

THE INDUSTRIAL TRIBUNALS

CASE REF: 2421/12

CLAIMANT: Patricia MacBride

RESPONDENT: The Commission for Victims and Survivors

DECISION

The decision of the tribunal is that the claimant is an officeholder, who is not an employee.

Constitution of Tribunal:

Chairman (sitting alone): Mr D Buchanan

Appearances:

The claimant was represented by Mr M McEvoy, Barrister-at-Law, instructed by Rosemary Connolly, Solicitor, of Rosemary Connolly, Solicitors.

The respondent was represented by Mr P Ferrity, Barrister-at-Law, of Macauley & Ritchie, Solicitors.

- 1(i) The claimant, by a claim form presented to an industrial tribunal on 20 November 2012, sought a redundancy payment from the respondent. She was one of four persons who had been appointed as a 'member' of 'the Commission for Victims and Survivors for Northern Ireland' (though for convenient shorthand I shall refer to her as a Victims' Commissioner, which was the original intended designation of her post, and the term used by the parties in correspondence, documents and in evidence to the tribunal). I set out in some detail below the manner of her appointment, the statutory background to, and the history of the post, the terms and conditions relating to it, and their variation in the course of the engagement. I also set out the circumstances of the termination of that engagement. In this respect I am much indebted to respective counsel and their instructing solicitors, who in accordance with the direction given by the Vice-President of the Tribunals on 25 February 2013, subsequently provided a statement of background facts which I have set out at **Appendix A**.
- (ii) Further to the Case Management Discussion, a statement of legal and factual issues was also provided. This is set out at **Appendix B**.

Paragraph 1 of the legal issues states:-

“(1) Was the claimant:-

- (a) an officeholder; and/or*
- (b) an employee; and/or*
- (c) a worker*

during the period of her appointment with the respondent between 2 June 2008 and 2 September 2012?”

The essential legal issue in dispute is that the claimant asserts that she was an employee during this period whereas the respondent states she was not.”

It would perhaps be more accurate to state that the essential legal issue, as the case developed, was whether the claimant was an officeholder who was also an employee. (In this regard Mr McEvoy BL who appeared for her, accepted that she was an officeholder, as opposed to a ‘pure’ officeholder, and therefore not also an employee, as contended by Mr Ferrity BL for the respondent.)

The case proceeded on the basis that if the claimant was an employee, she would be an employee of the Commission of which she was a ‘member’ in much the same way as someone can be an employee of a company of which he or she is a director. All the other issues to be decided were largely contingent on the determination of this question. A claim in the statement of issues under the Fixed Term Employees (Protection of Less Favourable Treatment) Regulations (Northern Ireland) 2002, while not explicitly withdrawn, was not pursued, as the claimant conceded no actual comparator existed for the purpose of those Regulations.

It was indicated to me that, in the event of a determination of liability, the parties were confident they could deal with quantum between themselves.

- (iii) In order to determine this matter I heard evidence from the claimant, Ms MacBride, and from Ms Arlene McCreight, Head of Human Resources and Corporate Services with the respondent, and from Mr Fergus Devitt, Director of Good Relations in the Office of the First Minister and Deputy First Minister (‘OFMDFM’) the respondent’s sponsoring Department in the devolved administration.

I also had regard to documentary evidence adduced by the parties.

- 2(i) As the position of Victims’ Commissioner arises by statute, and is subject, on any view, to a degree of statutory underpinning, it is convenient to start by setting out in some detail the relevant statutory provisions.
- (ii) A ‘Commissioner for Victims and Survivors for Northern Ireland’ was established by Article 4(1) of the Victims and Survivors (Northern Ireland) Order 2006 (‘the 2006 Order’).

Appointment to the post was to be made by the First Minister and Deputy First Minister acting jointly (Article 4(2)) and a Schedule to the Order had effect in relation to the Commissioner.

(iii) Paragraph 1(1) of the Schedule stated that:-

“[t]he person for the time being holding the Office of Commissioner for Victims and Survivors for Northern Ireland shall by that name be a corporation sole.”

(iv) Sub-paragraphs (2) and (3) provided that he or she was not to be regarded as the servant or agent of the Crown or enjoy any status, immunity or privilege of the Crown, and property held by the Commissioner was not to be regarded as property of, or held on behalf of, the Crown.

(v) Paragraph 2 of the Schedule gave the Commissioner power to do anything, other than borrow money, which was appropriate for facilitating or incidental or conducive to the exercise of his functions, and set out some particular powers which he could exercise (co-operating with bodies or persons exercising similar functions whether in the United Kingdom or not, requiring, holding and disposing of land and entering into contracts).

(vi) Paragraph 3 dealt with ‘Tenure of Office’. A Commissioner was to hold and vacate office in accordance with the terms of his appointment. The term of appointment was to be four years, with possible appointment to a second, final term.

A person could resign his office on notice to the First and Deputy First Minister, and, they, acting jointly, had power to remove a person from office as a Commissioner in certain defined circumstances (criminal conviction; bankruptcy and associated processes; failure, without reasonable excuse, to discharge the functions of the post; unfitness or inability to exercise his functions).

(vii) Paragraph 4 dealt with remuneration, allowances, pension provision, and compensation for loss of office in certain circumstances. The latter required the approval of the regional Department of Finance & Personnel (‘DFP’). The Commissioner could appoint his own staff. Again, their pay and other financial aspects of their employment required DFP approval.

(viii) Other provisions of the Schedule provided for the delegation by the Commissioner of his function to duly authorised staff (Paragraph 6), his seal of office and its authentication (Paragraph 7), evidence of documents (Paragraph 8), vesting of property in his successor (Paragraph 9), funding of the office by OFMDFM, payment to OFMDFM of sums received by the Commissioner (what ultimately went into the Consolidated Fund (Paragraph 10), the keeping, and provision of accounts by the Commission, the auditing of those accounts by the Comptroller and Auditor General, and the laying of those accounts before the Northern Ireland Assembly (Paragraph 11), and a requirement to provide an Annual Report to OFMDFM to be laid before the Assembly and copied to the Secretary of State (Paragraph 12). The Northern Ireland Assembly Disqualification Act 1975 applied to the Commissioner (Paragraph 13) and he was subject to investigation by the Commissioner for Complaints for Northern Ireland (Paragraph 14) and was designated an office or

body which was a public authority for the purposes of Part VII of Schedule 1 to the Freedom of Information Act 2000.

- (ix) Other substantive provisions of the 2006 Order set out the duties of the Commissioner (Article 6), his general powers (Article 7) and provisions relating to Work Programmes to be carried out (Article 8). These had to be submitted to the First and Deputy First Minister who could require further information in connexion with, or suggest modifications to, any such Work Programmes. There was also a general consultative duty in relation to Work Programmes.

- 3(i) The 2006 Order was enacted during a period of Direct Rule and during that period, and before the legislative came fully into effect, the then Secretary of State appointed an Interim Victims' Commissioner. On the restoration of devolution the First and Deputy First Minister decided that instead of appointing one Victims' Commissioner under the 2006 Order, four would be appointed instead. Amending legislation – the Commission for Victims and Survivors (Northern Ireland) Act 2008 ('the 2008 Act') – was therefore passed to achieve this objective.

- (ii) Article 1(2) of that Act replaced the Victims' Commissioner with:-

“ ... a body corporate to be known as the Commission for Victims and Survivors for Northern Ireland.”

A new Schedule was inserted into the 2006 Order by Section 1(2) of the 2008 Act. This largely mirrored the provisions of the original Schedule, with 'Commission' now inserted for 'Commissioner' and consequential amendments to reflect this change of terminology. Paragraph 3(1) of the new Schedule provided that:-

“[t]he Commission shall consist of such members as are appointed by the First Minister and Deputy First Minister acting jointly.”

There was new provision for those who filled casual vacancies (Paragraph 3(i)), arrangement for secondment of civil servants to the staff of the Commission (Paragraph 6), the making of standing orders by the Commission to regulate its own proceedings (including quorum), and the designation by the First and Deputy First Minister of a member of the Commission as Chief Commissioner (Paragraph 9(1) and 6(b) respectively).

- (iii) The claimant and the three other members of the Commission established by the 2008 Act were appointed following a recruitment process undertaken in early 2008 under the auspices of OFMDFM in conjunction with the Commissioner for Public Appointments. The names of candidates deemed appointable following interview by a selection panel which included representatives of OFMDFM, the Public Appointments Commissioner, and independent members were put forward to Ministers, who then made their choices from those names.

A letter, written on behalf of Ministers, was sent to the claimant offering her the post of member of the Commission. She accepted the offer of the post, and the appointment commenced on 2 June 2008 for a period of four years. Similar letters were sent to the other successful candidates.

- (iv) Terms and conditions of appointment were provided on 30 May 2008. Some of these terms and conditions reflected the provision of the Schedule to the 2006 Order, as substituted by the 2008 Act (eg the four year period, the possible extension for a further four year period, and the provisions for resignation and removal). Paragraph 1 of the terms and conditions provided that in the event of any inconsistency between the appointment letter and terms and conditions of appointment on one hand, and the Schedule on the other hand, the Schedule took precedence.
- (v) Other paragraphs of the terms and conditions of appointment which are of particular relevance to the claimant's employment status are as follows:-

"4. As a member of the Commission you will be required to work such hours as may be necessary to effectively discharge your duties. You may be regularly required to work outside normal office working hours in evenings and at weekends in order to attend meetings and be accessible to victims and survivors.

...

6. Absence through sickness, injury or other disability will entitle you to up to six months' full pay and six months' half pay subject to a maximum of 12 months' sick leave in any period of four years or less.

7. In addition to public and privilege holidays, you will have a leave allowance of 30 days per annum.

8. The post attracts an annual salary of £65,000. Progression will be in line with the overall value of the annual pay award for the Senior Civil Service.

9. The appointment will be pensionable : pension arrangements to be agreed with the Office of the First Minister and Deputy First Minister."

Other paragraphs dealt with the following matters : Termination of appointment (Paragraph 3), travelling and subsistence allowances for official business to be paid in accordance with Northern Ireland Civil Service Regulations (Paragraph 10), requirement to enter relevant matters in the Register of Interests to avoid conflicts (Paragraph 13), informing OFMDFM of any appointments which may impinge on Commission duties (Paragraph 14), restrictions on political activity (Paragraphs 15 and 16), and application of the Official Secrets Act 1911 and 1989 (Paragraph 17).

- 4(i) During the course of the claimant's four year term as a member of the Commission income tax, and employee pension contributions towards the Northern Ireland Civil Service pension scheme and National Insurance contributions, were deducted from her salary, which was paid by BACS transfer. Her tax code was a standard employee code, and she received P60 statements at the end of each tax year.

Her salary was adjusted in the course of her employment by the average pay increment for Senior Civil Servants, though it appears there may have been some delay in doing this, and her salary was paid by the Commission, not the Civil Service. This is evidenced by a letter from the Head of the Northern Ireland

Civil Service to the claimant of 24 February 2011. As far as leave was concerned, she enjoyed an entitlement equivalent to that in the Northern Ireland Civil Service (though not expressed as such in the terms of her minute of appointment). However, she did not require approval or permission of Commission staff to take leave. They merely noted that she had taken it.

- (ii) Around August 2010 an issue arose concerning arrangements for time off by the claimant to carry out her duties as a lay magistrate. She was given information about payment – she was told that she should choose to either accept payment from the Courts Service and apply for leave without pay from her Commission post to enable her to carry out her judicial duties, or else not accept payment from the Courts Service and apply to the Commission for special leave with pay. In this connexion she was provided with a copy of the Northern Ireland Civil Service Special Leave Guidance for information, and was told that any application for special leave should be made in advance and in writing. The Civil Service Special Leave Guidance referred to and was produced in the context of Articles 78 and 79 of the Employment Rights (Northern Ireland) Order 1996, which deals with the rights of an employee for time off for public duties.
- (iii) The claimant's duties as a lay magistrate also led to an investigation into suspected financial irregularities. It is necessary to consider this matter in determining the issues before the tribunal, but I wish to emphasise most emphatically that the investigation uncovered no evidence of fraudulent behaviour on the claimant's part, and there is no question mark over her integrity or honesty.
- (iv) The findings of the investigation showed that the claimant 'undertook remunerative work as a lay magistrate which rendered her unavailable for duty (as a member of the Commission) during normal office hours'.

As she had received payment for acting as a lay magistrate in addition to her salary as a Victims Commissioner, the recommendation of the investigation was that the Commission should seek restitution from the claimant.

- (v) The following points relating to this investigation and its consequences are to be noted. Firstly, while as is apparent, there was no evidence of fraud on the part of the claimant, had the matter progressed to the making of such an allegation, there was no disciplinary procedure (providing, by way of examples, for the making of allegations, an investigation into them, possible suspension pending investigation, disciplinary proceedings, potential sanctions, right of appeal) applicable to the claimant. Her terms and conditions of appointment did not include any such provisions, or incorporate by reference any other document containing such provisions. They merely made reference to the removal procedure under Paragraph 3(6) of Schedule to the 2006 Act, as substituted by the 2008 Act.

The investigation itself seems to have been convened on an ad hoc basis. No other member of the Commission or of the Commission staff played any investigative role in it (as opposed, I presume, to supplying evidence to it). It was carried out by a body external to the Commission, the Central Investigation Service ('CIS') of the Department of Agriculture and Rural Development. Had this investigation discovered evidence of irregularities or dishonesty, then the matter would have been referred to Ministers to consider exercising their power to remove the claimant from office.

The Secretary of the Commission, Anne Dorrie, was advised by a senior official of OFMDFM on 29 September 2010 as follows:-

“The CIS will also recommend that, to ensure no other errors of this type can occur in the future, there is an urgent need to review the Commission’s Governance system and protocols. The review should ensure the terms and conditions of Employment for the Commission are explicitly based on the [Northern Ireland Civil Service] guidelines on special leave arrangements pertaining to private occupations.”

On 2 November 2010, with regard to repayment of the money at issue by the claimant, she advised the Secretary:-

“As the Commission’s Accounting Officer the mechanism of how restitution is made is a matter for yourself. In terms of logistics you may wish to contact HR Connect (who discharge pay, personnel, etc functions for NICS) to get advice on such arrangements.”

- 5(i) Issues also arose during the course of the claimant’s work in relation to her sickness absence. This seems to have occurred in the early part of 2011.

On 4 March 2011, Ann Dorrie, the Commission Secretary, wrote to another senior official in OFMDFM, Mr Colin Jack. Her letter was headed ‘Commissioner’s Terms and Conditions’. She reiterated that they had previously had conversations on a number of personnel issues regarding Commissioners. In the letter she stated:-

“A ... recent conversation was in relation to the referral of Commissioner MacBride (ie the claimant) to the Occupational Health Service (‘OHS’) and you indicated that you were content for the Commission to take this forward.

On reflection ... I wonder if this is the correct action to take. As you are aware the Commission is not the Employer of the Commissioners and whilst I do not envisage there being any difficulty in the Department (ie OFMDFM) delegating certain functions to the Commission, such as payroll and record of attendance etc, I am unsure what is the legal position would be in regard to the Department delegating a fundamental employer function. The Department retains the responsibility for the performance of the Commissioners and I believe that issues such as attendance are directly related to this.

I would be grateful if you would consider this matter further and take legal advice on this matter.”

- (ii) On 16 March 2011, Ms Dorrie wrote to the claimant about her sickness absence. In that letter she stated that the claimant should produce medical certificates and forward them without delay. If she did not do this, the Commission might withhold her pay and not reinstate it until the required medical evidence was received.

She informed the claimant that with effect from 8 April 2011, she would exhaust her entitlement to full pay 'in accordance with the terms of the NICS Staff Handbook'. After that the claimant would receive half pay. However, the same entitlement was set out at Paragraph 6 of the claimant's terms and conditions of appointment. Paragraph 6 stood on its own, and did not mention, or incorporate by reference, the NICS Handbook.

The claimant was also reminded of the availability of the 'Employee Assistance Programme service', which gave access to professional, confidential counselling.

Upon her return to work, the claimant was required to complete a 'Return to Work' interview form. Section 2 of this form was left blank as the claimant did not have a line manager.

- (iii) Earlier, on 10 December 2010, Mr Brendan McAllister, one of the other members of the Commission and at that time its Acting Chairman, had written to Mr Jack stating that the Commissioners were concerned that their terms and conditions 'of employment' had still not been formalised in a written contract of employment, and asking that OFMDFM rectify this situation.

Mr Jack replied on 20 January 2011. He again commented on the need to ensure that the terms and conditions of employment for the Commissioners were explicitly based on [my emphasis] the existing NICS guidelines, including those covering special leave arrangements relating to private occupations (ie the issue that arose in relation to the claimant's duties as a lay magistrate).

He then continued:-

"I can confirm that the formal Letter of Appointment and Accompanying Annex (along with the provisions of Schedule 2 [sic] of the Victims and Survivors (Northern Ireland) Order 2006) constitute a legal contract of employment. We are also advised that in practice the term 'contract' is usually reserved for a conventional employment relationship whereas 'terms of appointment' is the norm for officeholders such as the Commissioners.

As such, I should take this opportunity to reaffirm that each of the Commissioners is expected to comply with the current NICS HR Handbook ... which provides guidance on the full range of NICS HR and pay policies. I should make clear that, in addition to the special leave arrangements pertaining to private occupations, this includes the need to comply with current guidance on advance notification and subsequent recording of both annual and sick leave."

He went on to say that he understood that Ms McCreight, Head of Corporate Services for the Commission had issued an e-mail to all staff of the Commission, and the Commissioners:-

"informing them of the suite of policies adopted by the Commission to date, and that, in the absence of a policy or any specific HR policy, that staff of the Commission and Commissioners adhere to the policies of the NICS."

He concluded by stating that Ms McCreight and her team were completing a CVSNI Staff Handbook, which would incorporate all the relevant policies and procedures for ease of reference.

- 6(i) On 27 March 2012 the claimant was informed by the First Minister and Deputy First Minister that her term of office and that of her fellow Commissioners would end on 23 May 2012. The intention was to advertise for a single Victims' Commissioner. On 22 May 2012 she received a further letter from OFMDFM, referring to the recruitment competition that was then underway for new Commissioners, and inviting her to continue to work within the Commission. It stated that the appointment would be for a period of up to three months from the end of her current term as a Commissioner and would cease when the new Commissioner, appointed as a result of the ongoing recruitment competition, took over the roles and responsibilities of the post. The letter went on to state:-

"In this temporary role, you will not be carrying out the duties of a Commissioner under the Victims and Survivors (Northern Ireland) Act 2006. You will be appointed in a capacity to ensure an orderly transition into the new arrangement."

This arrangement was a device designed to ensure that any existing Commissioner who was appointed to the temporary post was not regarded as serving a second term of appointment, and thus disqualifying himself or herself under the legislation from applying for what might be regarded as a third term when the competition took place.

The claimant accepted this new role with effect from 2 June 2012. There was no break between the end of her appointment as Commissioner and the resumption of her new role. She was provided with written statement of employment particulars, dated 19 June 2012. Her role was described in it as 'Interim Manager' and it set out such matters as her rate of pay (which effectively remained unchanged), her hours of work (set out with more particularity than in her previous terms of appointment, but as it was also re-emphasised that she could be required to work outside normal office hours in the evening and at weekends, it would appear the position remained much the same), superannuation (eligible to join the NICS scheme, but this was optional), holiday entitlement (unchanged but adapted to suit the short term nature of the contract) and sick pay and notification of absence (in accordance with NICS policy).

Provisions relating to disciplinary rules and procedure, a grievance procedure and the giving of notice, none of which had not been included in her terms and conditions of appointment, were also included in these written particulars.

The claimant was clearly an employee of the Commission in her role as interim manager from taking up that position on 2 June 2012 until it ended on 31 August 2012. This is not disputed by the respondent. However, that does not assist the claimant for unless she was also an 'employee' in her role as Commissioner, she does not have the necessary continuity of employment for a redundancy payment.

- (ii) According to the claimant's evidence, not only did her terms and conditions not change, but her duties and responsibilities did not change either. A number of her

key areas of work progressed in the same way as before, such as work on the establishment of a forum for victims and survivors which had existed in pilot form, and which came into being on 21 June 2012. In relation to matters such as this, she continued to meet and have discussions with colleagues, and she still had the same access to files and documents as before. Another previous Commissioner had been appointed as Interim Manager, and Mrs Bertha McDougall the third remaining Commissioner of the four originally appointed, became Interim Commissioner. (This was because she was not seeking re-appointment for a second term.)

The claimant stated that she continued to act in collaboration with Mrs McDougall, and that the latter, during her period as Interim Commissioner, never acted unilaterally without consulting the Interim Managers.

However, I accept the evidence of Mrs McCreight that Ms McDougall was the only person who could make decisions which were within the power of a Commissioner, and it was to her that Commission staff referred such matters. While the claimant did attend Board of Management meetings, she did so as Interim Manager, not as a Commissioner.

- (iii) On 22 August 2012, as her contract for the Interim Manager post neared its conclusion, the claimant sought confirmation from the Secretary of the Commission that she would receive a redundancy payment in accordance with NICS terms and conditions, which, on her case, governed her employment. (Although civil servants have no legal entitlement to statutory redundancy pay, and while other aspects of the statutory redundancy provisions do not bind the Crown, in practice government departments make payments on redundancy in accordance with the statutory provisions. (*See : NICS Handbook, 2.01 Redundancy, Paragraph 2.2*) She was subsequently informed by OFMDFM on 29 August 2012 that:-

“[t]he post of Commissioner for Victims and Survivors is a Public Appointment and, as such, is not entitled to a redundancy payment.”

- (iv) On 12 September 2012 the claimant was issued with a P45 (Details of Employee leaving work). The respondent was named as her employer. The ‘pay to date’ section included all pay received by the claimant in that tax year, ie payments as a member of the Commission and as Interim Manager.

- 7(i) As indicated at *Paragraph 1(ii) above*, the task of the tribunal in this case is to establish not if the claimant is an officeholder or an employee, but whether she is a ‘pure’ officeholder on the one hand, as opposed to an officeholder who is also an employee.

Historically, officeholders were regarded in law as a separate category of persons, who were not employed by virtue of a contract of employment and who were sharply distinguished from those who were employed under such contracts. Judges, magistrates and constables are examples of officeholders at common law, and who are still recognised as such in modern law.

- (ii) In ***Edwards v Clinch [1981] 3 All ER 543***, a tax case where the House of Lords held by a majority that a surveyor engaged from time to time to hold public inquiries was not the holder of an office, Lord Lowry stated, *at p553*:-

“There is no statutory definition of ‘office’ but everyone has been content with the following definition from the Oxford English Dictionary : ‘A position or place to which certain duties are attached, esp one of a more or less public character; a position of trust, authority or service under constituted authority; a place in the administration of government, the public service, the direction of a corporation, company, society, etc’.”

In that case reference was also made to the judgment of Rowlatt J in **Great Western Railway Co v Bater [1920] 3 KB 266**, at 274 where he defined an office at common law as:-

“a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, and which went on and was filled in succession by successive holders.”

- (iii) In *Wade and Forsyth, Administrative Law, 7th Edition*, at p557 a distinction is drawn between ‘an office which gives its holder a status which the law will specifically protect, on the one hand, and on the other hand, a mere employment under a contract of employment’. The learned authors state that:-

“[O]ffices used in old times to be looked upon as a form of property which could be held and recovered in specie.”

Prior to the Industrial Relations Act 1971 (which introduced for the first time protection against unfair dismissal in the law of England and Wales and Scotland – similar provision took effect in Northern Ireland in 1976) officeholders had a greater degree of protection than employees. An employer could dismiss an employee without notice, leaving the employee to sue for damages for breach of contract. Some officeholders could only be dismissed for cause, and if an improper procedure were followed in dismissing an officeholder, he or she would have an administrative law remedy, which could include a declaration that the dismissal was void. (See generally : **Ridge v Baldwin [1964] AC 40**.)

- (iv) In **102 Social Club v Bickerton [1977] ICR 911** at 917, Phillips J drew attention to the impact of the advent of unfair dismissal law. He stated:-

“Before 1971 there was perhaps a tendency to find in contracts of employment elements of a public character which would enable the court to extend to the employee the protection flowing from ‘the right to be heard’ enjoyed by the holders of an office. Since the fundamental change of the law brought about by the Industrial Relations Act 1971, which for the first time created the right of an employee not to be unfairly dismissed, the problem has arisen, which previously was not of much importance, of defining the circumstances in which an officeholder may be said to be employed. Previously, it was a case of defendants seeking to deny an officeholder a right of complaint on the ground that he was a party to a ‘pure contract of service’; now it is a question of defendants seeking to deny employees the right not to be unfairly dismissed on the ground that in reality they are not employees but ‘pure officeholders’.”

He went on at pp 917, 918, to speak of a future tendency developing to invest officeholders with at least some of the attributes of employees so as to enable them to enjoy the right not to be unfairly dismissed.

- (v) In **R v British Broadcasting Corporation, ex parte Lavelle [1983] 1 all ER 241**, at 252, Woolf J commented:-

“[E]mployment protection legislation has substantially changed the position at common law so far as dismissal is concerned. In appropriate circumstances ... statute now provides that an industrial tribunal can order the reinstatement of an employee. It is true that the order cannot be specifically enforced. However, the existence of that power does indicate that even the ordinary contract of master and servant now has many of the attributes of an office, and the distinction which previously existed between pure cases of master and servant and cases where a person holds an office are not clear.”

In that case, the plaintiff, an employee of the BBC sought, among other remedies, injunctive relief to quash both her dismissal, and the decision on an internal BBC appeal to uphold that dismissal. It was held that since there was a disciplinary procedure incorporated into her contract of employment which restricted the BBC's power to dismiss her, which the BBC had allegedly not followed, the court did have jurisdiction to grant relief. However, on the facts of the case, the court, in the exercise of its discretion, refused to grant it.

Even though the law traditionally drew a sharp distinction between officeholders and employees there was also a recognition that the incidents of the employment relationship in both cases bore similarities. Indeed the distinction between an officeholder and an employee in this respect was less marked than that between an employee and someone who was self-employed. This was noted by Lord Oliver in **Miles v Wakefield Metropolitan District Council [1987] ICR 368**, at p406 when he stated that:-

“ ... the position of the plaintiff [a Registrar of Births Deaths and Marriages and in law an officeholder] is very closely analogous to that of an employee employed by the Council under a contract of service, and embraces substantially all the incidents normally associated with such an employment save that the power of dismissal lies elsewhere than in the paymaster.”

In that case the claimant, as part of a campaign of industrial action, had refused to perform duties on Saturday mornings. The respondent Council, which was responsible for payment of his salary, deducted a proportionate amount of his salary. It was held by the House of Lords that although he was not an employee of the Council, but the holder of an office, his position was similar to that of an employee. An employee's right to remuneration depended on his doing or being available to do the work which he was engaged to do, and if he declined to do it, the employer need not pay him. Similarly, the defendant Council had been entitled to make the appropriate deductions in respect of the plaintiff's failure to perform his duties on Saturday mornings. This overruled the decision of the Court of Appeal which had held that the plaintiff's salary was an honorarium attached to the tenure of the office and which was to be paid regardless of whether he chose to perform all

or any of the duties attached to it. In such an eventuality the remedy for non-performance of the duties was removal from office.

- (vi) Apart from this obligation to be ready and willing to perform the duties required of them in return for the remuneration due, other similarities between an officeholder and an employee which are noteworthy are that they are sometimes indistinguishable in terms of working hours, regular monthly pay, Schedule E tax liability, and deductions for National Insurance and towards pension schemes.
- (vii) In the *Miles* case, Lord Oliver, at p398, also raised the possibility of a contract of employment existing in parallel with the status of an officeholder, albeit that the power of dismissal of a Registrar was vested in the Registrar General and not with the local Council who appointed him, paid him, provided him with premises, and regulated his hours and conditions of work.

Subsequent cases have adopted a purposive approach and shown a discernible tendency to bring atypical workers within the scope of employment protection law albeit sometimes to a limited extent, and where officeholders are concerned, finding that in some cases they also have a contract of employment, or if that is not the case, at least a status which enables them to assert some employment rights. As an example of the latter the Court of Appeal in Northern Ireland in *Perceval-Price & Others v Department of Economic Development & Others [2000] IRLR 380* held that tribunal chairmen were 'workers' in employment under the law of what is now termed the European Union and could bring complaints relating to equal pay and sex discrimination under EU law even though they did not come within the definition of employment under the municipal law of the United Kingdom. The objective of Article 141 (formerly Article 119) of the Treaty and of the Equal Treatment Directive was to give protection against inequality and discrimination and the term 'worker' had to be construed purposively by reference to the objects of these documents.

Similarly, in *O'Brien v The Ministry of Justice [2013] IRLR 315*, the Supreme Court of the United Kingdom, following a reference to the Court of Justice of the European Union (see : *[2012] ICR 955; [2012] IRLR 421*), held that part-time judges, although officeholders, were also 'workers' for the purposes of the EU Part-time Workers Directive (97/81), and that Regulation 17 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, which contained an exclusion in relation to the holders of judicial office, was incompatible with EU law. Consequently the claimant, a part-time Recorder in the Crown Court in England was entitled to a pension on terms equivalent to those applicable to a Circuit Judge, a full-time post. Again, the Court adopted a purposive or inclusive approach, and emphasised the similarity between judges' terms and conditions and those in employment, as opposed to the self-employed. (See : especially at *Paragraph 37 – 42.*)

Overall, EU law focuses on the existence of an 'employment' relationship, rather than the legal incidents, and nature, of that relationship.

- 8(i) Of more relevance are those decisions which contemplate that being an officeholder and an employee are not mutually exclusive. This was emphasised, particularly by Baroness Hale, in *Percy v Board of National Mission of the Church of Scotland [2006] ICR 134*.

In **Johnson v Ryan [2000] ICR 236**, the claimant, a rent officer, brought a complaint of constructive dismissal against the Chief Rent Officer, the local authority and the Secretary of State for Environment. She had previously been employed by the local authority in the posts of clerical assistant and administrative officer and her appointment as a rent officer was regarded as a promotion.

Her contract of employment as a rent officer was in similar form to her contracts of employment in her previous posts. Under its terms and conditions she was subject to the supervision of the Chief Rent Officer, paid by the local authority and subject to its disciplinary procedure and that of the Secretary of State. Rent officers were specifically deemed to be in the employment of the local authority for the purposes of the local government superannuation scheme and legislation relating to pensions and social security.

Section 63(2)(b) of the Rent Act 1977 ('the 1977 Act') provided that schemes drawn up by the Secretary of State in relation to the appointment of rent officers:-

"shall prohibit the dismissal of a rent officer ... except by the proper officer of the local authority on the direction, or with the consent, of the Secretary of State."

- (ii) At first instance an employment tribunal, on a preliminary issue relating to jurisdiction, held that the claimant was an officeholder appointed under Section 63 of the 1977 Act and, as such, was not an employee who could bring an unfair dismissal claim.

On appeal, the Employment Appeal Tribunal held that a rent officer was both an employee and an officeholder. It stated, at p242, that there were three categories of officeholder, namely those:-

"whose rights and duties are defined by the office they hold and not by any contract, such as a police officer; secondly [those] who retain the title 'officeholder' but are in reality employees with a contract of service ..., and, thirdly, there are also workers who are both officeholders and employees, such as company directors."

It continued:-

- "21. When considering the issue of whether a worker is an officeholder or an employee we accept that the factual circumstances are relevant. In particular it is relevant to consider whether there was payment of a salary, and whether it was fixed, and whether the worker's duties were subject to close control by the employer or whether they worked independently ...*
- 22. It has been the approach of the appeal courts in recent years that an inclusive and purposive approach should be adopted in relation to employee protection. We do not consider that the presence of the statutory provisions exclude the possibility of a rent officer being both an officeholder and an employee ... [A]ny doubt should be resolved in the applicant's favour as the Employment Rights Act 1996 is*

protective legislation and ... is to be construed in a wide, inclusive fashion ...

On the facts of this particular case we consider that the tribunal erred in law in holding that the applicant was an officeholder only and not entitled to bring a claim of unfair dismissal.

The question that the tribunal should have asked itself was whether she was an employee, on the basis that she was also an officeholder. On the basis of the facts, she was in the position of being both an officeholder and an employee of the local authority.

23. *We accept that the applicant was an employee and her employer was the local authority for the following reasons. The local authority was a party to the contractual documents signed by the applicant, upon which we find that she was an employee. The local authority's proper officer had the power to dismiss or suspend, and performed a supervisory role in relation to, rent officers. The local authority was also responsible for remuneration and the provision of accommodation and clerical assistance."*

- (iii) In the subsequent case of ***Lincolnshire County Council v Hopper [2002] ICR 1301 (EAT)*** the claimant, who was a Registrar of Births Deaths and Marriages appointed under Section 6 of the Registration Services Act 1953 ('the 1953 Act'), brought a claim of unfair dismissal against the respondent local authority which she had identified as her employer for the purposes of the proceedings. The local authority had appointed her, fixed her rate of pay, and determined the terms and conditions relating to her post, including her hours of work and leave entitlement. She was subject to its disciplinary procedures, could invoke its grievance procedures and was entitled to a pension under the scheme applying to local government employees. She held office by virtue of Section 6(4) of the 1953 Act "*during the pleasure of the Registrar General*".

Previously, as a deputy registrar, she had been employed by the local authority, and on 'promotion' to Registrar, the documentation in respect of the terms and conditions of appointment to that post were strikingly similar to those applicable to her when employed as a deputy. In her position as Registrar she had continuity of employment with her previous deputy registrar post, and also in respect of any service with any other local authority.

An Employment Tribunal held that she was both an officeholder and an employee of the local authority for the purposes of the Employment Rights Act 1996.

- (iv) On appeal, it was held that the post of Registrar was a creature of statute and that the effect of Section 6(4) was that only the Registrar General could dismiss the applicant. As it was a necessary term of any contract of employment that the employer had the right to dismiss the employee, and the local Council was unable to exercise any such power, the consequence was that the applicant was not its employee, and the tribunal had no jurisdiction to determine her claim.

Wall J reached this conclusion 'reluctantly'. He considered the system whereby Registrars were not employees and had no employment protection 'anachronistic',

‘one which perpetuate[d] an injustice’ and ‘unacceptable in the twenty first century’ (*Ibid* 1303). He was also unimpressed by the argument that judicial review provided an officeholder with a remedy in relation to any unlawful decision relating to his or her employment having regard to the restricted nature of that remedy and the limitations on its exercise.

- 9(i) It is now necessary to apply what I consider to be the relevant law to the facts of this case. Phillips J in **102 Social Club v Bickerton**, to which I referred at *Paragraph 7(iv) above*, stated, at pp 918, 919 that the Employment Appeal Tribunal in that case was “concerned with the ... question whether there is sufficient of the nature of employment is an officeholder’s engagement to be able to say that he is an employee”. That is a formulation which I have borne in mind, together with other judicial observations to which I have made reference which show a reluctance to deprive claimants of the protection of modern employment protection legislation, and also the purposive approach demonstrated in cases such as **Perceval-Price** and **O’Brien** where issues of the applicability and enforcement of rights under EU law have been concerned. I have also borne in mind the seemingly analogous situation of a company director who is also an employee of the company, though in the end I have attached comparatively little significance to that and indeed was not referred to any decided cases from that area of law.
- (ii) There are clearly many aspects of the claimant’s engagement which are consistent with a contract of employment. I have in mind numbers 4, 6, 7, 8 and 9 of her memorandum of appointment set out at *Paragraph 3(v) above*. In relation to issues which arose in relation to her sitting as a lay magistrate, the special leave guidance deemed applicable was that applying in the Northern Ireland Civil Service. The claimant relies heavily on Mr Jack’s letter of 20 January 2011 and its specific reference to her formal letter of appointment, the accompanying annex, and the statutory provisions as constituting “a legal contract of employment”, though I do not find that letter as strong in its terms as the claimant’s counsel suggested, as it seems to me qualified in some aspects. In this regard I have in mind his reference to terms and conditions of employment for Commissioners being ‘based’ on Northern Ireland, Civil Service guidelines, and his later statement that “*terms of appointment is the norm for officeholders such as the Commissioners*”.
- (iii) Ms Dorrie’s letter to the claimant of 16 March 2011 reads like one written by a line manager to a subordinate employee, but despite its emphatic tone I accept the oral evidence of Ms McCreight that any issue about reducing, stopping or reinstating the claimant’s salary would have had to be referred to OFMDFM to be dealt with by them.
- (iv) The arrangements for the claimant’s pay, sick pay, deduction of tax, National Insurance and pension contributions, the issue of a P45 on termination were identical to those of an employee, but this will usually be the case for an officeholder in any event. I do not attach great significance to the fact that many of the terms of appointment mirrored those in the NICS. There has to be a framework for the terms of engagement of an officeholder in relation to pay/pensions etc and in the public sector, it will often be convenient to adopt, or incorporate by reference, the settled terms which apply in the Civil Service itself. I do not find that the provisions of the Northern Ireland Civil Service Handbook in relation to redundancy pay were incorporated into the claimant’s terms and conditions of appointment either expressly or by implication, or by custom and practice.

- 10(i) As far as control over the claimant was concerned, I accept that there was ministerial direction and control, eg in relation to programmes of work. Generally, however, she and her fellow Commissioners had a high degree of autonomy and independence in the way they performed their duties. This is not, of course, inconsistent with employee status. The example is frequently cited of a surgeon employed by a health authority, which exercises no control over his or her skills in the operating theatre. However, here the autonomy and independence is primarily so that decisions, which may be controversial and sensitive, are removed to some extent from political control by Ministers and this seems to me to be more consistent with the claimant (and her former colleagues) being 'pure' officeholders.
- (ii) Other factors which I consider indicate that the claimant is an officeholder, but not an employee, are as follows:-
- (a) The posts of Commissioner and, subsequently, 'member' of the Commission were not only created by statute, but in terms of the duties, powers, and functions attached to it, has a wide degree of statutory underpinning.
 - (b) There is a distinct and substantial public law element attached to the post. The original Commissioner was a 'corporation sole' and the subsequent Commissioner under the 2008 Act was declared to be a 'body corporate'.
 - (c) While changes were made from one Commissioner originally to four members of the Commission, and then back to one Commissioner, these offices continue to exist even though the holders of them have changed.
 - (d) Appointments were made by Ministers after a recruitment competition which involved the Public Appointments Commissioner.
 - (e) A Commissioner could only be removed from office by the First Minister and the Deputy First Minister acting jointly. He or she could only be removed on the restricted grounds set out in the Act.

There was no disciplinary procedure applicable to her. When there were issues of alleged financial irregularities, an ad hoc investigation was carried out, and the results of it, if appropriate, would have been reported to Ministers. No one in the Commission could dismiss the claimant, or impose any lesser disciplinary sanction.

It seems to me that a limited statutory power of dismissal is indicative of someone's status as a 'pure' officeholder. Judges are another example of this. In the United Kingdom they can only be removed from office on restricted grounds following a defined procedure – in this jurisdiction set out in the Justice (Northern Ireland) Act 2002, as amended. The exact requirements on the procedure depend on the level of the judicial officeholder, and in relation to the senior judiciary include the passing of a resolution in favour of removal by Parliament.

I consider that the removal procedure for a Commissioner is inconsistent with someone who has the status of an employee.

- (f) Any issue relating to the reduction, stoppage, or reinstatement of the claimant's sick pay was not a matter for the Commission, but would have been the subject of a referral to Ministers at OFMDFM.
- (g) There are specific restrictions on political activity on the part of a Commissioner. While this is not unknown in the case of employees, eg the senior civil service, I consider it is indicative of a desire to ensure that an officeholder with a wide degree of autonomy should be seen to be independent in the discharge of his or her functions and to enjoy public confidence.
- (h) The provisions of Paragraph 4(3) of Schedule 1 to the 2008 Act (compensation for loss of office). This would not usually be found in the contract of employment if an employee, except in the fairly limited circumstances, eg high earning employees, or company directors who were also employees.

11. Having considered all the factors set out *at Paragraphs 8 and 9 above*, I have reached the conclusion that the claimant is an officeholder, who does not also have the status of an employee. Her claim for a redundancy payment therefore fails. I have reached this decision after much thought, but with some hesitation and diffidence.

Chairman:

Date and place of hearing: 9 May 2013, Belfast

Date decision recorded in register and issued to parties:

A P P E N D I X ' A '

**Record of Proceedings of Case Management Discussion
before the Vice President of the Tribunals held on
25 February 2013**

IN THE OFFICE OF INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

CASE REF NO: 2421/12IT

Between:

PATRICIA MacBRIDE

Claimant

-and-

THE COMMISSION FOR VICTIMS AND SURVIVORS

Respondent

Statement of Background Facts

1. The Claimant Mrs Patricia MacBride was one of four persons initially appointed to the position of Victims Commissioner in May 2008. The Claimant was appointed subject to the provisions of the Commission for Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008. Appendix 1 pages 1-20.
2. The Claimant's letter of appointment emanated from the Office of First Minister and Deputy First Minister and was dated 30th May 2008. Appendix 2 pages 21.
3. The letter of appointment specified a commencement date of 2nd June 2008 and stipulated that the appointment would be for a period of four years.
4. The Claimant was furnished with a document entitled "Terms and Conditions of Appointment of Membership of the Commission". Appendix 3 pages 22-25.
5. During the Claimant's four year terms as Commissioner she was remunerated by BACS transfer. Her salary was subject to deduction of income tax and national insurance. Her tax code was the standard employee code. She received annual P60 statements.
6. During her appointment the Claimant enjoyed a pay award commensurate with those attained by Senior Civil Servants. Appendix 4 pages 26-32.
7. The Claimant enjoyed terms and conditions which were stipulated to be equivalent to those of employees of the Northern Ireland Civil Service.
8. The Claimant had entitlement to sickness, injury and disablement benefit and holiday entitlement on the same or a like basis with employees of the Northern Ireland Civil Service. [paragraphs 6 and 7]
9. The Claimant's post attracted a salary. [paragraph 8]
10. The Claimant's position was pensionable and subject to Civil Service superannuation. [paragraph 9]
11. During the course of the Claimant's appointment an issue arose regarding payment to the Claimant for time off to carry out duties as a lay Magistrate. An exchange of correspondence followed in which the Claimant was advised that such absences needed to conform to special leave guidance applicable to Civil Servants and specifically the rights of employees to time off for public duties. In the course of that exchange Mr Noel Lavery of OFMDFM advised the Secretary of the Commission that there was an urgent need to review the Commission's

Governance systems and protocols and that the Review should ensure that "terms and conditions of employment for the Commission and explicitly based on the NICS Guidelines on special leave arrangements ...". Appendix 5 pages 33-37.

12. Also during the course of the Claimant's appointment an issue arose concerning sickness absence and the Claimant was advised that she needed to supply medical statements and that, in default, her pay might be withheld. She was advised of the availability of the "employee assistant programme service". Upon her return the Claimant was required to complete a "Return to Work" interview form. However Section 2 of the Return to Work Interview Form was left blank as the Claimant did not have a "Line Manager" Appendix 6 pages 38.
13. In or about December 2010 Mr Brendan McAllister, one of the Commissioners, wrote to Colin Jack of the Office of the First and Deputy First Minister concerning terms and conditions of employment for Commissioners. Mr Jack replied by letter of 20th January 2011. In that letter Mr Jack spoke of a need to "ensure that the terms and conditions of employment for the Commissioners are explicitly based on the NICS Guidelines". Mr Jack referred to the Claimant's formal letter of appointment and advised that the same along with the provisions of Schedule 2 of the Victims and Survivors NI Order 2006 "constitute a legal contract of employment". The letter went on to "reaffirm" that each of the Commissioners was expected to comply with the current NICS HR Handbook. Appendix 7 pages 39-41.
14. By letter of 27th March 2012 the Claimant was advised that her term of office and those of her fellow Commissioners would come to an end on 23rd May 2012. By further letter of 22nd May 2012 the Claimant was advised that her term of office would come to an end "shortly"
15. She was invited to continue to work with the Commission on terms appended to that letter. Appendix 8 pages 42-43.
16. The Claimant continued to carry out the full range and functions of her duties and responsibilities as Commissioner without any break until 31st August 2012. The Respondent asserts that the claimant was not carrying out the full range and functions of her duties and responsibilities as commissioner without any break until August 2012.
17. By e-mail of 22nd August 2012 the Claimant sought an assurance that she would receive redundancy entitlement in line with those provided by the Northern Ireland Civil Service consequent upon the termination of her employment.
18. By e-mail of 29th August 2012 the Claimant was advised as follows:-

"The post of Commissioner for Victims and Survivors is a public appointment and, as such, is not entitlement to a redundancy payment" -Appendix 9 pages 44-45.
19. The Claimant was furnished with a document headed "Written Statement of Employment Particulars" in which her position was described as that of Interim Manager in June 2012. Appendix 10 pages 46-49
20. The Claimant relies on the provisions of the Northern Ireland Civil Service Handbook which in relation to redundancy provides, at paragraph 2.2 - Appendix 11 pages 50.
21. The Claimant was issued with a P45 (details of employee leaving work) on 12th September 2012 on which an Employee PAYE reference number was supplied. The "Employer" name and address was given as that of the Respondent. The leaving date was specified as 31st August 2012. The pay to date noted all pay received by the Claimant during that year until the leaving date. Appendix 12 pages 51-53.

**THE INDUSTRIAL TRIBUNALS
CASE MANAGEMENT DISCUSSION
(TELEPHONE CONFERENCE CALL)**

CASE REF: 2421/12

CLAIMANT: Patricia MacBride

RESPONDENT: The Commission for Victims & Survivors

DATE OF HEARING: 25 February 2013

REPRESENTATIVES OF PARTIES:

CLAIMANT BY: Ms R Connolly, Solicitor, of Rosemary Connolly, Solicitors
(on telephone link). The claimant was also present.

RESPONDENT BY: Mr P Ferrity, Barrister-at-Law, instructed by
Macauley & Ritchie, Solicitors.

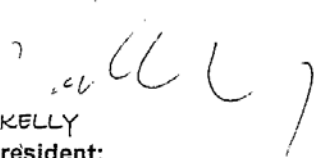
**Case Management Discussion
Record of Proceedings**

1. I explained to the parties that this, at first glance, appeared to me to be the type of case which was not appropriate for fast track listing and perhaps even for a one day listing. I explained the purpose of the Case Management Discussion was to ensure that arrangements were made so that the claim could be heard effectively and expeditiously.
2. The parties agreed that they would lodge two documents. Firstly, they will agree and lodge a statement of background facts, annexing, where appropriate, the appointment, the e-mails, the meeting notes, etc to explain the agreed facts. Within that same document, the parties will identify and specify the exact areas of contention and disagreement between the two parties. The second document will be an agreed set of legal and factual issues. There may be some overlap between the two documents.
3. The parties will agree and lodge these documents by 5.00 pm on 1 May 2013.

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4. Either party may serve a Notice for Additional Information on the other party **no later than 5.00 pm on 8 March 2013** and any party in receipt of such a Notice will reply in full **no later than 5.00 pm on 22 March 2013**.
5. If witness statements are deemed necessary by either party, there will be a simultaneous exchange of witness statements **by e-mail no later 5.00 pm on 1 May 2013** and three copies of those witness statements will be lodged in the Office of the Tribunals **by Royal Mail on the same date**.
6. The claim will be listed for two days, ie:-
9 – 10 May 2013;
but it is possible that it might just conclude within one day if, as currently anticipated, the argument is largely an argument based on legal submissions.
7. I indicated that my fingerprints might be all over this one and that therefore I would not be chairing the substantive hearing.


NOEL KELLY
Vice President:

Date:  February 2013

Notice

1. If any party fails and/or is unable to comply with any of the above Orders, any application arising out of such failure or inability to comply must be made promptly to the tribunal and in accordance with the Industrial Tribunals Rules of Procedure 2005.
2. Failure to comply with any of these Orders may result in a Costs Order or a Preparation Time Order or a Wasted Costs Order or an Order that the whole or part of the claim, or as the case may be, the response may be struck out and, where appropriate, the respondent may be debarred from responding to the claim altogether.
3. Under Article 9(4) of the Industrial Tribunals (Northern Ireland) Order 1996, any person who, without reasonable excuse, fails to comply with a requirement to grant discovery and inspection of documents under Rule 10(2)(d) of the Industrial Tribunals Rules of Procedure 2005 shall be liable on summary conviction to a fine not exceeding Level 3 on the standard scale - £1,000 at 3 September 2007, but subject to alteration from time to time.
4. A party may apply to the tribunal to vary or revoke any of the above Orders in accordance with the Industrial Tribunals Rules of Procedure 2005.

APPENDIX 'B'

List of legal and factual issues

IN THE OFFICE OF INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

CASE REF NO: 2421/12IT

Between:

PATRICIA McBRIDE

Claimant

-and-

THE COMMISSION FOR VICTIMS AND SURVIVORS

Respondent

Legal Issues

1. Was the Claimant:
 - (a) An office holder, and/or
 - (b) An employee, and/or
 - (c) A workerduring her period of appointment with the Respondent between 2nd June 2008 and 2nd September 2012?
2. (a) Is the Claimant entitled to a redundancy payment consequent upon the termination of her employment on 2nd September 2012?
(b) Is she eligible for same on grounds of length of service under Article 199 ERO 1996?
3. (a) Is the Claimant entitled to redundancy payment on the same basis as would be applicable to Civil Service Employees?
(b) Are Civil Servants/Public Servants entitled under Article 194 ERO 1996?
4. In the alternative is the Claimant entitled to redundancy pay consequent upon the alleged termination of her position as Commissioner on 2nd June 2012?
5. Has the Claimant been treated less favourably contrary to the Fixed Term Worker Regulations? and has any term for same be varied?
6. Did the Respondent comply with the Statutory Dispute Resolution Procedures in terminating the Claimant employment either in June or September 2012

Factual Issues

1. Was the Claimant offered and did she accept re-engagement 1st June 2012?
2. Was the Claimant offered suitable alternative employment under Article 176 ERO 1996

Witness Statements

The Claimant is content that Witness Statements be utilised.

Interlocutory Proceedings

Notices for Discovery has recently issued on behalf of the Claimant.