

# Employment Advice Need and Provision at the Dungannon Citizens Advice Bureau

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## **1.0 The research project**

### **1.1 The study research focus**

Researchers from the universities of Bristol and Strathclyde have been carrying out research to find out about the barriers to justice experienced by people who try to resolve employment problems. The study, funded by the European Research Council, focuses particularly on people who cannot afford to seek help from a solicitor. As such, we have been working with Citizens Advice to access study participants. The South Tyrone and Mid Ulster Citizens Advice Bureau is one of seven bureaux participating in the research. The bureau operates from 2 main offices, known as Dungannon CAB and Cookstown CAB and provides services across the Dungannon, Cookstown and Magherafelt Council areas.

The other bureaux in the study are located in Bristol, Southwark, Stoke-on-Trent, Greater Pollok, West Dunbartonshire and one other Scottish location (which prefers to remain anonymous).

We have three principal questions:

- How does the relationship between the CAB and their clients shape the approach taken by clients to their employment problem?
- How do the different levels of support offered by bureaux (CABx) affect how clients can identify, assert and defend their rights?
- How does CABx advice work help the organisation to campaign for social policy change in the field of workers' rights?

Research is ongoing in the Dungannon bureau. This report details initial findings on the employment advice needs and provision at the Dungannon CAB.

### **1.2 The Northern Ireland dimension**

An important feature of the research is to understand how the different legal and administrative systems in Scotland, England and Northern Ireland (NI) affect the services and solutions people seek in relation to their employment problems. Given that justice and employment policy are matters devolved to the Northern Ireland Assembly there are a number of differences in the employment disputes system in NI compared to Scotland and England. First, in NI a Fair Employment Tribunal operates alongside the Industrial Tribunal (IT) (the latter having retained its name, changed to Employment Tribunal in England, Scotland and Wales in 1971). Second, the Labour Relations Agency provides the services that Acas (Advisory, Conciliation and Arbitration Service) provides in the rest of the UK. Thirdly, and perhaps most significantly, in NI no fees are charged to submit a claim to an IT, whereas fees were introduced for taking applications to Employment Tribunals in England, Scotland and Wales in July 2013.

As far as we can ascertain from emailing all CABx in NI, Dungannon is the only bureau with a specialist employment adviser. For this reason our research has been undertaken in this CAB. However, the Dungannon district provides an interesting case study for other reasons: the rural/urban mix of the Dungannon area provides a contrast with the other case study bureaux which are all based in large towns or cities, potentially allowing us to look at employment problems associated with agriculture and other rural employment. Further, the area comprises a significant proportion of larger employers, the workers of which provided the majority of the employment problems dealt with by the bureau (see Appendix II).

### 1.3 How we conducted the research

We began recruiting participants to the research project in February 2014 through the specialist employment adviser at the Dungannon bureau. He identified potentially suitable participants (largely based on the nature of their dispute) and discussed the study aims and methods with the client. The specialist employment adviser then provided researchers with background notes on the participant's dispute based on the meeting(s) with the client.

Researchers visited the bureau on at least six occasions, observing adviser-client meetings and interviewing clients. Some clients chose to complete a survey about their experiences. Researchers also interviewed staff working at the CAB.

The participants are not a statistically representative sample of Dungannon CAB clients with employment problems. Only those who wanted to take part were recruited to the study. All participants signed a consent form and were told that they could withdraw from the study.

## 2.0 The research participants and their employment disputes

### 2.1 Overview of participants

So far we have gathered data from 26 participants. Over two-thirds (69%) are women. Twenty-three percent are migrant workers. Participants faced a range of employment problems, many of which were multifaceted. Over one-quarter (27%) had issues with their pay, be it the non-payment of wages, holiday or sick pay or a reduction of their pay. Of the 18 female participants, nearly one-quarter (22%) had issues relating to pregnancy, including discrimination, failure to undertake a risk assessment, a reduction of hours of work during pregnancy and the downgrading of a job upon return from maternity leave. A summary of these participants, including the nature of their disputes, is detailed in Appendix II.

### 2.2 Some case studies

#### *Pauline*

Pauline worked cleaner in a large organisation and had done so for more than six years. She combined this part-time work with care for her eleven year old child (as a single parent) and her elderly disabled mother. Pauline's manager informed Pauline that her hours of work would need to change. However, the new hours would have major negative implications for Pauline's care responsibilities. As such, Pauline made a request for flexible working. Pauline was subsequently called to a meeting with her manager who informed her that she was being made redundant with immediate effect.

Pauline was shocked and upset at the course of events and attended the Dungannon CAB for advice. The specialist employment adviser informed Pauline that there may be a case for unfair dismissal and, potentially, indirect sex discrimination. Pauline was keen to pursue her case. She met with the specialist employment adviser on at least five subsequent occasions. During these meetings they discussed the detail of the events that Pauline experienced, the documentary evidence in relation to the events, and how the law may apply.

With the assistance of the specialist employment advisor, Pauline lodged an ET1 with the IT. A representative from the Labour Relations Agency then contacted Pauline and informed her that the employer was prepared to offer her £500 and her old job back. Pauline felt that the Labour Relations Agency representative put pressure on her to accept the offer, telling her that she would struggle in the IT without representation and indicating that her case for sex discrimination was not viable.

After discussing the matter with the CAB specialist employment advisor, Pauline decided to accept the offer. However, this was on the proviso, as suggested by the specialist employment advisor, that she would have continuity of employment and that the hours offered were permanent and non-moveable.

Pauline was very satisfied with the advice received from the CAB. She felt that without them she would not have challenged the actions of her employer. While she was slightly apprehensive about returning to work with the manager who had informed her that she was redundant, Pauline very much appreciated being able to keep her part-time employment with an organisation that was close to where she lived.

#### *Sarah*

Sarah worked as a carer visiting people in their homes for a period of eight months. She was on a zero hours contract, which required that she work shifts of varying duration and at varying times. She was only informed of the time of her next shift at the end of her previous one. On some occasions she did not know at the start of her shift when the shift would end. Sarah found the situation both stressful and exhausting.

Due to these conditions of work and her pending study for a nursing degree, Sarah resigned from her job. The employer did not pay her final month's wages or her outstanding holiday pay. Sarah contacted the employer by telephone on a monthly basis for more than six months to try and recoup the money owing. Her mother also assisted her by telephoning the employer on a number of occasions. This was to no effect. Sarah did not know what else she could do on her own, so decided to seek assistance from the Dungannon CAB.

The specialist employment adviser informed her that she was out of time to make a claim in the IT for her unpaid holiday pay. However, she could make a claim for her outstanding wages in the Small Claims court. Proceedings were issued in the Small Claims Court for all wages owed, claiming interest and costs. One week after issuing proceedings, Sarah received a call from the employer. She was told to call into the office, as a cheque was waiting for her there. Prior to going to the office, Sarah called the adviser. She asked what she should do if the employer was not going to pay the full amount claimed. He told her she should consider telling them she would see them in court. Sarah went to the office and, when the employer tried to avoid paying the full amount claimed, Sarah told them she would see them in court. Sarah then received a cheque for the full amount claimed.

The cheque bounced. At the time of writing the client is pursuing the claim in the Small Claims Court with the support of the bureau.

## 3.0 Employment advice needs – what the research tells us

### 3.1 Delivery of employment advice by Dungannon CAB

The employment advice service from the South Tyone and Mid Ulster CAB is mainly delivered from the Dungannon CAB office. Clients are referred to the specialist employment adviser from both of the main offices in Dungannon and Cookstown, and via a large number of outreach venues serviced by CAB in the region. At the time of conducting this research one adviser was involved in delivering comprehensive employment advice; a second adviser was being trained in employment issues. The bureau does not receive any specific funding to deliver employment advice and, like other bureaux in NI, has never received legal aid funding for providing this service.

Most enquires that become employment advice cases originate through email, phone or by people dropping in to the bureau. This first contact will be dealt with by an experienced adviser (although not necessarily the specialist employment adviser) who will collect relevant information, attempting to understand the issues that lie behind the client's problems. The bureau considers it necessary to utilise experienced advisers at this stage as, frequently, the initial problem presented by the client reveals a number of more complex underlying issues. At this first contact the client will either be given information on how to deal with the problem themselves or an appointment will be made with the specialist employment adviser if the problem is more complex.

### 3.2 Employment advice needs

Data from all our case study areas demonstrates that people go to a CAB with varying degrees of understanding about their legal rights and varying expectations about how law may apply to their particular employment problem. CAB advisers are involved in complex processes of interpretation, diagnosing the client's problem and what can be done about it. They 'translate' back to the client how employment law relates to the dispute.

The extent to which an adviser will encourage client involvement will depend upon the competencies and resources of the client, as well as the approach of the adviser. Our findings suggest that clients with greater levels of education and social and economic resources are better able to navigate the system and inform themselves of relevant legal processes. Those with less resources and who struggle with communicating in English are more reliant upon the advice and support of the CAB.

Despite the jurisdictional differences in Dungannon, the problems faced by CAB clients and the barriers to justice are similar throughout the case study areas. Here is a summary of our key findings so far. These concern the following features of resolving employment problems:

- **The law relating to their employment problem:** clients will come to the bureau because they have a sense that they have suffered a 'wrong'. Generally they have little understanding of the legal avenues they could follow. The adviser will typically inform the client of the (probable) law relating to their employment problem. However, often the client does not fully understand terms such as 'constructive dismissal', 'unpaid holiday pay' or 'discrimination' or how they apply to their particular situation.

- **The process:** many clients were unaware of the possibility of taking a case to the IT or of other legal pathways they could follow to implement their legal rights. In Dungannon, the specialist adviser attempts to involve clients in developing a strategy to deal with their case from the outset, explaining the timescales involved, and what will be required of them along the way. At an early stage he would explain that whilst representation at the IT is a service provided by Dungannon CAB, such representation comes at a high cost to the resources of the bureau, and as such, could not be guaranteed. This could mean that, if their case was to reach an IT hearing, they would (most probably) be representing themselves and being cross-examined by the employer's legal team. We have found from our other study sites that people have very little understanding (if any) of the processes they may need to go through to, for example, take a claim to an IT. They may engage in one aspect of the process with little or no knowledge of possible subsequent courses of action, should their efforts fail to produce results. Guidelines offered by the tribunal service itself appear inadequate, something often talked about by participants.
- **Negotiated settlements:** it is noticeable that most of the participants in the Dungannon case study did not reach the stage of a tribunal hearing. With the support of the specialist adviser, settlements were negotiated with employers in some cases. Particularly notable here is the fact that Pauline in the case study above was offered her job back. It is rare that a settlement (or a tribunal judgment) will result in a reinstatement.
- **Attending the Employment/Industrial Tribunal:** almost all participants who faced the prospect of, or attended an Industrial/Employment Tribunal were apprehensive about it. Few had a good sense of the process involved or what would be expected of them. Many were intimidated by the unfamiliar language and concepts used in the tribunal and were concerned that they would not be able to communicate their points articulately. Our data indicates that many (though not all) tribunal judges attempt to ensure that participants have their say, but this does not necessarily allow them to do so as the whole experience is power infused and alien to them.
- **Enforcement of awards:** it came as a surprise to most participants that they would not automatically receive the financial remedy awarded to them.
- **Fair Employment Tribunal:** no cases in our sample had been referred to the Fair Employment Tribunal.
- **Relationship with Belfast Law Centre and local solicitors:** we noted the good (informal) working relationship between Dungannon CAB and one local solicitor which provided bureau workers with additional knowledge and expertise in dealing with cases. Similarly, the importance of the Belfast Law Centre was apparent in both taking on the most complex cases and in providing the bureau's specialist employment adviser with advice and support for those cases they are unable to pursue.
- **Empowering clients:** the specialist adviser's approach of involving clients in the development of a strategic approach to their case, gave confidence to clients in approaching employment problems. This was evident in both of the case studies. Pauline, after several months of working with her, told us how she had advised a friend on dealing with his own problems at work; and Sarah gained the confidence to tell her ex-employer she would 'see him in court'!

## **4. Conclusion and future action**

### **4.1 The need for employment law expertise**

The study in Dungannon has revealed a strong need for the provision of expertise in employment disputes. A range of factors contribute to this. Firstly, the extent of employment rights knowledge amongst CAB clients is low. The fact that many clients are migrant workers will play a role in this. However, the widespread application of unfair employment practices, particularly on workers who are female, young and/or in precarious work, normalises employer behaviours that breach the law. Secondly, there is very limited employment law expertise, particularly in dealing with employee rights cases, amongst private legal service providers in Dungannon and surrounding areas. This is common throughout our research sites. Thirdly, many of the employment problems relate to unpaid wages or holiday pay, typically under £300. The cost of a solicitor to deal with such low value claims would be at least the amount of the money outstanding.

Perhaps most significantly, we have found from all our case study areas that successfully resolving employment disputes involves more than simply an understanding of the relevant law. Expertise is required in instigating successful strategies for proceeding with a claim, most particularly with respect to the gathering of suitable evidence. As is frequently the case in the Dungannon area, employers are large and so have access to sophisticated legal teams. Workers need to present strong and well evidenced cases in order to be successful. They require legal expertise to support them in this.

### **4.2 The potential impact of fees for submitting claims to Industrial Tribunal**

Since the introduction of fees to take cases to Employment Tribunals in England, Wales and Scotland, claims submitted have fallen by more than 80%. The effect is disproportionately falling on women, with sex discrimination claims falling by 84%. Even though most of the cases at Dungannon CAB do not result in an IT hearing, the threat of being taken to a tribunal significantly strengthens the claimant's negotiations. Any proposal to introduce fees to ITs in NI would be disastrous and should be vigorously opposed through all possible avenues.

### **4.3 Turning insights gained from front-line advice giving into powerful policy tools**

There is currently an opportunity to turn the insights gained from the delivery of front-line advice to participants into effective and powerful tools for influencing employment law policy. This has recently been done with the Citizens Advice NI and Dungannon CAB response to the Department for Employment and Learning consultation on zero hours contracts. However, there is potential for more far-reaching influence.

A number of important trends have been observed by the specialist employment adviser in the Dungannon CAB. There appears to be a widespread problem of employers not paying out accrued holiday pay at the cessation of a worker's employment contract. A worker has only three months in which to make a claim to the IT for this and it cannot be sought in the Small Claims Court. More generally, casework demonstrates that certain local employers repeatedly fail to comply with employment law obligations. As is the case with most advice work, Dungannon CAB attends to the needs of workers employed by these organisations as and when they present themselves and, typically, on a one-on-one basis. However, the root cause of the problem is not

being addressed. There is a lack of incentive for these employers to improve their human resources practices. The fact that the bureau has identified particular problematic employer could be exploited to bring about longer lasting change in their behaviours.

#### 4.4 The need for education about employment rights

The lack of knowledge of employment rights appears across the age groups in our study. We asked participants whether they had been taught anything about employment rights at school or, for those who were students, as part of their university courses. No-one said they had. The CAB already provides education sessions on debt and money matters in schools; consideration could be given to whether this should be extended to include employment matters. Additionally, campaigning for employment rights to be included in school and university curriculum would be an important step in empowering people to understand possibilities for action when they experience a problem at work.

#### 4.5 The Fair Employment Tribunal

This study was unable to ascertain what role, if any, the Fair Employment Tribunal plays in access to justice in NI. The researchers would suggest that further research is needed in this area and would welcome comments and ideas for how this should be carried out.

More information about this research programme can be found on our website:

[www.bristol.ac.uk/adviceagencyresearch/](http://www.bristol.ac.uk/adviceagencyresearch/)

We welcome comments and feedback on this report - please contact

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### Further Reading

Citizens Advice Northern Ireland and Dungannon Citizens Advice Bureau (2014) *Zero Hours Contracts:*

*Response to the Department for Employment and Learning*

(<http://www.citizensadvice.co.uk/media/uploads/Zero%20Hours%20Contracts%20Citizens%20Advice%20consultation%20response.pdf>).

Busby, Nicole and Morag McDermont (2012) 'Workers, Marginalised Voices and the Employment Tribunal System: Some Preliminary Findings' *Industrial Law Review* 41(2): 166-183

(<http://www.bristol.ac.uk/law/research/centres-themes/aanslc/cab-project/publications/marginalisedvoices.pdf>).

Busby, Nicole and Morag McDermont (2014) *Employment Tribunal Fees Deny Workers Access to Justice*

(University of Bristol, Policy Briefing 6/2014) (<http://www.bristol.ac.uk/media-library/sites/policybristol/migrated/documents/employmenttribunalfees.pdf>).

Busby, Nicole, Morag McDermont, Emily Rose and Adam Sales (eds) (2013) *Access to Justice in Employment Disputes: Surveying the Terrain* (Institute for Employment Rights: Liverpool).

Busby, Nicole, Morag McDermont, Emily Rose, Adam Sales and Eleanor Kirk(2013) *Citizens Advice Bureaux and Employment Disputes: Interim Report* (<http://www.bristol.ac.uk/law/research/centres-themes/aanslc/cab-project/publications/cabxinterim.pdf>).



## APPENDIX I: The Dungannon population and economy<sup>1</sup>

The estimated population of the Dungannon and South Tyrone borough was 59,298 in 2013. This figure represents a dramatic population increase of 22% from the previous decade. Approximately 10% of the borough's population are migrants (comprised 8% EU migrants and 3% non-EU migrants). The level of immigration in Dungannon and South Tyrone is much higher than in NI as a whole (3% EU migrants and 2% non-EU migrants). English is not the first language of 9% of the Dungannon and South Tyrone borough population.

The local government district of Dungannon is the 11<sup>th</sup> most deprived (out of 26) in Northern Ireland. The average life expectancy for males and females were 77.8 and 82.2 years respectively. These figures are identical or close to identical to those for Northern Ireland as a whole.

In terms of the proportion of employee jobs in Dungannon, the four main industries are: manufacturing (32%); wholesale, retail and trade and repairs (20%); health and social work (12%); and education (11%). Of these, manufacturing is significantly higher than NI as a whole (at 11%), while health and social work is significantly lower than in NI as a whole (at 17%).

The percentage of the working age population in receipt of job seekers allowance in August 2014 was 3.1% (3.8% for males and 2.3% for females). This is lower than for Northern Ireland as a whole, with a rate of 4.6% (6.3% for males and 2.8% for females). The job density rate for Dungannon in the same period was 0.71 (a figure derived by dividing the total jobs in the area by the resident working age population). This figure is the same for Northern Ireland as a whole.

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<sup>1</sup> Data for this section this drawn from the following sources:

- *Local Government District Information for Dungannon*, NINIS (<http://www.ninis2.nisra.gov.uk/public/AreaProfileReportViewer.aspx?FromAPAddressMultipleRecords=Dungannon@Exact%20match%20of%20location%20name:%20@Exact%20Match%20of%20Location%20Name:%20%20Dungannon@3?#1261>).
- *Dungannon and South Tyrone Borough Profile 2013* (<http://www.dungannon.gov.uk/index.cfm/area/page/categorykey/29>).
- *Northern Ireland Multiple Deprivation Measure 2010*, NISRA ([http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM\\_2010\\_Report.pdf](http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM_2010_Report.pdf)).
- *Northern Ireland District Council Briefing*, DETI ([http://www.detini.gov.uk/index/what-we-do/deti-stats-index/stats-regional-analysis/regional\\_dca.htm](http://www.detini.gov.uk/index/what-we-do/deti-stats-index/stats-regional-analysis/regional_dca.htm)).
- *Claimant Count by District Council Area*, DETI ([http://www.detini.gov.uk/index/what-we-do/deti-stats-index/stats-regional-analysis/regional\\_dca.htm](http://www.detini.gov.uk/index/what-we-do/deti-stats-index/stats-regional-analysis/regional_dca.htm)).

## APPENDIX II: Profile of research participants

Code	Sex	Migrant worker	Nature of dispute
A	M	Y	Redundancy
B	F	N	Employer changed hours of work making meeting childcare responsibilities difficult, request for flexible working
C	F	N	Harassment and bullying by manager resulting in client depression and need for sick leave
D	F	N	Job downgraded upon client's return from maternity leave
E	F	N	Downgrading of job and reduction in hours
F	M	N	Sick day deducted from holiday entitlement, non-payment of sick pay
G	F	N	TUPE case – nursery closure because owner disappeared
H	F	Y	Agency worker underpaid holiday pay
I	F	N	Pregnancy discrimination
J	M	N	Redundancy, but client had worked for less than 12 months
K	M	N	TUPE, reduction and pay and increase in work hours
L	F	N	Change in hours, request for flexible working, subsequent redundancy
M	F	N	Non-payment of sick pay, bullying and harassment
N	F	Y	Sex discrimination – pregnancy, no risk assessment, heavy lifting
O	F	N	Reduction in work hours following pregnancy related sick leave, no pregnancy risk assessment, possible sex discrimination
P	M	Y	Employment terminated by employer
Q	F	N	Offer of employment terminated, seeking clarification of reason for this
R	M	N	Bullying and harassment, down-grading of job, possible discrimination
S	F	N	Zero-hours contract, non-payment of wages and holiday pay
U	F	N	Person employed as carer under personal budgets (self-directed payments) – client believes dismissed for requesting holiday pay
V	M	N	Possible TUPE
W	F	N	Reduction in pay, possible age discrimination
X	F	N	Reduction in pay, possible age discrimination
Y	F	N	Employer encouraged client to do further study, saying it would pay for time off work and fees involved, now reneging on agreement to pay for time off and placing requirement on client having to stay with employer or else will have to repay fees; bullying and harassment and possible constructive dismissal
Z	F	Y	Agency worker not paid accrued holiday pay
AA	M	Y	Sacked from job by text message for no apparent reason