

Democracy at Work

- Social Dialogue and the Tripartite Model

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STRONGER TOGETHER

CONGRESS

Irish Congress of Trade Unions
Northern Ireland Committee





Foreword

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Northern Ireland faces profound challenges. Trade unions are ready to be part of the solution.

In recent times, the leadership role of the trade union movement has been vindicated and widely supported for its principled and responsible defence of the interests of working people and their families from all communities.

Unions took the lead on diagnosing the challenges and outlining the steps required to achieve sustainable public finances. This movement representing over 200,000 working people is ready and able to step up to play its full part in moving Northern Ireland into a place where prosperity for every family is matched by the progressive transformation of our society.

This new document is intended to dovetail with Smart Money. It's **first objective** is to introduce the case for a social dialogue model including trade unions as equal partners. To date the voice of the workforce, through their trade unions, has been excluded from such considerations.

A **second objective** is to recall that a form of social dialogue served us all well at an earlier time of crisis. However, that inclusive model was gradually undermined with trade unions pushed to the sidelines.

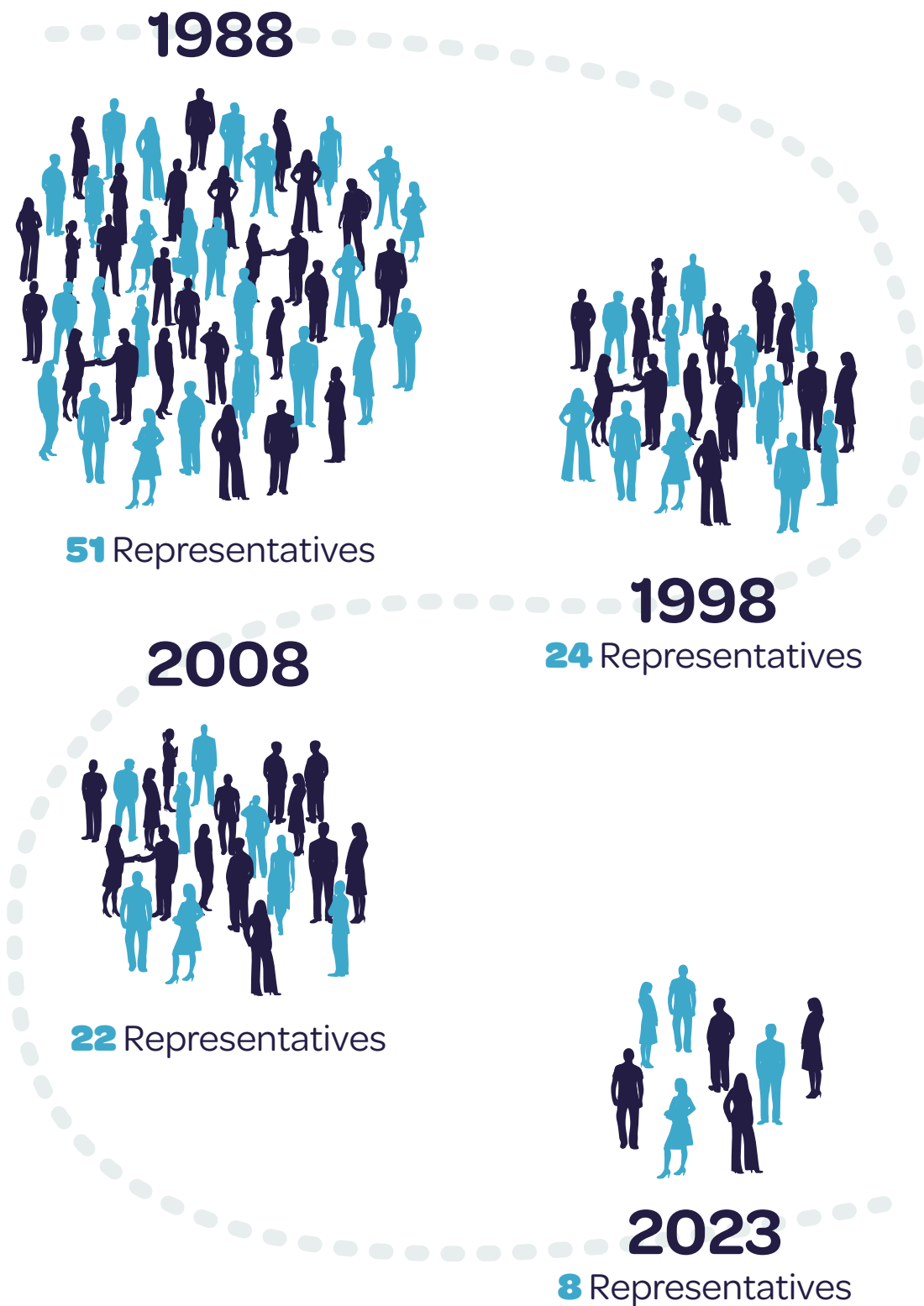
The **third objective** is to highlight the undermining of the tripartite model on crucial non-departmental public bodies, such as the HSENI, and Tribunals.

Given the major economic and social challenges confronting NI we need a different approach from government. Real power-sharing must be based on social dialogue including civic society and the social partners. NIC ICTU and its affiliated unions represent the interests of 200,000 workers in NI. There is no other equivalent organisation representing the voice of the workforce. A better functioning tripartite model would feature:

- A social dialogue model with trade unions, as equal partners, to examine the functioning for and support of the transformation of our public services;
- A review of the membership of the boards of arm's length public bodies and the process of appointments;
- Ensure that seats on arm's length public bodies which are legally designated for 'employee representatives' are populated by trade union representatives;
- New legislation to improve social dialogue through collective bargaining;
- A new and deeper appreciation of the value of a resilient tripartite model across the economy and the employment relations arena.



Trade Union representation on public bodies





Introduction

The Irish Congress of Trade Unions (Congress) brings together 800,000 people in 44 affiliated trade unions across the island of Ireland. Congress strives to achieve economic development, social cohesion and a just society by upholding the values of solidarity, fairness and equality. The Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) directs the work of Congress in NI. NIC-ICTU is the largest civil society organisation in Northern Ireland, representing and campaigning on behalf of some 200,000 working people across the economy in 34 affiliated trade unions.

NIC-ICTU speaks with unrivalled workplace-based experience and expertise in industrial relations, health and safety, promoting equality, inclusion, learning and the development of skills, mainly, but not exclusively, from the perspective of workers. Our raison d'être is to represent the interests of working people. There is no equivalent organisation.

NIC-ICTU operates a number of policy and advisory committees including the Women's Committee, the Health Services Committee, the Education Trade Union Group, the Health and Safety Committee, the Disability Committee, LGBT Committee, Youth Committee, and Retired Workers Committee. NIC ICTU manages the Union Learning Fund - promoting a culture of learning which equips people for work in a modern economy, the Employment Relations and Workplace Skills Training Programme, and the BAME and migrant workers unit. NIC-ICTU also have advisory groups of affiliated unions covering areas such as climate change – just transition, equality and human rights, community not for profit sector, the arts, and private sector issues such as the retail and services group. The work of NIC ICTU is reinforced by the Nevin Economic Research Institute, an independent think-tank supported by Congress.

Social dialogue is defined by the International Labour Organisation (ILO) to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.

In many countries, social dialogue has delivered economic development, transformation, a level of inclusion





and equality, industrial and social peace, and real benefits for people and society. While governments and employers' and workers' organisations may hold divergent views on some matters, tripartite social dialogue is the recognition that there is a common interest in the well-being of economy and society.

When implemented correctly social dialogue can:

- Lead to better policy making by being informed by knowledge from all social partners.
- Democratises the policy-making process which can help legitimise the resulting policies.
- Increase transparency, build trust in, and commitment to, new policies making them easier to implement.
- Help mitigate inequities and ensure representation of vulnerable members of society and diverse communities.
- Support economic growth while creating a more equitable work environment.
- Support increased innovation and productivity and promote better working conditions for staff.
- Assist in reducing power imbalances in labour markets, reduce social conflicts, and provide a mechanism to resolve differences.

Social dialogue promotes a collaborative approach to work cultures, creating a new emphasis on respect and inclusion. It provides an effective voice for the workers and thereby improves information sharing, understanding, buy-in and this can improve performance. Trade unions share knowledge and learnings on best practice from the different sectors they organise in and through their international union connections facilitated by NIC ICTU. This breadth of knowledge combined with an intricate understanding of the workplace can inspire innovation and better governance.

Wider societal benefits of social dialogue have been identified in a number of studies including the European Trade Union Institute's (ETUI) *Benchmarking Working Europe* (2019) which found that people with a high degree of democracy at work were significantly more likely to vote, to consider themselves able to influence politics and to say they were interested in politics, than those faced with low democracy at work. The survey states:

*'The analysis shows that democracy at work and political democracy are mutually reinforcing: if workers are more empowered in the workplace, they will carry this engagement over into civic life, and vice versa.'*¹

As advocates for the working people and their families, NIC ICTU has always promoted the benefits of social dialogue and contributed expertise to the public policy debate across the range of economic, social and workplace issues.

However, over the past 25 years NIC ICTU has become concerned at the undermining, deliberate or not, of social dialogue and the tripartite model in the employment relations arena with trade unions excluded from key arm's length public bodies on which they historically held positions, and through the introduction of changes to tribunal non-departmental public bodies.

¹ <https://www.etui.org/sites/default/files/BENCHMARKING%202019%20Web%20version%20-%20Copy.pdf>



Turn to Social Dialogue in Response to Crisis

In 1964, recognition of NIC ICTU as the appropriate central trade union body for NI was largely based on an agreement between the then NI Government and the ICTU on a system of nomination of trade union representatives to a variety of public bodies, including the newly established Economic Council. The NI Government was tentatively beginning to explore the tripartite model (government, employers and trade unions) in response to a crisis in manufacturing and the need for economic reform and development. This agreement known as the ‘Concordat’ was revised from time to time over the years.

This form of social dialogue expanded through the 1970s to the mid 1990s (under the period of Direct Rule) with trade union representatives appointed by the Secretary of State to a wide variety of public bodies alongside employers and other representatives of society. This inclusive, democratic arrangement unique in the UK resulted from the British government’s policy to “depoliticise” government in an uneven and polarised society. As Elizabeth Meehan pointed out:

‘In one sense, the direct relationships between groups in civil society and departments or quangos mean Northern Ireland is a better example than Britain of participatory democracy.’²

A fundamental principle of democracy is that people affected by decisions should have some input or influence over them. Irrespective of the motivation behind it this form of social dialogue reflected the fact that trade unions, through their democratic structures, represent not only the voice of the workers across the economy, delivering every aspect of government, but also that they work for the wider benefit of society and advocate on behalf of all communities. This model also offered opportunities for involvement in civic life which would not have otherwise be open to many people in NI.

2 <https://archive.niassembly.gov.uk/io/research/0402.pdf>



Our records indicate that in 1988 NIC ICTU had representatives on the following major public bodies.

- | | |
|--|--------------------|
| 1. Public Services Training Council | 38. Distributive |
| 2. Northern Ireland Economic Council | 39. Engineering. |
| 3. NI Construction Industry Advisory Council | 40. Food and Drink |
| 4. NI Electricity Board | 41. Road Transport |
| 5. NI Tourist Board | 42. Textiles |
| 6. Agricultural Wages Board | |
| 7. Belfast Harbour Commissioners | |
| 8. Warrenpoint Harbour Authority | |
| 9. Londonderry Harbour Authority | |
| 10. Enterprise Ulster Board | |
| 11. Industrial Development Board | |
| 12. NI Training Authority | |
| 13. Manpower Council | |
| 14. Fair Employment Agency | |
| 15. Equal Opportunities Commission | |
| 16. Labour Relations Agency | |
| 17. Health and Safety Agency | |
| 18. Industrial Tribunals | |
| 19. Arts Council | |
| 20. Ulster Museum | |
| 21. NI Schools Examination Council | |
| 22. NI Council for Educational Development | |

Education and Library Boards:

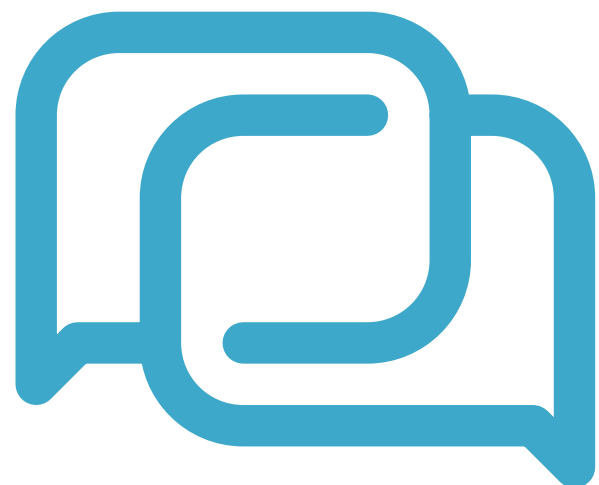
- 43. Belfast.
- 44. North-Eastern.
- 45. South-Eastern.
- 46. Southern.
- 47. Western.

Department of Health and Social Services Area Boards:

- 48. Eastern.
- 49. Southern.
- 50. Western.
- 51. Northern.

Industrial Training Boards:

- 23. University of Ulster
- 24. Standing Advisory Commission on Human Rights
- 25. Probation Board
- 26. Legal Aid Advisory Committee
- 27. Boards of Prison Visitors
- 28. Fire Authority
- 29. NI Housing Executive Board
- 30. Citybus Ltd
- 31. Ulsterbus Ltd
- 32. NI Airports Ltd
- 33. NI Railways Ltd
- 34. Rent Assessment Panels
- 35. Construction.
- 36. Catering
- 37. Clothing.





New Dispensation and the Retreat from Social Dialogue

While a form of social dialogue took root in NI with trade unions and others participating on the boards of a wide range of public bodies, the situation in Britain was somewhat different.

Throughout the 1980s and early 90s successive British governments presided over a proliferation of non-departmental public bodies (NDBPs) throughout Britain. Contrary to the aims of social dialogue what were widely referred to as quangos (quasi-autonomous non-governmental organisations), were designed to undermine existing democratic local structures and were more open to commercial influence. The selection and appointment of quango members were often influenced by a strong, party-political bias. Any notions of transparency in the process or accountability of the appointees were conveniently discarded. Over the years, growing allegations of corruption in the public appointment system culminating with the 1994 scandal relating to the acceptance by Conservative MPs of “cash for questions” in the House of Commons led to the establishment of the Committee on Standards in Public Life under the Chairmanship of Lord Nolan.

The recommendations from this inquiry, which covered NI as well as Britain, led to the formation of a new independent Commissioner for Public Appointments, whose role was to regulate, monitor and report on public appointments. The Commissioner was also to be responsible for the introduction of a code of practice on public appointments, and to ensure that a list of regulated ministerial appointments be published. The Nolan Committee identified seven key principles which were to be the basis of the ethical standards expected of public office holders. The Nolan Principles as they are now commonly referred to, (Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership), were to underpin the code of practice.

The fundamental point from the Nolan Committee’s recommendations was that public appointment must be made on the basis of merit, but the Commissioner for Public Appointments was also tasked with increasing diversity in public appointments.

Unfortunately, in NI, the implementation of the recommendations Nolan inquiry, along with the new political dispensation after 1998, resulted in a major retreat from social dialogue and, arguably, a greater restriction of public participation from civic life.

As the new public appointment processes and procedures were rolled out here from the mid 1990’s, NIC ICTU broadly accepted them in consultation responses and through meetings with the then Secretary of State even though there was the potential to disrupt their existing written agreement with Government (the Concordat) on trade union representation on public bodies. In 1998 NIC ICTU welcomed the commitment to a more inclusive approach to membership of public bodies and, in that regard, urged Government to improve the representation of women, young people, community activists and the unemployed.



At that time, NIC ICTU's procedures for making nominations to public bodies were guided by a number of principles, including diversity, inclusiveness, representativeness, openness and accountability. Vacancies on public bodies to which the trade union movement had either been invited to nominate for or on which it wished to have representatives were circulated to all affiliated unions and trades councils and nominations would be sought. Affiliates were reminded of the need to ensure that nominations should embrace a proper spread of gender, community, geographical and other representations. The Northern Ireland Committee (NIC) would normally consider a number of nominations from affiliates at its monthly meetings. Each nominee was proposed and seconded, together with supporting statements in respect of the strengths and qualities that the nominee could offer to the particular public body. NIC ICTU's nomination procedures were therefore more comprehensive than at the time of the original Concordat and represented a more open and democratic system than currently enshrined in the Commissioner for Public Appointments procedures. Further to this, trade union representatives on public bodies also remained accountable to their union and NIC ICTU.

As NI was evolving into a more peaceful society, NIC ICTU argued that the involvement of community at the broadest level in public bodies would be an important vehicle for social inclusion and progress. But NIC ICTU warned that if public bodies fail to reflect the interests of the whole community in their composition there will be a lack of confidence in them and, just as important, there will be no sense of ownership.

However, throughout this period NIC ICTU asserted its strong view that the social partners, including the trade unions, should continue to be fully represented on public bodies and with prescience warned against membership of public bodies becoming restricted to retired civil servants, business representatives, lawyers, and academics. By this time NIC ICTU had already witnessed exclusionary barriers being erected through the introduction of highly restrictive specifications in the selection criteria for some appointments. This was clearly in contravention of the stated aims of Government that there should be a greater degree of inclusiveness.





Our records indicate that by 1998 NIC ICTU representation on major public bodies had been reduced to the following:

1. NI Economic Council
2. Industrial Development Board
3. Fair Employment Commission
4. Standing Advisory Commission on Human Rights
5. Labour Relations Agency
6. Equal Opportunities Commission
7. Health and Safety Agency
8. Agricultural Wages Board
9. Training and Employment Agency
10. Enterprise Ulster
11. NI Transport Holding Company
12. Belfast Harbour Commissioners
13. Warrenpoint Harbour Authority
14. Statistics Advisory Committee
15. Community Relations Council
16. Council of University of Ulster
17. Staff Commission for Education and Library Boards
18. NI Disability Council
19. Health Promotion Agency
20. Industrial and Fair Employment Tribunals
21. Northern Ireland Housing Executive
22. Construction Industry Training Board

Education and Library Boards:

23. Belfast
24. Western

Over 10 years trade union representatives were removed from 27 major public bodies.

Deeply concerned at the continuing decline in trade union representation on public bodies whether by intention or by the unconscious placing of barriers to trade union representatives in the appointment process NIC ICTU continued to press the case without success at meetings throughout 1999 and into the 2000s with the First and Deputy First Ministers, the Northern Ireland Office, the Northern Ireland Affairs Committee of the House of Commons, and the Commissioner for Public Appointments.



This retreat from social dialogue continued over the next 10 years. By 2008 our records indicate that NIC ICTU had representatives on the following major public bodies.

1. Economic Research Institute for NI
2. NI Transport Holding Company
3. Labour Relations Agency
4. Health and Safety Executive
5. Equality Commission
6. Agricultural Wages Board
7. Belfast Harbour Commissioners
8. Economic Development Forum
9. Local Government Staff Commission
10. Industrial and Fair Employment Tribunals
11. Industrial Court
12. Northern Ireland Housing Executive
13. Invest NI
14. District Policing Partnership Boards
15. Statistics Advisory Committee
16. Construction Industry Training Board
17. InterTradelreland
18. Community Support Framework Monitoring Committee
19. Building Sustainable Prosperity Monitoring Committee
20. Peace
21. INTERREG
22. Human Rights Commission

In this period trade union representation was removed from a further 2 bodies.

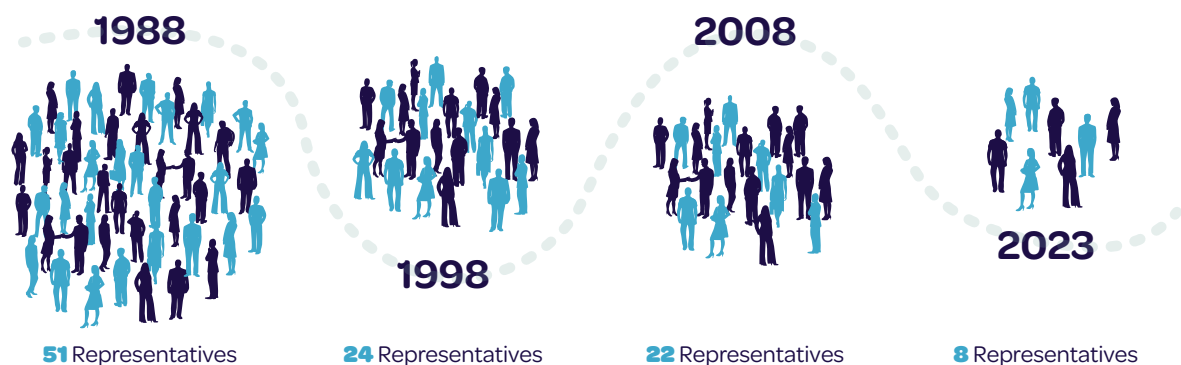
By 2023 NIC ICTU representation on major public bodies had been reduced to.

1. Labour Relations Agency
2. Industrial and Fair Employment Tribunals
3. Industrial Court
4. Northern Ireland Skills Council
5. Agricultural Wages Board
6. Public Health Agency
7. Patient Client Council
8. Peace Plus

In the previous 10 years trade union representation fell from a further 15 public bodies.

Between 1988 and 2023, trade unions lost positions on 43 major public bodies - an 84% reduction.

Trade Union representation on public bodies





While social dialogue was being dismantled in NI, other parts of the UK began to see in it the potential to address needs and deliver effective transformation and have started to embrace forms of social dialogue. For example, the Scottish TUC³ has direct representation on a breadth of public bodies in Scotland including:

1. Scottish Council for Development and Industry (SCDI) SCDI
2. Partnership for Health and Safety in Scotland
3. Scottish Government Employability Stakeholder Group
4. Scottish Business Growth Group
5. Skills Development Scotland Equality Advisory Group
6. Scottish Government Youth Guarantee Working Group
7. Just Transition Commission
8. Skills Development Scotland
9. Scottish Apprenticeship Advisory Board (SAAB) Employer Engagement Group
10. SAAB Standards and Frameworks Group)
11. SDS / SQA Future Standards Architecture Advisory Forum
12. SDS Engineering Skills Leadership Group
13. SQA Advisory Council
14. SQA Qualification Development Team
15. SQA) Strategic Sector Panel for Computing
16. Fair Work Convention
17. Oil and Gas Energy Transition Industry Leadership
18. Scottish Energy Advisory Board
19. Renewable Energy Strategic Leadership Group
20. Regulatory Review Group
21. PACE Ministerial Advisory Group
22. FM Advisory Group on Women and Girls
23. FM Advisory Reference Group on Human Rights
24. Equally Safe Strategic Board
25. Transport Strategy Review Group
26. National Strategic Forum for Adult Learning
27. SCQF Forum
28. Scottish Government Cyber Resilience Learning Network
29. Zero Waste Scotland SWITCH
30. Health and Work Review Advisory Board
31. Scottish Procurement Supply Group
32. Scottish Government Employability Leadership Group

³ <https://stuc.org.uk/about-the-stuc/stuc-public-appointments>
Accessed 9th June 2023



Exclusion of Trade Unions and Suppression of Diversity

Public bodies are organisations set up to manage, advise, enforce statutory provisions, or deliver important and essential public services. While they are set up by government they work separately, at arm's length from government. Examples of public bodies include the Health and Safety Executive, the Equality Commission, the Housing Executive, Health and Social Care Trusts and the Education Authority.

Most public bodies are managed by Boards of Directors. Most public appointments will be for member or chair positions on the board of a public body.

The almost complete purging of trade union representatives from the boards of major public bodies between 1988 and 2023, as shown above, clearly demonstrates the scale of the retreat from social dialogue in NI.

This withdrawal has been facilitated by the imposition of restrictive and biased recruitment processes, failures of senior civil servants to ensure that seats legally designated as for 'employee representatives' are filled by people who genuinely represent employees, and the prejudice of some Stormont Ministers (see below). Democratically nominated and accountable trade union representatives on NDPBs have been replaced by retired civil servants, business representatives (including consultants), lawyers, and academics. The voice, expertise and interests of the workforce have now been excluded from the boards that run or supervise public services. It is these boards that have presided over the growing crisis in our public services and, remarkably, are now expected to lead on the transformation of public services. Yet, they have no direct input from the people that deliver the services and who thereby hold significant practical knowledge of the actual system that if accessed would be invaluable to the delivery of innovative and effective change.

There are other quangos/NDBPs that trade unions should, or previously did, have representation on until the new appointment processes were introduced, including the Equality Commission. Since the inception of the Equality Commission and its predecessor organisations NIC ICTU has had representation on the board of Commissioners. Today we have no representatives. This is bewildering given the central role played by the trade union movement over the years in challenging discrimination, promoting equality and good relations. While a key priority of the trade union movement continues to be the tackling of gender and non-gender (disability, age, race, migration status, sexual orientation and religious belief) inequalities, NIC ICTU no longer has a voice on the NDPB with responsibility to address these issues.



At present, incredibly, quangos here that deal with major issues of public safety and the quality of people's lives and, literally with matters of life and death, such as the Health and Safety Executive NI, are largely opaque bodies devoid of input from those they are meant to protect. Other vested interests often dominate their membership, while the voice of workers and the wider public on their boards is virtually non-existent.

Quangocrat Coup

NIC ICTU's concerns about subversion of the spirit and intent of the new regulations on public appointments are shared by others.

In 2011, the BBC carried an article on the outgoing Commissioner for Public Appointments Northern Ireland (CPANI), Felicity Huston, who declared that our public bodies are not representative of what the country looks like. Mrs Huston said that she had experienced difficulties asserting her role as a regulator at Stormont and stated that incredibly she had been unable to get meetings with the head of civil service during her tenure as CPANI to seek changes to the public appointment process. Damningly she declared in the article that:

*'People recruit people who look like them, sound like them and have the same life and work experiences.'*⁴

More recently, on the BBC Radio Ulster programme Talkback, in September 2023, Mrs Huston spoke further on the flaws in the public appointments process stating that:⁵

'Yes, there is a middle-class thing. The (selection) criteria are written by civil servants, who, you know, write criteria that would suit them, so their former colleagues then fulfil the criteria and get appointed. It's a massive problem.'

Mrs Huston went on to identify the competency-based criteria system in the application process drafted by civil servants as one of the exclusionary barriers to diversity in public appointments. Mrs Huston also expressed the view that the boards of public bodies are dominated by "serial quango sitters" who understand the system and use it to move from one public appointment to another. She alleged that the system is self-perpetuating as these quangocrats benefit from the experience gained on lower-level appointments to meet the competency-based criteria for more lucrative appointments. "They use their membership of one as board level experience to get on to another one. Make their way up the pecking order until they get a big one."

Her successor, John Keanie who was appointed CPANI in August 2011, expressed similar frustrations during his term in office and in fact resigned after 4 years in the post, a year early. According to an article in the *Irish News* in July 2015,⁶

⁴ <https://www.bbc.co.uk/news/uk-northern-ireland-14014630>

⁵ Talkback - 13/09/2023 - BBC Sounds

⁶ <https://www.irishnews.com/news/2015/07/23/news/quango-commissioner-s-parting-shot-blasts-ofmdfm-200638/>



'John Keanie said he is quitting as commissioner for public appointments after four years due to frustration at a lack of change in the way quango members are selected. Mr Keanie has particular concerns about the failure to address the propensity of white, middle-aged males on the boards of public bodies, as well as people sitting on several quangos at one time. The departing commissioner has highlighted a lack of political leadership from the Office of the First Minister and Deputy First Minister (OFMDFM) alongside the "reactive nature of officialdom.'

'What is really not fair is the whole culture of public appointments – the way job descriptions are developed," Mr Keanie told the Irish News. "The system is filling slots on boards rather than assembling teams of complementary abilities, views and perspectives. That's intrinsically unfair to the wide range of people who would like to contribute.'

In his final annual report as CPANI, Mr Keanie wrote, under the title, 'Lack of Diversity/Under-Representation on the boards of public bodies:

'This is the area of work that disappoints me most. The statistics for underrepresented groupings, including women, people under 30 years of age, people from our ethnic minority communities and people with a disability remain stubbornly unchanged except for minor fluctuations. On my visits to women's groups, young people's groups, trade union organisations, business organisations and third-sector organisations, I get the same message, delivered to me with increasing frustration – that message is that they perceive the public appointment process as being biased against their members, to the extent that many talented people are put off applying for public appointments.

'It is rare to get an identical message, on any topic, from such a diverse range of interests, and it is clear to me that these people see no progress by Government and its Departments, on 'widening the net' to get a more diverse range of applicants coming forward for appointment. I have to say that I share the frustration of those organisations and agree that little visible progress has been made in the 17 years since the Good Friday Agreement, which was supposed to herald a new era of inclusion in Northern Ireland.'

Political Bias

Each Minister in the Stormont Executive is ultimately responsible for public appointments and thus the final selection of those appointed rests with Ministers. However, as we have recently seen, this power can be transferred on occasions to Permanent Secretaries. NIC ICTU are deeply concerned at what appears to be the political prejudice of some former Ministers against trade unions.



It appears that a similar bias exists in some senior civil servants as demonstrated by their continuing failure to ensure that genuine employee representatives are appointed to positions reserved under legislation for employee representatives. And also, by their downplaying of legislative requirements to consult with NIC ICTU as the leading trade union body in NI on the appointment process. Both failures contravene the tripartite spirit and intention of the originating legislation. This issue will be addressed later in the document.

The continuing refusal by some Ministers and Permanent Secretaries to select trade union representatives from lists of successful candidates to NDBPs have become matters of public record. Successful complaints to the Commissioner of Public Appointments NI (CPANI) are on record. And at least one case was the subject of a successful, but costly Judicial Review when the Minister for health in 2011 selected a non-union candidate over a highly experienced trade union representative for a position on the Northern Ireland Social Care Council that was advertised as a seat for a 'Trade Union Representative Member.' A more recent potential complaint awaits the appointment of CPANI.⁷

While the appointments system is designed to provide a degree of Ministerial discretion sponsoring departments must make their Minister aware of regulatory requirements in terms of board membership.

Professionalisation and Exclusion

According to the CPANI Guidance on Carrying Out a Skills and Attributes Audit on a Public Board:⁸

'Merit, transparency, fairness, accountability and diversity are key principles underpinning our public appointments processes... A public appointments system working effectively along this design is an important contribution to the good governance of our public bodies. The desired outcome is the delivery of high quality public services within the framework of democratic, transparent and fair government.'

The document also states that:

'Most boards will need a good mix of skills and attributes – it is neither necessary nor desirable for everyone on the board to have the same - and they should be drawn from as wide a background as possible. This will ensure that different views are brought to bear on the board's decision making.'

⁷ [https://www.judiciaryni.uk/sites/judiciary/files/decisions/Corey%20\(John\)%20and%20The%20Northern%20Ireland%20Public%20Service%20Alliance%E2%80%99s%20Application%20\(In%20the%20matter%20of%20a%20decision%20of%20the%20Minister%20for%20Health%20and%20Social%20Service%20and%20Public%20Safety%20on%207%20July%202011\).pdf](https://www.judiciaryni.uk/sites/judiciary/files/decisions/Corey%20(John)%20and%20The%20Northern%20Ireland%20Public%20Service%20Alliance%E2%80%99s%20Application%20(In%20the%20matter%20of%20a%20decision%20of%20the%20Minister%20for%20Health%20and%20Social%20Service%20and%20Public%20Safety%20on%207%20July%202011).pdf)

⁸ <https://www.publicappointmentsni.org/publications/guidance-carrying-out-skills-and-attributes-audit-public-board>



It is the view of NIC ICTU that for the creation of high functioning public boards committed to good governance that can provide the leadership and direction necessary to ensure its public body delivers effective and quality public services, the voice of workers as providers and beneficiaries of the service should be represented on the boards. Accountable representation of the workforce on the boards is essential also in the context of need for transformation of public services. The expertise and practical organisational knowledge of the workforce is an untapped resource which can deliver positive changes that support and improve public services for those who use them and those who provide them.

As referred to earlier, NIC ICTU supports the call for greater diversity on public boards and shares the concerns of the Equality Commission and CPANI on under-representation and lack of diversity in public appointments in NI. It is the view of NIC ICTU from our experience that unnecessarily restrictive selection criteria have been applied to the appointment processes of a number on NDPBs. This blocks trade union representatives and greater diversity on boards.

CPANI's guidance document calls for a 'skills and attributes audit' to be conducted prior the commencement of an appointment process. It identifies the following attributes and skills that they believe are needed by public board members:

'The ability to challenge as well as support positively, independence of thought along with the ability to build collaborative relationships, an ability to think strategically and across organisations towards shared outcomes, a strong desire to strengthen and improve our public services, an understanding of resource and policy considerations, valued based leadership, financial, public accounting experience...'

This guidance strongly influences the selection criteria that are applied to many public appointment processes. Yet, surely the requirement for 'public accounting experience', would greatly narrow the pool of potential applicants. It is the role of both the board's Chair and the senior officials of the sponsorship Department, according to CPANI's guidance, to conduct the skills and attributes audit. Such a narrow field of sources risks continuing the status quo in terms of the board make up.

NIC ICTU supported highly suitable candidates for public appointments have on many occasions fallen foul of broad opaque "essential" criterion such as the requirement for experience of 'corporate governance'.

In the Northern Ireland Audit Office document *Board Effectiveness – A Good Practice Guide*⁹, when considering the optimal composition of a board it states:

'However, an ideal number should not prevent spaces on a board being made available for additional less experienced members to join. This gives new members time to learn and develop, enabling them to

9 https://www.niauditoffice.gov.uk/files/niauditoffice/documents/2022-06/273004_NIAO%20Good%20Practice%20Guide%20-%20Board%20Effectiveness%20%28June%202022%29.pdf



become fully contributing members before other, more experienced, members' terms expire.'

This guide makes the case that gaps in new board members attributes and skills, within reason, could also be filled with suitable training:

'Board members come to the boardroom with varying degrees of previous training, knowledge, skills, experience and understanding of the body itself. It is therefore important to use gap analysis to identify any potential training or development needs. For new members it is imperative that comprehensive induction is provided at the outset and is subsequently supported by a training and development programme. Boards should consider including details of this programme within their recruitment material, this can be attractive to prospective members and also reinforces that all board members can benefit from continued learning and development.'

NIC ICTU, therefore, calls for a review of the public appointment process to identify potential structural barriers to widening the participation on public bodies. This review must consider ways that such barriers could be overcome to improve diversity (including diversity in socio-economic background) and ensure that the voice of the trade unions is adequately represented.

Appointing departments must ensure that seats on arm's length public bodies (e.g. HSENI) that are legally designated as for 'employee representatives' are filled by people who genuinely represent employees, i.e. nominees of NIC ICTU.

Appointing departments should also engage with the social partners on succession planning for relevant NDPBs to ensure that future members are developed to play the required role effectively and to successfully get through the appointment process without undue delay.





Dismantling the Tripartite Model

As mentioned earlier, NIC ICTU are deeply troubled at the failure of senior civil servants and Ministers to ensure that genuine, accountable employee representatives, that is trade union nominees, are selected through public appointments to seats reserved for 'employee representatives' under legislation.

Such legislative provisions around reserved seats or requiring government departments to consult with organisations representing employees, (trade unions) were originally drafted wisely to enshrine tripartism between employers, trade unions and the state as the most appropriate model.

It should not be the role of senior civil servants to attempt to redefine who are employee representatives or who are organisations representing employees. The raison d'être of the trade union movement is to represent employees. There is no equivalent organisation.

Attempts by senior civil servants to justify the downgrading of this commitment to trade unions based on 'attaining greater diversity in public appointments' are at best spurious given the continuing abject malfunctioning of the public appointment system in delivering diversity and inclusion, as referred to previously. If requested NIC ICTU could assist in improving diversity and inclusion in public appointments as our affiliated unions have wide and diverse memberships representing all communities in NI.

We are now in a bizarre position in NI where seats on a number of NDPBs designated as 'Employee Representatives' and historically held by trade union representatives, are now occupied by senior management appointed by Ministers. For an example, see the board membership of the Construction Industry Training Board where senior management appointees fill both the Employer and Employee Representative seats. There is clearly no longer a voice of the workers on this board despite the fact that NIC ICTU and its affiliates are heavily involved in addressing the skills agenda and key issues such as health and safety in this sector.

And then there is the Health and Safety Executive for Northern Ireland (HSENI)...



Health and Safety Executive for Northern Ireland

As the regional authority for workplace health and safety, the HSENI operates under a legislative remit in providing information and advice; promoting best practice in health and safety in the workplace; enforcing compliance with statutory provisions and preparing new legislation. NIC ICTU has not had a seat on this body since 2012 despite having nominees successfully completing the interview stage but failing to be appointed by the relevant Minister. Although the legislation that underpins the HSENI intends that its board has 3 seats reserved for employee representatives, none of the current HSENI board members would objectively meet that designation. To reinforce the significance of this omission it is important to understand the background to this vital NDBP.

As a result of a series of shocking workplace disasters in the late 1960s the British Government established the Robens Committee in 1970 to investigate the health and safety system and propose changes. Its radical 1972 report formed the basis of the 1974 Health and Safety at Work etc Act which led to the establishment of the Health and Safety Executive in Britain in 1975.

Under the Act Ministers were required to consult with organisations representing employers and employees in respect of appointing members to the HSC – with three “seats” for each. The CBI and the TUC were the de facto organisations to be consulted. [Membership also included a nominee representing Local Authorities who served a dual role of being seen to represent the ‘public’ interest and their important regulatory function in respect of “non-industrial” workplaces]

The legislation establishing this arrangement the Health and Safety at Work etc. Act 1974 states:

‘Schedule 2

- 2 (1)The Secretary of State shall appoint the Chair of the Executive.*
- (2)[F3Subject to sub-paragraph (3A),]The Secretary of State shall appoint the other members of the Executive according to sub-paragraph (3).*
- (3)The Secretary of State—*
 - (a) shall appoint three members after consulting such organisations representing employers as he considers appropriate;*
 - (b) shall appoint three members after consulting such organisations representing employees as he considers appropriate;*
 - (c) shall appoint one member after consulting such organisations representing local authorities as he considers appropriate; and*
 - (d) may appoint up to four other members after consulting, as he considers appropriate—*
 - (i) the Scottish Ministers,*
 - (ii) the Welsh Ministers, or*



- (iii) *such organisations as he considers appropriate, including professional bodies, whose activities are concerned with matters relating to the general purposes of this Part [F4, building safety, building standards or fire safety.]'*

The HSE has an Operating Framework which lays out how the Board functions and operates and confirms the composition of the Board. Regarding the HSE Board Composition it states:

'13. The HSE Board has a prescribed structure as set out in Schedule 2 of HSWA and consists of a Chair and at least 7 and no more than 12 non-executive Board Members, who have a balance of skills and experience appropriate to directing HSE's business. The HSE Board has a tripartite composition of local authority, employee and employer representatives. Other members may be appointed after consultation with the devolved administrations and other groups/ organisations, as appropriate.'

Furthermore, in Martin Temple's independent review of the HSE, which included the governance arrangements, he reconfirmed the importance of maintaining the tripartite structure of the Board remarking:

'I fully support the need for HSE Board members who have experience of, direct contact with and preferably are currently active in, the relevant 'user interests', including employers, employees and local authorities, as envisioned by Robens.¹⁰'

Throughout the years of well documented hostility of successive Conservative governments towards the trade union movement, the tripartite arrangement on the HSE was maintained in recognition of the fact that the most effective tool in ensuring good health and safety at work is the trade unions.¹¹

A 2005 research paper prepared by Cardiff University for the Health and Safety Executive, *The role and effectiveness of safety representatives in influencing workplace health and safety*, found that:

'The main conclusion that emerges from our findings overall is that worker representation and consultation in the UK have a significant role to play in improving health and safety at work. They have the potential to raise health and safety awareness amongst both workers and managers, effect improvement in arrangements for managing health and safety, improve the practical implementation of these arrangements, and contribute to improved health and safety performance. Most importantly they represent means by which workers' voice can be heard and acted upon to the benefit of those that experience the risks of the production process.¹²'

10 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275233/hse-function-form-governance-triennial-review.pdf

11 https://www.tuc.org.uk/sites/default/files/Union%20effect%202015%20%28pdf%29_0.pdf

12 <https://orca.cardiff.ac.uk/id/eprint/71292/1/rr363.pdf>



Northern Ireland followed Britain with the creation of HSENI on a similar tripartite model as the lead body responsible for the promotion and enforcement of health and safety at work standards. From its inception NIC ICTU provided nominees who played a central role on the HSENI including holding the position of the first Chair of the board.

The legislation equivalent to that in Britain behind this arrangement, *The Health and Safety at Work (Northern Ireland) Order 1978*, states:

'Establishment of the [F2 Executive]

F312. – F4(1) There shall be established a body to be called the Health and Safety [F2 Executive] for Northern Ireland consisting of a chairman appointed by the Head of the Department and not less than six nor more than nine other members appointed by the Head of the Department in accordance with paragraph (2).

(2) Before appointing the members of the [F2 Executive] (other than the chairman) the Head of the Department shall—

- (a) as to three of them, consult such organisations representing employers as he considers appropriate;*
- (b) as to three others, consult such organisations representing employees as he considers appropriate;*
- (c) as to any other members he may appoint, consult such organisations representing district councils and such other organisations, other than the organisations mentioned in sub-paragraph (a) or (b), as he considers appropriate.'*

The clear intention of the legislation is that the composition of the HSENI Board should be three places for worker representatives, three for employer representatives and three others. This was indeed the case until very recently and then, when vacancies for the HSENI Board arose, the vacant seats were advertised as employee seats/employer seats or other.

This in no way contradicted the requirement for public appointments to be made in an open and transparent manner and candidates were still required to go through a rigorous application and interview process.

However, in recent years, there appears to have been no attempt by the Department for the Economy, HSENI's sponsoring government department, to ensure that the Board is balanced and represents employee as well as employer interests, as clearly stated in the legislation.

As mentioned above, NIC ICTU representatives have in the past managed to meet the unnecessarily restrictive selection criteria for the HSENI Board, successfully passed the interview stage, had their names and details added to the list of candidates considered to have the ability to perform the role effectively submitted to the relevant Minister, but the Minister has failed to select them. Instead, they have selected candidates who do not represent employees to fill the seats designated for employee representatives.



It is the view of the NIC ICTU that the Department has failed in its duty to maintain the tripartite structure of the Board of the HSENI by ensuring that three seats are maintained as employee representative seats, three as employer representative seats and three as other. The wording of the legislation is unequivocal directing that the Head of Department **shall** consult employee organisations as to three seats. As such there is a strict obligation on the Department to designate membership accordingly.

To say that the appointment process is open to all and that employee representatives are welcome to apply is not an acceptable approach and misses the obligation in the legislation.

Undermining Tripartite Model of Tribunals

NIC ICTU also has serious concerns about proposed changes to the Industrial and Fair Employment Tribunals and the Industrial Court, both unregulated Tribunal NDBPs, that will undermine the tripartite model on which they were established.

Industrial and Fair Employment Tribunals

In November 2016 NIC ICTU discovered that the Department for the Economy (DfE) were recruiting 40 new lay panel members (20 representing employers and 20 representing employees) for the Office of Industrial and Fair Employment Tribunals (OITFET). NIC ICTU also learned that the Department, without consultation or notification, decided to change the method of appointment from a process whereby nominations were sought from the relevant social partners to one based on an open competition.

The notion of employment tribunals resolving all types of employee/employer disputes, was suggested by the Ministry of Labour in its evidence to the Royal Commission on Trade Unions and Employers' Associations, often called the Donovan Commission in the 1960s. It was recognised that the tripartite model in the employment sphere offers decision makers unrivalled advice and information from workers' representatives and employers, providing a platform to feed in expert guidance, competing perspectives and coal-face experience. The Donovan Commission's report eventually led to the establishment in Britain of the Employment Tribunal (formerly the Industrial Tribunal) system consisting of a professional judge and two lay members, one appointed after nomination by the Trades Union Congress (TUC), the other appointed after nomination by the Confederation of British Industry (CBI), all three having an equal vote.

This tripartite Employment Tribunal model was implemented in NI from 1976, now known as Industrial and Fair Employment Tribunals. Like in Britain it was universally accepted that these tribunals were judicial bodies consisting of a legally qualified Chairman (now Judge), and two lay panel members, one being an employer representative, nominated by an employer association, and the other an employee representative nominated by NIC ICTU.



The appointment of lay panel members was provided for under The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005, which laid out at section 4.(1) that:

- '(b) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employees as it sees fit; and*
- (c) a panel of persons appointed by the Department after consultation with such organisations or associations of organisations representative of employers as it sees fit.'*

It should be noted that in 2020 DfE revised these regulations and curiously moved the section quoted above from the main body of the legislation and placed it in the 'Interpretation' section. The relevant section of the new 2020 regulations are now as follows:

'Appointment of panel members

7.—(1) Members of panels of tribunals shall hold and vacate office in accordance with the terms of their appointment, as specified—

- (a) in the case of the panel of employment judges, by the Northern Ireland Judicial Appointments Commission with the agreement of the Department of Justice;*
- (b) in the case of the employee panel and the employer panel, by the Department.'*

The last recruitment process for OITFET lay panel members, in 1999, followed the procedure established from the inception of Industrial Tribunals of seeking nominations from NIC ICTU and CBI to a recruitment process. The nominated candidates still had to go through a rigorous application and interview process prior to appointment. Applicants from outside these social partners were not sought.

NIC ICTU wrote to the Department on the 5th January 2017 requesting a meeting. In that letter we pointed out that:

'Lay panel members have previously been appointed on the basis of their verifiable workplace expertise and experience in employment/industrial relations having been nominated by the trade union movement or a recognised employers' organisation. They add valuable expertise to decision making in tribunal cases that entail an appreciation of the practical realities of day-to-day workplace employment relations – particularly claims of discrimination and those in jurisdictions such as unfair dismissal where a test of reasonableness applies. Lay panel members, therefore, must have considerable experience in conducting workplace grievance and disciplinary procedures or representing employees at such hearings. '



'The presence of expert lay panel members nominated from the relevant social partners is also a significant factor in ensuring the confidence of users from all parts of the employment relations spectrum in the tribunal process.'

Following a meeting with DfE on 7th February 2017, the Department responded in writing on 9th February as follows:

'I can confirm that the positions are not CPANI regulated and not subject to the Code of Practice for Ministerial Public Appointments. However, the Department is approaching the matter in the spirit of the Code in light of the commitment by departments, following a PAC hearing some years ago, to abide by the principles of the Code when making unregulated appointments. Successive CPANI Commissioners have encouraged departments to treat competitions for unregulated bodies in a similar manner to those for regulated bodies. This approach provides consistency and an assurance to applicants that the process is open to all and is subject to a clear set of standards.'

The Code does allow for exceptions for appointments to expert posts where very specialised knowledge, skills or experience are required. The Department, in following the spirit of the Code, does have the option of taking this approach, but it is not persuaded that there is a robust business case for doing so.'

The Department accepts that the posts require significant expertise and that trade union officials are likely to be particularly well equipped to fill them given their role in the workplace. However, we do not accept that the necessary skills and attributes are exclusive to trade union members and are unable to justify restricting opportunity to that group.'

The Commissioner for Public Appointments has emphasised, and the Department agrees, that every citizen with the requisite skills and experience, motivation and integrity should have the opportunity to contribute their service to public life. This entails exposing a wider range of public appointment opportunities to open competition.'

Last year, the Executive committed to a policy of attaining greater diversity in public appointments and set challenging timescales for achieving gender equality as part of a package of measures to broaden involvement of under-represented groups in public life, subject to the principle of appointment on merit.'



The letter also contained a commitment made by DfE at the meeting on 7th February as follows:

'The intention, subject to Ministerial agreement, is to establish one or more selection panels each comprising a representative of the trade union movement, a representative of an employer organisation, an independent assessor appointed by CPANI and a Departmental official at Director level as chair. The panels have a key role in the design and weighting of the questions to be asked at interview.'

And that:

'I understand that an open competition is not NIC ICTU's preference but the Department has concluded that a nomination based approach is not sustainable and will be proceeding as planned. As part of that process, I look forward to further engagement with NIC ICTU to ensure that the process ultimately results in a strong and diverse pool of candidates for appointment.'

As the NI Assembly and NI Executive had collapsed in January 2017, the Department eventually put the recruitment process on hold.

Following restoration of the Executive DfE wrote to the Chair of the Committee for the Economy in 2020 reiterating their position and commitments.

At a meeting DfE on 16th February 2023 NIC ICTU was informed that the Department is intending to recommence the OITFET Lay Panel recruitment process and that Capita, an outside agency providing services to DfE were designing the appointment process.

In October 2023 DfE met again with NIC ICTU. At this meeting DfE undertook to reconsider their proposal for appointment of lay panel members. At the time of publishing this document NIC ICTU had not received the outcome of their considerations.

NIC ICTU is concerned that DfE's decision to move unilaterally to an open recruitment process completely undermines the tripartite nature of employment dispute resolution systems and in our view runs contrary to the intent and spirit of the legislation that established employment tribunals.

As trade unionists or employers, lay members' main contribution derived from their provision of workplace experience, which the professional judges did not have, and their injection of a practitioner perspective which balanced judges' legal perspective.

Under legislation an employee can only be represented at a grievance or disciplinary hearing by a work colleague or a trade union official. It is difficult to understand how anyone outside of the trade union movement could have developed the necessary experience, 'skills and attributes' to fulfil the role required i.e. applying their 'employment' expertise from a workers perspective to the interpretation and application of legal principles.



The value of trade union and employer representatives' contribution to tribunals was confirmed in research produced by the Universities of Greenwich and Swansea (*The Role of Lay Members in Employment Rights Cases*, 2011)¹³, which found that for employment judges, the most important contribution of lay wing members is their general workplace experience followed by their ability to provide a non-legal perspective. The research also referred to the benefit to Judges of lay panel members through their ability to identify issues that needed to be explored both before and during case hearings. The jurisdictions in which lay members are considered by Judges to add particular value were discrimination cases, followed by unfair dismissal with breach of contract coming towards the bottom of the list identified in the research.

This important insight and in-depth knowledge of the workplace from both sides of industry that lay panel members bring builds a crucial perception of fairness and credibility for claimant and respondent alike.

As mentioned earlier, NIC ICTU fully supports the NI Executive's commitment to attaining greater diversity in public appointments and for achieving gender equality as part of a package of measures to broaden involvement of under-represented groups in public life. However, the challenge of achieving greater diversity in the OITFET lay panel membership was not put to NIC ICTU. Given that the trade union movement has a very diverse membership, NIC ICTU firmly believes that a greater diversity in potential candidates for the lay panel member position could be achieved within established recruitment system that retains the tripartite model.

Industrial Court

Another concern NIC ICTU has relates to DfE's recently declared views over the Industrial Court (IC). The IC is an unregulated Tribunal NDBP with statutory powers, like the Central Arbitration Committee (CAC) in Britain. It is not a fully-fledged court like the OITFET, where the chairs, now termed judges, are judicial appointments.

It is the view of NIC ICTU that the IC is a specialist tribunal established on the recognised tripartite model with powers to interpret and enforce relevant legislation. Since its reconstitution in 2001 it is, in effect, exclusively used by trade unions and employers to adjudicate upon statutory claims over union recognition and the disclosure of information for collective bargaining purposes, although it does have statutory powers to determine on a limited number of other disputes and complaints. As such, the communities the IC serves are trade unions and employers. And that this fact has, up to now, been recognised by IC panels being comprised of a trade union representative, an employer's representative, and a chair from a legal background, following the established tripartite model.

Appointment for lay panel members to the IC was changed from nominations by the social partners to open public appointment in 2010/11 which, given the nature of the IC and the community it serves, is entirely inappropriate in the opinion of NIC ICTU. In 2007 NIC ICTU opposed the Department of Employment and Learning's (predecessor of DfE) proposal to change the legislation relating to appointments to the IC. However, at that time the

¹³ <https://impact.ref.ac.uk/casestudies/CaseStudy.aspx?Id=3929>



Department gave equal weight to each and every consultation response regardless of the size or significance of the organisation which submitted them. So, incredibly NIC ICTU's view was disregarded.

Further to this, in discussions with DfE during the subsequent recruitment round in 2023, NIC ICTU was shocked to learn that the Department were no longer of the view that the IC Chair and Vice Chair must be from an independent legally qualified background.

It is NIC ICTU's position that it is essential to maintain the position that the Chair and Vice Chair of the IC are legally qualified as they are charged with interpreting legislation, case precedent and considering other complex legal issues, as well as drafting legally binding decisions of the Court which can be appealed to higher courts. As with the OITFET the two lay panel members are there to provide industrial expertise.

It should be noted that in Britain the Chairs and Deputy Chairs of the CAC continue to be from a legal background.

The impartiality of the IC could be seriously undermined in the eyes of the communities it serves if the requirement that the Chair and Vice Chair are from a legal background is dropped. If instead the positions were filled by candidates from either side of industry, e.g. employers, human resource managers, management consultants, or trade unionists, the IC would be vulnerable to the accusation that it was imbalanced in favour of one side.

It must also be borne in mind that it is not unusual for employers to be legally represented at IC hearings which could disadvantage a Chair or Vice Chair who is not from a legal background and lead to delays in the proceedings and thus increase the cost to the public purse.

Value of Tripartite Model

An objective review of the circumstances outlined above could only validate NIC ICTU's concern that there is an ideological bias against trade unions amongst some at senior government levels here, both elected and unelected. Such unjustified misunderstandings and distrust must be confronted and overcome. The tripartite model was originally, and astutely, introduced for sound reasons. In the case of the HSE it was recognised, from bitter experience, that it was the best approach to reducing death, injury, and ill-health in the workplace. The tripartite model in all its manifestations ensures that decisions taken benefit from a variety of perspectives and essential expertise of workplace realities. It improves the effectiveness of public bodies and fosters credibility amongst stakeholders and those who rely on the service. In an era of rapid change in the world of work, a challenging economic environment, and in the context of digital, environmental and demographic transitions NIC ICTU believes that a strengthened tripartite model and greater social dialogue are vital to develop balanced and sustainable responses.



The case for Social Dialogue

It is undisputed that NI faces major economic, social and environmental challenges. What is up for debate is how we should address the challenges.

Transformation of Public Services

Our public services are teetering on the brink of collapse. Those with limited vision, or with vested interests shamelessly promote the vulture-like encroachment of the private sector as a solution. Increasingly threadbare claims about the “superior efficiency” of private over public ownership models rest mainly on assertion, rather than hard evidence or fact.

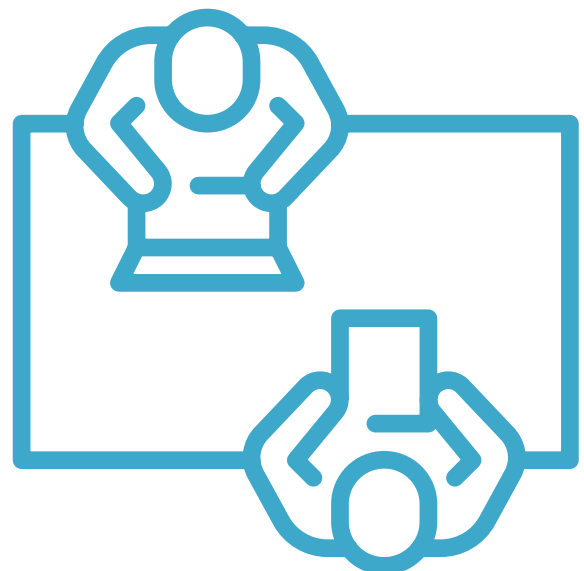
One need look no further than England for ample evidence that heading in this direction will only end in disaster. Time after time, the outcome of privatisation has resulted in a worsening of services and an increase in their cost; decimation and demoralisation of the workforce; and public money siphoned off into huge profits for private companies, instead of its investment in service development.

Such was the case with the privatisation of the water services in England. The profit motive that drives the private water companies, currently under public scrutiny, has led to high levels of debt and underinvestment leading to raw sewage pollution of beaches and rivers, water shortages and leaks.

The failure of privatisation in Britain’s railways led to the government having to renationalise the rail infrastructure operator Network Rail. Surely it must be embarrassing for the champions of privatisation to recognise that nearly three-quarters of Britain’s privatised rail operators are partly or wholly under ownership by state-owned foreign entities such as Deutsche Bahn and SNCF of France.

But there are always the few vested interests who benefit from privatisation. The Chair of British Gas (Centrica) has been awarded a £4.5m pay package on the back of record profits of £969m in 2023 while millions of households continue to struggle to pay their energy bills. Announcements like this reinforce the argument that privatisation has failed Britain’s energy system.

The only rational, efficient, and effective solution to the need for transformation of our public services requires a combination of social dialogue and adequate investment.





The workforce who delivers the services holds significant expertise and practical knowledge of the actual system, recognise where problems lie, and can identify innovative ideas for effective change. Their voice, through democratically nominated and accountable trade union representatives, if accessed through social dialogue can be invaluable to the delivery of innovation and transformation. Recognising the workforce, through their unions, as an equal partner, taking account of their interests, and not viewing them as a powerless production factor, will improve motivation, performance and buy-in to the transformation process.

Historically, social dialogue has been successfully used across many countries at times of economic crisis and change. Social dialogue is also the key to addressing the digital, environmental and demographic transitions facing NI.

Social Dialogue

Evidence gathered by the Organization for Economic Cooperation and Development (OECD), the International Labour Organization (ILO), the European Commission and others demonstrates that countries with a strong social dialogue are characterised by better economic performance and a more equal distribution of income. The result of such research clearly indicates that social dialogue has been identified as a key driver for economic and social resilience, competitiveness, fairness and sustainable growth.¹⁴

According to the International Labour Organization (ILO), the enabling conditions which must exist for social dialogue to take place are,

- *Strong, independent workers' and employers' organizations with the technical capacity and the access to relevant information to participate in social dialogue;*
- *Political will and commitment to engage in social dialogue on the part of all the parties;*
- *Respect for the fundamental rights of freedom of association and collective bargaining; and,*
- *Appropriate institutional support.*¹⁵

¹⁴ For example see,

Social Dialogue and Economic Performance. What matters for business - A review Grimshaw, Koukiadaki and Tavora 2017

https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_571914.pdf

Negotiating Our Way Up - Collective Bargaining in a Changing World of Work OECD 2019

<https://www.oecd-ilibrary.org/docserver/1fd2da34-en.pdf?expires=1685619845&id=id&accname=guest&checksum=A7C1BD6EE8FE25062E544580B36A085A>

Question and answers: Strengthening social dialogue. European Commission 2023

https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_289

Good Jobs for All in a Changing World of Work - The OECD Jobs Strategy

<https://www.oecd.org/employment/good-jobs-for-all-in-a-changing-world-of-work-9789264308817-en.htm>

¹⁵ [https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm\)%20%20a](https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm)%20%20a)



The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) provide the most obvious concrete examples of a model with social dialogue at its heart that has successfully fostered competitiveness, growth and employment and has also contributed to a significant levelling of social differences. Key to the functioning of this model, which ensures sustainability and social peace while contributing to structural transformation and transition, is the high rate of trade union organisation, strong and independent social partners (trade unions and employers), broad coverage of collective agreements, and constructive cooperation and trust between the partners. The Nordic model shows that extensive public sector employment, a generous welfare state, workers' rights, high employment protection, and wage increases tied to productivity are consistent with competitiveness and growth.

EU and Social Dialogue

Social dialogue is at the heart of European Union (EU) governance. It enables the European social partners to help to define European social standards and is a fundamental cornerstone of the European social model. Social dialogue is a powerful means of reaching fair agreements between the social partners and of generating quality jobs and employment and securing sustainable economic growth.

To ensure a fairer and more inclusive Europe for everyone the EU introduced the *European Pillar of Social Rights (EPSR)*¹⁶. The EPSR promotes social dialogue and seeks to create improvements in areas like employment, equal opportunities, working conditions, healthcare, housing, services, childcare, social protection, pensions, education, and lifelong learning.

It should be noted that the European Trade Union Confederation (ETUC), to which ICTU is affiliated, is the only social partner representing workers at European level. The Treaty of Maastricht (1992) guarantees this formal status.

As ICTU point out in 'Route to Reform - Realising the Transformative Effect of Social Dialogue and Collective Bargaining in Ireland' (2019):

'EU guidelines for Member States employment policies have repeatedly over recent years urged Governments to involve social partners in policy-making. The 2015 guidelines urged Governments to "closely involve... social partners in the design and implementation of relevant reforms and policies" while the 2018 guidelines go further to state:

Building on existing national practices, and in order to achieve more effective social dialogue and better socioeconomic outcomes, Member States should ensure the timely and meaningful involvement of the social partners in the design and implementation of employment, social and, where relevant, economic reforms and policies, including through support for increased capacity of the social partners. The social partners should be encouraged to negotiate and conclude collective agreements in matters relevant to them, fully respecting their autonomy and the right to collective action.¹⁷

¹⁶ <https://ec.europa.eu/social/main.jsp?catId=1226&langId=en>

¹⁷ <https://ictu.ie/publications/realising-transformative-effect-social-dialogue-and-collective-bargaining-ireland>



To strengthen social dialogue, in October 2022, the Council of the EU adopted the Directive (EU) 2022/2041¹⁸ on adequate minimum wages which aims to reduce working poverty and inequality, by focusing on improving the adequacy of statutory minimum wages as well as the promotion of social dialogue through increasing collective bargaining coverage on wage setting. Under this Directive each Member State with a collective bargaining coverage below a threshold of 80% should establish a framework of enabling conditions for collective bargaining and an action plan.

It is important to state at this point that it is the firm view of NIC ICTU that in the post-Brexit arrangement not only should all existing employment rights in Northern Ireland be protected by the devolved administration but also that the Assembly should continue to enact legislation separately and distinctly from the rest of the UK that keeps NI in line with progressive developments in employment law originating from EU Directives such as this.

Further to this, in January 2023, the European Commission presented a Council Recommendation:

‘which sets out how EU countries can further strengthen social dialogue and collective bargaining at national level. The Commission also presents a Communication on reinforcing and promoting social dialogue at EU level. Social partners were closely involved in preparing these initiatives.’¹⁹

This renewed focus on reinforcing social dialogue is a firm endorsement for this model for progress at a time when Europe is looking for sustainable solutions to the cost-of-living crisis and negotiating the environmental and digital transitions.

Social Dialogue – UK and Ireland

The Irish Government has taken a number of initiatives over recent years to consult unions and employers on policy-making. These include the establishment of the National Economic Dialogue (NED) in 2015 and the Labour Employer Economic

Forum (LEEF) in 2016. The aim of the former is to ‘facilitate an open and inclusive exchange on the competing economic and social priorities facing the Government’ while the latter is described as a ‘formal structure for dialogue with representatives of employers, and of labour on economic and social policies as they affect employment and the workplace’.

The effectiveness of social dialogue was clearly demonstrated during the Covid-19 crisis when governments and social partners engaged to develop measures and protocols to protect frontline workers, jobs and businesses and allow an eventual safe return to work. During the pandemic the value of social dialogue was amply proved through the key role played by the Northern Ireland Engagement Forum on Covid-19 in protecting the safety of workers here and safeguarding the economy.

Social dialogue is continuing at pace in Scotland with developments such as the Fair Work

¹⁸ <https://www.consilium.europa.eu/en/press/press-releases/2022/10/04/council-adopts-eu-law-on-adequate-minimum-wages/>

¹⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_290



Convention, with the vision that:

'by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society.'²⁰

In Wales the *Fair Work Commission* published its *Fair Work Wales* report in May 2019 and the Welsh Government recently passed the *Social Partnership and Public Procurement (Wales) Act 2023*. The new Act will see the creation of a statutory social partnership framework through a permanent Social Partnership Council for Wales.²¹ Even in some English regions local government have embraced social dialogue with initiatives such as the *Greater Manchester Good Employment Charter*.²²

In NI the Labour Relations Agency commissioned research by the University of Warwick, Institute for Employment Research, to support the development of a new model of employment relations for NI to have better jobs, more productive working relationships and an innovative and inclusive economy. This report, published in 2020, entitled *Research to inform the development of an employment relations model in Northern Ireland*, identified that:

'There is consensus that a new model of employment relations is needed in Northern Ireland. The model should be part of a wider strategy to transform employment and the economy. The new model needs to be inclusive, encompassing trade unionised and non-unionised, and small and large businesses. Introduction and implementation would work best with multi-level collaboration and coordination within the policy process and across politics and business, the latter broadly defined to include employee representative organisations. Indeed, social dialogue amongst the partners is clearly regarded as important, both as underpinning the new model and as a feature of its operation. This social dialogue should also be multi-level – national and firm and, possibly, sectoral.'²³

²⁰ <https://www.fairworkconvention.scot/>

²¹ <https://www.gov.wales/fair-work-commission-recommendations-progress-report-2023-html>

²² <https://www.greatermanchester-ca.gov.uk/what-we-do/economy/greater-manchester-good-employment-charter/>

²³ <https://warwick.ac.uk/fac/soc/ier/researchthemesoverview/researchprojects/employmentrelationsni>



Conclusion

Given the major economic, environmental and social challenges facing Northern Ireland we need a new approach from government. Real power-sharing must be based on social dialogue including civic society and the social partners. However, there can be no real social dialogue without a solid basis of freedom of association for trade unions and the right to collective bargaining and action.

To begin along this path NIC ICTU make the following calls:

- **Adopt a social dialogue model with trade unions, as equal partners, to examine and deliver transformation of our public services.**
- **Institute a review of the membership of the boards of arm's length public bodies, and the process of appointments to widen participation, improve diversity (including socio-economic background) and ensure that the voice of the trade unions is adequately represented. Having the expertise of the worker's voice on them will improve performance and good governance and allow trust and partnership working to evolve.**
- **Ensure that seats on arm's length public bodies (e.g. HSENI) that are legally designated as for 'employee representatives' are filled by people who genuinely represent employees, i.e. nominees of NIC ICTU.**
- **Enact legislation to improve social dialogue through collective bargaining including the relevant provisions of the Directive (EU) 2022/2041 on adequate minimum wages.**
- **Ensure that the value of retaining the tripartite model on tribunals, HSENI, etc, and in the wider employment relations arena is appreciated, protected, and enhanced. Changes to the appointment processes for tribunal bodies must be agreed with NIC ICTU and representatives of employers.**



STRONGER TOGETHER

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