DÁIL ÉIREANN

AN COMHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Máirt, 11 Aibreán 2017

Tuesday, 11 April 2017

The Joint Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Senator Aidan Davitt,
Deputy Tony McLoughlin,+	Senator Paul Gavan,
Deputy Tom Neville,	Senator James Reilly.
Deputy Maurice Quinlivan,	

+ In the absence of Deputy Tom Neville for part of the meeting.

DEPUTY MARY BUTLER IN THE CHAIR.

The joint committee met in private session until 4.20 p.m.

Scrutiny of EU Legislative Proposals

Chairman: With regard to Schedule A, it is proposed that COM (2012) 124 warrants no further scrutiny. Is that agreed? Agreed. It is proposed that COM (2016) 34 warrants further scrutiny. In that context, it is proposed that the committee should seek an updated information note from the Department, specifically requesting further information on the implications for Ireland and an update on the progress of the proposal. Is that agreed? Agreed. It is proposed that COM (2016) 662 warrants no further scrutiny. It is that agreed? Agreed.

With regard to Schedule B, it is proposed that COM (2016) 508, COM (2016) 524, COM (2016) 614, COM (2016) 629, COM (2016) 630 and COM (2016) 631 warrant no further scrutiny. Is that agreed? Agreed. This meeting will be suspended for a few minutes to allow our first guest to take his seat.

Sitting suspended at 4.21 p.m. and resumed at 4.23 p.m.

Health and Safety Authority: Chairperson-Designate

Chairman: I remind members, visitors and the people in the Gallery to ensure their mobile phones are switched off or in flight mode for the duration of this meeting as they interfere with the broadcasting equipment, even when they are on silent mode.

I welcome Mr. Tom Coughlan, who is the chairperson designate of the Health and Safety Authority. Before we commence, in accordance with procedure I am required to state that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to 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. They are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person 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 they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I ask Mr. Coughlan to make his opening remarks to the committee.

Mr. Tom Coughlan: I thank the Chairman and the other members of the joint committee for giving me this opportunity to address the committee. It is a privilege and an honour for me to be here as chairperson-designate of the Health and Safety Authority, HSA. I welcome the invitation because my appointment as chairperson would give me an opportunity to continue to make a high-level contribution to the public sector and to use the skills and experience I have gained during 40 years of public service in local government.

I understand it is customary on these occasions to give some personal background information. I am from Mulranny in west Mayo. I am married to Ruth and we have two sons. We

have lived in Ennis for 22 years, having relocated from Galway in 1995. I commenced my career in local government as a temporary clerical officer. Having served at all administrative and managerial levels, I was appointed as chief executive of Clare County Council in 2009. As chief executive of a large local authority, I gained extensive senior-level practical experience in developing and implementing strategy, change management and partnership and stakeholder engagement and significant experience of governance at executive and political levels. I possess State board experience, having been appointed to the board of the Shannon Airport Authority in May 2013. I was subsequently appointed to the board of Shannon Group plc on its incorporation in August 2014. I continue to serve as a non-executive director of the group.

When I applied to the Public Appointments Service to be considered for the position of chairperson of the HSA, I considered that I met the requirements of the person specification as advertised. I applied for the position on the basis of my genuine belief in the importance of the role and objectives of the HSA. The principal objectives of the HSA are to ensure workers in Ireland, and people affected by work, return home safely to their families and everyone is protected from the harmful effects of chemicals. As the former chief executive of a multifunctional authority which employed over 1,000 indoor and outdoor, technical and administrative workers, I appreciate the importance of achieving such objectives. Responsibility for occupational safety and health and chemicals policy has been formally delegated to the Minister of State with responsibility for employment and small business, Deputy Breen. I understand the Minister of State met members of the board of the HSA in recent months and has been closely involved in promoting a range of safety initiatives targeted at high-risk sectors. I expect to meet the Minister for Jobs, Enterprise and Innovation, Deputy Mitchell O'Connor, very soon.

Like many public bodies, the HSA has seen a reduction in its financial and human resources over the past eight years. Specialist technical expertise levels are less than those required. It is important for the HSA to be empowered to rebuild its capacity and capability. I welcome the increase provided in the HSA's 2017 budget for extra payroll funding. I welcome the non-pay funding that has been allocated specifically for Brexit-related purposes. It is unlikely that Brexit will have any medium-term impact on the regulation of occupational safety and health at EU level or in Ireland. However, potentially significant impacts may arise with regard to chemical regulations and aspects of chemicals policy which are essential to the continued operation of many Irish and foreign direct investment enterprises. Small and medium-sized enterprises are the backbone of the economy. They need simple tools and guidance to help them to manage workplace safety and health. In recent years, the HSA has invested significant resources to enable enterprises to achieve compliance in the simplest and most cost-effective manner. A culture of health and safety compliance contributes positively towards national competitiveness by reducing the costs of workplace injury and illness. Balanced and proportionate regulation acts as an aid to ensuring there is an even playing field in competitive areas.

The HSA's strategy for the period from 2016 to 2018 refers specifically to work-related health and the promotion of well-being and positive mental health. The HSA is working with the Department of Health and other bodies to ensure workplaces in Ireland protect the health and well-being of employees and, furthermore, encourage people to improve their own health and well-being. Sadly, there were 45 work-related deaths in 2016. The highest number of fatalities - 21 - was in the agriculture sector. As I come from a rural background in the west of Ireland, I appreciate the impact of farm fatalities on communities and accept that agriculture is a major challenge for the HSA. I understand the HSA, in conjunction with the farm safety partnership advisory committee, has sought to broaden the type of contact the HSA has with farmers and to find the most effective means of spreading the message of prevention within the

farming community. The upturn in the construction sector will also pose a continuing challenge. I understand that the HSA plans to increase the level of construction inspections based on the risk profile of the sector in its 2017 work programme.

The HSA's remit is broad, spanning more than 200 Acts, regulations and conventions. The authority seeks legal compliance through motivating, influencing, promotion, information, education, inspection and enforcement. Its vision is "healthy, safe and productive lives". Achieving that vision, particularly in the context of such a broad remit, is a significant challenge. I trust that committee members will appreciate that I have not as yet attended a board meeting of the HSA or had the opportunity to explore in depth the issues relating to the authority. However, on the basis of the briefings that I have received to date, I am fortunate that the most recent chairman, Mr. Michael Horgan, and his board, the previous chairpersons and boards, the chief executive and his team have established and maintained an organisation that is capable of achieving that vision. I look forward to chairing the board of the authority and playing my part in achieving that vision so as to ensure that workers return home safely to their families.

I thank the committee for the opportunity to meet it today.

Chairman: Mr. Coughlan is welcome. I will allow Senator Reilly to contribute first, as he must leave for the Seanad.

Senator James Reilly: I approached Mr. Coughlan to make my apologies to him personally. I must attend a debate on a Bill in the Seanad. I thank Mr. Coughlan for his presentation. The role that he is taking on is an important and serious one and I wish him well. The well-being and safety of workers are of paramount importance to us all.

I noted Mr. Coughlan's mention of agriculture, in which regard much remains to be done to protect people, especially young people, from the dangers associated with the fact that they just so happen to be domiciled in businesses run by their parents and families. I apologise for being unable to stay for longer.

Senator Aidan Davitt: I am in the same boat, in that I must attend the debate on the Companies (Amendment) Bill. I wish Mr. Coughlan well. He has a comprehensive CV from what I read of it and he seems suited to the job. I have no doubt from listening to him that he intends to make the role his own. He will be instrumental. It is great to hear that he comes from a farming background. Besides deaths, a number of serious injuries caused by farm accidents are never reported. This problem was one of Mr. Coughlan's main points.

I wish Mr. Coughlan the best of luck with his work. Undoubtedly, he will be a great success.

Senator Paul Gavan: I thank Mr. Coughlan for his presentation and wish him well in his position. I have a particular interest in this matter, as it was prominent in my role as a trade union official. The Safety, Health and Welfare at Work Acts of the 1990s were some of the best legislation ever passed, but the problem then seemed to be that people could have the best legislation possible just so long as there were no inspections. In my years there, the number of inspections was insufficient to meet the level of need. It is unfair to ask this of Mr. Coughlan before he starts, but what are his views on the resource issue as it affects inspections? What assurance can he give us of a substantial increase in resources?

Mr. Tom Coughlan: I thank the Senator. I noted his reference to a trade union background. He will be familiar with the fact that the HSA's board is tripartite, in that it is representative of employers, employees and the Minister. That works well and is to be welcomed.

Regarding resources, there were 10,400 inspections in 2016 and I understand that there will be an increase in resources in 2017, although I have not yet had a chance to examine that matter in depth. Before being briefed on the HSA, I did not realise how important a certain element was. While the authority has a reactive enforcement role in terms of inspections following incidents, the bulk of its inspections are carried out on an advisory basis. According to the statistics on the outcomes of inspections, 41% resulted in written advice, 48% resulted in verbal advice and 11% resulted in enforcement. The role of inspections - not just in terms of enforcement, but also advice - is critical for health and safety. Resources have become available and additional inspectors are being recruited, which is a good sign. At budget time, I hope that it will be possible for Oireachtas Members to increase the HSA's level of resources.

Deputy Tom Neville: I thank Mr. Coughlan for attending. I congratulate him and wish him well in his post.

In County Limerick, which neighbours the county for which Mr. Coughlan was county manager, agricultural safety is a major issue. Construction safety is also an issue according to his presentation. That industry is beginning to expand again. From my own campaigning, though, I have picked up on issues relating to mental health in the workplace. I will offer a suggestion for future consideration. Agriculture and construction are male-oriented industries, in that most of their workers are male. Men find it challenging to discuss mental health issues and express their views. Unfortunately, this is apparent in some of the figures on a number of tragedies in recent years.

While we are all trying to promote positive well-being and mental health through education, more could be done in the workplace, especially as regards male-oriented work. I understand that females also work in those industries, but the workers are predominantly male. An initiative or vision should be put in place in the coming years to identify trends and communicate about mental health well-being to these people through their work. Whatever help Mr. Coughlan requires from our side, I would be more than willing to give it. It is time that we be more innovative on this matter. Our intentions are always in the right place, but finding innovative solutions is difficult. Now that the issue has been mentioned, mental health is coming more to the fore commercially with a view towards saving on sick days and the like because of stress. We could have a double whammy and educate people on health and safety through the workplace.

Chairman: Would Mr. Coughlan like to comment?

Mr. Tom Coughlan: Yes. I thank the Deputy for his questions and I understand his point. One of the HSA's strategic priorities between 2016 and 2018 is to focus on work-related health risks. It is only when one delves into the detail of the role of the HSA that one realises that it is not all about safety inspections and the physical environment in which people work. It is easy to recognise physical risks, but the HSA also has responsibility for the health element. As the Deputy said, it is more difficult to identify non-physical risks in the workplace, for example, risks to mental health. Health and work-related health risks will form a strategic priority and focus for the HSA. Much of the work that has to be done in that space must be done through partnerships and engaging with stakeholders.

The Deputy mentioned the HSE. There are a number of stakeholders and partners. For example, a range of partners are involved in the farm safety advisory group and that is the way the Health and Safety Authority will have to work in the future. It will have to create alliances and work with stakeholders, because these are not just problems for the Health and Safety Au-

thority. They are also problems for the farm community and the construction sector. I said that one of the valuable lessons I learned in local government, particularly as chief executive, was the importance of working in partnership with different agencies, bodies and organisations and that will be my focus in my term in the HSA.

Deputy Niall Collins: I welcome Mr. Coughlan and thank him for his presentation and his input to our session. It is refreshing to hear how he intends to approach the job. Is this the biggest organisation of which he has been chairperson? His CV shows that he has been on a number of boards over the years. Why did he apply for this post? Did it particularly interest him or was it just because it was available and suited his skills set?

Can Mr. Coughlan take us through the process? He said it was advertised through the Public Appointments Service. How many, if any, interviews did he have? Can he tell us what he hopes to achieve in his term as chairperson? I am not asking him to predict the future but what are his key goals? I wish him well in the post.

Mr. Tom Coughlan: It is the biggest organisation of which I have been chair but I have been chief executive of Clare County Council, which has 1,000 employees and is a multifunctional organisation with a significant budget. I also have a background in corporate governance and have qualifications in that subject.

I applied for the position having retired about a year ago, after 40 years in local government. I felt, however, that I was too young to fully retire and that I had more to give. I had a knowledge of the public sector, which I could continue to use in order to make a contribution, and I was very interested in taking up either a board position or a chair position which would allow me to do that. When I was appointed as chief executive of Clare County Council, one of my priorities was health and safety and I embedded health and safety into the organisation. There was a particular reason for doing that and Clare County Council won the national award during my term for health and safety in a local authority. I integrated health and safety into performance monitoring and development so health and safety was an area in which I was particularly interested. When the chair and board positions were advertised, I applied because I had a genuine interest in the area.

The position was advertised and I had to submit a CV. I had to make a comprehensive submission on how I met the requirements of the position. I had also to say why I felt I would be a good chair of the Health and Safety Authority and my background knowledge of health and safety, my corporate governance knowledge, my managerial knowledge and my change management knowledge were included in the covering letter I submitted with my CV. I applied to the Public Appointments Service and went through its process, to which I am not a party and on which I cannot, therefore, comment. I was, however, delighted to be advised by the Department that I had been recommended as chair.

Deputy Niall Collins: Was there any interview?

Mr. Tom Coughlan: No, there was no interview. I was appointed on the basis of my comprehensive written submission and the PAS process. I do not know what background checks the service carries out.

Deputy Niall Collins: Does Mr. Coughlan have any vision for the organisation? How will the organisation look when he has finished with it?

Mr. Tom Coughlan: This may change when I learn more about the role but I have already

stressed the importance of engaging with stakeholders. The Health and Safety Authority is a very efficient, well-run organisation. In one way it stands alone, at arm's length from the Department, and I hope it will continue to operate efficiently. I hope the organisation will continue to be adaptable and can change according to external circumstances. Strategic priorities have been set for 2016-18, one of which concerns work-related health risks, and I hope the HSA will concentrate on that area. Safety chemicals accreditation is another area, as is changing the organisation as necessary to make sure it is fit for purpose. I hope that at the end of my term the HSA will be recognised, nationally and internationally, as best in class. I cannot do that on my own and will have to do it with the executive and fellow board members, with the Department and with all other stakeholders.

Deputy Maurice Quinlivan: I wish Mr. Coughlan all the best for the future and hope he does well in his job. If he makes the HSA best in class, it should mean there will be fewer fatalities and accidents, which would be very welcome. I commend him on his reference to positive mental health, an area to which the Minister of State, Deputy Breen, referred in the last presentation. It is important that we focus on that issue in the workplace. He recognised the fact that the construction industry will pose a challenge because of the good things it will be doing in the future in the area of infrastructure and building houses. He said there will be an increase in inspections in this area so we will see how we get on with them. I wish him the best of luck for the future.

Chairman: I add my voice to that. I see the vision of the authority as focusing on healthy, safe and productive lives. Mr Coughlan said he would play his part to achieve that vision so as to ensure that workers returned home safely to their families every day. This is something we can all aspire to because 45 work-related deaths in 2016 means that 45 families were destroyed. In the next few years we are, hopefully, going to see a glut of young apprentices in the construction industry and in farming and health and safety are very important. We have come through a period of rogue builders and it is very important for any parent who sends a child out to do an apprenticeship that the health and safety checks are in place.

On behalf of the committee, I thank Mr. Coughlan for coming here to engage with us today. I wish him success in this role and we look forward to meeting with him again in the future. The clerk to the committee will write to the Minister informing her that we have completed our engagement with Mr. Coughlan and a transcript of this meeting will be provided.

Sitting suspended at 4.49 p.m. and resumed at 4.52 p.m.

Banded Hours Contract Bill 2016: Discussion (Resumed)

Chairman: I remind members, visitors and those in the Public Gallery to ensure their mobile phones are switched off or on flight mode for the duration of the meeting as they interfere with the broadcasting equipment even when on silent mode.

I welcome Dr. Desmond Ryan, School of Law, Trinity College Dublin, and Mr. Ronnie Neville, employment lawyer and Ms Joanne Hyde, chair of the employment law committee, Law Society of Ireland to the meeting to discuss the Banded Hours Contract Bill 2016.

Before we commence, in accordance with procedure, I am required to read out the following. By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by

absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, 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 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 they 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 witnesses that their presentations should not be more than five minutes' duration. The presentation submitted by today's witnesses has been circulated to members. Three Senators were here but they had to leave because there is a Bill being discussed in the Seanad and they were required for the purpose of votes. When today's meeting started we had a much larger attendance.

I ask Dr. Ryan to begin the presentations.

Dr. Desmond Ryan: I thank the Chair and members of the committee for extending an invitation to me. In terms of the perspectives that I hope to bring to the committee, they come from my being a researcher in employment law with a particular emphasis on atypical or non-standard work. I am also a practising barrister of many years experience who has represented employees and employers. Therefore, I hope that I am well placed to comment in a balanced way on this proposed legislation.

I commend the sponsor of this Bill. The legislation is a very significant step in strengthening further the rights of atypical workers and those working in precarious forms of employment. However, in my view there are a number of potential difficulties with the Bill as currently drafted that require reconsideration. As the legislation attempts to deal with the issue of banded hours it ought to strive to be fair, effective and sufficiently balanced in terms of the interests of workers and employers. The first of the areas that I would like to focus on is the balance that has been struck in the Bill, as currently drafted, between flexibility and security. A cornerstone of European employment law is the combination of flexibility and security that has given rise to an EU law concept of what is termed "flexicurity".

In terms of the balance between flexibility and security in this proposed legislation, I have a number of comments to make. First, in terms of the flexibility principle, section 3, as currently drafted, lacks sufficient flexibility for a number of reasons. The first point I will emphasise is the stringency of the potential defence that an employer has under this section. I have concerns about the constitutionality of this section on the basis that the test laid down is onerous. The test laid down in section 3(4) makes reference to severe financial difficulties and the substantial risk of redundancies or an unsustainability of the business among other things. I would favour the replacement of the current test with a test of objective justification. The latter test can be found in the other three Acts on the Statute Book that deal with atypical work. Those are the part-time, fixed-term and temporary agency work Acts.

Section 3 lacks flexibility due to the way two employers are treated in the very same way and I will explain. Let us consider an employer has legitimate reasons for not acceding to the request made under section 3(1). Under the Bill, as currently worded, if that employer does not

provide a sufficiently reasoned decision explaining that then he or she will be treated in exactly the same way as another employer where he or she sets out to conjure up spurious reasons to deny the claim even though the latter employer can well afford to grant the claim.

Section 4, as currently worded, uses mandatory language to state that the Workplace Relations Commission will order the employer to increase the worker's hours to the next band. In my view, it is unsatisfactory that no differentiation is made between an employer who does not set out clearly or in a sufficiently reasoned way very good reasons and the employer who has no good reason. At present both types of employer are treated in exactly the same way.

There is another element to the flexicurity goal. In terms of security of employment for vulnerable workers, it is important to move away from the notion of job security and the idea of holding down one job for all of one's lifetime. Instead, we should consider security of employment more generally. I mean employability or making an individual more employable by having protections in place that are balanced against the needs of businesses. This aim could be better achieved. I urge the committee to consider protection for workers in terms of penalisation. The Bill, as currently drafted, enables a worker to seek the right to move up to an increased band but grants no protection to the worker against unfair dismissal or adverse treatment that flows from his or her request. That is a conspicuous lacuna or gap in the existing Bill that ought to remedied.

In terms of the obligations on the employer such as notification and displaying hours, I refer to the type of analysis used in Court of Justice case law on objective justification. I question whether there is a need for such onerous requirements in terms of display and translation. I also note that there is no provision in the current wording for redress to be sought in the event of non-compliance with the notification provisions.

I welcome the Bill. It is an important additional step to protect vulnerable workers. I am concerned about the constitutionality of the legislation in terms of the balance being struck between flexibility and security. In my view the Bill as it stands is insufficiently flexible. The committee might consider introducing more flexibility. I go back to my example of the conscientious employer who legitimately cannot provide the additional hours but who, perhaps due to time delay, cannot obtain the relevant financial information in the 21-day period, for example. The committee could consider importing a provision to enable the Workplace Relations Commission to draw inferences from the failure to provide the response in a reasoned way within 21 days. Such provisions relating to atypical workers are in the Protection of Employees (Fixed-Term Work) Act and the part-time legislation. That would be a more proportionate way to deal with different cases in a sufficiently differentiated way.

On balance, the Bill is very welcome. I have a number of other observations to make and I hope I will have the opportunity to do so during the discussion.

Ms Joanne Hyde: The Law Society of Ireland and in particular its employment and equality law committee welcomes the opportunity to address the committee on this important legislation. The relevant committee has approximately 25 practitioners, all experts in the area of employment law. We act for employers, employees, trade unions and employer representative groups. On matters of policy, we have remained neutral in respect of this legislation, as we do on other legislation. We have limited our observations to legal issues we have identified, as has Dr. Ryan.

I will ask my colleague and co-member, Mr. Neville, to address those in detail.

Mr. Ronnie Neville: I thank the committee for the invitation to participate in this consultation process. The society is aware that the committee has been consulting with various interested parties on the Bill. We have reviewed and considered some of the representations made to date. Given that the committee has already received numerous representations, highlighting legal issues and potential concerns, we do not want to rehearse those either in our written submission or in this oral submission. We sought to limit our comments to the two most important provisions in the Bill.

The society acknowledges concerns which have given rise to this Bill and which have been put before the committee regarding certain practices affecting some casual employees working under if-and-when contracts. The society absolutely endorses and supports any efforts for greater protection of workers where such protection is necessary. The most obvious example is that of workers who are on a part-time contract, for example, for ten hours a week, and who over time, perhaps a number of years, may well have actually been rostered to work more hours, such as 25 to 30 hours. Obviously there has been some media focus on this in recent years. Undeniably where there is such an obvious practice of consistently depriving a worker of the contractual right to the hours that he or she consistently works, this justifies a change in the law in order to offer such workers protection. However, the society has concerns that the Bill, as drafted, may place a disproportionate burden on employers. This, in turn, gives rise to potential constitutional concerns regarding the Bill.

During previous consultation before the committee, various speakers emphasised that the intention of the Bill was to give a worker a contractual right to the existing working hours already in place, but it should not give rise to workers gaining a right to demand additional hours. We have concerns that section 3 appears to expressly allow for this. The Bill makes express provision for an employee to be moved to an "increased" weekly band of hours, where the band requested "exceeds" the average hours worked weekly in the previous six-month period. It does not provide for workers requesting to be moved, as a matter of contract, to the band of hours which corresponds to the average weekly hours worked. It expressly provides that the worker should request the next, or higher, band of hours.

We recommend that the committee should consider the constitutionality of such a provision as to require an employer to increase workers' hours above those usually worked, even on an average basis, may be disproportionate. It is conceivable that under the Bill as drafted an employee could build up their contractual hours by making repeated consecutive requests every six months. Clearly that was not envisaged by the proposers initially, nor is it envisaged today. That would need to be considered.

Our second main concern is that the threshold to be reached by an employer to lawfully deny a request to provide increased contractual hours appears quite high and may be excessive. The Long Title to the Bill provides that the employer must consider an employee's request for an increase in hours and to "permit refusal only on objectively justified grounds". Notwithstanding the Long Title, that is the only reference to objective justification in the Bill. Thereafter, the Bill is silent. Specifically, section 4(3), as Dr. Ryan pointed out, provides that the request can only be refused by demonstrating that the business is in severe financial difficulty such that there is a substantial risk that either people will be laid off or that the sustainability of the business would be adversely affected. Clearly the language used in the drafting of the Bill has been very deliberate in specifying "severe financial difficulty" and "substantial risk" of those dire financial difficulties.

The justification for refusal appears narrow and fails to allow for any other form of objective

justification. The committee might consider whether the threshold for an employer refusing a request should be lowered, as there appear to be numerous examples of situations which might objectively justify a refusal, other than being in dire financial straits.

We recommend that the committee may need to look closely as the constitutional aspects of the Bill and in particular the scope of the Bill on two fronts. One is the potential to seek and obtain higher hours than those previously worked and the second is the considerable limitation on the basis on which employers can refuse such a request.

Senator Paul Gavan: I thank the witnesses for their presentations, both of which made for very interesting reading. I am intrigued by the submission by the Law Society of Ireland. As Ms Hyde mentioned at the beginning, its members represent employers and trade unions across the board. I cannot help noticing that its submission, unlike that of Dr. Ryan, does not make reference to how to strengthen legislation for workers' rights. That is somewhat strange for an organisation that claims to be neutral on this. How did the representatives of the Law Society of Ireland miss the points that Dr. Ryan made or do they disagree with him? I specifically refer to his point on the notable omission in the current Bill of any protection from penalisation. As someone from Sinn Féin I accept this; we think that is an area that needs to be considered. He also referred to an amendment to the Unfair Dismissals Act to allow for redress for unfair dismissal. The Law Society of Ireland made a number of points here, but did not make a single point on how the Bill might be strengthened for workers. Why is that?

Mr. Ronnie Neville: At the outset, we acknowledged that various written submissions and oral presentations have been made which covered numerous aspects of the Bill, including legal issues. Given the time allowed on foot of the invitation to be present, for which we are grateful, we deliberately did not seek to go over all the relevant sections or indeed to support or acknowledge some of the other recommendations or observations offered, including Dr. Ryan's regarding potential improvements from a worker's perspective.

As Ms Hyde, as chair of the committee observed, we act for both sides of the equation. We identified concerns over potential challenge to the legislation. That does not mean to say we do not agree with potential improvements, including, for example, compensation as an alternative to merely making an order for an increase in hours, or a suggestion that some form of penalisation clause might be built in to protect a worker. Our not making that express recommendation does not mean we do not acknowledge that these issues exist.

The two main concerns we have with the Bill as drafted relate to potential constitutional challenge. These are the two most striking points that occurred to us and perhaps were ones that did not seem to have been acknowledged, particularly the potential for block-building regarding requests. It is not necessarily in circumstances that we are making representations for employers that we observe that an employee could conceivably make repeated requests every six months to effectively ramp up their hours over a period of time.

Dr. Desmond Ryan: Concerns about the potential constitutionality or long-term sustainability of this Bill, albeit that they have pointed to specific issues which could also match employers interests and concerns are not necessarily reflective of any particular stance in favour of employers. For example, from the point of view of the individual employee, the vulnerable worker being protected by a legislative measure, the concern is that if that legislative measure is itself struck down then the vulnerable worker will lose that protection.

Senator Paul Gavan: If he does not mind my saying, Dr. Ryan's submission had a fair

degree of balance in highlighting elements that needed to be strengthened but also the constitutional concerns and other concerns, where to be frank, the Law Society's submission did not. I do not see any point in its submission that identifies an issue of concern from the point of view of protecting workers. I am disappointed that that is the case.

Dr. Ryan's submission suggested that consideration could be given to banning if-and-when contracts. He also says that proportionality concerns arise there and he says that "consideration should be given to rendering such arrangements presumptively unlawful unless that presumption is rebutted by an employer through the invocation of objective justification grounds". I was struck by that as an alternative potential path that we could look at. Could Dr. Ryan tell us a bit more?

Dr. Desmond Ryan: To give the committee some context, what I was alluding to was an existing legal provision from the fixed-term workers directive which has been transposed into Irish law under the 2003 Protection of Employees (Fixed-Term Work) Act. That directive expressly states that fixed-term contract arrangements are not to be regarded as the norm in terms of the ideal form of working. They require to be justified if they are going to be used. As the committee will be aware, under the Protection of Employees (Fixed-Term Work) Act, an employer has to explain why it is having recourse to a fixed-term contract as opposed to giving somebody an indefinite contract, effectively a permanent job. The employability concern that I referred to earlier is very well captured by that legal provision because it says that if an individual worker is to be employed on a form of employment contract that lacks long-term security, that has to be capable of being explained. That is a principle that could be very effective in regard to if-and-when contracts. To return to the Senator's point about balance, I recognise that employers may contend that to have an outright ban or a blanket rule precluding zero hours or if-and-when contracts would be a disproportionate interference with the way in which particular employers need to run their business. It seems to me that a more balanced approach would be to say, in recognition of that argument but furthering also the employees right to a degree of security of employment, that the particular business must be able to explain why for its business an if-and-when or zero hours arrangement is necessary. We then go back to the established legal principles in terms of objectively justifying a particular measure.

I would also emphasise, from recourse to comparative studies of other jurisdictions, in the United Kingdom, for example, that there is not an outright ban on zero hours contracts but what has been done there is that specific regulations have been brought in which ban exclusivity clauses. In other words, if an employer tries to say that they want their workers on zero hour contracts but they are also preventing them from working for a competitor, that is unlawful under United Kingdom legislation. There are ways in which what is perceived as a specific abuse of zero-hours or if-and-when contracts can be managed without banning them outright and in general, in light of the experience of the other three Acts on atypical work - part-time, fixed-term and agency work - outright bans in regard to atypical work are not desirable. What is needed is more nuance which tries to strike that balance. I agree with Mr. Neville's point about objective grounds being used both in the defence, currently in section 3(4), but also more broadly in regard to the committee's concern about banning zero-hour contracts.

Chairman: To follow on from the original question, Dr. Ryan and others have suggested that amending current legislation might be a preferable alternative to this Bill. Do the witnesses believe that an amended version of this Bill could be integrated into existing legislation or would it require amendments to various pieces of legislation?

Dr. Desmond Ryan: It certainly would require either amendments to or direct incorpora-

tion with various pieces of legislation. One difficulty with which we are all very familiar as employment lawyers or practitioners is the piecemeal legislative situation in regard to a myriad number of Acts of the Oireachtas dealing with specific issues. That is realistic in terms of the need to address specific issues as they arise, but that is where we are on the legislative picture. In my written submission, in regard to the consolidation of these protections, it seems potentially anomalous and undesirable that, for example, the existing provisions in the Organisation of Working Time Act 1997, in sections 17 and 18, would coexist alongside the provision in section 5 of this Bill in terms of the obligation to provide the information about availability. That seems likely to give rise to very significant duplication of resources but also confusion as to the notification obligations.

I also mentioned the concern about unfair dismissal. As the committee will be aware, and I know it has been rehearsed in other submissions, there is a 12-month service requirement qualifying period. A major concern I have in the current Bill - I return to the text of the Long Title and the aim of this legislation which is to protect employees, to protect workers - is that if I speak up and look for my employer to give me an additional band of hours, under the current wording I have no recourse if I am summarily dismissed for having done that. Even if the employer accedes to my request and gives me the additional hours, I still have no recourse for unfair dismissal unless I have the 12 month qualifying period. To return to the Chairman's comment, I believe that consideration is necessary as to how these measures would tie in with the existing legislation on unfair dismissal and with the time period, and also to look at it from the perspective of the employer insofar as the employer is already dealing with its obligations under the Protection of Employees (Fixed Term Work) Act. Take an employee on a fixed-term contract of six-months duration, how is that situation going to be reconciled with the provision in section 3 in regard to a six-month window? What mismatch would there be, if any, between the entitlements that the worker could have under this legislation in the context of the fixed-term work legislation? A related point is the need to have consistency of definitions. As the committee will be aware, the definition of "worker" is that borrowed from the Industrial Relations Act.

A point I would make more generally, coming from that point, is that this Bill seeks in a very commendable way to protect workers, but it seems to me to be trying to unify two very different approaches, one from an industrial relations perspective, which is evident in the borrowing of the definition of "worker" from the 1990 Act on the one hand, and on the other, the protective legislation in the employment law sphere. I already mentioned the part-time, fixed-term and agency work Acts. Those pieces of protective legislation give a framework within which this type of protection for the precarious worker could be achieved on a footing that would potentially be more balanced.

Deputy Niall Collins: This is the second group of legal people to make a presentation to this committee. Like the previous group, they have acted on both sides, be it employer or employee. Both have expressed the view that the legislation as drafted by the sponsor may be, or is, unconstitutional. It is significant if that is the case, so could the witnesses expand on this?

Dr. Desmond Ryan: I am conscious that Mr. Neville has looked at this in detail so I will make one brief point and pass back to him. I want to make a point about Article 26 and the Employment Equality Bill, a Supreme Court challenge to the employment equality draft legislation prior to its subsequent enactment in a different form in the 1998 Employment Equality Act, which I do not believe has been raised in any of the submissions. A particular provision in that Bill imposing an obligation on employers in the context of the disability ground was deemed

to be unconstitutional. There was a specific reference by the Supreme Court to the fact that the proposed legislation would have required employers to disclose to third parties the financial status of their business. That is a very important statement in the Supreme Court decision in the Article 26 employment equality case because the concern expressed about an obligation being placed on employers to disclose their financial status is one which seems to me to be particularly pressing in this context. I question whether that is proportionate to the aim being pursued in circumstances where there could be all manner of reasons an employer may not be well placed to accede to the request. As long as it can explain that in a transparent and objective manner, it would still strike the balance sought to be achieved in the legislation.

I also share the concerns which have been expressed by the representatives of the Law Society in relation to the use of the word "accede" in section 3(1). There is a real risk there of unconstitutionality. One way to deal with that would be to prefer wording like "meets" or "covers" or "is already in accordance with or reflects the situation". If we boil it down, what the committee and the sponsor of the Bill are trying to do is ensure for employees that their contracts of employment reflect the reality of the work they are doing. That is a basic right and there is a dignity interest in that. There is also a clarity and a certainty that comes with it. In fairness, that is not the same thing as saying that an individual worker should be entitled to accrue rights which he or she never had prior to seeking them. Before she moved to the Supreme Court, Ms Justice Laffoy determined a case in the High Court under the fixed-term work legislation. In McArdle, she specifically clarified that the effect of being able to have one's rights vindicated under the fixed-term work Act and to be entitled to a contract of indefinite duration did not and could not enable an employee to secure better rights or a better job than he or she had prior to bringing a claim. That is very authoritative dicta from an extremely respected now Supreme Court judge in employment law. It is an important principle in the context of considering the potential constitutionality concerns.

Chairman: Follow that, Mr. Neville.

Mr. Ronnie Neville: In simple terms, the draft legislation must strike a balance between the interests of the worker and the employer. Senator Gavan commented on the potential imbalance in our observations, but the Law Society seeks to identify two main concerns in relation to the Bill as drafted which might allow interested parties, more likely on the employer side, to challenge the two specific provisions highlighted which are, most obviously, potentially susceptible to challenge. The first is that the proposers of the Bill want to ensure, laudably, that there is no abuse of an arrangement. I acknowledge that to be not only commended but supported by the Law Society. However, while there is a six-month timeframe of a look-back in this draft Bill, in reality over the course of a longer period, perhaps a number of years, an employee may be kept on a lower number of hours than is actually being worked. It is obvious to all concerned that an abuse of that type should not be supported and should be stopped. The difficulty with the Bill is that, contrary to the stated intention, it does not simply provide for the employee to be brought up to the average hours he or she was working. It expressly goes further than that. We are merely highlighting it as the Law Society and acknowledging in the interests of both parties that it is a susceptible exposure. There is a potential area of concern that it could be challenged on the basis that constitutional property rights are potentially being breached in circumstances where an employee who historically has been working 25 to 30 hours over a number of years gets bumped up to a higher band of hours. While it might be laudable that the worker should be brought up to the number of hours he or she has been working over a number of years, he or she now actually gets more hours. That is not what was stated to be the intention and it would be a potential concern from the prospect of challenge.

The second major concern in relation to challenge is as follows. Speakers have referred to proportionality. It seems clear that there has to be a proportionate response to the concerns of workers not being entitled to receive as a matter of contract the hours they work over a period of time. Obviously, when an employer receives this request, it needs, in order to protect the workers, to be able to offer a reasonable explanation as to why it is either going to accede or refuse. As the Bill is drafted, the bar is set so high that it gives rise to constitutional property right concerns where the employer would say he or she cannot but accede to this because the only way he or she can lawfully deny the request under the legislation is to prove with financial data if necessary that he or she is in severe financial difficulty such that the business is in jeopardy. Setting the bar so high gives rise to a concern about proportionate interests and the lack of reference to objective justification which is contained in the Long Title. That objective justification should provide for an employer being reasonably entitled to offer an explanation which, if objectively justified, would then permit it to lawfully refuse. As drafted, the Bill has no such objective justification defence. It is merely provided that unless the employer is in severe financial difficulty, it has no choice but to accede to the request.

Chairman: On the same point, Senator Gavan.

Senator Paul Gavan: I am interested that both Dr. Ryan and Mr. Neville raised the point in relation to the financial proof elements of it. Where there is a call for a pay rise and the company says while it would love to give one, it cannot afford it, there is a well-established practice in the Workplace Relations Commission whereby it appoints an independent person to look at the books privately and without exposing them to anybody else. The person can come back and say whether the firm can afford it. It has never been a problem. There has never been a challenge while the practice has been in place for years. Why could that same system not operate here?

Dr. Desmond Ryan: This point goes directly to the potential hybrid between the industrial relations influence of the Bill and the protective employment legislation influence of it. A couple of technical points are very relevant to the Senator's question. Any appeal from the Workplace Relations Commission as provided for in section 4(6) goes to the Labour Court and that appeal is to be heard, unless there are very compelling reasons otherwise, in public with the parties identified and the determination published. That is unlike the situation in the Workplace Relations Commission to which the Senator alluded. The consequences of exposure or a finding of breach under section 4 of this Bill would have severe and, it appears, irrevocable implications for the employer. There is no provision in the legislation as drafted - and this goes back to Deputy Collins's question on constitutionality - for the employer in the context of a diminishing profitability or need for expanded hours to seek to have the worker revert back to the previous hours, nor is there provision in respect of inferences. I urge the committee to consider the inferences point as going specifically to this question. If we think about the 21-day time period in section 3, after the worker makes the request and while the employer is trying to collate the data to assess the financial viability of the proposal, a further 20 requests may come in within ten days. These requests themselves will have implications for the data and whether the hours are going to be available. Suddenly there are only 11 days left within which to take this reasoned decision and communicate it. The complete lack of any basis to allow the employer either to look for extra time or explain why it could not provide the decision is a problem in the proposal. I emphasise again that in terms of the aim that is being pursued it can be done. However, it needs much more nuance in section 3.

Chairman: I add one further question to whoever wants to answer it. Are the witnesses aware of any EU legislation which the Bill might contravene?

Dr. Desmond Ryan: No. The cornerstone of EU employment and social policy is the flexicurity imperative I mentioned, which is "flexi" as in flexi-time and security of employment as opposed to job security. Flexicurity seeks to promote and harness circumstances where there is a balance of flexibility and security for the individual worker. This measure, which seeks to pursue that aim, would be in accordance with that ideal. However, as we have all indicated, the Bill as currently presented would pose significant problems and is not in accordance with the Court of Justice's approach with regard to objective justification for the employer being able to defend a claim. Certainly, what is being pursued by the Bill is very much in accordance with European employment and social policy and is a good thing.

Senator Paul Gavan: I have a brief question. Mr. Neville and Dr. Ryan have expressed concerns about the proportionality of the Bill in terms of the balance that must be struck. Would they accept that there is an imbalance at present and that the imbalance is to the detriment of the worker?

Dr. Desmond Ryan: One of the interesting features to emerge from the University of Limerick study on zero-hour contracts was that it appears that the use of zero-hour contracts is far less frequent than had been feared. In terms of where there are the so-called if-and-when arrangements, which are identified by the Limerick study, my view is that there is a gap or lacuna in the existing legislative protection whereby there is no basis on which, at least pursuant to statute, an employee can require that the reality for that employee is reflected in their contractual status. As I said, that is an important right which an employee has and it is something which could be strengthened by legislation.

Senator Paul Gavan: The witness makes the point in his submission that, at present, an employer employing somebody under an if-and-when contract never needs to dismiss anybody. They can simply stop giving them hours. That appears to be a huge imbalance. Does Mr. Neville agree?

Mr. Ronnie Neville: If there are situations where over a relevant period of time - the Bill provides for a six month look back although various commentators have suggested that this might be too short a timeframe - there is a consistent pattern of workers receiving more hours over that period, it is absolutely unsurprising that there should be a change in the law to allow that worker to make a request of their employer to bring them up to their de facto hours. That is laudable. If there is a suggestion in the submission that this is something which is not to be promoted, I can emphasise on behalf of the society that it is something that should be actively promoted. All we seek to do is say that notwithstanding the laudable aspirations of the Bill, and it should be promoted, the balance must be struck for fear that the Bill could fall down and be susceptible to challenge, which would ultimately be to the detriment of workers.

Deputy Maurice Quinlivan: I seek clarification on that. The witnesses have said on numerous occasions that various commentators have said X, Y and Z and they have quoted from them. Most of the contributors who have appeared before the committee to date have had problems with this before they came in the door. I do not believe they wish to legislate for the issue. Representatives of the unions will appear before the committee after these witnesses, and the witnesses might have more things to say after the union representatives appear so that we have more balance. They might quote from some of the union representatives and Deputy Cullinane. I am concerned that the witnesses are quoting people who, when they appeared before the committee, offered no solution to the problem we have, which is zero-hour, if-and-when and banded hours contracts. That is my concern.

Chairman: In fairness to our guests, they are considering it specifically from a legal point of view. Are the witnesses aware of comparable legislation in other jurisdictions with which we might be able to compare what this Bill is trying to achieve?

Dr. Desmond Ryan: I recommend that consideration be given to the 2015 regulations in the United Kingdom, which specifically address the abusive practice of precluding a zero-hours worker from working for anybody else. That is recognised as unduly constricting a worker's ability to generate income and take up work elsewhere and it has been dealt with specifically in that legislation. That is a more nuanced response to the concern about banning zero-hour contracts. It shows how legislation is capable of achieving that. Incidentally, English law specifically removes the qualifying period for unfair dismissal claims. In that jurisdiction, the qualifying period is two years, which is longer than it is here, but it waives it where the person contends that they have been penalised for raising this concern about working on a zero-hours contract for another employer.

Senator Paul Gavan: I am aware of that legislation and it slightly improves the situation. However, it does nothing with respect to an employer who has a huge pool of labour and each week picks who will get hours. Why would the witness not ban zero-hour contracts? What possible damage could be done by just outlawing them?

Dr. Desmond Ryan: Again, it comes back to the ability of an employer to contend that, for its specific business need, there may be circumstances where they can be justified. Of course, this is subject to safeguards protecting the workers. One safeguard is to make that argument as, under the Protection of Employees (Fixed-Term Work) Act, one can only make it successfully if one can show that one's specific business need justifies a fixed-term contract or, in this case, a zero-hours contract. It is not a free for all. It is not the case that some empty incantation can be invoked by the employer. They must be able to demonstrate concrete reasons. The case law on this is very robust. It says that the employer cannot simply have recourse to an empty formula but must explain, with reference to its business and its specific sectoral need, why it can only offer this type of contract. To return to the question of why we cannot simply ban zero-hour contracts, obviously that approach is open but it admits of no possible circumstance where it could be permissible or desirable as a contract model. Again, I refer to the other forms of what are referred to as atypical work such as part-time, fixed-term and agency work and the recognition that, in certain circumstances, they can suit the needs both of employers and workers. As long as there is a degree of regulation ensuring a minimum safeguard for the employee they are not necessarily, in and of themselves, to be prohibited.

Senator Paul Gavan: This arose at a meeting with IBEC recently. There are no circumstances in which it would suit an employee to not know how many hours they will get in the following week. Employees want to know. Even if it is only five hours, they want to know that it is five hours so they can plan for child care or to do other work. I can think of no circumstance, and if the witness can think of one he should suggest it, where an employee would want a situation where he or she does not know how many hours they will work the following week.

Dr. Desmond Ryan: I accept that the idea of extremely precarious work practices where there is a lack of clarity and certainty about when an individual will be working is presumptively problematic. This was referred to in the questions posed to us in being invited here and included, for example, an individual's capacity to save money and to have a modicum of a sense of security within the role they are carrying out. Much of the literature on atypical work and more casualised forms of work shows that having access to less rigid or Procrustean models of work can avail workers at certain stages of their lives when they particularly want flexibility

and are not able to take on rigid commitments week to week. I agree with the point the Senator made that it is difficult to conceive of a zero-hours contract promoting flexibility for the worker. However, I question the propriety of having an outright ban.

The other point that must be made is that zero-hours contracts as referred to in section 18 of the Organisation of Working Time Act, for example, is a different concept from a zero-hours contract in the UK and the regulations I mentioned. If one wanted an outright ban, one would have to be clear as to what zero-hours contract is being referred to. For example, in that legislation, there is a minimum payment commitment for hours not being provided. The first matter in consideration of any ban would be to clarify whether there is any degree of reciprocity or mutuality involved in the relationship. Even zero-hour contracts as envisaged by section 18 of the 1997 Act contain a minimum floor of security for the worker with regard to payment which zero-hour contracts in other jurisdictions do not have.

Chairman: Are there any further questions? I thank the witnesses for coming to engage with the committee today. It was very worthwhile. I propose that we suspend to allow our next guests to take their seats.

Sitting suspended at 5.40 p.m. and resumed at 5.43 p.m.

Chairman: I welcome Ms Patricia King, General Secretary, and Mr. Liam Berney, Industrial Officer of the Irish Congress of Trade Unions, ICTU. I also welcome Mr. John Douglas, General Secretary of the Mandate Trade Union. I also welcome Mr. Paul Bell, Health Division Organiser, and Ms Ethel Buckley, Services Division Organiser from the Services, Industrial, Professional and Technical Union, SIPTU. I also welcome Mr. Richie Browne, Regional Co-ordinating Officer from Unite the Union. This is the second session of today's discussion on the Banded Hours Contract Bill 2016.

Before I read out procedure, I would like to apologise for the small number of members who are present. We had three Senators here who had to go to the Seanad because the Companies (Amendment) Bill is being discussed there at the moment. Debate on that has concluded so some of them may return. Deputy Niall Collins had to leave because he is on the radio at 6 p.m. We commenced at 4 p.m. so there is a little bit of toing and froing.

Before we commence, in accordance with procedure, I am required to read the following. By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to 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. They are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person 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 they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I remind our guests that the presentation should be no more than five minutes in duration. The presentation submitted by today's attendees has been circulated among Members. I understand that, by agreement, ICTU will be making an opening statement to the committee and Mr. Paul Bell of SIPTU will follow this, looking specifically at health care workers. I ask Ms

Patricia King to begin the presentation.

Ms Patricia King: I thank the committee for the opportunity to address it on this important issue.

Congress has been highlighting the issue of low-hour contracts for some time and, arising from our campaign, the previous Government commissioned a study on the prevalence of low hour and zero-hour contracts in Irish workplaces. The study, which was carried out by the University of Limerick, found that there was considerable evidence of low-hour contracts in some sectors of the Irish economy. The report proposes a number of changes to legislation to give workers more certainty regarding their hours of work. Congress supports the recommendations in the University of Limerick study and we believe that the Banded Hours Contract Bill 2016, which has been referred to this committee for consideration, is an important step in bringing to an end the exploitation of thousands of workers in workplaces.

The correspondence inviting us to appear before the committee this evening asked us to give consideration to a number of specific matters. Our views on these matters are summarised in points made in paragraphs 6 to 9 of this submission.

Congress and our affiliated unions have been pointing out that there are significant negative implications for individuals working on low-hour contracts. Workers who are employed on low-hour contracts have little predictability about the scheduling or number of hours they will be required to work in any given week. They have uncertainty about their income which often leads to difficulties, including lack of capacity to access financial credit, managing work and family life and generally have poorer terms and conditions than those who work full-time hours.

The most extreme form of low-hour contracts are those contracts that do not specify and guarantee working hours, so called zero-hour contracts. Congress is strongly of the view that there should be a legal prohibition on such contracts. We believe that this was the intention behind some of the provisions of the Organisation of Working Time Act. However, in reality, the passing of this legislation has not prevented employers from using zero-hour contracts. We strongly believe that workers should have a legal right to a guaranteed minimum number of working hours.

Some employer organisations have raised concerns about the impact on small business of any further regulation of working time. We do not believe that any new law which seeks to give greater certainty to workers about their working time will have a negative impact on small business. The Banded Hours Contracts Bill 2016 seeks to balance the needs of employers with the need to give workers more predictability about when they are required at work. It has been suggested that the remit of the Low Pay Commission should be expanded to allow it to give consideration to proposals on banded hours. Congress believes that it has been demonstrated conclusively that further regulation of working time is required. Asking the Low Pay Commission to review the proposal on banded hours contracts will only delay the implementation of the required changes to the law on working time.

Congress is therefore seeking changes to legislation that would provide for the following. The first is a right in law to a guaranteed minimum number of working hours and a legal prohibition on zero-hour contracts. Another change is a right to be paid compensation, at the appropriate hourly rate of pay, when no work is made available. Another is an amendment to the Terms of Employment (Information) Act to require an employer to provide a written statement

of terms and conditions of employment, including working hours, from day 1 of employment. The final change is the right of employees to claim an alteration to their contract of employment in respect of working hours if, over a specified reference period, their actual working hours are in excess of their contracted hours as provided for in the Banded Hours Bill 2016.

Chairman: I thank Ms King and call Mr. Paul Bell.

Mr. Paul Bell: I want to touch on the issues that community health workers face. I thank the committee members most sincerely, on behalf of health workers engaged on precarious and zero hour contracts working in community health, for the opportunity to make this brief submission to the joint Oireachtas committee today. I would ask that they note that SIPTU health division fully concurs with and supports the submission presented by the Irish Congress of Trade Unions General Secretary Ms Patricia King here this evening. In the course of this brief submission, which centres on community health support workers, I will refer to the Government-approved study on this subject. This study was conducted by the University of Limerick. I will also rely on my direct experience in advocating for and supporting vulnerable health workers exploited through the practice of zero hours contracts, which are repugnant to the principles of a fair and just workplace.

The State's main employer in the health sector is the Health Service Executive. Until 2013 the HSE practised zero hour contracts. This practice was ended by SIPTU's successful campaign which resulted in a binding Labour Court recommendation CD/12/527 issued on 16 September 2013. This Labour Court recommendation compelled the HSE to ensure that each community and home help employee, directly employed by the HSE, would have a minimum of hours which the worker could not fall below and that should the hours not be available the employee would receive payment and the hours would be banked for future use in the service. While we see this outcome as an advance in the right direction, the progress made was limited to workers who are organised within the trade union family and who, just as important, successfully communicated to both the public and public representatives the injustice they were suffering. Ongoing efforts to secure the same outcome in HSE-funded section 39 employments have thus far been actively resisted and frustrated by the Department of Public Expenditure and Reform which has committed to resolve the issue of zero hour contracts and employees' rights to access to the State's grievance and dispute resolution machinery. This agreement is an integral element of the Lansdowne Road agreement, and as of today has not been implemented by the HSE.

It is SIPTU's experience that health workers exposed to precarious or zero hour contracts are predominantly female; are low paid or on minimum wage; are mainly working in isolated settings such as home care; have basic education or are early school leavers; are in a higher age bracket, from 35 to 49 years and 50 to 65 years; have received very limited or zero employer-sponsored education; are likely to be non-Irish employees, with rates of 12% excluding nursing homes, which according to the last employer census stands at 51% non-Irish; are exposed to part-time work; work in community settings; are likely to be lone parents as they are more prevalent in the heath care sector than any other sector of the care industry; are highly flexible; are highly vulnerable to private sector tendering process; have limited or no opportunity to personal development education; are working in an unregulated industry; are unregistered workers; and may require State pay support through the Department of Social Protection to mitigate against the poverty trap.

Government policy in addressing the changing demographics of our nation has shifted over the past two decades to caring for elderly and disabled citizens in their home and community.

SIPTU supports this policy in recognition that, unless absolutely necessary, citizens requiring care should in the first instance be cared for in their home or community, whether it be a rural or urban setting. However, SIPTU is determined that health care provided in the service user's home or community must be equal to that of care offered in an institutional setting. We also are determined that it must also be regulated by HIQA to ensure that this desired benchmark is upheld and advanced in the interest of the service user and those workers charged with delivering care in what can be described as an isolated challenging setting. With the exception of agreements reached with the HSE to offer a floor of rights which includes basic hours, significant numbers of section 39 employers - HSE funded - have removed themselves from any forum which attempts to even the playing field for vulnerable employees. The private sector, also in receipt of huge funds from the Exchequer via HSE service level agreements, have also in the main behaved in a similar fashion. SIPTU is determined to ensure that taxpayers' money spent on community care is not based on a casualised, vulnerable and undervalued workforce.

Community care and home care must issue a contract of employment reflecting in the first instance a minimum floor of hours with the optional right to work additional hours when available reflecting the flexibility required in this sector.

Government policy must ensure that the industry is regulated and that care workers are registered.

In order for the highest standards of care to be provided in the home and community settings, the Government must support and resource FETAC training and education for these workers. Such a policy would also allow for these workers to advance their skills and create opportunities for them to work in other areas of health care.

The Government and its agencies contracting services to section 39 and private sector providers must, through their service level agreements, stipulate the requirement that zero hour contracts cannot be applied and that a worker's right to have his or her grievance or dispute addressed by, for example, the Workplace Relations Commission or the Labour Court, must be be a right which cannot be obstructed or frustrated.

These points, if applied, will prevent the home care community care setting from being casualised and will ensure that workers and the vulnerable clients they care for are protected by the highest standards. SIPTU is opposed to taxpayers' money being issued to employers who believe that is some way they are remote from employment and justice in the workplace. SIPTU also believes that the taxpayer expects vulnerable workers to be treated fairly and have their rights upheld in the workplace.

Chairman: I will start with a few questions. Previous speakers before the committee have had numerous concerns around the drafting of the Bill, highlighting in particular that there may be some constitutional issues placing a disproportionate burden on employers. We are trying to get a balanced approach here, so the witnesses might address that. We have heard a lot of evidence over the last few months.

The question of unintended consequences was raised, and in fairness to the drafter of the Bill that was never the intention. Quite a few different organisations have flagged that there may be unintended consequences.

Does SIPTU currently have any agreement with employers using a banded hour system?

Ms Patricia King: On the constitutional issues and the disproportionate matters and the

burden that may arise for employers, my understanding of the Bill before us is that it would provide workers in a company with an opportunity to put forward a claim to have their contracted hours included in a band of hours if, over a period of time often referred to as the look-back, it could be established that that was a pattern of employment. I listened to the employers' contribution to the committee and also to Deputy Cullinane, who instigated this Bill in the first place. From the employers' side I could not understand how they could construe that there would be any burden placed or imposed upon them in this, in that every employee would only be able to seek to have the pattern of hours that they are currently working assured in a banded hours scenario. One could not make the claim without having the pattern of hours and attendance, so it seemed to me - if I am permitted to say it - that there was a deep lack of understanding as to what the Bill was about and how it would work in practical terms. There were many comments on burdens on employers, but they bore no relationship at all to what was in the Bill. If I work in a particular company, this Bill promotes a six months look-back-----

Chairman: Does Ms King think that the six months is sufficient?

Ms Patricia King: I do not.

Chairman: Does she think it needs to be longer?

Ms Patricia King: I have spoken to Deputy Cullinane many times about this. The Unfair Dismissals Act terms kick in after 12 months of employment. Someone who is only in employment for six months is taking a big risk approaching an employer with a claim because, notwithstanding the very good employers who are out there, there are employers who are quite capable of mishandling or misusing a situation whereby somebody puts forward a claim and within a relatively short period of time finds himself or herself unemployed. That person has little or no comeback by virtue of not being covered by the Unfair Dismissals Act. The argument that the period should be 12 months plus could be considered. There is certainly an argument to the effect that a period of 18 months would provide certainty regarding unfair dismissals and address a number of sectors in which there are peaks and valleys in terms of how busy they are. Employers could argue that the pattern of hours was only due to the fact that it was coming up to Christmas, Easter, the summer holidays or the like. A period of 18 months is probably more likely to give a more balanced view of an employee's claim of a pattern, as it would take in all eventualities. This is open to debate. Deputy David Cullinane stated he was open to considering it.

Chairman: Absolutely.

Ms Patricia King: I am not saying anything that is contrary to what he said.

Chairman: Dr. Desmond Ryan from the school of law at Trinity College Dublin attended one of our meetings. He made the same point about there being a gap in the Bill as regards unfair dismissals that needed to be addressed. If the period was six months, someone could be dismissed unfairly. I jotted down the point he made. This is something we might have to-----

Ms Patricia King: That is high-powered company to agree with me, but there we are. It is a first.

Chairman: Members will agree that he made that point.

Ms Patricia King: People with no coverage under the legislation will be vulnerable.

There is no reason to suggest there would be a disproportionate burden on employers if the only basis for the claim is the pattern of hours a person is required to work in X period, thereby putting him or her in band A, B or C and the certainty and other beneficial elements it provides for the employee. The burden has been overstated by employers either because they are opposing the Bill or do not understand it.

Mr. John Douglas: I am the general secretary of Mandate, the bar and retail workers' union. We welcome the Bill. It is good and has the potential to address most of the abuses and exploitation found not only in the retail sector but also in the hospitality, education and, as Mr. Bell pointed out, health sectors.

Does the question on a balanced approach show a lack of understanding of the problem? One cannot balance exploitation against workers' rights. There is no equation - it is exploitation and an abuse of power by employers. How can any worker expect to live without knowing what his or her wages will be from week to week? The only contractual commitment a sizable number of retailers make to an employee on starting is that he or she will work 15 hours per week. People might work 39 hours per week for two, three or ten years, but if they move up the service scale, their rates will increase, they will join a union or they will say something they should not and their hours will be changed suddenly. Not only will their days change, but their rosters and times will also change, with a dramatic reduction in their working hours to 15, the only commitment employers are prepared to make. This has nothing to do with balance; it is sheer exploitation. Every worker should at least have some idea of how much he or she will earn from week to week. Otherwise, employees will be blocked from taking out loans. Bank managers look at their contracts, see that they are only guaranteed 15 hours per week and do not care how many hours they actually work. This issue must be addressed. In asking about a balanced approach one misses the problem.

With the exception of one that, under the Chairman's guidance, I will not mention, we have reached banded hours agreements with the majority of retailers along the same lines as the provisions included in the Bill. If retailers can operate within the guidelines and have the necessary flexibility to run their businesses on a profitable basis-----

Chairman: Successfully.

Mr. John Douglas: -----there is no need for employers to worry. We will not close down major multinationals across Ireland at the stroke of a pen. The world goes on. We have had these agreements in place for the past five or six years.

Chairman: That the unions have reached successful agreements on banded hours contracts is an important point.

Mr. John Douglas: Not only does the employer have control over what a person earns on a week-to-week basis, he or she can force him or her out of the social welfare system. An employee must work 19.5 hours to be entitled to family income supplement, FIS. Not only do employers control people's behaviour by messing around with their hours, they can mess up their part-time social welfare entitlements and FIS payments also. The control of this power has a chilling impact on many employees and their behaviour. It is unfair, unbalanced and an abuse of power. Asking whether we can balance the rights of employers with those of employees is akin to asking whether we can balance workers' rights with the right of employers to exploit their employees. That is a non-starter.

Chairman: Through no fault of the drafter, could the Bill have negative unintended consequences? Negative consequences have been pointed out to us. For example, a legal group told us that a worker employed by the State would not be covered because the definitions of "worker" and "employee" had been drawn from two-----

Mr. John Douglas: I would be happy for all workers to be covered, be they State or private sector employees. In terms of the Unfair Dismissals Act, the threshold could be lowered to six months, which would make perfect sense. One year is too long.

Chairman: For the-----

Mr. John Douglas: Unfair dismissals legislation coverage. It could be solved that way also.

Ms Patricia King: There is dancing on the head of a pin in that regard.

Chairman: It is a play on words.

Ms Patricia King: The definitions of "worker" and "employee" are set down in legislation. If we call the State sector what we generally regard as being the public sector, shift patterns and various bands of hours are commonplace. They are also commonplace in airports, airlines and so on by virtue of the nature of the business where they include early morning and late night working. Shift roster patterns are a nightmare to manage in particular industries, but these industries agree that they would not survive if they did not have these patterns.

I would not regard the two issues raised as unintended consequences. A worker can only make a claim if he or she is working the hours. If someone's contract includes a period of 15 hours and it can be established that the pattern in the past six, 12, 18 or however many months has been that he or she is working between 20 and 25 hours, the legislation allows that pattern to be banded. As Mr. Douglas stated, this provides certainty of hours and income. However, if the employee is not working the hours in the first place, he or she cannot make the claim.

Currently, an employer decides for how long employees work and what income they will receives. He or she picks and chooses at will which of them will be offered the work, often at very short notice. This is an unbalanced relationship. The balance of power in the matter of hours and earnings lies entirely with the employer. While I do not think this measure would solve all of the imbalance that exists, I suggest it would be an effort to address some of that imbalance.

Deputy Maurice Quinlivan: I thank Ms King and Mr. Douglas for their presentations. I welcome Ms King's comment that this important Bill is a "step in bringing to an end the exploitation of thousands of workers in workplaces". It is important to note that she stressed Congress does "not believe that any new law which seeks to give greater certainty to workers about their working time will have a negative impact on small business" because other contributors have suggested differently. I was also struck by something else she said. Many groups have come to this committee to speak about this Bill or to give us private briefings on it.

The presentation we were given by IBEC last week clearly showed its deep lack of understanding of the Bill and its contents. I will give IBEC a bye because it might be the case that it was not trying to mislead us, but instead simply did not understand the Bill. Having said that, the briefing from IBEC on the Bill and its contents - or, more particularly, what is not contained in the Bill - was very biased. I think IBEC threw in many red herrings in an attempt to complicate something that is not especially complicated. It has tried to make it sound like the Bill will

do much more than it will do, particularly with regard to its impact on businesses. I have asked a number of groups to propose other ways of solving this problem. Every member of the committee agrees that the problems associated with low-hours or zero-hour contracts, banded hours and if-and-when contracts need to be solved. As Mr. Douglas has outlined, such contracts are preventing people from being able to get mortgages and loans. It is hard to organise child care when one does not know what hours one is going to be working next week. As Mr. Douglas said, it should be emphasised that employers are messing around with people's social welfare by changing the number of days they work and the times at which they have to come into work. Such practices make some people unable to apply for social welfare. I commend Ms King and Mr. Douglas on their presentations.

Senator Paul Gavan: I welcome the witnesses. I think this is our sixth meeting on banded hours.

Chairman: We have had quite a few.

Senator Paul Gavan: We have. It is very welcome to hear the voice of organised workers for the first time. We have had a number of presentations from employers' groups, including some that I did not know existed. Perhaps that is a reflection on me and my naivety. It is important for the committee to get an idea of how widespread is this problem. I am conscious that some of my colleagues are not present.

The employers' groups have made two contradictory arguments. They have argued that this problem affects a small number of people. At the same time, they have argued that if these changes are made, it will be a disaster for the economy. Mr. Bell has highlighted how widespread the use of if-and-when and zero-hour contracts is in the health sector. I invite the others who are present to talk about how widespread it is in other sectors and to say whether they think it is growing.

Ms Patricia King: I will give a general answer before asking Ms Buckley to set out some of the good sectoral information that is available. According to the latest CSO figures, 35.2% of workers earn €400 a week or less, 75% of those who work in accommodation and food earn less than €400 a week-----

Chairman: Is that 75% of the 35% mentioned by Ms King?

Ms Patricia King: No, 75% of all workers in accommodation and food earn less than €400. That 75,000 workers earn the minimum wage or less provides a fairly good picture of the size of low pay. I would regard anybody who is earning €400 or less as being definitively categorised as a low-paid worker. Furthermore, 32% of all workers are in the next tranche, which comprises those who earn between €400 and €800 a week. The figures I have provided for these sectors are a good indicator that low pay and low hours go together. The proposed Bill does not deal precisely with some of the issues mentioned in our submission, such as the problems associated with zero-hour contracts and the need for a minimum number of hours. We are advocating strongly for the five points set out in the submission. For the purposes of this conversation, we are talking about banded hours. The figures I have mentioned clearly indicate how this issue fits into an overview of the economy and of employment in Ireland. There are just under 2 million workers in Ireland, of whom 365,000 are regarded as self-employed. Therefore, there are 1.65 million direct workers in part-time or full-time employment. That gives a good outline of the size of the low-pay issue. Ireland ranks second among OECD countries - behind only the US - in the low-pay category. We have a very bad track record in this area. I ask Ms Buckley

to hone in on the accommodation and food sectors.

Ms Ethel Buckley: I thank Ms King. It is important for me to respond to a question that was asked earlier by saying that the services division of SIPTU, which represents workers in the private sector, has reached numerous voluntary agreements with employers that are trading successfully in respect of banded-hours contracts. I will restate the nature of these agreements. A worker can claim the banded hours that he or she has been working but cannot claim for additional new hours. Some of the employers with which we have agreements are very large and successful. I will not name them because I want to comply with what the Chair said earlier. They include some of the most successful wholesale and distribution companies. If those good unionised employers had been given an opportunity to be here, they would say that these agreements with trade unions allow them to plan their businesses successfully. They also take pride in offering quality employment that people can actually live on in the certainty that they will earn living wages. Like previous speakers, I would like to put it on the record that we have already reached such agreements voluntarily with employers.

Unfortunately, a positive story is not coming through in the hospitality sector at present. We regularly deal with workers in this large sector of the economy, which is generally not unionised, who are fearful of organising unions because they know of numerous examples in the industry of workers who have been discriminated against and have faced recriminations after taking such steps. Last year, there were many media reports of dismissal for unionising and asserting the right to fair employment and good working conditions. The prevalence of low pay, low working hours, zero-hour contracts and the lack of certainty of earnings in the hospitality sector reflects the fact that employers in that sector appear to be pursuing an employment strategy based on having a large pool of casualised workers available to them. I would say that until the 2000s, the hospitality sector offered decent employment to people. Somebody could do the group cert or the leaving cert and then go to CERT, which was a State body, to be trained in a craft skill as an apprentice chef, commis chef, chef de partie or silver service waiter or waitress. This would enable him or her to get a job in a hotel and stay in that hotel to earn a living, raise a family and own a home. Now the vast majority of workers in the Irish hotel industry cannot aspire to owning a home or rearing their own family without State subsidy in the form of family income supplement. Legislators and policymakers need to consider whether this country wants to pursue an employment model where profitable private sector employers are being subsidised by the State in pursuing casualised employment with low levels of working hours, zero hour contracts and low pay. That is what is happening in the industry.

A veto is being pursued by the hotel and catering industry – the entire hospitality industry to which Ms King referred – regarding engagement with the machinery of the State in addressing these matters, which are joint labour committees. They are to where the low pay industries have traditionally gone. Worker and employer representatives sit down and deal with the particular issues in their industry. They reach an agreement, which becomes the statutory minimum. Hotel and catering employers are currently refusing to do that.

If one compares that with employers in the private sector in industries which are agreeing to sit down and negotiate with employee representatives, one finds there is a very different pattern. For example, the contract cleaning and private security industries have agreements that address wages. Nobody is going to get rich as a private security guard or contract cleaner, but people can raise families on the wages they earn because they are the result of collective bargaining.

Joint labour committees and EROs can agree working hour patterns that reflect the particular characteristics of an industry. We have concluded a negotiation which will, I hope, do that

very thing in the security industry, namely give certainty of hours to security guards. It is an industry in the private sector where the employer body has agreed to put in place guarantees and conditions regarding working hours. If the security industry can do it, I do not know why other industries cannot. I wish to reiterate the points made by Ms King regarding the Unfair Dismissals Act, which were very clear.

Senator Paul Gavan: It is worth repeating that 35.2% of the workforce earn €400 or less per week. For the benefit of my colleague, Senator Reilly, I wish to repeat that we had been led to believe that this was a relatively small-scale problem. That was never my experience as a trade union official. Based on what we have heard from our colleagues, this affects a range of sectors. It is the model for the hospitality sector which, as the witnesses rightly pointed out, receives a subsidy of €650 million a year while refusing to engage with industrial relations bodies. It is also extremely widespread across private health care, from what Mr. Bell has said. I believe it is rampant across retail. Am I missing out on any sectors such as education?

Mr. John Douglas: Education is one of the sectors.

Chairman: The figure that was discussed at earlier meetings was 80,000 or 1%. Am I correct?

Senator Paul Gavan: Yes.

Chairman: We were told 80,000 may be affected.

Senator Paul Gavan: That is why it is important to hear this story today. The figures come from the CSO and cannot be disputed. The figures demonstrate that there is a major problem with low pay and precarious work in this country, which affects over one in three of the workforce. That is all the more reason the committee will, it is to be hoped, contribute to a resolution of these issues.

Chairman: Are the figures net or gross?

Ms Patricia King: They refer to the number of employees. It does not refer to take home pay. A sum of €400 or less is the gross amount of money.

Chairman: Ms King said 32% earn between €400 and €800.

Ms Patricia King: Yes, that is the next band. One of the positives about the Low Pay Commission is that it has urged the CSO to do more work in this area. Over the past two years the CSO has increased its capacity to produce these figures. The figures I mentioned relate to the end of 2014 and the beginning of 2015. That is a good picture. It is doing very worthwhile work.

Chairman: Ms King said the six-month period could be extended to provide a proper pattern.

Ms Patricia King: As I said, six months is probably not the correct amount of time for the reasons we stated related to unfair dismissals. There would be an argument that a person who worked for 12 months plus one day would be covered by the unfair dismissals legislation and, therefore, it is a case of job done. As a trade union official, if I was to make an argument that there is a concerted pattern over a long period of time a stronger argument could be made. That is my judgment and is a personal view having represented workers for years. If one is able to convince someone that one is looking back over a solid period of time the chances are that one

will convince him or her of that view.

As the committee knows, we have engaged with the Department of Jobs, Enterprise and Innovation and have campaigned for years. We have met many Ministers over the years and in the past couple of months, and have tried to convince them that they need to put in place legislation which deals not just with banded hours but also zero hour contracts, minimum hours of attendance at work and so on, a lot of which would be based on the UL review which the last Government sponsored.

Employers have also had such discussions. Luckily for both groups they have not been in the same room, but we have argued the points with officials in the Department.

Chairman: I will refer to another part of the Bill because an issue arose with many employer groups. I do not normally ask so many questions but because many members are missing I will do so. Many employers had an issue with the part of the Bill requiring them to state quite clearly in writing how many hours were available to a particular person for a week in two different languages. In fairness to Deputy Cullinane, he was not hung up on the issue. Do the witnesses have any comment on that?

Mr. John Douglas: Is the Chairman referring to Irish and English?

Chairman: Yes, or English and Polish or Latvian.

Deputy Maurice Quinlivan: I challenged IBEC and others on the issue because I thought they were trying to complicate things more than was necessary.

Ms Patricia King: Mr. Browne may wish to contribute because Unite, the union, has a fair number of people involved in this. My candid view is that employers are able to handle complex tasks, including management tasks, with workers who do not speak English as a first language. In the main, English is the language we use. Employers in accommodation and food outlets are able to manage staff and direct them to do what they want to be done, to ensure that everybody understand their instructions and that employees understand what is happening if they are being dismissed and so on. It is a fairly feeble position to try to argue that it would be a bit difficult to outline banded hours in Polish, Lithuanian, Estonian or whatever other language.

Chairman: I do not think language was the issue. Rather, it was the fact that the information would have to be displayed for everyone to see quite clearly.

Ms Patricia King: They display many notices. They pay people. Workers have to understand their instructions, contracts of employment and what happens when they are initially employed.

Chairman: I do not want to argue with Ms King, but the point employers were trying to make was this would not apply solely to new employees who might be on banded hours contracts. Rather, it would refer to everyone. That is a major issue for a large factory employing 800 people. The proposal states that each employer shall display, on a weekly or monthly basis in a prominent position or positions a notice or notices in the form and manner such as the notice is reasonably likely to be understood by the workers concerned. There are 800 workers in Bausch & Lomb in Waterford and some employers asked how such a business could display everyone's working hours. The points were made to us as a committee.

Ms Patricia King: On that particular issue, I do not think it would affect those situations

because in factories like that there are shifts and rosters. There are not those sorts of rates of pay and low hours.

Chairman: The wording of the Bill would mean that it would affect them. It does not state categorically in the Bill that it would only affect these particular workers. It states in the Bill that it would encompass every worker. That is where employers felt there would be unintended consequences and this would be one of them.

Ms Patricia King: There may be something in the drafting of the Bill that alludes to something unintended. That is often the case in a Bill. The basis of the Bill, however, is that if one's contract is different from one's pattern or work, one has the opportunity to make a claim. In most organised employments it does not arise because, for the reasons Mr. Douglas has outlined, there are already collective agreements. The labour inspectorate and its current rules, for instance, already require employers to meet certain standards in respect of information to employees. Indeed the labour inspectorate can already require the employer to comply by putting up notices, if they do not already do so, in respect of certain aspects of the employment. That is already a feature anyway. I am quite sure employers would say they would find it burdensome to do so in a number of languages, but that is all that is required. They must ensure, as part of the labour inspectorate's rules, that the employees understand the message of compliance notices and so on. I am not sure that there is anything substantive in the claim that there would be unintended consequences that would then cause them a great burden, which I think is the point employers may have been making.

Chairman: Are there any further questions?

Senator James Reilly: I apologise, I was in the Seanad with a Bill and then had to go to a quick meeting. We are all concerned that workers have been taken advantage of with these zero-hour contracts and the whole issue of banded hours. The statistic given here today, that 32.4% of workers are earning €400 or less gross, is a disturbing figure and certainly one the committee will want to look at long and hard. We are very proud of the fact that we have gotten so many people back at work, but we want to make sure that the wages they earn allow them a decent standard of living. Clearly that piece of information was not something that had been highlighted to us before Ms King came in here today. For that point alone I would like to thank her.

In respect of the overall Bill itself, are there any issues with it that Ms King would like to see changed to improve things from the worker's perspective or is she happy that the Bill is complete?

Ms Patricia King: As I made reference to earlier, I believe that prohibition of zero-hour contracts needs to happen immediately. That is not provided for in this Bill. The issue of notifying employees of the number of hours in any week that they are required to work should be in law. As was set out in the University of Limerick, UL, review, the matter of people being paid for a minimum number of hours at their rate of pay should be set down in legislation. Again, it would stop much of the unbalanced relationship whereby the employer is entitled to call people to work and then send them home having earned nothing. In a lot of cases, it would have cost an employee to go to work, then when he or she gets there, there is no work and the employee is sent home. If the person does not take up the work, he or she is no longer on the list to be called for work. Again, this is more of the unbalanced relationship.

We believe that there should be legislation as the UL review has set out. That issue is very

prevalent, for instance, in education. Somebody can be called in to do an hour's work then the classes are changed, and he or she is not needed to do the lecture and is told to go home. Certain parts of the education sector have very bad practice in this regard. We have debated and discussed this many times. From our perspective, we would like to see legislation which, at the very least, attempted to address zero-hours contracts, the minimum number of hours and the requirement for an employer to be able to set out what hours an employee will be requested to work per week or per day, whichever is appropriate. This should be set out at a very early stage, probably on day one. We believer an amendment to the Terms of Employment (Information) Act or a new composite Bill would be the most appropriate instrument to achieve this. Those pieces are fundamental in trying to address this imbalance in the relationship between worker and employer. We would like to see legislation that started to deal with those issues at the very least.

Mr. Richie Browne: I want to re-state or emphasise the issue of banded hours. Effectively, somebody who is guaranteed or contracted for ten hours a week but in fact works 20, 25 or 30 hours a week, on a regular and continual basis, would be given the ability to look back over a reference period, state that he or she had actually worked 20 or 25 hours week on a continual or regular basis and make a claim for that certainty or for those hours.

That does not place an additional financial burden or an extra cost on the employer because the employer is already paying. The employee is doing those hours on a regular basis and is getting paid for them. They are not worked for nothing. The employee is getting paid for them, which means the employer is already paying for those hours. All this does is give that person a degree of certainty in respect of their own financial arrangements and personal circumstances. It is not an additional cost or extra financial burden on the employers. They are already paying it anyway.

Chairman: Are there any further questions?

Senator James Reilly: What do the witnesses say to the contention of some of the business people who were in here around the hospitality industry, where students sometimes work few hours and sometimes longer hours? In respect of that 34.2% who earn €400 per week or less gross, are they all full-time workers working 40 or 37 hours or are they people who are working part-time and who would have family income supplement and so on?

Ms Patricia King: The figures are determined by the CSO using P35 information from Revenue, which is a new channel of information that the CSO has linked into. It is based on employees and their work. There would be a mix of-----

Senator James Reilly: They cannot be distinguished.

Ms Patricia King: They cannot, as yet.

Senator James Reilly: Will Ms King answer the question on students?

Ms Patricia King: Students feature. I sit on the Low Pay Commission and the issue of students and where they sit in the order of things comes up quite a lot, particularly when employers come in to make submissions to the commission. The holy all of it is why do we differentiate? If someone is coming to do a day's work, an hour's work or two hours' work and is going to do the work to the required standard, that person deserves to get paid a decent wage for doing it. If he or she is available to work two hours a day or 15 or 20 hours a week, the employer is obliged to pay a decent and fair rate for the labour, once he or she does the required work. I am not sure

I understand the difference between the non-student and the student worker.

I have heard some arguments made, though I would regard them as weak, that these people are training. The training issue is dealt with in the minimum wage. There is provision for that. I hope the apprenticeship will be a growing feature of our economy, to boost training access for people and so on. All of that, and how people are treated in the training mode, is dealt with in law through the industrial training orders. If one is making oneself available and has a contract with an employer to do the job, it really makes no difference if one does not fit into either of those categories. If one does not fit into either of those categories, the fact that one is making oneself available and has a contract with one's employer to do the job really does not make any difference. If one is doing the job and getting paid, one should get a decent rate for doing the job. That would be my argument. I argue that at the Low Pay Commission all the time. I do not think that being a student makes any difference to it.

Senator James Reilly: That was not the nature of the question. I fully agree with the principles of what the witness just espoused. People doing the same work, whether students or not, should get paid the same. The question was more about the flexibility that both students and employers would seek, though some have abused that arrangement, as we have all acknowledged here. There are students who would value that flexibility of being able to work a few hours during the week, a few more at the weekends and maybe not work a few weeks when they have exams coming up. They are then able to work a lot more during the holiday period. The perspective of how this Bill impacts on them is where the employers were coming from, or so I thought. It is not that it would result in paying people less, rather that by having a less than flexible piece of legislation that would not cater for that could disadvantage these people. That was the way I understood it and the concern I would have. We all agree that we need to tighten up the legislation because the abuse of workers that is clearly taking place in certain instances by some employers who have been anything but scrupulous in their application of fair law needs to be addressed. At the same time, I do not want to create a hammer to break a nut. That is the concern.

Mr. John Douglas: Mandate Trade Union deals ostensibly in the bar trade and the retail sector. As explained earlier to the committee, we have quite a number of banded hour agreements and collective agreements with all the major retailers bar one at this stage. That covers students, young people, women and men. There is no difference. A worker is a worker; he or she is entitled to the same rate of pay. It does not cause any problems for these very profitable retailers to employ students or not to employ students. In fact, students like certainty. They like to know when they can get off to college and when they get time to do their exams. They do not like being exploited.

This is not about creating a balance between flexibility and workers' rights. There is an abuse of power here. It is about people not knowing from one week to the next how much money they are going to earn. Will they have enough money to pay their rent, student accommodation, books and tuition fees? That is wrong and we have to call it wrong. Whether it is a student, a young worker, a female worker or some other worker, it is wrong. All we are asking is for a decency threshold. We have heard from Ms King that the figures are alarming. The employers in general cross all sectors - retail, hospitality, security and a whole other range. They have passed on their responsibility to provide decent jobs and a decent living wage to the State. The State is picking up the pieces through family income supplement, social welfare supplements, benefits and part-time dole. These workers can no longer contribute to the Exchequer because they are not earning enough to pay tax. They cannot be consumers in the local

economy and create other jobs by having money to spend. They are trapped in a vicious cycle of poverty. The State is picking up the pieces.

We need to call it for what it is. It is mass exploitation. Whether it is students or young workers, precarious employment is wrong and we need to put a stop to it quickly. Zero-hour contracts and precarious employment are becoming too prevalent in the Irish economy. We are second only to America as OECD countries in the prevalence of low-paid jobs. We are a low-paid economy and this is going to have massive impacts on the Irish economy not only on our ability to provide services for people in terms of resources, but also on creating a consumer economy in which people have money to spend in the local economy. We have to deal with it and this Bill goes a long way to dealing with it.

Deputy Tom Neville: I want to apologise for not being here. I have been in and out of committees-----

Chairman: I saw the Deputy on the television screen. He cannot be everywhere.

Deputy Tom Neville: The timing did not work. I apologise for that. It is not as if I was not interested in what the witnesses were saying. I will be watching this session back later on this evening.

I was a casual employee for years in the bar trade. I have worked in bars, supermarkets, etc. Oftentimes, I worked two or three jobs. I could get ten hours in one place and 12 hours somewhere else. It may have been across the same business unit, such as two or three different bars owned by the one bar owner or whatever. What kind of implication would this legislation have for the flexibility of workers who might have ten hours in one place and are trying to get four to seven hours somewhere else? Can the witnesses see any deficiencies around that or any obstacles for somebody trying to do that?

Mr. John Douglas: There is a major profitable multinational retailer in Ireland that will remain nameless - at this juncture anyway - that only guarantees its workers 15 hours a week. It works its workers between 15 and 39 hours a week but only guarantees them 15. They could be working 30 or 35 hours a week for years, but for some reason that could be dropped to 15. An employee cannot then go to look for a second job because the employee cannot tell the second employer when he or she is available. He or she will not know when he or she will be available from week to week. Those employees are trapped in that job and trapped in poverty.

Deputy Tom Neville: That is one multinational, but in general, can the witness see any obstacle for somebody who may be guaranteed ten hours a week in one specific organisation and wants to work five or six hours somewhere else? Can the witness see any obstacle to the flexibility of that in this legislation?

Mr. John Douglas: No. It has nothing to do with flexibility. It is about exploitation. Let us call it what it is.

Deputy Tom Neville: I understand that. I understand where the witness is coming from on that. That was my question-----

Mr. John Douglas: Frankly, this has not nothing to do with employers' flexibility. I have been in retail now for 37 years. The least offenders are small employers in the retail sector. The big players are the ones with the fancy scheduling machines and computers that have the employees up and down. They know when a customer is going to come in any given week. They

will have the employee in for a half an hour. When that customer goes, they tell the employee to come back in for another half an hour next week. These are mass employers and profitable companies that have passed on their responsibility to provide decent jobs and that pay dividends to their massive shareholders wherever they are. That is the reality of it. Let us call a spade a spade.

Ms Patricia King: There would not be a problem if an employee was with an employer and the offer was five hours, the employee was getting five hours and was not in a position whereby he or she is contracted for five hours but wanted for ten. In that case, the employer will only honour in contract the five hours and the employee is guaranteed only that. That is the point. There is little opportunity for a downside to this. That is why we have such difficulty understanding employers' opposition. In fairness, I watched the full session with the employers here. I heard a lot of the committee members question the employers. Senator Reilly made the point that he put to us about the unintended consequences involving students and the whole lot. We cannot understand what the employers are bringing as opposition to this. As Mr. Richie Browne has said, people are already getting paid the money and the patterns are already established. Therefore, it is about control. That is what the employers are objecting to. It is about holding on to the unbalanced relationship. The employers can work the employees for as long as they like, for as little as they like and for as much as they like. They have that in the low-pay area. I have publicly said that several times. It is for as long as they like, for as much as they like and for as little as they like, other than the minimum wage. That is what we are talking about here. The segment of the employment population subjected to that is a growing segment. That is the point. This is not about the burden of anything. It is about the loss of control. We have argued and lobbied that this is an entirely unbalanced area and needs to be dealt with. It is a very strong policy failure that it is not dealt with.

Mr. Paul Bell: In the health services in home help provision, one may find that a home help or home care worker works on and off for an average of 25 hours a week, even though the contract could be for ten hours or a minimum of ten hours. On some occasions, it predominantly impacts on female workers. They are told the hours are going to be reduced, but if they wish to pick up the hours they had, they can work for an agency. This is a manipulation. It involves the State employer saying that it has to reduce the hours because its budget is gone, but if the employee follows on another link, he or she can work those hours for the same client by jumping onto that ship. If a worker is working an average of 20 hours for a period of, say, 18 months, as Ms King has suggested, the employer would have to provide those hours or the funding for them. I know exactly the position Deputy Neville is describing. In the health services, some people have to juggle employers; sometimes, however, it is for the worst reasons. The proposal is just to demonstrate that I am not actually working those people the hours that they are required to give that service.

Chairman: Is there anything further?

Senator Paul Gavan: This committee has always worked constructively and tried to build consensus, as we did in respect of the Brexit report. Concerns have been expressed across all sides about workers' rights. I ask the committee to look at point 10 on the ICTU statement, which is a simple summary of what congress is asking for. I think we can all agree on these points. We can all agree that workers should be entitled to a guaranteed minimum number of working hours. There is nothing unreasonable about that. The right to be paid compensation at the appropriate hourly rate of pay where no work is made available is perfectly reasonable. I do not think anyone from any party would object to the right to terms and conditions of employ-

ment. Finally, there is the right to claim an alteration to their contract but only on the basis of looking back, perhaps over as long a period as 18 months, as Ms King has said.

I hope all of us could sign up to those points. As Ms King has pointed out, we could make a difference to a huge segment of the population. The political point I would make is that the economic recovery is quite imbalanced. We could have a way of making a real difference to people at the low-pay end of the spectrum by adopting these proposals. I would hope they would not be politically contentious because they should not be.

Ms Patricia King: We talked about low pay and that segment of the population and so on. We must not forget that the State steps in to subsidise employers that, based on their profit levels, are very well capable of paying more than they are paying. The State steps in with social transfers such as family income supplement, FIS and so on, to alleviate the at-risk-of-poverty categories in our society. That is the way it works. We do not think it is the right way. It is about the redistribution of wealth. That really is the basis of all of the argument when we analyse it.

Chairman: I thank the witnesses for their attendance today. I know it is late in the evening. That concludes our business.

The joint committee adjourned at 6.53 p.m. until 4 p.m. on 9 May 2017.