

OCCASIONAL PAPER  
**EMPLOYMENT RELATIONS  
IN NORTHERN IRELAND –  
CO-OPERATION OR  
CONFRONTATION?**

*Patrick McCartan, Labour Relations Agency*



**Labour Relations**

**A G E N C Y**

*Improving Employment Relations*

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# Employment Relations in Northern Ireland – Co-operation or Confrontation?

By Patrick McCartan, Chairman, Labour Relations Agency

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## Introduction

There is a myth that employment relations are 'good' in Northern Ireland.

They are not. They are too slow, too costly, and too litigious. As such, they are a threat to jobs and careers, to business organisations, large and small, public as well as private, and are a drag on our local economy and our international competitiveness. They could be much better. They should be much better.

In our new political reality, the economy, business performance and career opportunities are expected to be at the top of the agenda in the Assembly. Hard on their heels comes the pressure for efficiency and value for money, the Review of Public Administration, the need for improved health and social care, better education, water and local government, as well as devolved central government, with infrastructural investment in roads and public transport. Small firms, often seen as the area with most potential, need to be encouraged to grow. The accepted view is that if we have the right economic package then Northern Ireland can truly realise its potential, that we will have economic success, and that we can match the Irish Republic for growth, wealth creation, and we can match Britain by eliminating the gap in income per head. A few fiscal measures from the Chancellor, some cross-border infrastructural investment, and all will be well under a new devolved government.

So far, little or no thought has been given to workplaces. It is just assumed workers and managers and owners will be happy to co-operate better than ever before in managing the largest set of changes and challenges they have ever faced. Or, that workplace issues are not that important, and can be put right as we struggle along.

The indications are not good. The RPA involves legislating for changed contracts of employment for 150,000 public service workers. The potential for litigation, on employment rights, human rights and equality matters is significant. Public interest in the location and possible re-location of organisations and jobs is high. Levels of trust between employer and employee in public services can not be said to be high, given recent employment relations experience. Negotiations and consultation over terms and conditions are so important, yet there appears to be no coherent policy for having such mechanisms for public sector workers in Northern Ireland, where a variety of arrangements, or sometimes none, exist. A high level of trust is essential for successfully managing change and competing in today's world of work. Peter Drucker knew this well...

**"Organisations are no longer built on force, but on trust. The existence of trust between people does not necessarily mean that they like one another. Taking responsibility for relationships is therefore an absolute necessity. It is a duty. Whether one is a member of the organisation, a consultant to it, a supplier, or a distributor, one owes that responsibility to all one's coworkers: those whose work one depends on as well as those who depend on one's own work." (Drucker, 1999).**

In individual employment rights matters, NI continues to lead the way in raising significantly more cases per head of the working population than in Britain. We also lead the way in delays before cases are heard at tribunals, but some progress is being made by the LRA in conciliating cases before hearings and by scheduling cases through improved tribunal processes. (See below).

There is a growing complacency that human resource management techniques now deal with all the people issues in organisations, and that employee attitudes and behaviour become compliant where HRM is practiced by employers. I take serious issue with Human Resource Management, which largely ignores the central importance of employment relationships. There has been a buildup of human resource theory since 1980, particularly centred in the US, which has argued that if an organisation designs and applies a “bundle” of HR best practices to employees, then performance and competitiveness will be enhanced. The expectation is that if the right bundle of HR practices is carefully designed and chosen for the organisation, if the employment practices are modern, flexible, and adapted to serve their lifestyle as well as the needs of the organisation, then employees will almost automatically perform at a high level. They are expected to move beyond compliance with their contract of employment, and to demonstrate commitment to the organisation by contributing their discretionary effort. Good terms and conditions of employment, with some focused training and development, will solve the people problems in managing change, building productivity, and improving competitiveness....., or so the theory goes. Employees are expected to recognise the generosity of the employer; the satisfaction derived for working for such an advanced organisation, and be fully committed to its mission statement, its vision, its set of values, its quality assurance standards, six sigma, EFQM, balanced scorecards, Charter Marks, IIP, and all the rest. In my view, such approaches, based upon HRM being put into practice, are either doomed to failure, or only partially succeed, because they ignore the centrality of the employment relationship. That relationship is essentially individualist, not collectivist, and is dependent upon the employee perception of trust, fairness, and the extent to which their expectations are fulfilled.

So, from this it is reasonable to assert that the ability to make a significant impact on a business organisation is dependent upon

securing continuous individual employee engagement at a high level.

Also, the employment relationship is no longer governed just by the contract of employment, but rather by the psychological contract between each employee and the employer, and by the current framework of employment rights. So what is meant by the term “psychological contract”, and how is it to be successfully managed if business organisations are to be successful as well as deliver employee expectations?

### **Psychological Contract – Definition**

Schein, in 1965, defined the psychological contract as ... “a psychological contract implies that there is an unwritten set of expectations operating at all times between every member of an organisation and the various managers and others in that organisation.”

More recently, Denise Rousseau (1994) has expanded it .... “Psychological contracts refer to beliefs that individuals hold regarding promises made, accepted and relied upon between themselves and another. (In the case of organisations, these parties include an employee, client, manager, and/or organisation as a whole.) Because psychological contracts represent how people interpret promises and commitments, both parties in the same employment relationship (employer and employee) can have different views regarding specific terms.”

In recent research work for the CIPD Professor David Guest identified three essential values for high performance workplaces. These were high trust, inherent fairness, and delivery of the deal (*Guest and Conway, 2004*).

All NI business organisations, public as well as private, micro, small, medium and large, community and voluntary, need to be competitive to survive and grow. The central importance of the employment relationship requires a modern approach. To achieve continuous levels of high performance the employment relationship has again to be

placed at the centre of business activity. This must not be on the traditional model of compliance with contracts of employment combined with a raft of employment rights and adversarial methods of adjudicating those rights. Nor can we rely on traditional collective bargaining, or on human resource management practices alone.

Also, people in NI are coming out of a period of deep social upheaval, and the lack of trust in political and social matters is manifest. Attitudes and behaviours in workplaces have been a reflection of our societal problems. Scepticism, or cynicism characterises many workplaces, and is the biggest enemy of the changes necessary to enhance workplace performance.

All of these pressures on workplaces require a new approach to the employment relationship in NI if we are to build upon our opportunities arising from a new political, social and economic environment.

Our new approach to employment relationships should embrace the following principles:

1. The identification and proactive management of the psychological contract is critical to achievement and maintenance of each individual's maximum discretionary effort.
2. Secondly, that contract, which is individual between each employee and the employer, depends upon the level of trust mutually developed within the organisation.
3. Thirdly, the psychological contract is governed by the mutual management of the employment relationship, individual and collective.

### Economic Context

First, let us look at the labour market and the economy – the state we are in.

**NI Population:** 1.7m,  
1.322m are 16+

**Economically active:** 783k, includes  
34k registered  
unemployed.

**Economically inactive:** 538k

**Activity rate:** 72.6% (NI)  
78.9% (UK)

**Unemployment:** 4.5% (NI) 5.4% (UK)

**Self employed:** 16% (25% male,  
6% female)

**Public Sector:** 235k employees (32%)

**Private Sector:** 514k employees

**Micro/Small Bus. >50:** 205k employees

**Employers/  
Bus. Nos (IDBR):** 67,405

**Micro/small firms:** 98%

**SMEs (50-249):** 1,155 1.7%

**Large employers:** 0.3%

**Employees/  
size of business:** 57.2% in small/SME  
42.8% in large.

(Sources: Labour Market Bulletin 20, DEL, 2007, and IDBR, DETI Statistics, 2005)

As can be seen from above, the NI economy is characterised by small private firms, many of which are dependent on the public sector. It is a feature that the impact of minimum wage legislation has had a greater direct and indirect effect in NI. Also the Chancellor's budget statement each year has set the norm for public sector income growth, with some knock-on effects in the private sector. However, NI average earnings in the private sector are 16% less than UK average (Source: NI Labour Market Bulletin 20, DEL 2007). Also, economic inactivity is the lowest for all regions in the UK, with 27.4% inactive, and contributes to lower income per head.

### Social Context

Trade Union Membership

**NI** 255k, 41% of eligible,  
34% overall

**GB** 7.2m, 28%

**NI Private Sector** 22% - 23% (estimate)

**GB Private Sector** 17% - 19% (estimate)

(Sources: Report of Certification Officer for NI 2006, and McCartan, P. in Annual Reports of LRA, 2004/5/6)

Collective dispute cases referred to the LRA reduced from 48 in 2002/3 to 33 in the 2003/4, and 33 in 2004/5. Whilst the number of collective disputes has reduced, the nature and extent of them has been changing, from private sector to public sector, from short duration to lengthy, and from national to regional. For a considerable period in the early part of 2004, over 10% of all working people in NI were in “official” dispute with their employer. These included the teaching profession, NICS, and Bombardier, as well as almost 18,000 individual cases at tribunals. More recent cases such as Royal Mail have hit the headlines, but the LRA has had considerable recent success in reducing cases outstanding at IT to 10,077 by December 2006. (Sources: *Report of Certification Officer for Northern Ireland 2006*, and *McCartan, P. in Annual Reports of LRA, 2004/5/6*)

### **Employment Relations in NI**

In NI, there are usually over 5,000 Industrial and FET new claims each year. This reduced to 3,600 in year ending 31 March 2006, but this may be a temporary reduction due to new procedures introduced from 1 April 2005, and there appears to be some increase again from April 2006.

It is clear that we continue to produce tribunal cases at significantly higher rates per head of working population than in Britain, although the reasons are unclear.

With 10,077 cases outstanding in December 2006, it is still too high, and many cases are outstanding for lengthy periods of over a year. Nonetheless, the trend in outstanding cases is sharply downwards, and this reflects great credit on staff in the Labour Relations Agency working closely with the Tribunals Office to resolve cases more efficiently. The LRA now resolve as many as 89% of cases without the need for a tribunal hearing. In Britain, most tribunal hearings are held within 3-6 months of the case arising, and in the Republic of Ireland, the much less formal, non-adversarial Rights Commissioner service operated by the Labour Relations Commission produces faster

workplace-based solutions to employment rights disputes.

The number and complexity of employment rights continues to grow, often driven by European Union directives and improving standards. Recent examples include the extension of flexible working entitlements arising from the Work and Families (Northern Ireland) Order 2006, from 6 April 2007, and the age discrimination legislation from October 2006. Other recent changes include new regulations for Tribunals and revised codes of practice on disciplinary and grievance procedures, from 3 April 2005. In addition the EU Directive on employee information, consultation and involvement places specific requirements on organisations with more than 50 employees to be fully implemented by April 2008.

It clearly is Government policy to adopt EU Directives on employment matters, and current trends are for more regulation. Our Tribunals system now has jurisdiction over 100 types of case, with often very complex legal matters in dispute, or with conflicting precedent. The NI system, without an Employment Appeals Tribunal, is sometimes over-litigious, complex, and unhelpful to workplace relations, as well as costly in emotional stress and money. That is why the Gibbons review of employment tribunals for the DTI in Britain is welcome and timely. The case for reform in NI should now be investigated as a matter of urgency with a view to bringing forward draft legislation for reform to the Assembly.

Also there are certain categories of employment notable for having few tribunal cases – I believe that is no accident. It is due to such employments as the NI Civil Service, the banks, and NI Housing Executive having their own independent employment conflict resolution mechanisms – internal independent appeals boards. Usually these are informal, non-adversarial procedures quickly held as the need arises, and with applicants having full access to remedies laid down in law, with compensation where appropriate. Dissatisfied



applicants can still take tribunal cases afterwards, but few do, having had their case fully heard and determined by an independent panel. There is a lesson for us all here. (See Employment Relations: Agenda for Change, proceedings of LRA Conferences, 03/05, at website – [www.lra.org.uk](http://www.lra.org.uk).) Also, there is growing evidence of independent mediation being used in workplaces, to resolve differences between employees, or between employees and the employer, as part of grievance, disciplinary, equality, or bullying and harassment processes. Changing regulations, and if necessary legislation to incentivise employer and employee interests towards mediation would be following best international practice. The LRA can offer such services at little or no cost to the parties. These should be used routinely, particularly by small firms.

### **Political and Legal Context**

Put simply, the new NI Assembly will have fully devolved power over employment legislation and regulations. It will operate in a framework of Human Rights and Equality as laid down by the Northern Ireland Act 1998 (Good Friday Agreement), and by EU directives. Traditionally, though not always, the NI Assembly and past governments have only followed parity with GB and compliance with EU Directives on employment laws. When sitting, it has demonstrated a risk averse approach, and our politicians have been long on criticism of employers, and sometimes Trade Unions, but short on initiatives in employment matters. Our politicians have been part of a complaints culture, and are not used to being the decision makers, or reducing the burden on employers and unions through their leadership. Mediation and facilitation skills in resolving workplace conflict are in short supply, but now that agreement has emerged at political level, it is time to bring such skills to resolving workplace conflict.

Employees, trade unions and employers have also developed a claims culture as a way of coping with human rights and equality matters arising in employment. It is much easier to shift the burden of decision making to

outsiders than accept the responsibility of resolving the issue within the workplace in accordance with the legal right, and applying that right in the workplace context. Trade unions refer cases to solicitors, who also now advertise, often accepting cases on a no – win, no – fee basis. Employers, particularly in the public sector, refer many tribunal cases routinely to their legal service rather than meet the challenge to manage and find a solution. Such practices are costly, damaging to employment relations due to delays, are damaging to trust in the workplace, with the consequent adverse effects on performance and productivity. Public sector managers are risk averse, and can at least blame someone else if a case is lost. Often, it is small firms who feel they are the victims of employment laws and regulations, and jobs as well as the survival of the firm are sometimes threatened by tribunal costs. Small employers avoid risk by not hiring workers preferring labour only sub-contracts, either hiring self-employed consultants or workers for specific projects. Such practices which used to characterise construction only are now widespread, and have resulted in the creation of a de-regulated labour market, with almost one male worker in four now forced into self-employment. Sixteen percent of all our workers are described as self-employed. This means lack of social protection for such workers, with immediate as well as long-term consequences.

### **The Hidden Costs**

It is time for us to reflect that NI pays a heavy price for conducting our employment relations as we do currently. This is the crucial time for us to build competitiveness, to meet the challenge of globalisation of our economy, and world economic pressures. There are no better examples of that than in NI industry at present, where our manufacturing jobs are fast disappearing overseas.

Yet, we persist with employment relations systems which are based upon adversarial legal methods, long recognised elsewhere in the world as mostly inappropriate to our needs. NI should have systems which emphasise ease of

access, speed of response, non-confrontation, and which guarantee the employment context is fully considered in arriving at solutions. Industrial and Fair Employment Tribunals are no longer able to do this, and are increasingly viewed as part of the courts system, particularly by the legal profession.

The damage to employment relations in our current system arising from a single rights claim is often apparent in personal working relationships, in emotional costs and related stress, in career disruption and recruitment costs. In some cases, there is a negative effect in employment relations within the organisation much wider than the immediate applicant and her/his manager, with many employees and managers awaiting the outcome of the case. A single case often has collective negative effects. The cost may include not just the legal costs of solicitors and barristers, but the time out of work for applicant/s and managers, as well as much negative effort in preparation meetings. None of these costs are taken into consideration in the conduct of an industrial or fair employment tribunal which must rightly confine itself to the legal matters in dispute. We should bear in mind that it is our workplaces in NI that ultimately pay these costs and suffer the productivity and emotional consequences which render them less competitive.

### **Economic and Social Benefits**

The benefits of high trust working relationships are that most costs can be avoided, and decisions made within weeks, with consequent benefits to our business competitiveness, job security, and customer care.

Further, if we are serious about creativity and innovation, they are fostered in a high trust working environment, not one where working relationships have damaged morale.

If we are committed to equality and human rights being properly accessed in workplaces, and if we believe such workplaces are more likely to be high performance and high trust,

then we are duty bound to build better methods for conflict resolution for individual rights cases. These methods should be workplace based, independent, and designed to be informal and non-adversarial. They should be applied in compliance with a knowledge of the law and workplace context.

### **Ways Forward**

Until 9 March 2004, NI was the only exception to the norm in Britain, the Republic of Ireland and the United States, which did not have a fund to promote greater mutuality between employers, trade unions and employees, within business organisations. This was a serious omission. The 2004 approach by the Department for Employment and Learning was too little (£150k) and not backed by any policy imperative, nor were the trade unions or employers sufficiently consulted and involved. A new approach is called for, and should begin with consulting interested parties. The positive engagement of all in building our workplaces for the future should be our objective.

Also, independent mediation should be available within every workplace. No business, however small, or individual employee, should be deterred from exercising their employment rights by the financial and emotional risks, and time delays inherent in tribunal processes. The LRA has alternatives, and should be given the responsibility to develop more user friendly and cost-effective schemes, including independent workplace mediation, and special services for small businesses and their employees. Independent, full application of legal rights/remedies, and fast realistic solutions should be made available to all businesses and employees. The LRA can provide such services, supported by new legislation and regulations.

### **Building High Performance Organisations**

Returning now to the reasons for this paper. There are few if any successful organisations, public or private, small medium or large, community or voluntary, that can disregard the business strategy of managing employment relations in achieving competitiveness, productivity, and managing change. In every



case, the commitment of employees is paramount, and is the only way to win and maintain each employee's discretionary effort beyond mere compliance with their contract of employment. Success is reliant upon building and maintaining high level trust at the core of the employment relationship. This in turn depends on the context in which the organisation operates, its performance management culture, and on the management attitudes and behaviours. After that, employment rights and the "bundle" of HR practices are important, particularly in supplying the hygiene factors which are essential to recruitment and retention of high potential employees. But it is the psychological contract, and how it is influenced, positively or negatively, by the decisions which impact on employees, which distinguishes the high performing organisation.

Remember:

- The identification and proactive management of the psychological contract is critical to achievement and maintenance of each individual's maximum discretionary effort.
- Secondly, that contract, which is individual between each employee and the employer, depends upon the level of trust mutually developed within the organisation.
- Thirdly, the psychological contract is governed by the mutual management

of the employment relationship, individual and collective.

In our new political climate, co-operation, not confrontation should be the mantra, and all employments in NI should be encouraged to improve their workplace relationships and the level of trust within their organisation. We simply do not know enough about workplace practices, attitudes and behaviours. The last research by survey of NI workplaces was carried out in 1988, and has long been outdated by developments elsewhere. It is essential now to conduct a research exercise to provide us with data similar to that in competitor countries, and to enable us to complete further longitudinal studies after a suitable period. We would then have an evidence base for policy, a clear audit of how NI compared with other countries and regions, and a basis for proactive and preventative measures, at the LRA, in government departments and the Assembly, and in tribunals and dispute resolution processes. Employers and unions could benchmark their workplaces, sectors, and have evidence on which to base their dialogue.

In our new political climate we have the opportunity and the responsibility to build more productive workplaces capable of supporting and developing a better life for all.

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