



## A Word from the President

Dear Colleagues, the Executive Committee of TUI is asking you to vote yes to the Third Level redeployment scheme which is now accompanied by significant clarifications from the Labour Relations Commission (LRC) and the Department of Education and Skills (DES). These clarifications were sought by TUI both at and after the LRC conciliation meeting last July following the rejection of the scheme by members in a ballot. The clarifications are authoritative and provide some assurances that can be relied upon for the purpose of implementation of the Third Level redeployment scheme. It should be recalled that both the Croke Park Agreement and Haddington Road Agreement (HRA) provide for the redeployment of public servants in permanent positions. It should also be noted that the sectoral redeployment scheme is about how redeployment will be implemented, not whether there will be redeployment.

Following the result of the last ballot the DES instructed management in the Institutes

not to implement specific measures of the HRA. TUI made strong arguments at the LRC conciliation meeting against this punitive action which resulted in an interim arrangement that is currently in place pending the outcome of this ballot.

When considering how to vote in this ballot it should be noted that TUI members, in common with other public service workers, may be redeployed out of their profession. This is because the HRA, to which TUI is a party, provides for the possibility of redeployment out of one's profession. One of the purposes of the Third Level sectoral redeployment scheme is to curb such possibilities by providing for alternatives at earlier stages.

The alternative to accepting this redeployment scheme through ballot is to be given a binding decision by the Labour Court through the dispute resolution mechanism of the HRA. The best that could be realistically hoped for in the Labour Court is what is now on offer. However, to

go to the Labour Court at this stage or to seek to reject the effects of its binding decision would result in the DES withdrawing measures of the HRA. In such a scenario the question has to be asked if the right conditions exist at this time for TUI to respond adequately to what could become an unravelling of the protections within the HRA for Third Level members.

Colleagues, there clearly is a difficult history and context to this ballot. How to vote on this issue is obviously your decision. But it is important that you make a decision in light of the facts. The Executive Committee has recommended a yes vote based on consideration of substantial material, including legal advice which is referred to elsewhere in this issue. I would urge you to review the information available, engage in dialogue with colleagues and attend Branch meetings to become informed of the facts. Regardless of what your view is I would encourage you to exercise your democratic right to vote and make your voice heard.

*Gerry Quinn*

## Ballot on redeployment process for the Institutes of Technology

### TUI's Executive Committee recommends that members vote YES

#### What you are being asked to decide

Whether you accept the redeployment scheme for the Institutes of Technology with the additional clarifications provided by the Labour Relations Commission and the Department of Education and Skills.

Ballot papers issue from TUI Head Office on Tuesday 23rd September and must be returned to the auditors Deloitte by 5 p.m. on Thursday, 9th October, at the latest, using the reply paid envelope.

*Please post by **Tuesday 7th October** at the latest to ensure your ballot arrives on time.*

**All TUI members in Institutes of Technology are being balloted on the sectoral redeployment scheme (as clarified) and are encouraged to exercise their right to vote.**

**The Executive Committee of TUI recommends that members VOTE YES** to accept the sectoral redeployment process for the Institutes of Technology.

#### What is likely to ensue if the scheme is not accepted?

Key questions that arise in this context are:

**Do public servants, including TUI members, who are identified as surplus to requirements have a legal/statutory protection against compulsory redundancy?**

No. If a member's work no longer exists then, prima facie, s/he is liable to compulsory redundancy.

*continued overleaf*

### **What protection, if any, does such a member have against compulsory redundancy?**

Any member in a permanent post (PWT or CID) has the protection provided by the PSA 2010-14 (Croke Park Agreement) and its successor, the Haddington Road Agreement. These are industrial relations agreements. However, the protection against compulsory redundancy in the CPA/HRA is subject to compliance with the terms of the agreement (currently the HRA) and, in particular, to the agreed flexibility and redeployment being delivered.

### **If members reject the proposals in the ballot, what happens next?**

- The interim arrangements cease to apply and, at a minimum, a number of the provisions of the HRA relating to the status and

protection of employment will be withdrawn (as set out in the DES communication of June 2014)

- The disputes resolution procedure under the HRA will in all likelihood be invoked by the DES. This is covered by Paragraphs 1.23 and 1.24 of the PSA 2010-14 and Paragraph 5.1 of the HRA. Essentially, this means that the matter will be referred (by the DES) to the Labour Court.
- The Labour Court will issue a determination that is final and binding on all parties.
- The only appeal available in respect of that determination is to the High Court, by way of judicial review, on a point of law.
- It is not open to the TUI to reject the Labour Court determination.

- Members would be bound by the determination and the effect of the determination would become part of the terms and conditions of the Contract of Employment of members.

### **Could the union take industrial action in relation to an adverse Labour Court determination?**

- It could not take industrial action in an effort to reject or overturn the determination.
- It could take industrial action to seek to change the terms and conditions of employment that had been brought into contractual effect by the determination.
- This would require a further ballot of the affected members; that is, third level members.

## **Background**

- Both the Public Service Agreement 2010-2014 (the 'Croke Park Agreement' - CPA) and the Public Service Stability Agreement 2013-2016 (the 'Haddington Road Agreement' - HRA) make provision for the redeployment of public servants who are in permanent positions. This can include redeployment out of one's area of work/profession.
- However, both the CPA and HRA allow for the negotiation of sectoral redeployment procedures that would seek, as far as possible, to have redeployment out of one's profession regarded as a last resort and have it preceded by successive provisions for redeployment within the profession. Such a sectoral arrangement was negotiated for second level. You are now balloting on a sectoral arrangement for academic staff in the IoT sector.
- The sectoral redeployment scheme for academic staff in the IoT sector is the product of negotiations that commenced in August 2011. It was formally accepted at the IoT Industrial Relations Forum in April 2014. However, TUI Annual Congress 2014 instructed that a ballot be conducted in line with a previous Congress motion. In that ballot, held in June 2014, third level members voted not to accept the sectoral redeployment scheme.
- Responding to the ballot outcome, the Department of Education and Skills (DES) instructed management in the Institutes not to implement specific measures of the Haddington Road Agreement (HRA) relating to employment status, such as the award of CIDs and conversion of HPALs. It also pointed out that the protection against compulsory redundancy depends on co-operation with redeployment arrangements. The DES referred the matter to the LRC.
- At the LRC conciliation conference, on 15th July, the union objected to what it characterised as punitive action by the DES. The DES denied that its instruction to IoT management amounted to punitive action, stating that redeployment is an integral element of the HRA upon which other commitments rely.
- Significant clarification was provided by the LRC regarding a number of elements of the sectoral redeployment scheme – see the LRC letter of 15th July (page 4). More recently, the union also got clarification from the DES on a number of issues – see page 4.
- In order to protect the employment status of members and to secure application of the award of a CID after three years and the conversion process for HPALS, the union accepted the interim arrangement proposed by the LRC. That arrangement lasts until the conclusion of the TUI ballot on 9th October.
- If members vote against the sectoral redeployment scheme (as clarified), the interim arrangement will lapse and, at a minimum, the award of CIDs after 3 years and the conversion of HPALs will cease. If members vote for the scheme, the interim arrangement will be overtaken by the terms and protections of the HRA, CIDs will be awarded after 3 years and the HPAL conversion process will continue.

# Key characteristics of the sectoral redeployment scheme for academic staff in Institutes of Technology

*(The full text of the document is available for download on the TUI website and on the TUI members' portal.)*

## Scope

The redeployment process applies to all permanent staff (i.e. staff with permanent whole-time contracts or contracts of indefinite duration -CIDs) in lecturing grades, i.e. College Teacher, Lecturer Scale I, Lecturer Scale II, Assistant Lecturer/Lecturer, Senior Lecturer I (Teaching), Senior Lecturer II and Senior Lecturer III.

## Process

The sectoral scheme is based on a step-by-step process, outlined below, whereby surplus lecturing staff will, in the first instance, be absorbed through re-assignment/transfer within their own institute before redeployment (that is, movement to a different employer) applies.

### - Reassignment/transfer within institute

In the first instance, staff who are deemed surplus will be re-assigned/transferred within their own institute. This involves transfer to another post, academic or otherwise, within their institute. Where appropriate, this re-assignment/transfer may be temporary, pending restoration to one's original post/duties. Where necessary, re-training will be provided to facilitate staff being re-assigned to other areas within the institute.

Re-assignment will be considered and, where possible, will occur before there is recourse to redeployment, except in circumstances where a staff member, by agreement, opts for redeployment.

### - Redeployment

Where re-assignment/transfer options have been exhausted, redeployment will occur in the following order, as necessary:

1. Redeployment to another Institute
2. Redeployment within the education sector, including universities
3. Redeployment to another public service employer, outside the education sector

Please note that redeployment out of the education sector is the final option after reassignment and redeployment options within the education sector have been exhausted. Furthermore, to the greatest extent possible, efforts will be made to redeploy a surplus member of staff to a vacancy in another Institute, having regard to the course needs of the institute and the individual's qualifications and previous experience.

In circumstances where staff are reassigned (within their institute) or redeployed (to a different employer) to different grades they will retain their basic pay and pension terms. This includes the provision for ALs to progress to the L scale.

## Surplus staff

Redeployment arises only where there are surplus staff in an institute. Under the scheme, a surplus situation arises where an Institute has an excess of staff over its annual employment ceiling under the Employment Control Framework (ECF). This could occur due to courses or programmes being discontinued or scaled down, for example.

For a redeployment actually to occur, there must be both a surplus member of staff in one employment (Institute A) and a suitable vacancy in another employment (Institute B, for example).

## Geographical limits

Redeployment may only occur within a maximum radius of 45km of the staff member's current institute or her/his place of residence, should s/he request the latter.

## Appeals process

It is open to a staff member to appeal her/his proposed redeployment where he/she considers that the agreed process and procedures have not been complied with.

## PAS scheme

In voting to accept the CPA and HRA, public sector unions, including TUI, have already accepted redeployment. The Public Appointment Services (PAS) administer the basic redeployment scheme for all public service workers. Under the terms of the PAS redeployment scheme, a public servant may be redeployed to another public service employer, not necessarily connected with one's original employment. This, as it were, is the default scheme. However, where unions have agreed sectoral arrangements for their members, the PAS scheme typically operates only after the other options set out in the particular sectoral arrangements have been exhausted.

If third level members reject the sectoral redeployment scheme for the IoT sector, it is arguably the case that the PAS scheme then operates on a default basis.

## ECF and redeployment

There is understandable concern that the arbitrary and blunt Employment Control Framework could be used to create "surplus" situations leading to enforced redeployment. However, in operational terms a redeployment can only occur if there is a suitable vacancy in a receiving employment. A greater concern arises if the ECF is operating in the absence of an agreed sectoral redeployment scheme as two possibilities then emerge: application of the PAS redeployment scheme on a default basis or recourse to compulsory redundancy (which does away with the need for a receiving employer). The latter might prove tempting to an impatient employer in the context of significant restructuring of the sector.

# Clarification from Labour Relations Commission (LRC), July 2014

15th July 2014

C-146597-14



TUI

## Department of Education & Skills

Re: Redeployment Arrangements for the IOT Academic Staff

The Labour Relations Commission engaged with the parties in respect of the above matter which was referred to the LRC under the HRA. Both parties have agreed to recommend the following for acceptance,

- It was clarified and agreed that the parties will engage in a consultation process in respect of the appointment of a Redeployment Director and the drafting of an appeal form in accordance with the provisions of paragraphs 10 and 22 of the redeployment arrangements. Both parties will expedite the appointment of advisor(s) to the Director as part of these consultations.
- The progression provisions that apply regarding Assistant Lecturer to Lecturer will continue to apply in the event of an Assistant Lecturer being redeployed outside of lecturing. (See point 1 in next section for further clarification)
- In relation to paragraphs 4 and 15 of the redeployment arrangements, it is implicit and noted that every reasonable effort will be made in the first instance, to retain Lecturers within the profession in their particular Institute. In such circumstances, priority will be given to re-assignment to academic positions.

- In relation to paragraph 30, it was clarified that amongst other things, this includes voluntary transfer to a vacancy in another IOT where the 45 KM limit is exceeded. This will be subject to the agreement of the receiving Institute. (See point 2 in next section for further clarification)
- In accordance with best practice principles, it is open to either party to seek to review this process at a later date.

Pending the outcome of the TUI decision making process and this dispute resolution process, the TUI agree to operate the Redeployment Scheme as agreed at the IOT forum in April 2014, and the Department agrees to withdraw its instruction to the institutes on 3rd July

*“not to proceed with the issuing of CID’s to academic staff after 3 years and the conversion of Hourly-paid and Associate Lecturers to Assistant Lecturers”.*

In that context, the Department and Institutes and the TUI will continue to participate fully in the Expert Group of fixed-term and part time employment in lecturing. The Commission urges all involved to give the most serious constructive consideration to the terms out above. If either party rejects this proposal it is considered withdrawn and has no future status.

Please revert back to the Commission as soon as is possible.

Anna Perry

Deputy Director, Conciliation Services

## Clarification from Department of Education and Skills

### The TUI set out its understanding of three matters, as follows.

**1. Progression:** In the event of an assistant lecturer being redeployed out of an institute of technology into a non-academic public service employment, the person concerned will carry with him his/her pay and pension conditions, inclusive of the right to apply for progression as set out in CL IT 03/05 and to progress if/s/he satisfies the relevant criteria. In the case of a redeployment to a non-academic employment, the default criteria would be those that would have applied had the person concerned remained in the employ of the institute and not been redeployed. However, it may be the case that the new, receiving employer would regard those criteria as being applicable to an academic, institute of technology employment and as not being relevant in her/his new, non-academic employment. If such is the case, the progression procedures and criteria, if any, that would be appropriate for the

new, non-academic employment will be the subject of discussion between the new employer and the person being redeployed. In this context regard will be had to measures already taken by the person concerned to meet the progression criteria that had been agreed for progression by her/him within the institute of technology. Also in this context, if there is any disagreement as to what progression procedures and criteria, if any, should apply in the new employment, discussions to secure an appropriate resolution will be held involving the new employer, the Director of the redeployment scheme and the union representing the person concerned. Such discussions will be assisted by the Department of Education and Skills.

**2. Textual clarity:** In the LRC letter of 15th July, “voluntary transfer to a vacancy in another IoT” in the fourth bullet point means voluntary redeployment, involving a change of employer, as opposed to “transfer” or

re-assignment to another position or to other duties within one’s current employment and with one’s current employer.

### 3. Voluntary Redundancy:

In the event of a person being deemed surplus to an institute’s requirement in accordance with the terms of the Redeployment Scheme, it is open to institute management, using the June 2012 Collective Agreement on Enhanced Redundancy payments to Public Servants as clarified by Labour Court Recommendation 20730, to offer that person the option of either voluntary redundancy or redeployment, provided sanction for the offer of voluntary redundancy has been approved by the DES/ Department of Public Expenditure and Reform in the required manner.

On 10th September the DES confirmed in writing that it has the same understanding as the TUI in relation to the three matters.