not necessarily a great predictor of the future. What has happened previously does not always tell us what is going to happen next. For example, an employer might hire a student and six months into the term of employment, the student might state that his or her lecture timetable will allow him or her to offer the employer more hours. The employer, however, will not accept the offer on the basis that an obligation or liability would be created within the business without him or her necessarily knowing - or maybe knowing - what the peaks and trends in the market are going to be or knowing that he or she is not going to be able to maintain or facilitate those hours for the employee in the future. When we look to see what is the intent behind this proposed legislation, I do not believe that these potential situations are secure employment. It certainly does not provide opportunities or allow additional opportunities to come through.

IBEC is concerned about the ratcheting up of hours and of banded hours. We are concerned about such an increase in hours where an employer is obliged to demonstrate that the reason they are not giving more hours is because they are in severe financial difficulties. Members should speak to businesses in their communities and ask them is this appropriate that they should be obliged to publicly state "I will be in severe financial difficulties if I have to offer these additional hours". That is actually not a very good way to save their employment, their businesses and the ongoing employment opportunities for employees within their sectors. Employers being obliged to appeal to the precariousness of their own finances is clearly an unintended consequence of what this Bill would bring through.

I will give a final example. Let us take a nursing home under the implications of this Bill. Obviously, there are different intensities of care required at all times. There can be very difficult and harsh winters and the recruitment of additional resources can be required to support the needs of the business. As the crisis passes and one moves into summer and a potentially milder autumn, over that period of months the business has actually contracted in more hours than it might have necessarily needed in the longer term. With the inflexibilities this Bill would provide, there would be no way of being able to manage those hours and the business would be left in a situation in which there would be more hours available than the work required. For any manager, that is not a sustainable way to be able to run a business. Into the longer term, no business is going to be able to manage in that way. Rather than creating secure employment, that incentivises the employer to have two employees with fewer hours rather than one employee with the opportunity to be able to have a greater amount of secure hours.

The key point is that predictable flexibility is really what any business needs to survive. We believe this Bill will encourage more sporadic and insecure employment than what we believe to be its intention, which was more secure employment. We suggest the ability to flex working hours in a more predictable and appropriate way is a better way for people to be employed, to be able to share their labour in the labour force and to be able to flex that labour up and down. It is important to note the University of Limerick report demonstrated that only 2.6% of employees in the labour market are on variable part-time contracts. This is highly significant legislation with huge unintended consequences to deal with an issue that perhaps would be better addressed through monitoring and compliance.

Chairman: I thank the witness for her presentation. I now ask Mr. Talbot to make his pre-

sentation to the committee.

Mr. Ian Talbot: I thank the committee for having us here today. Chambers Ireland is the largest business network in the State, representing 10,000 members in every geographic region and economic sector in Ireland. We are well positioned to understand the concerns of businesses from across the country. I am not going to read out our full submission but will try to point to some key aspects.

At the outset, I believe it is important to stress that chambers throughout the country are supportive of employment regulation that works for the benefit of both employers and employees. It is a truism that businesses need certainty. Businesses need to know their production cycle, when their liabilities fall due, when their orders need to completed and so on to operate efficiently. If a business is unable to provide with reasonable certainty a guaranteed number of hours of work for its employees in advance, it is very likely because the business model does not allow them to do so.

In our view, the Banded Hours Contract Bill as drafted is unbalanced and ignores the perspective of employers and the realities of business. The Bill unfairly assumes that employers are withholding higher-hour contracts from employees without good cause. This negative view of employers and businesses is clearly reflected in the unmanageable requirements this Bill seeks to impose upon all Irish businesses.

When considering the introduction of legislation, we must consider what the legislation is intended to address, whether it can actually achieve this intent and whether it is proportional. This Bill fails to achieve any of these criteria and stands to have negative effects for employers and employees if enacted. The publication of the University of Limerick's 2015 report on the prevalence of zero-hour contracts and low-hour contracts in the Irish economy found that "Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 ... are not extensive in Ireland". As such, any increased regulation or legislation to prevent the use of such contracts is disproportionate and unnecessary. This Bill seeks to implement disproportionate and onerous restrictions on sectors which by their nature require a degree of flexibility and seems to have general applicability regardless of the core structure of employment in an organisation. It applies to organisations to which hourly-base work has no relevance.

I will point out a few specific issues and some definitional aspects of, for example, how to define when a business is experiencing severe financial difficulties. It is an unmanageable requirement, which has the potential to undermine a business's ability to operate and grow. The requirement that a business must be experiencing severe financial difficulties to refuse such a request is an extremely unfair burden on a business and does not exempt cases where the business is facing, for example, seasonal downturns or requirements to invest in other areas or simply is at a fragile stage of development or growth. The Bill fails to provide any flexibility for employers in the managing of their businesses; there is no provision contained in the Bill that allows for employers to move employees back to a lower band where necessary, for example, when trading conditions deteriorate. Again, outside of a business cycle, the Bill ignores the requirements of businesses most typically engaged in this type of low-hour or flexible-hour employment contracts, such as seasonal or sharp demand-led businesses.

The Bill does not take into account the flexibility which often is of benefit to employees and employers. For example, an employer may alternate extra hours available between staff so that each of them receives a similar increase on top of their contracted hours. However, under this Bill, the first employee to request an increase might benefit disproportionately. Banded

hours contracts within smaller businesses are more likely to have the effect of reducing the total number of employees rather than increasing the number of hours per employee. If there is an obligation or perceived obligation on a business to provide increased hours of paid work for an employee regardless of whether there is an actual business need for the additional hours, an employer may take the view that there is less exposure to risk of complaint by simply reducing headcount. Fewer jobs overall is not something that should result from any legislation in this area.

This Bill, while attempting to strengthen employee rights, is more likely to act as a deterrent for businesses when considering entering into employment contracts. From a business perspective, the requirements of the Bill are so burdensome and overly restrictive that it would incentivise the avoidance of contracted labour. We are all obliged to deal with the real world, both public representatives and the business community. In the real world, there is a risk that this legislation will push some employers to move to more informal working arrangements with employees. The risk of employment moving to the grey economy is not a good outcome for any party.

Section 5 of the Bill, which requires that businesses provide information of overall availability of working hours, mandates that such notices be displayed in English and Irish and in other languages where required. This represents another unfair burden on businesses and this provision can only result in potentially significant increased costs.

In conclusion, this legislation is disproportionate, will have significant unintended consequences and is unnecessary. It is deeply flawed in its approach to employer-employee relations and is more likely to incentivise the avoidance of employment contracts, for example, through outsourcing, or a reduction in jobs creation. It will also apply to a large number of companies to which hourly work has no relevance.

Chairman: I now invite questions from the members. Who would like to go first?

Deputy Niall Collins: I do not mind who offers an answer to this question. Could each organisation give an overview on the levels of engagement it has had with either the sponsor of the original Bill or with the Department of Jobs, Enterprise and Innovation, which is in the process of drafting a Bill?

The witnesses have articulated their critique of the Bill presented to the Dáil, which is the reason we are here. Recognising that there is a problem, which our previous guest stated was unquantified, and noting the objections the witnesses have made - I have noted them and I am sure others have as well - how do we fix the problem? If the witnesses are stating the legislation will not work and are expressing their objections to it, have they suggestions to offer members as to how the problem, which is real and does exist, can be addressed?

Mr. Neil McDonnell: I might answer that. I acknowledge the Deputy has questioned me on this before. My colleague talked about this as an issue for 2.6% of the workforce. That is one in 40. While the committee is asking us to produce evidence of a problem, we are suggesting to it that its own study is telling it that this problem does not relate to 39 out of 40 workers. Can the committee justify it and has it done a regulatory impact assessment to suggest this is a proportionate response to the problem that exists? I have represented and dealt with large numbers of employers where the NERA inspector was available or there was an external method of checking what was going on. We would like to know whether the initiators of the proposed legislation have quantified why the enforcement mechanism is not working and what is the ap-

propriate way to deal with it, not to apply a catch-all Bill that will hurt.

With respect to some of the large employers who are represented here, as a representative of the smaller businesses, I think it will disproportionately affect small businesses in which the administrative ability to manage this sort of legislation will not be present. I suggest the committee hear loud and clear what is being said to it. The market always solves these problems. If the Government imposes this on a small business that is unable to manage, it will push the problem out the door and into an area where it will become progressively harder for the enforcement authorities to deal with. Please manage the problem for the 39 out of 40. Do not hit with a sledgehammer the one job in 40, which we do not doubt is being affected.

Chairman: Deputy Niall Collins's first question was on the level of engagement with Deputy David Cullinane and the Department.

Mr. Neil McDonnell: Among our members, it is very small. Small businesses tend to be reactive. They react after the legislation has been passed and they are told the date of effectiveness. We have to push it down all the time.

Ms Maeve McElwee: In response to what has been said, it is important to highlight that the 2.6% on variable, part-time hours does not quantify who is on that 2.6%. The UL report conflated every type of part-time and variable hours working. It made no distinction between those who chose to be on variable hours and were satisfied with them - who would refuse additional hours were they to be offered - or whether they were low-paid or precarious. They will have captured people on very high rates of pay who may be working very small numbers of variable hours, perhaps lecturing or taking up very short periods of specialised nursing care on an *ad hoc* basis. We have not considered who is actually being affected in a detrimental way by the issue. Before we proceed with any legislation, it is important we quantify it. The UL report is very light on detail. It was more of a collation of observations than any significant hard evidence. We have very significant concerns about how it came together.

As has already been outlined, we have a very strong workplace relations system, a very effective and well-functioning dispute resolution process and a very well resourced inspectorate in terms of NERA. Given the scale of the issue - by virtue of the UL report we know we have no zero-hour problem but we potentially have some issues around variable hours - NERA is the most appropriate way to deal with it in the workplace and in the context of the issues that face the workplace. We have not spoken or engaged directly with Deputy David Cullinane. At the request of the Department of Jobs, Enterprise and Innovation, we have been working with the Department in the development of the Government Bill.

Mr. Ian Talbot: We have not engaged directly with Deputy David Cullinane on this. We have engaged with the Department of Jobs, Enterprise and Innovation. At the risk of repeating myself too often, it is disproportionate. There is a very small cohort of potential issues. Many people are in jobs around the country where variable hours suit them. The Bill seems to be a sledgehammer to crack a nut. It will affect a huge number of companies and employment contracts to which it is not relevant. We continue to believe the Bill is disproportionate.

Senator James Reilly: I welcome our guests and thank them for their presentations. Part of the reason they are here is that we are examining the Bill. I am very concerned that an impression would be created that there is not a problem. We need to identify the size of the problem in a much clearer way than we have to date. There is a moral guidance. Whether it is 2% or 20%, people are being abused. If the law is insufficient to deal with it, the law must be

changed. I am very glad to hear all three parties have engaged with the Department and made submissions. Clearly, they have suggestions to make. Regardless of the size of the problem, there is a problem. Everybody knows and accepts that.

ISME and Chambers Ireland have many members who are involved in SMEs. It may not be such a big problem for IBEC, whose members tend to be bigger employers. We need their help and guidance as to where the specifics of the Bill are causing problems for them. I can understand Mr. Talbot's statement that it seems like a sledgehammer to crack a nut. However, we are trying to find out how best to address it. The witnesses have engaged with the Minister and I would be very grateful if they could give us some guidance on where they feel we could nuance the Bill's provisions to protect workers.

The Bill purports to protect workers who are consistently working longer hours than they are contracted for. We will get into the nitty gritty to ensure it does that and nothing else. Some people say six months is too short and maybe a year would be better in order to accommodate the seasonal element about which people have spoken. In those circumstances, there is an issue that must be addressed. This is the witnesses' opportunity to give an alternative approach to how it might be addressed. They have asked us questions and we will have to go and get the answers. This is our opportunity to ask the witnesses questions and perhaps they might give us some direction and answers.

I am struck by a few statements. With all due respect, a student who is working a certain number of hours and is then going to be available for additional hours, has clearly not been working those hours on contract. That is what the Bill is supposed to address. I struggle with the concept that nursing homes take on additional staff in the winter time. It has not been my experience, although I can fully understand that with people being more ill, in theory they would need more help. I would be keen to hear from the witnesses on how we can help address the issue, and if not through the Bill, through what mechanism. There is definitely a problem which we need to address.

Mr. John Barry: I am involved on the ground with employers who deal with these types of contracts and have variable contracts. We all know this has come about because there is a problem of some employers, maybe, not treating employees fairly. It has been suggested employers are using this as a form of punishment for employees in different cases. This is not the original zero-hour contract. Unfortunately, I can remember the original zero-hour contract, and it came in for the same reason. In those days, a phone was stuck to a wall and an employee had to remain in a house until a phone call came through to say they could come into work. This is how the legislation came in. It is interesting that the Organisation of Working Time Act was introduced in 1997, and all parties - I was included - were invited in around 2000 to come and make presentations on how to improve the Organisation of Working Time Act. Unfortunately, although very valid comments were made, nothing ever happened. The Organisation of Working Time Act is the legislation which addresses working hours and to bring in a stand-alone, independent Act without taking account of the obligations of the Organisation of Working Time Act would be inconsistent.

Regarding the practicalities of it, leaving aside the seasonal issue, this has come about given that some employers may abuse the arrangement. The majority of employers do not abuse it. They are fair and try to treat people fairly. Some employers may treat people unfairly by using these contracts. However, if this legislation is introduced, what will it actually do? It will actually give employers a benchmark against which to work. If banded contracts are in place, an unscrupulous employer will ensure an employee never works more hours exceeding the banded

hours provision, so the employee can never look for increased hours. That employee will, in turn, lose out on the opportunity for additional hours. If there is somebody on maternity leave, as was suggested, and an unscrupulous employer felt that person could claim those hours after 42 weeks, that employer will ensure they do not get the opportunity of those hours. This, in turn, reduces their opportunity to gain more experience in the workplace, learn new jobs and develop themselves within an organisation. This is the negative side of this.

In reality, we are focusing on the people who abuse this, not the majority of good employers. They are being penalised because of the minority. I accept something needs to be done. Doing it this way, however, is not practical.

Another significant point about this legislation is that there is no mutuality of obligation. The employee is the only person who can benefit from it. What happens to the established standard terms and contracts of employment for short-time working, etc? Are they now overruled by this legislation? Once a person moves up to banded hours, how are they moved back down again? These are not addressed in this legislation and have been forgotten about. It will put an undue onus on the employer again when there is actually legislation dealing with this.

The issue of enforcement was raised. As was said earlier by a speaker who supports this legislation, the Workplace Relations Commission is good and fair at enforcing industrial relations provisions. For example, the Industrial Relations Act allows any employee to go to the Workplace Relations Commission if they believe they are being unfairly treated by an employer. The commission will bring an employer to account. If an employer is giving somebody a certain number of hours, the Labour Court or the commission will ask why the employee has not received a contract which reflects that. An employer will have to stand up and justify that.

This proposed legislation only regards a company's financial circumstances. The fixed-term work Act and other legislation bring in objective criteria, which is more than just the financial condition of the company. There could be other reasons a company is keeping people's hours down or cannot give them certain hours. These need to be taken into account if we go down this road.

The issue of notification of hours is already dealt with in section 17 of the Organisation of Working Time Act 1997, which states the employer must give notification of working time to an employee. It is reasonable that people will want to know what they are doing next week, so they can plan their own lives. People work fewer hours in order to do other things. We have moved on to atypical working. We are long since gone from the standard working practices. People now have multi-arrangements and multi-employments. For example in the cleaning industry, a person could work 12 hours in one particular contract and work for another company for another 12 hours. They need certainty and I understand that. However, what happens if a client says we no longer need that person or we want to reduce hours? How does the cleaning industry respond to that? This is very common. If this proposal sees hours increasing in the cleaning industry, we will see what happened when social welfare changes were introduced several years ago which brought 15 hours working down to 12.5 hours. Essentially, hours will be cut to avoid these obligations.

All that will happen with this legislation is that those who abuse this - I accept we need to find a way to address those people - will just find another way to abuse it. The trouble is that every good employer will have to do likewise. They are not going to employ people or give them extra hours if they think that, in six months time, they will have to guarantee those hours. Small industries are vulnerable because they do go up and down. People in them will work

more or fewer hours. In my company, which only employs seven people, I have people who work three days a week. There will be times, however, when I will have to ask somebody if they could come in for an extra day. That might happen for six months to cover a contract. Under this legislation, that person can demand more hours but I might not have the work for them.

Many difficulties will arise from this legislation which aims to resolve what is essentially a small problem in the total workforce. I accept, however, for those it does affect, it is a big problem. The financial institutions have to learn that they have to approach these employees in a different way and give them credit. If someone can show from their P60 that they have consistently worked 15 to 20 hours a week for the past two years, the financial institutions must take that into account. A banded hours arrangement would effectively do no more than that, however.

My biggest concern about this legislation is that those employers who will find ways around the system will not give people extra hours. As a result, it will probably deny people the opportunity of getting more experience, more hours at work and developing themselves. That is my serious concern about taking this matter in isolation.

Instead, we should review the working time Act like as happened in 2000 and ask how we can address this issue. The facilities are there to address and enforce this matter.

Ms Maeve McElwee: IBEC represents a significant number of small and medium-sized companies, both through the SFA, Small Firms Association, and its wider membership. It is not just an issue that we see for our larger members.

This is about the reality of how people work and the flexibilities people want to see in their working lives. A large number of students work, and need that opportunity, throughout their period of education. Employers work with them on a flexible basis on what times suit and so forth. An employer who has to trade on an ongoing basis, and needs some certainty around financial commitments and obligations they may be creating in terms of continuing to flex hours up and down, will have to have certainty within that six-month period as to how many hours they have committed if the likelihood is the employee can tell the employer they have an obligation in terms of the number of hours they flexed up and down to accommodate the employee's needs and earning capabilities during this time period. Unfortunately, it will reduce an employer's ability to work with the hours somebody might want so as to offer flexibility into the labour market. That ability to be able to work with somebody's own needs and requirements will be significantly curtailed. Again, an employer cannot continue to allow an obligation to grow into the long term without having any certainty that they will be able to deliver work to meet the hours they have agreed over a short period.

We see this in many sectors, particularly in hospitality and retail. For example, a local shop situated beside the University of Limerick could be enormously busy during term time but exceedingly quiet outside of it. Those hours will fluctuate considerably. Even if the business knows that, in a six-month period, it may have committed more hours than it would be able to give in the next six-month period. It is the same with hospitality where somebody may work additional hours to cover for a colleague. Hospitality is also unpredictable. Many of our members, such as the local pub or the local hotel, tell us about unpredictable surges in trade such as funerals, banquets or family gatherings. There are unpredictable surges in trade and, over a six-month period, a business may need people to flex up and to be able to flex those hours back down without creating an ongoing commitment into the longer term, because a business has no certainty as to whether those issues or types of events are going to arise again, when they will

arise again and for whom.

It is understood that there are issues in terms of compliance. In every aspect of legislation, there are always issues of compliance. The major concern for employers is the scale of what is proposed to deal with the issue that is there. I acknowledge that people do have some difficulties, and they can be severe difficulties. However, as has already been said, the vast majority of employers have invested in their employees. It is in their interests to work with their employees and be good employers, particularly given the cost of recruitment, hiring and training in order to secure good employment opportunities for their employees. The unintended consequence of this Bill will be an inability to be able to flex that work, leading to a situation in which the hours that are provided at the outset will be stuck to very rigidly and will not be able to be flexed up and down. Therefore, nobody would have the opportunity to increase their hours as their circumstances permit.

Chairman: If I may interject, there is a vote in the Seanad at the moment. We will continue. I call Mr. Talbot. Would he like to hold on until Senator Reilly comes back?

Senator James Reilly: No, go ahead. There may be a few votes as the Seanad is discussing the Adoption (Amendment) Bill.

Chairman: Okay. Thank you.

Mr. Ian Talbot: I will be quick anyway. We have had some substantial responses on this already. Ultimately, there is a nirvana aspect to this. Would it not be great to have a booming economy and for people to have choices of jobs? That would immediately mean that people would have a choice between this type of job, that type of job, these type of hours or that type of contract. That would be fantastic, but I guess we are not there yet. I keep coming back to the vulnerability. We spoke earlier about the vulnerability of small businesses and how they are least able to deal with new regulations and obligations. Larger companies' pay are not in this general space at all anyway. However, they have the resources and the skilled HR departments and everything else. Small businesses are desperately trying to stay alive, manage their cash flows and make some sales. Adding in new restrictions, regulations, things that have to be posted and converted into Polish and everything else is, for 39 out of 40 jobs, going to end up causing extreme grief and threaten viable businesses, all in order to solve what I think is a relatively small problem.

Deputy Maurice Quinlivan: I thank the witnesses for their presentations. I appreciate it. I read their written submissions before I came in. I have to say that I was disappointed with what was in most of them, though I was not surprised. Deputy Cullinane has come forward with a simple Bill. I believe we have a problem that we need to deal with. I was involved in chairing a meeting in the AV room to which people came with their testimonies. They were real people who told us about the stress they had at work. I have met lots of other people since then. I believe we need to do something to solve this. I listened to what the witnesses have said but I do not see any of them coming forward with any solutions to how we are going to deal with the issue. It has been going on for years and needs to be addressed.

Deputy Cullinane was before the committee prior to the witnesses. He said something I completely agree with. He said that he is open to sensible amendments that might come forward. I would suggest that if witnesses have those, they send them in or come back to us on them. The Workplace Relations Commission can deal with any issues that arise after the Bill is enacted. I believe the Bill should proceed. I thank the witnesses for their presentation.

Chairman: Does Deputy Collins wish to come back in?

Deputy Niall Collins: Did the author or authors of the UL study, who will present before the committee, consult the witnesses as part of the fact-finding or evidence-gathering in writing the report?

Mr. Barry is the only witness who has acknowledged that there is a problem that needs to be fixed. I commend him on that. Did I hear him say that the issue could be sorted through the Organisation of Working Time Act?

Mr. John Barry: The Organisation of Working Time Act is the Act that addressed hours, breaks, etc. It addressed maximum working hours, the issue of the original zero-hours contract and declared that minimum hours must be paid in those circumstances. It is the Act that currently addresses the whole question of working hours. I do not see the logic of bringing in a new Act to do this when there is already legislation there that needs to be looked at. There was a lot of criticism of the Organisation of Working Time Act back in 2000. To be quite honest, it was a waste of time going in and making presentations on it, because those presentations are still collecting dust somewhere. Nothing has changed in the Act with all of its imperfections. We have all had to work with that Act in the meanwhile. The Labour Court has done its job to try to make the Act reasonably applicable. It was a badly written Act in the first place, but it is the Act that deals with these issues. My view is that that is where this matter should be going, rather than as a separate stand-alone Act.

As I said, the enforcement side of the Industrial Relations Act allows the adjudicators and the Labour Court to recommend what they regard as just and equitable in the circumstances. The Labour Court is given a huge remit in dealing with employee disputes, including if an employee feels they are being unfairly treated at work because they are not getting either guaranteed hours or the hours have been unfairly distributed. A classic claim to the Labour Court is about the unfair distribution of overtime hours, for example, and things like that. Those issues can be dealt with and addressed by the Labour Court. As was said by the previous presenter, the Labour Court is very fair. He has said that himself. It has its finger on the pulse and can deal with these issues. While I would say its recommendations are only recommendations and are not binding, they carry an awful lot of moral support. Certainly, an employer generally does not like to go to the Labour Court and have a recommendation against it that it then ignores. All of its employees can then see that it is ignoring the Labour Court. We have the resources already. We do not need to be creating a whole new horse for this when have the horse. I am simply saying that we should take a practical look at that, use it and not reinvent the wheel.

Deputy Niall Collins: What about the engagement with the author or authors of the UL report?

Ms Maeve McElwee: I had occasion to engage with the UL authors as they carried out their research for this particular report. They interviewed me and a colleague in IBEC about some of the issues that came up. I had a number of concerns and questions for them about the interview on the basis that the questioning took on a remit well beyond the remit that the report had, which was contracts of less than eight hours. There was concern around the fact that all types of variable-hours contracts, including the full-time shift patterns of people on very significant rates of pay, were all being collated into the one report, which again was way beyond the scope of the report's remit. All of the information that was being transmitted was anecdotal. As the issue had arisen, we did not have any facts around how many people were on zero-hours contracts or very low-hours contracts. That is what UL was tasked with determining.

In actual fact, by coming to ourselves, ICTU and the various unions, we did not have that information or we would have already supplied it. Therefore, it was very much a conversation around what we thought, what our opinion was on how many variable-hours contracts there are or why there are variable-hours contracts. There was a lot of discourse around what the difference is between as and needs, if and when, casual contracts and variable-hours contracts. They are all very different and discrete types of working, but were all conflated into one in the report. My understanding, when I asked the question, was that UL did not carry out any direct survey to determine who was on variable hours, what the terms of those variable-hours contracts were and how many people wanted more hours, would accept more hours or were dissatisfied with the distribution or assignment of hours. That information is still not available to us.

Mr. Mark O'Mahoney: We also engaged with the University of Limerick research team when it was compiling the report. Whereas we limited our discussion with the team to low hours and zero-hours contracts, the subsequent report seemed to make a leap and ended up with a multitude of recommendations beyond the scope of zero-hours and low hours. We are concerned about some of the recommendations arising from the UL report.

I reiterate that I believe there is a conflation issue around the identification of the problem. It relates to conflating the number of people on low hours and zero-hours and conflating that with a problem. Undoubtedly, there are problems for a small percentage of people working on low hours and zero-hours. There are some employers abusing that and they should be addressed. However, to identify low hours and zero-hours as problems *per se* is a mistake. The first course of action that needs to be taken is to identify the problem we are trying to address. The second point is the question of new legislation and the appropriate way to proceed. The third point is the question of whether the proposed Bill is the right way to do it. In our view, it is not.

Mr. Neil McDonnell: I wish to address a point made by Deputy Quinlivan. I do not doubt the sincerity or earnestness of anyone who has come to the Deputy from the employee side with a problem. The UL survey predates my arrival in ISME, so I was not consulted on it. Oddly enough, given that the trucking industry has strange hours, this was not raised as an issue in the trade association I was with previously.

I am keen to reiterate that despite a substantive study, there is no evidence of prevalence. The size of this problem has not been established and no scope of the problem has been undertaken. Yet, we are before the committee being asked by legislators to comment on a proposed Bill to set up a new Act independent of the Organisation of Working Time Act to address an unscoped problem.

This goes back to the interaction I have had with legislators in my previous life dealing with road transport and traffic issues. In fact, the State provides substantial enforcement measures right now. I appeal to the committee to tell us where those enforcement mechanisms are falling down. In this case, they are extremely weighted in favour of the employee.

I suggest the resources of the Legislature would be better directed to questioning the failures of National Employment Rights Agency inspectors now. I know of no employer who has found a NERA inspection to be a pleasant experience or an easy one to go through. That arm of the State functions well on behalf of employees. What is going wrong if this has been identified as a significant problem? The previous Minister asked us to respond to a previous study that was unable to quantify the problem. I do not think the nature of the problem has been established in any way.

Chairman: Thank you all for coming before the committee to engage with us in what has been an informative session. We will have many witnesses and guests coming before the committee in the coming months.

The joint committee adjourned at 6.15 p.m. until 4 p.m. on Tuesday, 14 February 2017.