

Report on the Review of the Conciliation and Arbitration Scheme for Members of the Permanent Defence Force

September 2018

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1. Background

1.1 Mr Paul Kehoe, T.D. Minister with responsibility for Defence asked me to carry out a review of the Conciliation and Arbitration Scheme for members of the Permanent Defence Force. On the 24th January 2018 he announced my appointment as an independent chairperson of the review.

1.2 “I announced recently that one of my priorities for 2018 would be a review of the C&A Scheme for members of the Permanent Defence Force. The scheme has been in existence since the early 1990’s and since then it has provided the framework to progress many successful negotiated agreements between Defence management, PDFORRA and RACO. However, in the intervening period there have been many changes in the industrial relations landscape and it is now appropriate that the Scheme is reviewed in order to ensure that it remains efficient and effective.” (extract from Minister’s statement of 24th January 2018)

2. Terms of Reference

1. The review shall:

- (a) Consider the redress and dispute resolution processes that are available to members of the Defence Forces and the issues that are within the scope of those processes.**
- (b) Review the purpose, scope and the key features of the PDF C&A scheme – up to and including arbitration.**
- (c) Consider the PDF C&A Scheme in the context of the current Defence Forces redress and dispute resolution processes, broader public sector pay negotiation processes and agreements, and any other relevant legislative provisions.**
- (d) Consider the findings of the European Committee on Social Rights in the recent case of Euromil v Ireland.**
- (e) Identify impediments to the efficient processing of claims within the PDF C&A scheme.**
- (f) Examine other C&A schemes in operation in the public service and benchmark the Defence scheme against these.**
- (g) Make recommendations regarding:**
 - a) The scope of the PDF C&A scheme**
 - b) The operation of the scheme, including the lodging and processing of claims**
 - c) The constitution and operation of the Conciliation Council including the appointment of, and role of, the Chair, and options for third party facilitation and/or mediation**
 - d) Options for third party arbitration in relation to matters not resolved at Conciliation Council.**

- 2. A review of the PDF C&A Scheme will be undertaken. The Minister has appointed Mr. Gerard Barry, as the independent chairperson for the review.**

- 3. The parties contributing to the review will comprise a representative from C&A Branch, Military C&A, Defence Forces Personnel Policy Branch, Defence Forces J1 Branch, PDFORRA, RACO and the Department of Public Expenditure and Reform.**

- 4. The Chairperson is to be provided with secretarial and research support by a nominated Department of Defence staff member who is not assigned to the C&A Branch. A member of the Permanent Defence Force nominated by the Chief of Staff will act as a contact point for the Chairperson and the person providing research and secretarial support to the chairperson. The nominee shall provide support and research regarding matters relevant to the Permanent Defence Force as may be required from time to time.**

- 5. The parties shall meet at the direction of the chairperson and the chairperson shall seek a written submission from key stakeholders including Civil/Military Management, PDFORRA, RACO and any other individuals, groups or organisations that he deems appropriate.**

- 6. The Chairperson is to provide a report to the Minister for Defence no later than six months from the commencement of the process. Said report is to be drafted by the Chairperson, taking into account the submissions and discussions that take place between the parties. The report should reflect the agreed positions of the parties, and where there is no such agreement it is open to the Chairperson to make his own recommendations and for these to be included in his report.**

3. Profile of the Defence Forces

3.1 The agreed establishment for the Permanent Defence is 9,500 personnel. As at the end of July 2018 there were 8,898 (whole time equivalent) personnel comprising of 7,187 Army, 705 Air Corps and 1,006 Naval Service personnel.

The combined Estimates for defence including army pensions Votes in 2018 provide for gross expenditure of €46 million. In Vote 36 the Vote of €707 million includes a pay and allowances allocation of some €509 million, while the remaining non-pay allocation of €198 million provides mainly for the renewal and maintenance of essential equipment, infrastructure and operational costs. The defence pay allocation provides for the pay and allowances of a Permanent Defence Force strength of up to 9,500, 550 civilian employees, 350 civil servants, 18 chaplains and 14 Army nurses.

3.2 Management Structure:

3.2.1 Under the Defence Acts, 1954-2015, the Department has civil and military elements. The civil element is headed by the Secretary General, Department of Defence and the military element by the Chief of Staff. Both elements provide supports to the Minister in the management of defence.

3.2.2 The Ministers and Secretaries Acts 1924-2017 provides that the Minister is ‘head’ of the Department. The Secretary General is the “principal officer” of the Department and as such is the Minister’s principal policy adviser. He is also appointed by the Minister for Finance as the Accounting Officer for all defence expenditure in accordance with the Exchequer and Audit Departments Act 1866. The authority, responsibility and accountability of the Secretary General are further elaborated in the Comptroller and Auditor General (Amendment) Act, 1993 and the Public Service Management Act 1997.

3.2.3 The Chief of Staff is the principal military adviser to the Minister. As provided for in the Defence Acts, the Minister has assigned duties to the Chief of Staff.

The Chief of Staff is directly accountable to the Minister for the performance of these duties, which include responsibility for the military effectiveness, efficiency, organisation, and

economy of the Defence Forces. As provided for in the Acts and with the approval of the Minister, the Chief of Staff has, in turn, delegated responsibility for certain duties to the Deputy Chief of Staff (Operations) and to the Deputy Chief of Staff (Support).

4. Representation

4.1 Legislative and Regulatory Framework

In July 1989, the Government announced that the Chief of Staff had been instructed to make preparations for the establishment of a new structure in the Defence Forces for ongoing consultations on pay and related matters. In February 1990 the Tánaiste and Minister for Defence announced the Government's intention to introduce legislation which would provide for the establishment of (i) associations for members of the Permanent Defence Force up to and including the rank of Colonel for the purpose of representing them on remuneration and related matters and (ii) a scheme of conciliation and arbitration analogous to the schemes which operate in other areas of the public service. The Defence (Amendment) Bill, 1990 was presented to the Dáil on 8 March 1990 and was enacted on 11 April 1990.

The Defence (Amendment) Act 1990 and Defence Forces Regulation (DFR) S.6 provide for the establishment of representative associations for members of the Permanent Defence Force. The associations that have since been established are the Representative Association for Commissioned Officers (RACO) and the Permanent Defence Forces Other Ranks Representative Association (PDFORRA) for Enlisted Personnel. A Scheme of Conciliation and Arbitration (C&A) for members of the Permanent Defence Force provides a formal mechanism for the Defence Forces representative associations to engage with the Official side¹ on matters which come within the scope of the Scheme. The Defence Forces representative associations are prohibited from being associated with or affiliated to any trade union or any other body without the consent of the Minister. Members of the PDF cannot become members of a trade union and are prohibited from taking industrial action.

4.2 Legal/Collective bargaining framework

Currently the Financial Emergency Measures in the Public Interest Acts 2009-2015, Public Services Pay and Pensions Act, 2017 and the Public Service Stability Agreement, 2018-2020

¹ References to the Official side encompass Civil Service and Military management and the Staff side encompasses the two representative associations RACO and PDFORRA.

provide the legal and collective bargaining framework for current pay and industrial relations policy.

The Military Representative Associations RACO and PDFORRA were party to the negotiations chaired by the WRC which culminated in the Public Service Stability Agreement, 2018-2020.

5. Redress and Dispute Resolution Mechanisms

5.1 Conciliation & Arbitration Scheme for Members of the Permanent Defence Force - Dispute Mechanism

The Conciliation and Arbitration scheme for members of the Permanent Defence Force was agreed in November 1998 and is similar to the schemes for the Civil Service, members of the Garda Síochána and Teachers. Those within these C & A Schemes do not have access to the Workplace Relations Commission/Labour Court for trade dispute purposes as they are not included in the definition of “worker” under the Industrial Relations Acts.

The Scheme applies to those ranks represented by the Representative Association of Commissioned Officers (RACO) and the Permanent Defence Forces Other Ranks Representative Association (PDFORRA) up to and including the rank of Colonel. As with other C & A Schemes “the existence of the scheme does not imply that the Government have surrendered or can surrender their liberty of action in the exercise of their Constitutional authority and the discharge of their responsibility in the public interest”.

The Conciliation and Arbitration (C&A) scheme provides a formal mechanism for the PDF Representative Associations, RACO and PDFORRA, to engage with the Official side. The purpose of the scheme is to provide a means for the determination of claims and proposals from the representative side and official sides relating to remuneration and conditions of service.

The scheme provides for two processes, Conciliation and Arbitration/Adjudication. The Conciliation Council is the joint regulatory body for the scheme. The Conciliation Council holds separate meetings with RACO and PDFORRA and meets bi-monthly.

Section 2(1) of the Defence (Amendment) Act, 1990 excludes from representation “matters relating to any operation and the raising, maintenance, command, constitution, organisation and discipline of the Defence Forces under the Principal Act and offences in relation to the Defence Forces and military property under that Act.”

The scheme sets out the matters appropriate for discussion by the Council as follows:-

A. Remuneration etc. under the following headings: -

- (a) claims relating to remuneration and other emoluments whether in cash or kind (for this purpose "remuneration" means, pay, allowances, gratuities, or grants payable to a member of the Permanent Defence Force or any pension, retired pay, or gratuity for which a member may be eligible in respect of or arising out of his/her service as such a member).

While, due to the nature of military service, claims for overtime payments may not be entertained, claims for specific allowances for any type of duty, including those duties which of their nature involve long hours, may be submitted under this heading.

- (b) claims relating to compensation for loss of earnings;
- (c) the administration of remuneration;
- (d) deductions from pay in respect of accommodation, rations and welfare services;

B. Other Conditions of Service and Career Development under the following headings: -

- (e) criteria governing the entry of personnel into the Permanent Defence Force other than the number of such personnel;
- (f) changes in systems of performance appraisal;
- (g) general criteria governing selection for overseas service;
- (h) systems and general criteria governing promotion;
- (i) the allowances and the occasions of the granting of all categories of leave including the quantum;
- (j) medical and dental benefits provided by the Department of Defence;
- (k) standards of living accommodation officially provided and general criteria governing the allocation of married quarters;
- (l) procedures for dealing with redress of wrongs and grievances;
- (m) the question of the provision of legal representation for members of the Permanent Defence Force against whom legal proceedings have been instituted arising out of their duties;
- (n) the application of the Safety, Health and Welfare at Work Act, 1989;

- (o) changes in the existing scheme of third level education;
- (p) the question of the recognition by outside bodies of training and qualifications gained in service;
- (q) changes in retirement ages and the procedures regarding voluntary retirement, resignation or discharge;
- (r) the application to the Permanent Defence Force of legislation which affects matters coming within the scope of this scheme;
- (s) (1) amendments of the Defence Acts, 1954 to 1998;
 (2) amendments of Defence Force Regulations;
 (3) amendments to General Routine Orders;
 (4) the implementation of reports which come within the scope of this scheme; and
 (5) amendments to Administrative Instructions which come within the scope of this scheme;
- (t) secondment/release of personnel to the Association;
- (u) affiliation to other bodies;
- (v) welfare schemes in the Permanent Defence Force; and,
- (w) Suggestions, within the scope of representation, for the promoting efficiency and effectiveness in the Defence Forces in a spirit of partnership.

Where agreement is not reached at conciliation (with or without the aid of a facilitator), the issue in dispute, if arbitrable, may go to the Adjudicator or Arbitration Board as appropriate.

The following claims are arbitrable under the scheme: -

- (a) Claims for adjustment of rates of
 - pay
 - allowances
 - gratuities, or
 - grants
 payable to a member of the Permanent Defence Force (including claims for new allowances, gratuities or grants).
- (b) Claims in regard to the quantum of annual leave and sick leave allowances;
- (c) Claims concerning compensation for loss of earnings.

5.2 Redress Mechanisms for Individual Members of Permanent Defence Force

Grievance Management Office Role

In order to rationalise its responses, the Grievance Management Office was established in Q1, 2018. This replaced the Redress of Wrongs Office and is now responsible for the management of all grievances taken in the Defence Forces through the various channels.

5.2.1 Redress of Wrongs (RoW)

There are 5 methods for a member of the Defence Forces to air a grievance.

- a) Redress of Wrongs Procedure
- b) The Workplace Relations Commission
- c) Solicitors Query
- d) Interpersonal Relations Complaint
- e) Judicial Review

The Redress of Wrongs (RoW) process operates under the provisions of Section 114 of the Defence Act, 1954, as amended. It provides a mechanism whereby any member who believes himself or herself wronged in **any matter** by any superior or other person may seek redress of the perceived wrong. The objective of the process is to resolve grievances at the earliest possible point within the military structure.

The internal RoW process involves a review of the complaint by the complainant's Unit Commander and may involve a referral to the General Officer Commanding the Brigade (GOC) and ultimately a referral to the Chief of Staff (COS). If the determination from the internal process does not meet the complainant's approval, he/she may then refer the complaint to the Ombudsman for the Defence Forces (ODF). Administrative Instruction A7 Chapter 2 deals specifically with the mechanics of the RoW scheme. The Admin Instruction lays out guidelines for timelines to be met in order to resolve issues as quickly as possible. From the initial complaint Military management have 28 days to resolve the perceived wrong before it

is forwarded to the Ombudsman. There are no time guidelines given to the Ombudsman. The Office of the Ombudsman is independent –role is outlined in Section 5.3

Stage 1. Company Commander (or equivalent).	2 days.
Stage 2. Commanding Officer	5 days.
Stage 3. GOC	14 days.
Stage 4. Chief of Staff	7 days.
Stage 5. Ombudsman/Complaints Inquiry Officer*/Minister guidelines.	No time

It should be noted that these are recommended guidelines and that in complex cases they cannot always be met. Reasonable delays in respect of these timelines should always be explained to the complainant.

*The Complaints Inquiry Officer deals with complaints that pre-date the enactment of the DF Ombudsman Act 2004 which established the Office of Ombudsman of the Defence Forces.

5.2.2 Ombudsman for the Defence Forces.

The Office of Ombudsman for the Defence Forces is established pursuant to the Ombudsman (Defence Forces) Act 2004. Section 2 of the Act provides that the Ombudsman is appointed by the President on the recommendation of the Government. The function of the Ombudsman for the Defence Forces (ODF) is to act as an independent ultimate point of appeal for complaints, and the administrative investigation into such complaints.

Mr Justice Alan Mahon was appointed by the President as the new Ombudsman for the Defence Forces, for a period of three years with effect from 6th July 2018.

The Ombudsman is independent in the performance of his/her functions. The recommendations of the ODF are non-binding on the Minister. Matters excluded from the remit of the ODF are set out in Section 5 including:

- a) any matter relating to the terms or conditions of employment in the Defence Forces, including any matter relating to the negotiation and determination of the rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in section 2(6) of the Defence (Amendment) Act 1990, or
- b) any matter concerning the organisation, structure and deployment of the Defence Forces.

Serving members of the Permanent Defence Force and Reserve Defence Force must first make a complaint through the Redress of Wrongs procedure under Section 114 of the Defence Act 1954. If dissatisfied with that outcome or if the complaint is not dealt with in a timely manner, the complainant may then lodge the complaint with ODF. Former members of the PDF and RDF can complain directly to the ODF. Complaints can be made against:

- Another serving Member of the Permanent Defence Force or the Reserve Defence Force;

- A former Member of the Permanent Defence Force or the Reserve Defence Force who was serving at the time of the action, (both members must have been serving at the time of the alleged action) or
- A Civil Servant who is or was employed in the Department of Defence.

Section 20 of the Protected Disclosures Act 2014 amended the Ombudsman (Defence Forces) Act 2004, by providing that the ODF can investigate a complaint made by a member of the PDF of penalisation for members of the Permanent Defence Force for having made a protected disclosure.

5.2.3 WRC Rights-based legislation for Individual members of PDF

Members of the Permanent Defence Force currently have the right of individual access to the Workplace Relations Commission/Labour Court under a wide range of rights-based matters provided under employment legislation. These include terms of employment, payment of wages, safety, health and welfare at work, maternity protection, adoptive leave, carers leave and parental leave².

5.2.4 Solicitors Query

A Member of the Permanent Defence Force may put in a solicitor's query in relation to a grievance. These are dealt with by the Grievance Management Office.

5.2.5 Interpersonal Relations Complaint

This method allows for an informal or formal approach in dealing with bullying and all forms of harassment.

² These include Terms of Employment (Information) Act 1994; Maternity Protection Acts 1994—2004; Adoptive Leave Acts 1995—2005; Carer's Leave Act 2001; Parental Leave Acts 1998 – 2006; Payment of Wages Act 1991; Safety, Health and Welfare at Work Act 2005; Paternity Leave and Benefit Act 2016 and the Employment Equality Acts 1998 -2011

5.2.6 Judicial Review

Members of the DF may take a judicial review on any decision made by a public body as a private citizen.

6. EUROMIL

A case was submitted by the European Organisation of Military Associations (EUROMIL) on behalf of PDFORRA in November 2014 on the basis that Ireland is in violation of Article 5 and Article 6 of the Revised European Social Charter (“the Charter”), on the grounds that the Defence Forces representative associations do not possess proper trade union rights. The Government’s submission was registered in September 2015. The EUROMIL response was registered in December 2015. The Government submitted a further response in February 2016. The European Committee on Social Rights published their decision in February 2018.

6.1 Article 5 - the Right to Organise

Euromil case on behalf PDFORRA under Article 5 v Ireland: -

That the prohibition on the right of representative organisations from joining Umbrella organisations such as the Irish Congress of Trade Unions (ICTU) is a violation of Article 5.

Decision on Merits: -

The committee did not consider that a complete ban on affiliation is necessary or proportionate, in particular as the restriction has the factual effect of depriving the Representative Associations of an effective means of negotiating the conditions of employment on behalf of their members, in so far as the ICTU possesses significant bargaining power in national negotiations. The Committee held there was a “violation of Article 5 of the Charter on grounds of the prohibition against military representative associations from joining national employees’ organisations.”

6.2 Article 6 subsection 2 – The right to bargain collectively

Euromil case on behalf of PDFORRA under Article 6 subsection 2 v Ireland: -

The right to bargain collectively.

Decision on merits: -

Having regard to the essential role of pay bargaining for the purposes of Article 6, the Committee considers that the situation fails to ensure sufficient access of military representative associations to pay agreement discussions. The Committee consequently holds that there is a violation of Article 6§2 of the Charter³.

6.3 Article 6 subsection 4 – Prohibition from striking

Euromil case on behalf of PDFORRA under Article 6 subsection 4 v Ireland: -

The right to take collective action including the right to strike.

Decision on Merits: -

The Committee noted that most Council of Europe states prohibit members of the armed forces from striking (with the exception of Austria and Sweden). Having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, potentially any industrial action could disrupt operations in a way that threatens national security. Therefore the Committee considered that there is a justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act.

The Committee consequently held that the prohibition of the right to strike of members of the armed forces does not amount to a violation of Article 6 subsection 4 of the Charter.

6.4 Review Terms of Reference – Euromil: -

Whilst the decision of the European Committee on Social Rights is not binding on Ireland the Minister did include consideration of the decision in the terms of reference for this review.

³ Representative Associations were granted access to the pay talks in 2017 ahead of the most recent Public Service Stability Agreement 2018 – 2020. These talks commenced after the submissions for this hearing had been finalised.

7. Review - Consultation Process

7.1 The First Plenary meeting to discuss the review of the C & A Scheme was held in Dublin on the 26th February 2018. In attendance were the Secretary General, Department of Defence, Chief of Staff of the Defence Forces, representatives from the Permanent Defence Forces Other Ranks Representative Association (PDFORRA), the Representative Association of Commissioned Officers (RACO), the Department of Public Expenditure and Reform (DPER), C & A Branches (military and civil), the Military Human Resources Branch (J1), the Defence Forces Personnel Policy Branch and Mr Gerard Barry, Chairperson of the Review.

This meeting was addressed by both the Secretary General and the Chief of Staff setting out their expectations for the review. As Chairperson, I set out the proposed methodology of the review and invited submissions from the individual parties. It was agreed these submissions would be exchanged between the parties.

7.2 As part of the review a number of projects would be undertaken:

1. A Compare and Contrast exercise to benchmark the Defence Forces C & A Scheme against other Public Service C & A Schemes.
2. An audit project focussing on the progression of a sample of cases that were/are being processed under the scheme, as selected by the parties.
3. An International fact-finding exercise to ascertain representative arrangements and pay determination systems of National Defence Forces from a number of other countries.

Following the receipt of the submissions and their subsequent exchange between the parties a series of bi-lateral meetings were held with individual stakeholders to discuss their submissions and the themes common to all of them.

7.3 At the second plenary meeting held on 26th April the parties were given a report on all of the submissions and bi-lateral meetings. The meeting also included presentations by both the Adjudicator and Arbitrator in the PDF C & A Scheme and also in the Civil Service C & A Scheme. The Adjudicator spoke about the genesis of the Civil Service C & A Scheme, and his

experience as a trade union leader and user of the scheme. The Arbitrator spoke of his other role as a former member of the Labour Court and he also contrasted the C & A Schemes with the Workplace Relations Commission/Labour Court system.

7.4 A third and final plenary meeting was held on 18th July to give the parties an opportunity to discuss the contents of the international comparators survey and the outcome of the audit of the sample of cases selected by them from the C & A process. As this was the final meeting the parties were offered an opportunity to raise any other issues relevant to the review.

8. Submissions Summaries

8.1 Department of Defence Submission Summary

8.1.1 C & A Scheme

8.1.1.1 Structure

The current scheme provides appropriate mechanisms for the processing of claims (i.e. Conciliation/Facilitation, Arbitration/Adjudication). While such mechanisms are mentioned within the scheme, there is no clear path for progression within the scheme to ensure full utilisation of all available means for resolving disputes or claims at each appropriate level. It would be useful to have in place a process and protocol to progress matters or to prioritise issues to the next phase.

8.1.1.2 Council

Conciliation Council Reports record the outcome of negotiations at council to include agreement and disagreement and the text must be agreed between the parties. Failure to agree a text means finalising the process is delayed. A clear process needs to be established for the recording of reports.

8.1.1.3 Chairperson

Chairperson of Conciliation Council - the review should examine if an Independent Chairperson could improve the process and develop the role of the chair.

8.1.1.4 Facilitation

Facilitation is very rarely used so it would be useful for clarity on when and how matters can be progressed through facilitation or mediation.

8.1.1.5 Arbitration

Under recent national agreements, the scope of arbitrable issues appears to have been widened so it will be necessary to examine how the C & A Scheme interacts with those agreements and outline a new definitive list of what is arbitrable.

8.1.1.6 The review of the scheme should assist in clarifying matters that are appropriate for adjudication and those more suitable for arbitration.

8.1.2 Scope – Matters encompassed by the Scheme

8.1.2.1 The scheme allows for claims relating to a wide range of issues including remuneration and other emoluments and certain other matters relating to conditions of service and career development. Custom and practice has led to some ambiguity regarding matters that are appropriate for discussion through C & A. There is a need to establish how and why a matter is referred to the C & A process and to know that efforts to find solutions through engagement with local management have been exhausted.

8.1.2.2 As per Section 2(1) of the Defence (Amendment), Act 1990 all matters relating to operations, raising, maintenance, command, constitution, organisation and discipline of the Defence Forces and offences in relating to the DF and military property are excluded.

8.1.2.3 Individual Claims

The current scheme does not provide clarity on the appropriateness of claims made on behalf of individuals versus those made representing a collective principle. This can lead to a single issue, which frequently centres on an individual's case, having a disproportionate work overhead for the Management side.

The time taken to process collective claims has been inevitably lengthened because of the high number of individual claims.

8.1.2.4 Best practice in operation in other C&A schemes should be adopted and utilised in the C&A scheme for members of the Permanent Defence Force.

8.1.3. Process

8.1.3.1 Presentation of Claims

Many claims submitted are deficient in terms of detail and necessitates requests for additional information and clarity before the merits and extent can be assessed. In order to expedite the

process and thus minimise delays a standard format should be put in place for the initial presentation of claims.

8.1.3.2 Parallel dispute resolution process

The representative associations should not present cases through the C & A Scheme where it is being progressed through a parallel dispute process. Matters being progressed by individuals using an alternative dispute resolution process should be removed from the C & A Scheme.

8.1.4 Circulation of Management Initiatives

The Department of Defence circulate management initiatives to the associations for their observations. A clear understanding of the consultative process to minimise delays in the implementation of Defence policy is needed.

8.1.5 Redress of Wrongs Process/ Defence Forces Ombudsman

The internal Redress of Wrongs process is separate from the C & A Scheme. It allows for the consideration of complaints by individual members of the Defence Forces. The Ombudsman is unique in that it is dedicated to serving the members of the Defence Forces rather than the public.

8.1.6. Euromil v Ireland – Consideration of Findings

8.1.6.1 The Department of Defence welcomes the conclusion of the European Committee of Social Rights that the prohibition on the right to strike is not a violation of European Social Charter.

8.1.6.2 A Government initiative led to the participation of the Defence Forces Associations in the negotiations on the Public Service Stability Agreement 2018-2020. The Representative Associations were afforded equal standing to other Public Sector Trade Union and Representative Associations at these meetings.

8.1.6.3 The feasibility of the Defence Forces Associations becoming associate members of the Irish Congress of Trade Unions (ICTU) should be explored. The ICTU should be approached to ascertain the conditions attached given that any form of industrial action is irreconcilable

with military service. Where the Government decides to deploy the Defence Forces for the maintenance of essential services, the ability of the Defence Forces to perform all duties as assigned by Government cannot be impeded by affiliation with any organisation.

8.1.7 General Data regulation

Consideration should be given as to how the new general data regulations which came into effect in May 2018 will impact on the processing of issues relating to individuals under the scheme.

8.2 PDFORRA Submission Summary

C & A Scheme

8.2.1 Experience with C & A Scheme:

8.2.1.1 PDFORRA's recent experience with the scheme can at best be described as chaotic and devoid of any real results.

8.2.1.2 Our submission of a complaint to the European Social Rights Committee in 2014 was primarily as a result of this experience.

8.2.1.3 Many claims remain in the system for years (e.g. claim for the application of the Working Time Directive on the agenda in excess of 7 years). PDFORRA has had to resort to legal action to vindicate the rights and entitlements of our members.

8.2.1.4 Staff within the C & A section appear to be overburdened, which appears to lead to burnout and high turnover levels which gives rise to loss of corporate knowledge. This has the effect of hampering the progression of claims.

8.2.2 Scope:

8.2.2.1 PDFORRA considers that the scope of the scheme is too limited, in particular when the exclusion of discussion on operational matters is used to curtail discussion on issues. It also does not consider that military management have sufficient appreciation of its obligations under the scheme and believe this "gap" can be a cause of significant difficulties for representation at District and Regional level.

8.2.2.2 Currently national pay agreements provide for increasing the scope of issues that can be subject to adjudication.

8.2.2.3 The current scheme explicitly prohibits the discussion of overtime. PDFORRA believes that the application of the Working Time Directive/Organisation of Working Time Act 1990, and recent case law from the ECJ will require provision within the scheme for overtime to be discussed.

8.2.3 Process:

8.2.3.1 There should be a greater use of facilitation and when requested all sides should agree to participate in the process.

8.2.3.2 The absence of agreed job descriptions within the Defence Forces inhibits the Association's ability to substantiate claims.

8.2.3.3 Department of Defence C & A staff appear to work hard and understand problems and claims.

8.2.3.4 For PDFORRA the absence of progress is deeply frustrating and leads to representative turnover at District/Regional level and loss of membership in certain areas. Overall membership remains high.

8.2.3.5 The requirement to cost claims is disadvantageous to the representative side and currently delays the processing of claims.

8.2.3.6 Claims submitted by individual members under the Employment Equality Act and Payment of Wages Act requires for submission of complaints within 6 months of the alleged breach. When such claims are firstly referred to Council for consideration PDFORRA has encountered difficulties in respect to timelines for the initiation of complaints under the aforementioned acts. Delays are becoming increasingly common giving rise to the exclusion of personnel from the scope of the legislation.

8.2.3.7 In cases where technical positions on matters involving complex financial considerations are involved the Association should have the right to be assisted by an expert. The limit on the number of advocates should be strictly observed.

8.2.3.8 There is no formal minute taking at Council meetings, this is a procedural issue which needs to be resolved.

8.2.4 Ministerial role in the process:

8.2.4.1 The current scheme provides for a timeline of three months for the return of the Ministers approval for agreements or findings of adjudication hearings. The Association would advocate a shorter timeline for this process.

8.2.4.2 PDFORRA believe it is incumbent on the Minister to provide written reasons why decisions of the Arbitration Board/Adjudicator are not implemented in all cases.

8.2.5 PDFORRA's Complaint to the European Social Rights Committee – Affiliation to ICTU:

8.2.5.1 PDFORRA's complaint under Article 5 & 6 of the European Social Charter was primarily borne out of frustration with the C & A Scheme and the inability to have issues pertaining to our members fully discussed at National Pay negotiations.

8.2.5.2 National Pay Agreements are a regular feature of Irish Industrial Relations and are acknowledged as having benefitted all the parties.

8.2.5.3 PDFORRA believes itself to have been marginalised at recent talks with no consideration centrally of the unique aspects of military service.

8.2.5.4 PDFORRA strongly believes in the merits of its arguments for affiliation to ICTU and believes the latter will make every effort to facilitate this, should such a concession be made.

8.2.5.5 The Association does not consider initiatives such as parallel talks sufficient to secure equity in pay negotiations.

8.2.5.6 PDFORRA requests that the findings of the Social Rights Committee be implemented as soon as practicable.

8.2.6 Additional considerations:

8.2.6.1 Appointment of Chairperson - PDFORRA believes there is merit in rotating the chair of the Conciliation Council every 5/6 years.

8.2.6.2 We believe that personnel should be assigned to the C & A branch for a fixed period as the current high turnover levels are a significant impediment to the finalisation of claims.

8.2.6.3 For “small claims” that are unique in nature to the Defence Forces consideration should be given to the assignment of financial responsibility by DPER to the Department of Defence for a certain annual quantum to settle such claims.

8.2.6.4 WRC/Labour Court - Claims that cost in excess of a pre-determined amount should be referred to the WRC/Labour Court as their recommendations are unlikely to be challenged because of their public perception of fairness and equity. This is not intended to impugn the current adjudication process.

8.3 Defence Forces Military Management Submission Summary

Introduction

8.3.1.1 DFR S6, promulgated on 16 May 1991 pursuant to the Defence Act, allows for the establishment of Representative Associations for Enlisted Personnel & Officers and outlines the scope of representation. The Defence Forces Conciliation and Arbitration (C&A) Scheme took effect in 1998 following agreement between the Ministers of Finance and Defence, PDFORRA and RACO on the practices and procedures of the scheme.

8.3.1.2 Military Management's position is that the four principles of transparency, timeliness, subsidiarity and comparability should underpin the C & A Scheme. (*see Defence Forces Military Management Submission, Section 35*)

8.3.2 C & A Scheme

8.3.2.1 Conciliation Council:

Both the Official side and Representative Associations may seek to have matters placed on Council for discussion. The Chair may decide if items on the agenda are appropriate for discussion under the scope of representation. Matters discussed at Council will either be agreed or disagreed. A Conciliation Council Report will be prepared and signed recording agreement or disagreement. Agreed reports are submitted to the Minister and disagreed reports may at the request of either party, be referred to either Facilitation or Arbitration.

8.3.2.2 The length of time it takes for issues to progress through the scheme to conclusion, particularly through Council is causing general frustration on both sides. While it is understood that some claims cannot be finalised due to external constraints and limitations, set by either DPER or subject to FEMPI, many are within the remit of the Department to agree or disagree without excessive delay. The delay in clearing agenda items through Council leads to a lack of confidence in the scheme.

8.3.2.3 Recent changes in key personnel at the Department has resulted in better use of the C & A Scheme and progression on long standing items.

8.3.2.4 Military Management believe that the Chairperson should be independent and impartial and understand IR machinery and that this is essential for the effective operation of the Council.

8.3.2.5 There is no clear procedure within the C & A Scheme to deal with Official proposals. The delay in progressing time sensitive matters is particularly frustrating for Military Management. Procedural uncertainty leads to delays and frustration. Proposals from the Official side should be formally discussed with the representative associations prior to implementation and be subject to a Conciliation Council Report in a time sensitive manner.

8.3.2.6 There appears to be an anomaly between what is considered adjudicable and issues deemed to be within the scope of representation.

8.3.2.7 The review should include a discussion with the Adjudicator on the recourse to settle an 'excluded' dispute.

8.3.2.8 Facilitation:

Facilitation has not been used since 2009 which indicates that a reluctance to enter a forum that requires compromise and flexibility from all sides to reach agreement.

8.3.2.9 Arbitration:

There have been no referrals to the Arbitration Board since 2005.

8.3.2.10 Adjudication.

In the case of Adjudication Hearings, Military Management believe that if the military position were reflected in the official side statement, which is currently not the position in many cases, many claims would be agreed prior to Adjudication.

As the Department of Defence are not empowered to accede to claims without the prior approval of DPER, the functionality of the conciliation process is restricted leading to an increase in disagreed reports and referrals to adjudication.

8.3.3 International Comparators

8.3.3.1 Military Management welcomes the investigation and consideration of comparable C & A Schemes and International Armed Forces IR machinery as part of the review.

8.3.3.2 The U.K, Australia and Estonia each have a unique approach to determining remuneration in their respective Armed/ Defence Forces. (*see Defences Forces Military Management submission for further information*)

8.3.4 ECSR Findings:

8.3.4.1 PDFORRA recognises that should the Minister for Defence consent to its affiliation to the ICTU, it must be excluded from any rules which would require it to become involved in industrial action with the Government. PDFORRA have given their assurances of the continued loyalty of the Enlisted Personnel of the Defence Forces to the Government. However any such assurances must also be given and fully recognised by ICTU.

8.3.4.2 Direct discussions with the ICTU, as proposed, on the terms and conditions of affiliation outlining possible obligations and responsibilities to Congress and the broader trade union movement is welcomed.

8.3.4.3 There is an absolute requirement to ensure that there is no conflict of interest between the role of the Defence Forces and the requirements of ICTU, in particular the ability of the Defence Forces to engage in Aid to Civil Authorities operations in maintaining essential services during industrial action.

8.3.5 National Pay Talks/ Pay Determination

8.3.5.1 Many of the current DF IR issues originate from the economic downturn and subsequent National Agreements and Acts such as FEMPI, the Haddington Road (HRA) and Lansdowne Road Agreements (LRA1 & 2), the Pensions Act of 2012 and the Defence Forces Reorganisation in 2012. These Agreements and Acts reduced pay and allowances across the Public Service and additionally within the Defence Sector through cost saving initiatives.

8.3.5.2 It is the position of ICTU and its direct engagement with DPER that determine the outcome of National Pay Agreements. Public Service Pay Talks 2017 afforded the Representative Associations a seat at the negotiating table for the first time. As the real negotiations often take place behind closed doors between ICTU and DPER, PDFORRA's view is that its affiliation with the ICTU would allow direct access to DPER. Other sectors have secured additional sectoral agreements "side deals" because of their more advantageous position as members of the ICTU.

8.3.5.3 Pay Determination Recommendation

Military Management believe that consideration should be given to developing an alternative means of pay determination comparable to those available to International Armed Forces in view of the dearth of influence of the Representative Associations during national pay talks.

8.3.6 Redress of Wrongs

8.3.6.1 The Redress of Wrongs process provides for an internal complaints system for individual members of the Defence Forces.

8.3.6.2 The Redress of Wrongs process is currently under review by the Department of Defence.

8.3.6.3 The Redress of Wrongs process remains separate and independent of the C & A Scheme.

8.3.6.4 Referrals to the Ombudsman excludes matters within the scope of the C & A Scheme.

8.3.7 Recommendations for improving the Scheme

8.3.7.1 The review should aspire to update the process in line with current IR norms and to fully utilise all mechanisms available where applicable, this may include access to the WRC and Labour Court

8.3.7.2 Military Management must be assured that operational matters remain outside the scope of the C & A Scheme and representation.

8.3.7.3 The person appointed to the position of Chairperson of Council should be independent, nominated by the WRC with the agreement of all parties, have a clearly defined role and be empowered to progress issues to conclusion.

8.3.7.4 Realistic timelines and triggers should be in place for processes within the C & A Scheme.

8.3.7.5 The position of Military Management should be considered when forming an Official Position on C & A matters. In order for conciliation to work Military Management recommend that all parties including Military Management can engage at council.

8.3.7.6 The Department should be given a specified level of financial autonomy to settle claims without referral to DPER

8.4 RACO Submission Summary

8.4.1 Summary of RACO's perspective;

8.4.1.1 Any Defence Forces (DF) C&A Scheme or National Pay Talks Structure must factor the nature of the DF organisation and the restricted “employee status” imposed on those who serve in Óglaigh na hÉireann. The review should address these issues as a fundamental theme in any recommendations.

8.4.1.2 National level pay talks are the preserve of Trade Unions only. The inclusion of Representative Associations for nothing other than optics has failed and is in clear contradiction of the Government's intent for DF Representation. This failed approach has indisputably placed DF members at a disadvantage relative to those who enjoy the power and influence of Trade Union status, which includes the ability to threaten or conduct industrial action.

8.4.1.3 The review of the DF C&A Scheme must consider how DF Representative Associations will achieve equivalent IR treatment where this is the true objective of any scheme. These considerations must include an examination of the implications of either remaining as a Representative Association, or becoming a Trade Union. The Review should also consider how DF Associations can be represented by the **Public Services Committee of ICTU** and the **Public Service Stability Agreement Oversight Committee**. Where the DF Associations are denied Trade Union status, comparable and equivalent status in these state negotiating and decision making structures must be addressed.

8.4.1.4 The DF C&A review must address the fundamental questions regarding Trade Union status, affiliation to ICTU while addressing the weakened employee status of Representation. If the DF is to continue to be denied Trade Union status, other formal structures that provide equivalent status and treatment securing access to State IR Structures must be considered and provided for. Marginalisation of DF Associations and Members should no longer be acceptable.

8.4.2 Summary of RACO's observations on scheme operation:

8.4.2.1 The Military Management position on issues coming within the scope of representation should be factored at the negotiating table of Conciliation Council.

8.4.2.2 Blind and misguided application of Public Service Norms to the DF organisation has resulted in many disputes, the result of which has been continued HR deficiencies. The DF are not a standard organisation comparable to the Civil Service.

8.4.2.3 RACO accepts the overarching authority of the Minister for Defence. Our members expect the Official Side to recognise the unique and restricted nature of military employment. These factors should be represented in the functions and deliberations of those operating the DF C&A Scheme.

8.4.2.4 The recent approach and intent demonstrated by the Official Side in attempting to bypass their commitment to fully engage in the DF C&A Scheme must be addressed in the review.

8.4.2.5 Unilateral decision making in contradiction of the scope and agreements made under the DF C&A Scheme is inconsistent with Government's original intent for how the parties should operate while essentially subverting the scheme's designed operation.

8.4.2.6 The Official Side's approach in unilaterally imposing changes to Terms and Conditions of Service prior to concluding the process as designed by the DF C&A Scheme must be addressed in the review.

8.4.2.7 The deficiencies of the current scheme allow Management to take unfair advantage of the restricted nature of the DF Representative Association Status.

8.4.2.8 Where the DF Associations are unable to influence disputes by the threat or conduct of industrial action, more considered management engagement is a system requirement in order for any DF C&A scheme to be successful. Management must

demonstrate respect for the Government's DF C&A Scheme and the restricted rights of those who serve Óglaigh na hÉireann.

8.4.3 Summary of RACO observations on Conciliation Council structure;

8.4.3.1 Chair of Conciliation Council: It is an accepted industry principle that a Chairman's role is one which should progress issues on the agenda to final conclusion either through discussion at such a forum or through the assistance or determination by Arbitration, Adjudication or Facilitation.

8.4.3.2 The Chair is the Assistant Secretary from the Department of Defence. The Chair is briefed by C&A (Civilian Element of the Department of Defence only) in advance of Council meetings. Military Management's opinion or position is excluded from such discussions and deliberations. During council meetings, other than noting the position of the parties, no efforts are made to encourage consensus of the parties or apply timelines in the conclusion or determination of issues.

8.4.3.3 RACO recommends consideration of an Independent Chair of Council. RACO suggest that the Independent Chair should be appointed by the WRC. Impartial and professional experience in such a role is likely to bring significant valuable corporate IR knowledge from the greater Industrial Relations sphere and positively influence the functions and operation of the DF C&A Scheme.

8.4.3.4 The current practice of nominating a Chairperson from DOD does not lend itself to a situation where the Chair can build positive engagements and relations, mutual trust, confidence in the process, a sense of calmness or stability, deliver for both parties, provide a focus, manage outcomes and ultimately reach early solutions before inevitably going to adversarial 3rd party mechanisms.

8.4.3.5 This review should arrive at a situation where any new orderly dispute mechanism has a managed outcome supported by the employer and employees, assisted by the chairperson and kept out of the limelight or media.

8.4.4 Summary of RACO's observations on DF C&A Scheme process;

8.4.4.1 The Adjudication process is particularly effective. However, the lengthy timelines in the provision of 'Disagreed Reports' by the Official Side proves exhausting with consequential delays in the conclusion of claims. *The review should consider this issue.*

8.4.4.2 Facilitation has not been optimised. *The review should consider this issue.*

8.4.4.3 The Arbitration Board will need to be redefined in this review in the context of National Pay Agreements and Trade Union negotiation of "side deals" awarded by the WRC and Labour Court. The status of the relationship between the scheme's DF Arbitration Board and the WRC/LC should be considered as part of this review.

8.4.4.4 WRC training for those employed in the DF IR and DF C&A areas should be mandatory. *Any DF or DoD professional should factor the unique organisation and employee restrictions of those serving in the DF and the design intent of DF Representation to ensure that DF members are not disadvantaged accordingly.*

8.4.5 Summary of RACO's observations on Sub-Committees of Conciliation Council;

8.4.5.1 Sub-Committees should be more effective in progressing claims and resolving issues. Experience has demonstrated that the Official Side has great difficulty in progressing matters to a timely conclusion for the following reasons;

- a. Conflicting opinion between Military and Civilian management.
- b. A lack of delegated authority of those attending Sub-Committees to negotiate positions or settlements.
- c. Inability of Civilian management to prepare informed positions based on relevant and considered research and functional applicability to military organisations.
- d. Competing complexity of White Paper Strategy Projects with Organisation Strategy Statement Objectives is strangling any form of practical and effective operational decision making.

e. There would appear to be deliberate efforts to avoid dealing with the clear organisational issues which predominately emanate from the Human Resources spectrum and efforts to avoid dealing with the scope of representation by extension.

8.4.5.2 The relationship between Sub-Committees and the Conciliation Council is critical to driving and progressing matters to conclusion. This failure must be addressed by the review.

8.4.5.3 The failure of the Conciliation Council to advance potential solutions by consensus and influence matters to conclusion demonstrates a fundamental failure in the operation of the DF C&A Scheme.

8.4.6 Summary of RACO’s observations on Military Forum;

The Military Forum is a particularly effective forum for addressing issues and matters of military service.

8.4.7 Summary of RACO’s observations on Scope;

8.4.7.1 DFR S6 – Where RACO believes that the Third Schedule (DFR S6) adequately provides for the Scope of Representation, the conflict lies with the interpretation and practical application of the scope provisions in the operation of the DF C&A scheme.

8.4.7.2 DF C&A Scheme 1998 – Claims, provided for under the scope of representation, **must be arbitrable**. The Official Side’s efforts, whether uninformed, in attempting to exclude claims (which have been the subject of Council Reports) from final arbitration is seen as a deliberate attempt to subvert the conclusion of claims under the scope and process of the DF C&A Scheme. This anomaly must be addressed by the review.

8.4.8 Summary of RACO’s observations on impediments;

8.4.8.1 Corporate Knowledge and IR Experience: Success of the DF C&A Scheme must factor the unique nature of DF employment, restricted nature of employee status and restrictions of the IR actions to secure equivalence with other sectors. Official Side Staff must have IR experience and knowledge of the DF scheme and wider Public Service IR context.

8.4.8.2 Decision Making Efficiency and Defence Autonomy: Grand complex strategy structures in the absence of functional and effective decision-making on operational HR issues are frustrating any practical resolution to issues impacting on the DF C&A claims. The Official Side's continual referral of decisions to Internal Sections, Strategic Projects and DPER delays any efficient resolution.

8.4.8.3 Role of Chairman of Conciliation Council: RACO recommends consideration of an Independent Chair of Council. RACO suggests that the Independent Chair should be appointed by the WRC. Impartial and professional experience in such a role is likely to bring valuable corporate IR knowledge from the greater Industrial Relations context and positively influence the functions and operation of the DF C&A Scheme.

8.4.8.4 Labour Court & WRC - Sectoral Judgements and Equivalent relationship with DF: Clear anomalies exist with respect to the weakened status of DF Representative Associations and the significant influence by the powers afforded to Trade Unions. Access to WRC and Labour Court must be considered in light of the indisputable success that unions have in processing claims. The ability to threaten and conduct Industrial Action to influence positive outcomes for members must be factored when considering equivalent models and solutions for the DF C&A Scheme.

8.4.8.5 Status of Council Agreements: Registered Employment Agreements provide a more secure legal standing that parties are obliged to respect. Council Reports do not have standing and this situation must be considered by the review in order to provide equivalence with other sectors and, additionally, limit the potential for the Official Side's exploitation of this situation.

8.4.8.6 The DF C&A scheme review must consider how DF Representative Associations will have equivalent treatment, either as a party of the **PSC of ICTU** and **PSSA Oversight Committee** or, where denied Trade Union Status, comparable and equivalent status in these negotiating and decision-making structures in an effort to recognise our rights and position ensuring that DF members are no longer marginalised or excluded.

8.4.9 Summary of RACO’s observations on alternative models;

8.4.9.1 In examining alternative solutions or options, the DF C&A Review must consider and explore alternative models in how to conduct both dispute resolution systems and structures and forums for National Pay Talks while providing equivalence of treatment for the Defence Forces Associations. How equivalence of treatment is to be provided must consider the following;

- a. The unique nature of Defence Forces terms of service.
- b. The consequential implications of any restrictions on DF members “employee rights”.
- c. The more powerful rights of Trade Unions and influence of ICTU bargaining power.
- d. The more powerful influence of the PSC of ICTU in negotiations.
- e. The governance of the PSSA Oversight Committee which excludes DF Rep Associations.
- f. The limitations imposed by nature of the standing of Council Agreements.
- g. The self-funding obligations of Trade Unions and the inability of small groups to self-fund.
- h. The negotiating licence obligations of Trade Unions.

8.4.9.2 Trade Union Status or Representative Status must be determined by this review. Equivalent treatment, both in dispute resolution systems and structures and forums for National Pay Talks must be addressed.

8.4.10 Summary of RACO’s observations on ECSR findings;

8.4.10.1 The ECSR findings support the potential for the DF Associations to become Trade Unions, Excepted Bodies and supports affiliation to ICTU while denying the right to strike.

8.4.10.2 These potential scenarios also provide legitimate opportunity for access to the WRC and Labour Court.

8.4.10.3 This review must factor the most powerful IR influence of the “right to strike” and other forms of Industrial Action. Marginalisation of those who serve in Óglaigh na hÉireann, by virtue of their restricted “employee status”, must not be allowed continue.

8.4.10.4 The potential complexity for such developments will require very careful consideration both by the DF and RACO members in order to ensure that the fundamental principles of Military Service are not compromised while securing equivalent employee rights of our members.

8.4.10.5 The obligations of Defence Sector Management in any IR and C&A Scheme are particularly significant in this context.

8.5 Department of Public Expenditure & Reform Submission Summary

8.5.1 DPER

8.5.1.1 DPER is in favour of improving and maintaining the existing Defence Forces C & A Scheme.

8.5.1.2 The priorities of DPER are to manage the cost of the public service pay and pensions bill, maintaining a stable industrial relations climate across the public service, to manage the gradual and phased unwinding of the FEMPI Acts while maintaining industrial relation activity and supporting public sector reform.

8.5.1.3 DPER are of the view that Article 3 of the current C & A Scheme should be retained which provides that the existence of the Scheme may not hinder the role of the Government in the discharge of its responsibilities in the public interest.

8.5.1.4 In 2017 PDFORRA and RACO participated in negotiations leading to the conclusion of the Public Service Stability Agreement 2018-2020.

8.5.1.5 The Public Service Pay Commission is currently examining the issue of the recruitment and retention of specialist personnel within the Defence Forces and they were specifically referenced in the Pay Commission's first report as experiencing difficulties in this regard.

8.5.2 C & A Scheme

8.5.2.1 Background:

The C & A Scheme for the Defence Forces agreed in 1998 was modelled on the Civil Service C & A Scheme. It is recognised that the scheme has particular importance for the Defence Forces because they do not possess the normal trade union rights and are prohibited from taking industrial action.

8.5.2.2 Impact of Public Service pay policy on C & A Scheme:

Under the terms of current Public Service Stability Agreement, the issue of pay and cost increasing claims have been removed from C & A Scheme's agenda.

8.5.2.3 Unimplemented adjudications under the scheme are reflective of fiscal and legislative constraints and shouldn't be viewed as evidence of a flawed C & A scheme.

8.5.3 Chairperson of Conciliation Council:

Consideration should be given to the appointment of an Independent Chairperson for the C & A Scheme.

8.5.4 Council role in the dissemination of Information:

The scheme could be used by the official side/employer to apprise the staff side of other human resource management developments and improve the industrial relation climate.

8.5.5 Process:

8.5.5.1 The current scheme allows for the discussion of a wide range of matters. If agreement is reached on a claim, an agreed report of Council is prepared and signed by both parties. If not, disagreement is recorded and the issue is sent for determination/arbitration by a third party.

8.5.5.2 To operate successfully, Conciliation Council reports require the agreement of both parties including agreeing a text on what is disagreed.

8.5.5.3 Facilitation is infrequently used and increasing the use of Facilitation as appropriate under the scheme should be looked at as a means of improving the effectiveness of the scheme.

8.5.5.4 The level of detail required and difficulty in obtaining the necessary information can lead to delay in processing some claims.

8.5.6 Scope:

8.5.6.1 Individual claims should be excluded from the process as with the Civil Service C & A Scheme.

8.5.6.2 Prior to any referral to the C & A process, local management should be more pro-active in dealing with terms and conditions issues, as may be appropriate.

8.5.7 Euromil v Ireland:

DPER concurs with the views expressed by the Department of Defence in their submission to this review.

9. Site Visits

As part of the review, I visited a number of locations throughout the country to familiarise myself with the work undertaken by the Defence Forces. These included the Department of Defence and Defence Forces Headquarters (DFHQ) in Newbridge, the Defence Forces Training Centre, Curragh Camp, McKee Barracks, Dublin, Air Corps, Casement Aerodrome and the Naval Base, Haulbowline. I was accompanied on these visits by Killian Magee DoD, Secretary/Researcher and Lt. Col. Stephen Morgan, Researcher/Advisor who were assigned to the review.

10. Compare and contrast exercise with other C & A Schemes

10.1 The members of the Permanent Defence Force, Civil Service, members of the Garda Síochána and Teachers each have separate Conciliation and Arbitration Schemes. The Civil Service C & A Scheme was the first of these schemes to be introduced and the others are modelled on it.

A “compare and contrast” exercise was undertaken to show the similarities and differences between the schemes under the following headings: -

1. Structure & Process
2. Scope – Subjects for Discussion
3. Usage

10.2 Compare and Contrast – Structure & Process Findings

The exercise revealed that the schemes were almost identical under all of the headings with the only difference being the method of appointment of the Chairperson. In the case of the Civil Service, Permanent Defence Force and Garda Síochána C & A Schemes, the Chairperson is a serving Civil Servant nominated by the Minister, while the Chair of the Teachers scheme is independent of the parties to the scheme (a WRC staff member) and is nominated by the minister following consultation with the parties.

Appendix A Table 1 sets out the main elements in each scheme.

10.3 Compare & Contrast – Scope Findings

Many of the subjects for discussion are common to all schemes. The Permanent Defence Force have a greater number of subjects for discussion, many of which relate to their unique role of military service. Under the PDF C & A Scheme claims for overtime payments are not entertained, however discussion on claims for specific allowances relating to long hours may

be discussed. The other schemes also have a small number of subjects for discussion which are unique to their sector.

Appendix B Table 2 sets out the subjects for discussion under each scheme.

10.4 Compare & Contrast – Usage Findings

The figures as shown in Table 3 relate to the number of cases that were referred to Adjudication or Arbitration for the period 2004 – 2017. The purpose of the exercise was to compare the usage of these mechanisms in the Defence Forces with the usage in the other C & A Schemes. Having considered the statistics, I can draw no inference from them.

Appendix C Table 3 set out total usage figures under each scheme.

11. Compare and Contrast C & A Scheme with WRC/Labour Court

11.1 The WRC/Labour Court's role encompasses all matters relating to the employment relationship, the C & A Scheme has a more limited range of functions.

11.2 The processes employed in both systems i.e. conciliation and adjudication/arbitration are essentially the same.

11.3 An Industrial Relations Officer (IRO) is appointed by the WRC to chair all conciliation proceedings, whereas the C & A Scheme Conciliation Council may use a Facilitator at the request of one or more of the parties if the matter is not arbitrable, or if it is arbitrable by agreement of the parties.

11.4 When a matter within the scope of the C & A Scheme is before Conciliation Council for discussion, and is subject to a disagreed report, it may, if arbitrable be referred to adjudication/arbitration. When a matter at the Conciliation stage of the WRC is not resolved, it may, by agreement of all the parties, be referred to a full hearing of the Labour Court.

11.5 Individual or small groups who lodge a case with the WRC have their case heard by an Adjudicator who issues a decision, this decision can be appealed to the Labour Court by a party to the complaint. This contrasts with the Adjudicator's decision under the C & A Scheme which cannot be appealed as there is no further appeal mechanism within the scheme.

12. Analysis of ‘tracking exercise’

12.1 As part of the review process a ‘tracking’ exercise of PDF C & A cases was undertaken. The purpose of this was to identify impediments to the efficient processing of claims. The parties were invited to submit a number of cases and from those a representative sample was chosen and investigated. The exercise revealed a number of reasons why claims/issues were not progressed to a conclusion.

12.2 There were delays at departmental level in formulating responses to the Representative side claims when internal consultation either within the department or with other government departments was necessary e.g. the application of the E.U. Working Time Directive.

12.3 There were also delays on the Representative side responding to proposals for change from the Official side.

12.4 Three adjudication findings were not implemented due to the provisions of the Financial Emergency Measures in the Public Interest Acts 2009 -2015(FEMPI), similar to other areas of the public service.

12.5 Some delays could be directly related to the complexity of the issues involved. There were cases where the use of facilitation might have progressed matters to a conclusion. There were also examples where cases had progressed through the scheme and both sides reached agreement.

13. International Practice

13.1 In order to ascertain how the Defence Forces representative arrangements and pay determination system compared in an international context, information was requested from the militaries of twelve countries. Responses were received from Australia, Canada, Belgium, Denmark, France, Spain, Sweden and New Zealand. Information on the UK system was included as it was already available.

I wish to acknowledge the respondents' contribution to the research.

13.2 Australia: -

Australian Defence Forces (ADF) members are deemed “servants” not “employees” within the meaning of the Fair Work Act 2009 and are therefore prohibited in engaging in enterprise bargaining. They are precluded from engaging in industrial action by withholding labour and it is a breach of military discipline to do so.

Australia utilise a Defence Force Remuneration Tribunal. The Tribunal has the function and powers to inquire into and determine the salaries to be paid to ADF personnel. Where the Minister acting on behalf of the Commonwealth and the Chief of Defence Staff acting on behalf of ADF personnel agree on a pay determination the Tribunal may give effect to the determination.

13.3 Canada: -

The Canadian Armed Forces do not have representation nor do they plan to. They have no right to protest or strike.

In terms of pay determination they have a system in place which allows for the general parameters of pay increases to be determined by Government in consort with other Civil Servant organisations.

13.4 Belgium: -

The Belgian Armed Forces have full trade union status. In Belgium, personnel are allowed to demonstrate but it must be on their own time. In respect of affiliation to National Trade Union Bodies, Belgium allow such affiliations.

The Belgian pay determination system is partly based on the public service system with adaptations for the military.

Belgium have incorporated the European Working Time Directive for the Armed Forces but have sought derogations in respect of operations and training for such operations.

13.5 Denmark: -

The Armed Forces members in Denmark have full trade union status. They are derogated from any form of stoppage of work by collective agreement with the Ministry of Finance. They do not have the right to strike.

In respect of affiliation to National Trade Union Bodies, Denmark allows such affiliations. The pay determination system is based on the Danish model for collective bargaining.

The Danish Armed Forces are covered by the European Working Time Directive, however work that is classified as actual military service is exempt i.e. military exercise, international deployment.

13.6 France: -

France allows representation but does not allow full trade union status and there are no formal plans to change this. Strikes are illegal regardless of crisis levels. The EU Working Time Directive does not apply to the Armed Forces in any form in France.

The French military are paid through a common grid with the government civilian employees (from all ministries) and also there are specific bonuses linked to military status and activities.

13.7 Spain: -

Spain allows representation for Armed Force members but does not allow full trade union status and there are no formal plans to change this. They do not have the right to strike.

There are specific remuneration regulations for the armed forces “*given that its members are subject to a personnel regime that implies special circumstances and service in their professional performance*”.

A Ministerial order transposed the European Working Time Directive in 2006 in the field of military personnel of the Armed Forces.

13.8 Sweden: -

Armed Forces in Sweden have full trade union status. They have the right to strike but this right is curtailed in times of crisis.

In respect of affiliation to National Trade Union Bodies, Sweden allows such affiliations.

The military have a separate pay determination that correlates with the Swedish Agency for Government Employers.

In terms of the EU Working Time Directive, the Swedish Armed Forces have an agreement with the unions with certain regulations, to enable the specificity of a military authority.

13.9 New Zealand: -

New Zealand Defence Force members do not have representation nor do they plan to. They do not have the right to strike.

They have a separate system of pay determination, and this takes the form of a set of remuneration tables for military members and civilians.

13.10 U.K: -

UK Armed Forces do not have representation nor do they plan to. They do not have the right to strike.

The UK have an independent pay review body that advise the Prime Minister and Secretary of State for Defence on remuneration and charges for members of the Crown Forces. The review body accept submissions to assist in its determination from the MoD, Service personnel during visits to installations, each of the Services, the Secretary of State and Service Families Federations amongst others in lieu of the lack of formal representation. The review body can make general recommendations in respect of base pay and/or targeted measures to support recruitment and/or retention issues.

REVIEW

14. Conclusions and Recommendations

The Permanent Defence Force dispute resolution mechanisms are on a par with the other Conciliation and Arbitration Schemes in the public service. The dispute resolution mechanism namely the C & A Scheme was first introduced into the Civil Service in the 1950's, and was followed by similar schemes for the Teachers, Gardaí and the Permanent Defence Force. The schemes which are jointly regulated by the parties have the same parameters, criteria, processes and procedures, with minor variations in scope which are specific to the sector.

The Defence Forces redress resolution mechanism is superior in that, in addition to the internal redress complaints procedure (Redress of Wrongs), individual members may refer their complaint if unresolved to the Office of the Ombudsman for the Defence Forces, who is independent and whose function it is to act as the ultimate point for appeal. This contrasts with the role normally associated with the Ombudsman which is to investigate complaints from the general public against an organisation especially a public body.

An important event in the history of the Defence Forces was the establishment of the representative associations RACO and PDFORRA which were set up under the 1990 Defence (Amendment) Act and Defence Forces Regulation (DFR) S6. It followed a period of discontent among members in relation to their pay and conditions.

The review which was announced by Minister Paul Kehoe, T.D. in January 2018 had as its terms of reference a review of the Permanent Defence Force Redress Mechanisms and PDF Conciliation & Arbitration Scheme. He requested a report that would reflect the submissions and discussions with the parties, the areas of agreement and disagreement and my recommendations for an improved system of dispute and redress mechanisms and consideration of the Euromil findings. In my consideration of these issues, and given the restrictions of military service and in particular the prohibition on taking strike action, it is my view that it is of paramount importance that the Defence Forces have access to dispute

resolution machinery that is comprehensive, easy to access, timely in its operation, independent and enjoys the confidence of all the parties who use it.

The review found that the scheme as constituted has all the necessary elements to support effective dispute resolution and there was a consensus among the parties that a dedicated Defence Forces C & A Scheme has certain intrinsic values. It is jointly regulated by the parties i.e. Conciliation Council, and provides for conciliation and arbitration as required.

However, the parties in their submissions and subsequent discussions revealed a high level of dissatisfaction and frustration with the scheme, in particular how business was conducted. The input and engagement of the official side and representative side needs to be more efficient and co-ordinated, both in their interactions with each other and at Conciliation Council so that matters in dispute can progress in a timely manner to a conclusion. When matters cannot be agreed at Conciliation Council, the review has found that the absence of agreement to progress matters to the next stage as provided for under the scheme has led to inordinate delays resulting in a high level of dissatisfaction.

The scheme however has certain limitations in terms of its scope which need to be addressed. It needs to be broadened so that any issue relating to terms or conditions of employment, whether it relates to an individual or a collective, is admissible. This would bring it into line with the WRC/Labour Court system in terms of scope.

In any review of a system that provides for discussion on pay or conditions the impact of the financial crisis has to be considered. The prohibition of cost increasing claims underpinned in legislation in the FEMPI Acts 2009-2015 effectively removed pay and other cost increasing claims from both the C & A Schemes and WRC/Labour Court agenda.

The representative associations believe that their involvement in the public service pay negotiations process has not provided them with an effective means of advancing their members interests. In their submission PDFORRA state that they believe closer ties to the ICTU and specifically the Public Services Committee of ICTU would give them greater

influence at the negotiations. RACO and Military Managements preference is for a pay review body similar to The Armed Forces Pay Review Body in the UK.

As part of the review I have given consideration to the findings of the European Committee on Social Rights in the case of EUROMIL v Ireland taken on behalf of PDFORRA.

14.1 Review of C & A Scheme – Consultations Findings

The submissions from the parties and subsequent bi-lateral meetings highlighted a high degree of dissatisfaction and frustration with the operation of the scheme. Many aspects of the scheme came in for criticism by the parties, these include: -

1. Chairperson of Conciliation Council not independent of the parties - Department of Defence official;
2. The scheme is not comparable to the WRC/Labour Court model in terms of scope;
3. The scheme is not comparable to the WRC/Labour Court in that Adjudicator's findings cannot be appealed to the Arbitration Board;
4. Inordinate delays in progressing matters through the different stages to finality;
5. Absence of meaningful discussion at Conciliation Council;
6. Failure of the Conciliation Council and the Sub-Committees to develop effective interaction;
7. Sub-Committees of Council lack delegated authority which renders them ineffective;
8. The underutilisation of Facilitation;
9. Delays in getting Official side responses so matters can be progressed at Council;
10. Lack of detail in claims from Representative side;
11. Delay in Representative side responding to proposals for change from Official side;
12. Difficulty between the Department and Military Management in formulating an Official side position;
13. No Conciliation Council minutes are taken.

14.2 Recommendations on Redress and Dispute Mechanisms

14.2.1 Recommendation on Chairperson: -

There was a general consensus amongst the parties that the Chairperson of the Council should be independent.

Accordingly, it is recommended that an independent Chairperson to the scheme be appointed by the Minister for Defence following consultation with the parties. The Chairperson would play a key interventionist role in the operation of the scheme, thereby ensuring that the parties conducted their business efficiently and in accordance with the provisions of the scheme.

It is the view of the parties, to which I concur, that the Workplace Relations Commission should be approached with a view to identifying a candidate for the position.

14.2.2 Recommendations on Scope of C & A Scheme: -

There is a lack of clarity in relation to the scope and operation of the scheme which makes it difficult to navigate.

Not all issues that are admitted into the conciliation process are arbitrable e.g. claims for improvements in pay and conditions can go to conciliation under the scheme, but only claims that embrace the rank as a whole can be referred to Adjudication/Arbitration.

The Scheme as written does not provide access for individual type claims.

Decisions on organisational and operational matters may have HR/IR implications.

The exclusion for discussion of operational and organisational matters when such matters can have HR/IR implications can curtail the Representative side from carrying out their role. Claims for overtime payments per se are excluded under the scheme, but due to the nature of military service claims for specific allowance for any type of duty involving long hours may be submitted.

Having given these matters careful consideration, my recommendation is that the scope of the scheme should be broadened to allow for all matters relating to terms or conditions of employment to be discussed, whether they relate to a collective or individual.

Matters within the scope of the scheme should have access to all the mechanisms of the C & A Scheme, including Adjudication/Arbitration so they can progress, in accordance with procedures, to a conclusion.

14.2.3 Recommendation on Adjudicator Findings: -

A party to a complaint to the Workplace Relations Commission may appeal to the Labour Court from a decision of an Adjudication Officer. Under the C & A Scheme the Adjudicator's finding is final and cannot be appealed.

It is recommended that the C & A scheme should be revised to allow for an appeal of the Adjudicator's finding to the Arbitration Board.

14.2.4 Recommendations on Format of Claims: -

There is no standard format for the submission of a claim under the present scheme. The lack of specific detail and resulting requirement for further information delays the timely progression of the claim.

Accordingly, it is recommended that a standard format for the presentation of claims should be agreed between the parties with an emphasis on a requirement for greater specificity.

There is a requirement under section 45 of the Scheme for the Representative side, that when making a claim, they provide "an estimate of the annual cost of conceding the claim". As there are practical difficulties associated with this, it is recommended that any revision of the scheme should remove this requirement for the representative side.

14.2.5 Recommendations on Progression of Claims – Timelines: -

All the parties expressed the view that the issue of delays/timelines should be addresses in the review.

As a matter is only deemed to be within the C & A Scheme when it is referred to Council there is a need for a registration process at Council. There must be a clear delineation between matters registered by Council and matters still under discussion within the administrative structure of the C & A branch.

I recommend that a set of indicative timescales for processing claims/issues should be agreed between the parties thus providing a framework of how matters would be progressed at Council.

I believe there is a need for a system that charts the progress of issues on a regular basis and highlights where difficulties/delays have arisen that may negatively impact on workplace relations.

It is therefore recommended that a quarterly 'status report' be circulated to the parties and that it should become an agenda item to be considered by Council. This will assist the parties in identifying the obstacles and actions needed to progress matters and allow for intervention by the Chairperson if deemed appropriate.

14.2.6 Recommendations on the use of Facilitation: -

All parties agree that there has been an underutilisation of the facilitation process as an aid to negotiation. It is clear that this has impacted negatively on the effectiveness of the conciliation process. Under the current rules a matter that is arbitrable is excluded from Facilitation unless both sides agree.

It is therefore recommended that in future facilitation should take place at the request of either party. To expedite the process, it may be beneficial to have a panel of Facilitators available to call on.

14.2.7 Recommendations on C & A Scheme Personnel: -

The relatively high staff turnover of key personnel on both the departmental and military management side and to a lesser extent on the representative side has been identified as a negative factor in the operation of the C & A Scheme. It also impacts on relationship building and corporate memory.

I support the proposal from the parties that a training program should be a requisite for all those working within the C & A process to enable them to discharge their duties and responsibilities more effectively. It is essential that an induction programme be introduced for all the parties to coincide with the launching of the revised scheme.

I would recommend that all those with a role in the C & A process should possess the necessary skills and experience. The potential for developing career opportunities by establishing specialist HR/IR posts in the defence sector should be explored.

There is a need for good administrative support to underpin the efficient working of the scheme. My recommendation is that an appointment should be made to the position of 'Secretary to the C & A Scheme', and that the appointee's duties would include administrative support to the Chairperson, responsibility for maintaining of a register of claims, minute taking at Council meetings, correspondence etc.

14.2.8 Recommendations on the Scope of Redress and Dispute Resolution Mechanisms for Individuals: -

There are a range of redress mechanisms available to individual Members of the Permanent Defence Force. For the purpose of this review I propose to focus on two of the mechanisms currently being used to process grievances.

1. Redress of Wrongs
2. Conciliation and Arbitration Scheme.

The Redress of Wrongs process provides a mechanism whereby a member of the Defence Forces who believes that they have been wronged in “any matter” by, for example, a decision of a superior officer or another, may seek redress.

The C & A Scheme is the industrial relations machinery for the Defence Forces and even though individual cases are not included in the scope of the scheme, a practice has evolved in recent years that allows these cases to be processed on an ad hoc basis within the scheme.

The Official side expressed a need to have clear guidelines as to the matters admissible to each of the mechanisms. In order to understand what the volume and type of grievance being processed within each of the mechanisms I examined the most recent data available.

The most recent data from the Grievance Management Office for the period January 2016 to the present, show that of the 172 complaints referred to the RoW, 7 related to pay and conditions and 165 to other matters. (RoW is the complaints process for individuals.)

The most recent data from the C & A Scheme for the period January 2016 to the present, show that of the 198 individual cases referred to it, 173 related to pay and conditions and 25 to other matters.

This clearly shows that the preferred choice of individual members for grievances that relate to pay or conditions is the C & A Scheme, whereas the Redress of Wrongs is the preferred choice for grievances relating to ‘other matters.’

My recommendation is that the scope of the C & A Scheme be broadened to include matters relating to pay or conditions for individual members and that the scope of the RoW should be amended to allow access for “all matters” with the exception of those matters that relate to pay or conditions.

14.2.9 Recommendation – Implementation: -

If the recommendations contained in this report are accepted by the Ministers, there will need to be a transitional period that will involve some readjustment and may pose certain challenges in the short term. Consultation should take place to identify priorities and a realistic timescale for implementation. There will be a requirement for extra resources to give effect to the recommendations in the review.

14.2.10 Review

It is recommended that the revised scheme should be reviewed after a three year period as this would afford the parties an opportunity to assess the schemes performance.

14.3 Observations on Euromil

Both representative associations PDFORRA and RACO believe that the findings of the European Committee of Social Rights, taken by the European Organisation of Military Associations (Euromil), on behalf of PDFORRA should be addressed in the review.

Article 5, Article 6.2 and Article 6.4 of the European Social Charter relate to full trade union rights and are broken down as follows: -

- The right to join national employees' organisations (ICTU)

- The right to bargain collectively

- The right to take collective action.

The Defence (Amendment) Act 1990, Section 2 provided for the establishment of Representative Associations for Enlisted Personnel and Officers. Section 2.3 of the Act states “an association shall be independent of and shall not, without the consent of the Minister, be associated with or affiliated to any trade union or any other body”

The European Committee of Social Rights held that, in the case of the ‘right to organise’ complaint, the prohibition on the Military representative associations joining national employee organisations is a violation of Article 5 of the European Social Charter.

The prior consent of the Minister would be required should either of the associations decide that they wish to be associated with or affiliated to a national employees’ organisation.

The Representative Associations are recognised by the Minister for Defence for negotiating purposes under the aegis of the Conciliation and Arbitration Scheme for Members of the Permanent Defence Force up to and including the rank of colonel. The associations were unable to participate in National Pay Agreement discussions, as were negotiated by the trade union body ICTU with the Government, and were instead in a parallel process. The European Committee of Social Rights considered that given the essential role of pay bargaining, that the existing arrangements failed to provide the associations with sufficient access to the pay discussions and held there to be a violation of Article 6.2 of the European Social Charter.

A Government initiative in 2017 afforded the representative associations RACO and PDFORRA a seat at the most recent public service pay negotiations.

In the case of the Right to Strike the Government stated that in the context of the armed forces that the prohibition on the right to strike was necessary and proportionate in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The European Committee of Social Rights held that the prohibition of the Right to Strike of members of the armed forces does not amount to a violation of Article 6.4 of the European Social Charter.

The decisions of ECSR are not binding on Ireland.

It is my view that the granting of full trade union rights with its associated right to strike would not be compatible with the principles of military service.

14.4 Recommendations on Pay Negotiations /Determination

Pay Negotiations:

A Government initiative in 2017 afforded the representative associations RACO and PDFORRA a seat at the talks that led to Public Service Stability Agreement (P.S.S.A, 2018-2020). While the representative associations participated in the negotiations they did not believe they were accorded either the same status or afforded the same opportunities to pursue their members interests as the affiliated trade unions who were represented at the talks by ICTU. They cite the absence of any so called ‘side deals’ for their members as evidence of this.

The Department of Defence and DPER consider that the representative associations had equal status with other representative bodies and trade unions at the recent pay negotiations.

A public service pay commission was established in 2016 to advise government on public service remuneration policy. It is currently examining recruitment and retention issues in certain sectors including the Defence Forces and is due to report later this year. It provides independent evidenced based analysis to government and should inform any subsequent negotiations between the parties. As such the commission has many of the characteristics of a pay review body.

PDFORRA believe that an affiliation/association with ICTU would give them direct access to DPER and a more advantageous position when participating in the pay negotiating process.

RACO believe that consideration should be given to the establishment of a dedicated pay review body similar to other armed forces pay review bodies.

Military Management are also of the view that an independent pay determination system should be considered for the Defence Forces.

The Department of Defence and the Department of Public Expenditure and Reform are in favour of the representative associations continued participation in public service pay negotiations.

Pay Determination:

My recommendations are based on my discussions with the parties over the last few months on the subject of pay determination. This was a contentious issue with many different and diverging views being expressed, but there was unanimity among the representative associations that they should not be disadvantaged in any negotiations to secure improved pay and conditions for their members, because of their status as members of the Defence Forces and the restrictions that it imposes.

I recommend that the Representative Associations should continue to take their seat at the Public Service pay negotiations to further their members interests. As the Representative Associations believe that they had only a peripheral involvement in the recent public service pay negotiations, I believe there is a need to devise confidence building measures and specifically the modalities for their more effective participation in such processes. The combination of their involvement in Public Service Pay Negotiations, interaction with the Public Service Pay Commission and access to a revised C & A Scheme should provide a solid basis for the representative associations to advance their members interests in the future.

As the issue of the representative associations forming closer ties with the ICTU was advanced at the review, the official side should, with the consent of the Minister engage in discussions with the ICTU. The practicalities of a representative association forming association/affiliation with the ICTU should be explored while giving due consideration to any likely conflict that might arise between such an arrangement and the obligations of military service. Should this be viable, discussions could then continue on a more formal basis to include the representative associations.

Acknowledgements

I would like to thank all those who participated in the review, the representative organisations RACO and PDFORRA, officials from the Department of Defence and the Department of Public Expenditure and Reform and the representatives of Military Management. I want to acknowledge their contributions both in their written submissions and their input into the discussions at the plenary and bi-lateral meetings.

I also want to record my appreciation to the members of the Permanent Defence Force I met on my visits to the Headquarters, Newbridge, the Defence Forces Training Centre, Curragh Camp, McKee Barracks, Dublin, the Air Corps, Casement Aerodrome and the Naval Base, Haulbowline. It gave me an opportunity to see the work they do and a much greater understanding of their role.

I would like to thank the Arbitrator and Adjudicator for their informative presentations.

Finally, I would like to thank Killian Magee, Department of Defence, Secretary/Researcher, and Lieutenant Colonel Stephen Morgan, Researcher/Adviser for their insight, assistance and contributions over the period of the review.

Killian Magee,
Secretary

Gerard Barry,
Chairman

25 September 2018

Appendix A Table 1 - Structure & Process

Table 1

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Chairperson	Civil Servant nominated by Minister	Civil Servant nominated by Minister	Civil Servant nominated by Minister	WRC official
Facilitator's Role	As an aid to negotiation. When arbitrable subject to agreement of both sides. At the request of either side if not arbitrable, or arbitrability is in doubt.	As an aid to negotiation. When arbitrable subject to agreement of both sides. At the request of either side if not arbitrable, or arbitrability is in doubt.	As an aid to negotiation. When arbitrable subject to agreement of both sides. At the request of either side if not arbitrable, or arbitrability is in doubt.	As an aid to negotiation. When arbitrable subject to agreement of both sides. At the request of either side if not arbitrable, or arbitrability is in doubt.
Facilitator's Report	If agreement is not possible facilitator will prepare a report to be included in Council report.	If agreement is not possible facilitator will prepare a report to be included in Council report.	If agreement is not possible facilitator will prepare a report to be included in Council report.	If agreement is not possible facilitator will prepare a report to be included in Council report.

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Adjudicator	Appointment by Government on nomination of Ministers in agreement with Representative Associations	Appointment by Government on nomination of Ministers in agreement with Staff Side	Appointment by Government on nomination of Ministers in agreement with Representative Associations	Appointment by Government on nomination of Ministers in agreement with Staff Side
Arbitration Board	Appointed by Government, Chairperson nominated by Ministers in agreement with Representative Associations, one member nominated by Representative Associations and one member nominated by Government.	Appointed by Government, Chairperson nominated by Ministers in agreement with Staff Side, one member nominated by Staff Side and one member nominated by Government.	Appointed by Government, Chairperson nominated by Ministers in agreement with Representative Associations, one member nominated by Representative Associations and one member nominated by Government.	Appointed by Government, Chairperson nominated by Ministers in agreement with Staff Side, one member nominated by Side Staff and one member nominated by Government.

Issue	Defence Forces	Civil Service	Garda Siochána	Teachers
Arbitration Board/ Adjudicator's Scope	Claims for revisions of pay or significant changes in remuneration or conditions involving significant extra expenditure are only referable to the Board. All others referred to the Adjudicator.	Claims for revisions of pay or significant changes in remuneration or conditions involving significant extra expenditure are only referable to the Board. All others referred to the Adjudicator.	Claims for revisions of pay or significant changes in remuneration or conditions involving significant extra expenditure are only referable to the Board. All others referred to the Adjudicator.	Claims will be referable to Arbitration, save any claim agreed between both parties to be referable to Adjudication
Criteria for referral to Arbitration/Adjudication	Claims arbitrable under Permanent Defence Force scheme. Claims that record a disagreed report at Council. Claims that record an agreed report that is not accepted by the Minister.	Claims arbitrable under Civil Service scheme. Claims that record a disagreed report at Council. Claims that record an agreed report that is not accepted by the Minister	Claims arbitrable under Garda Siochána scheme. Claims that record a disagreed report at Council. Claims that record an agreed report that is not accepted by the Minister	Claims arbitrable under Teachers scheme. Claims that record a disagreed report at Council. Claims that record an agreed report that is not accepted by the Minister.

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Arbitration or Adjudication	<p>A claim will go to the adjudicator where both sides agree.</p> <p>A dispute as to whether a claim will be referred to the Adjudicator or Arbitration Board will be determined by the Arbitration Board.</p>	<p>A claim will go to the adjudicator where both sides agree.</p> <p>A dispute as to whether a claim will be referred to the Adjudicator or Arbitration Board will be determined by the Arbitration Board.</p>	<p>A claim will go to the adjudicator where both sides agree.</p> <p>A dispute as to whether a claim will be referred to the Adjudicator or Arbitration Board will be determined by the Arbitration Board.</p>	<p>A claim will go to the adjudicator where both sides agree.</p> <p>A dispute as to whether a claim will be referred to the Adjudicator or Arbitration Board will be determined by the Arbitration Board.</p>
Procedures for dealing with claims.	<p>Conciliation</p> <p>Facilitation</p> <p>Adjudication/Arbitration</p>	<p>Conciliation</p> <p>Facilitation</p> <p>Adjudication/Arbitration</p>	<p>Conciliation</p> <p>Facilitation</p> <p>Adjudication/Arbitration</p>	<p>Conciliation</p> <p>Facilitation</p> <p>Adjudication/Arbitration</p>
Advocacy	Not more than 3 advocates for each side.	Not more than 3 advocates for each side.	Not more than 3 advocates for each side	Not more than 6 advocates for each side.

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Arbitration Board Reports	<p>Ministers can authorise the implementation of the findings within one month, or if they consider that the implementation of the report would have serious financial/budgetary or taxation consequences</p> <p>Ministers will submit a report to Government who will either authorise implementation within 3 months or they will introduce a motion in the Dáil proposing an alternative basis for implementation. If for other reasons the Ministers consider the report should</p>	<p>Ministers can authorise the implementation of the findings within one month, or if they consider that the implementation of the report would have serious financial/budgetary or taxation consequences</p> <p>Ministers will submit a report to Government who will either authorise implementation within 3 months or they will introduce a motion in the Dáil proposing an alternative basis for implementation. If for other reasons the Ministers consider the report should not be accepted the Government</p>	<p>Ministers can authorise the implementation of the findings within one month, or if they consider that the implementation of the report would have serious financial/budgetary or taxation consequences</p> <p>Ministers will submit a report to Government who will either authorise implementation within 3 months or they will introduce a motion in the Dáil proposing an alternative basis for implementation. If for other reasons the Ministers consider the report should not be accepted the Government may either authorise the</p>	<p>Ministers can authorise the implementation of the findings within one month, or if they consider that the implementation of the report would have serious financial/budgetary or taxation consequences</p> <p>Ministers will submit a report to Government who will either authorise implementation within 3 months or they will introduce a motion in the Dáil proposing an alternative basis for implementation. If for other reasons the Ministers consider the report should</p>

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Cont/	not be accepted the Government may either authorise the implementation or introduce a Dáil motion proposing either rejection, modification or deferment.	may either authorise the implementation or introduce a Dáil motion proposing either rejection, modification or deferment.	implementation or introduce a Dáil motion proposing either rejection, modification or deferment.	not be accepted the Government may either authorise the implementation or introduce a Dáil motion proposing either rejection, modification or deferment.
Criteria for claims	At each stage criteria are set out that must be taken into account e.g. Public finances, national policy on pay	At each stage criteria are set out that must be taken into account e.g. Public finances, national policy on pay	At each stage criteria are set out that must be taken into account e.g. Public finances, national policy on pay	At each stage criteria are set out that must be taken into account e.g. Public finances, national policy on pay
Procedure for Pay claims and major claims.	Pay claims currently not dealt with under scheme	Pay claims currently not dealt with under scheme	Pay claims currently not dealt with under scheme	Pay claims currently not dealt with under scheme

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Items for Agenda	Representative Associations can request placing item on Agenda. Chairperson to decide. Minister can place item on Agenda for discussion to get views of Associations.	Staff Side can request placing item on Agenda. Chairperson to decide. Minister can place item on Agenda for discussion to get views of Staff Side.	Representative Associations can request placing item on Agenda. Chairperson to decide. Minister can place item on Agenda for discussion to get views of Associations.	Staff Side can request placing item on Agenda. Chairperson to decide. Minister can place item on Agenda for discussion to get views of Staff Side.
Costing of claims	If a claim may require extra expenditure Representative Associations must provide estimate of annual cost.	If a claim may require extra expenditure Staff Side must provide estimate of annual cost.	If a claim may require extra expenditure Representative Associations must provide estimate of annual cost.	If a claim may require extra expenditure Staff Side must provide estimate of annual cost.
Confidentiality	Proceedings of meetings of Council will be confidential.	Proceedings of meetings of Council will be confidential.	Proceedings of meetings of Council will be confidential.	Proceedings of meetings of Council will be confidential.
Scope of representation	Subjects for discussion as set out in Scheme.	Subjects for discussion as set out in Scheme.	Matters appropriate set out in Scheme	Subjects for discussion as set out in Scheme.
Council Reports	Not binding on Minister	Not binding on Minister	Not binding on Minister	Not binding on Minister

Issue	Defence Forces	Civil Service	Garda Síochána	Teachers
Claims for individual's admissibility	Claims on behalf of individuals excluded except where an individual constitutes a rank.	Claims on behalf of individuals excluded.		Claims on behalf of individuals excluded
Interpretation				Interpretation Committee

Appendix B Table 2 - Scope

Table 2 Subjects for Discussion under the C & A Schemes

	Remuneration to include Pay, allowances and similar payments	Administration of/ principles governing remuneration	Compensation for loss of earnings	Hours of weekly attendance/ duty	Criteria/ principles governing entry/ recruitment	Systems/ principles/ general criteria governing promotion	Principles governing grading
Defence Forces	✓	✓	✓	x	✓	✓	x
Civil Service	✓	✓	✓	✓	✓	✓	✓
Garda Síochána	✓	x	✓	✓	✓	✓	x
Teachers	✓	x	x	x	✓	✓	✓

	Principles/ allowances/ granting of governing leave including annual, sick and special leave	Principles/ procedures dealing with redress of wrongs/ grievances/ discipline	Changes to procedures/ principles governing superannuation, voluntary retirement, resignation or discharge.	Suggestions for promoting efficiency and effectiveness	Standards of/ principles governing officially provided living accommodation	Questions re legal representation for PDF members arising out of their duties
Defence Forces	✓	✓	✓	✓	✓	✓
Civil Service	✓	✓	✓	✓	x	x
Garda Siochána	✓	✓	✓	✓	✓	x
Teachers	✓	x	✓	x	x	x

	Application of Safety, Health & Welfare at Work Act	Deductions from pay for rations accommodation and welfare services	Changes in systems of performance appraisal	Changes in the existing scheme of third level education	Recognition by outside bodies for training and qualifications gained in service	Application to the PDF of legislation affecting matters coming within the scope of the scheme	Medical and dental benefits provided by Department of Defence
Defence Forces	✓	✓	✓	✓	✓	✓	✓
Civil Service	x	x	x	x	x	x	x
Garda Síochána	x	x	x	x	x	x	x
Teachers	x	x	x	x	x	x	x

	General criteria governing selection for overseas service	Implementation of reports or amendments to admin instructions that come within the scope of the scheme	Amendments to Defence Acts, Defence Forces Regulations or Routine Orders	Secondment/ release of personnel to the Association	Affiliation to other bodies	Welfare schemes in the PDF	Questions of doubt or difficulty re subjects appropriate for Departmental Council
Defence Forces	✓	✓	✓	✓	✓	✓	X
Civil Service	X	X	X	X	X	X	✓
Garda Siochána	X	X	X	X	X	X	X
Teachers	X	X	X	X	X	X	X

	Claims relating to the establishment of a proportion of unestablished grades	Standards of accommodation officially provided	Principles governing transfers	Any subject all parties agree is appropriate for discussion	Principles governing and claims relating to the express terms and conditions of employment
Defence Forces	x	x	x	x	x
Civil Service	✓	✓	✓	x	x
Garda Siochána	x	x	x	x	x
Teachers	x	x	x	✓	✓

Appendix C Table 3 - Usage Findings

Table 3 Adjudication and Arbitration Claims 2004 - 2017

	Defence Forces	Civil Service	Garda Siochána*	Teachers
Adjudications	29	55		2
Arbitrations	1	19		8

* Whilst there were no official figures available for Garda C & A Scheme it was believed that numbers of adjudications and arbitrations were in single digits.