

# Articles NEWS ANALYSIS - IRN 44 - 01/12/2016

## Kevin Duffy gets strong support, retracts 'mutiny' remark

**Brian Sheehan**

As if the temperature around public service pay wasn't already hot enough, the brief squall that blew up due to the "mutiny" comment on the threatened garda 'strike' by Kevin Duffy was something no-one needed. But Mr Duffy's role as the chairman of the Public Service Pay Commission remains solid, due to the strong backing he received from key trade union leaders.

Attention can now return to what price the Government may be prepared to secure a revised Lansdowne Road Agreement, following the unfortunate interlude last week, sparked by a comment from Kevin Duffy, chairman of the Public Service Pay Commission, at an industrial relations conference.

The furore, which blew up due to a choice of words, subsided sufficiently within 24 hours to ensure Mr Duffy can now get on with his work. This week's announcement by Government, which includes a commitment to public service pay talks after Mr Duffy issues his report in the second quarter of next year, further underscores his position.

"If you are going to change the law it has to be enforced"

Kevin Duffy made his "mutiny" comment in a question & answer session at the Resolve Ireland conference. He was responding to a presentation by fellow employment law expert, Seamus Given of Arthur Cox & Co. In the course of surveying the law around industrial action in Ireland, Mr Given had made a series of comparisons between the situation in Ireland and the more restrictive regime in the UK.

UK trade unions face hurdles that Irish unions don't, for instance around secret balloting, secondary picketing and so on, and Mr Given suggested that our law in this regard is in serious need of amendment. But Mr Duffy questioned the thrust of Mr Given's presentation, by commenting that if UK-style laws were in force here, these would have made little difference to recent strikes in Ireland.

"If you are going to change the law it has to be enforced", Kevin Duffy said. Commenting further, he said that industrial action by the gardai would be "unlawful". There had been a lot of language used in relation to the planned industrial action by Gardai, but no one had said what it was, a threatened "mutiny".

### **'INAPPROPRIATE EXPRESSION'**

Mr Duffy added that in the aftermath of the Court's recommendation, there had been "muttering" and suggestions that the Labour Court had gone too far. "Here was a dispute that

was unlawful and there was either no mechanism to enforce the law or no desire to enforce the law. And that sort of thing brings the law into disrepute,” he added.

Responding to Mr Duffy’s comments, Seamus Given said that in relation to the Gardai, he agreed with Mr Duffy. He was “horrified”, he said, adding that the Gardai would have been “breaking the law”.

In an interview with RTE the following day, Mr Duffy said his "mutiny" comment had been a throwaway remark, which had not been intended to give offence, although it clearly had. He said he had no difficulty in withdrawing or retracting any suggestion that the industrial action proposed was a mutiny - which had been an inappropriate expression to use. But he stood over his view that the industrial action was illegal, adding that this view was widely shared by many other lawyers.

Regarding his role as Chair of the Public Service Pay Commission, he said he could absolutely assure the various garda bodies they would be treated in exactly the same way as all other trade unions.

GRA president, Ciarán O’Neill, initially said they no longer had confidence in Mr Duffy as chairman of the PSPC. But later the GRA said it was reserving its position and that the situation will be discussed at their next executive meeting in December.

AGSI president, Antoinette Cunningham, said the AGSI "had it on good legal standing" that actions taken by members during industrial relations activities are not illegal; the law was not “prescriptive” in this matter, she said. But she added that AGSI welcomed the retraction made by Mr Duffy.

Taoiseach Enda Kenny described Mr Duffy as “an outstanding individual”, who given his “understanding of a working-class background ... will do an outstanding job.” The Minister for Justice Frances Fitzgerald said while she could understand the reaction of the garda associations, she said Mr Duffy has explained what he meant.

## **UNIONS BACK DUFFY**

SIPTU general president Jack O'Connor warned that the unions should be very careful "not to allow themselves be played into an agenda for removing someone who will be fair to their members and having them replaced very possibly by somebody who won't".

The general secretary of the INMO, Liam Doran, said when he first heard the comments, he thought that eyebrows might be raised, but he said that the comments about the Gardai, “were descriptive only”. “What Mr Duffy was trying to do was to say — ‘sure if we have that law now and the guards in theory don’t have the right to strike, well, they did strike, they were organising a strike and the law could not be enforced’.”

Speaking on behalf of the public service committee of the ICTU, Bernard Harbour of IMPACT said any attempt or suggestion that Mr Duffy should stand down from his position as chairman of the Commission would cause “serious problems” for public service unions.

The fact that support for Mr Duffy also came from across the political spectrum, added to the sense that his position was secure by the end of the week. The episode showed just how careful independent persons who take on these sort of roles have to be when making remarks in any sort of open forum.

## **WORK HAS BEGUN**

Mr Duffy has already started background work in his role as chairman of the PSPC. He submitted his report as chairman of the water charges commission this week, leaving him fully free to devote himself to the task of chairing the pay commission.

It is expected that he will furnish a full report within the April-May timeframe already outlined by the Government.

Given that the Government has now invited the public service unions to talks, threats of ballots (by SIPTU) and various warnings from all of the unions, can now be stood down to allow for talks on the implications of the Labour Court recommendations in relation to the GRA and AGSI.

A timetable for further talks that will take into account Mr Duffy's report can be expected in the second quarter of next year, with a talks agenda including pay, productivity, reform and labour market challenges - as well as taking into account factors like pensions and affordability.

## **ACHIEVABLE SCENARIO?**

Essentially, there are now two strands to the forthcoming talks: firstly, the immediate implications of the proposed €40m plus deal for Gardai (which is a combination of DPER proposals (€30.5) and extra terms added by the Labour Court (€10m and rising) and secondly, the broader call for accelerated pay restoration, which preceded – by several months - the garda recommendations.

There has been much speculation about what pay acceleration might cost in 2017, if the current Lansdowne terms are to be brought forward, or whether the September payment might be increased.

Under the LRA, €1,000 is due to those earning below €65,000 in September of 2017. For every month this might be brought forward, the cost would be in the region of an extra €20m per month to the Exchequer, although some estimates have put the figure at €30m or more. (*See [lead News item in this issue](#)*)

Pay increases currently not budgeted for would have to come from other areas, such as public services. The Government may have decided it can live with this as long as it can also negotiate a coherent follow-on version of the LRA that would ensure stability out to end 2019 at least (only a year or more beyond the lifetime of the current LRA).

Such an arrangement would suit both Fine Gael and Fianna Fail. Given that a general election is surely a high probability in 2018, having public pay locked down would seem to be eminently sensible from their perspective.

There is also, of course, the critical issue of Brexit; having a tidy public pay scenario in place with the uncertainty that this headache is going to cause, could be hugely important.

However, the initial 'phase one' talks in January pose the question of how unbudgeted concessions in 2017- on top of the cost of the deal for the Gardai – are to be funded?

A wider affordable agreement in time for inclusion in Budget 2018 is another challenge, especially given competing demands, not just on pay, but also in regard to issues like working hours and the retention of change so painstakingly negotiated in the crisis years