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Ollscoil na hÉireann, Corcaigh  
National University of Ireland, Cork



**Citizens in Uniform:**

An examination of the Irish military representation in comparison with European military trade unionism and the ideals of the European social charter.

Thesis presented by

**Ruairí de Barra, BA**

for the degree of

**Master of Commerce**

**in**

**Government and Public Policy**

**University College Cork**

**Department of Government and Politics**

Head of Department: Dr. Clodagh Harris.

Supervisor: Dr. Andrew Cottey

**2019**

## **DECLARATION:**

1. This is to certify that the work I am submitting is my own and has not been submitted for another degree, either at University College Cork or elsewhere. All external references and sources are clearly acknowledged and identified within the contents.
2. I have read and understood the regulations of University College Cork concerning plagiarism.
3. Permission is given for University College Cork and the UCC Library to lend or copy this dissertation upon request.
4. The views and conclusions expressed herein are those of the student author, and do not necessarily represent the views of the Irish Defence Forces, or the Permanent Defence Forces Other Ranks Representative Association.

Signed: \_\_\_\_\_  
(Ruairí de Barra)

Date: 11/01/2019

## **DEDICATION:**

I wish to dedicate this thesis to my wife Aoife, and to my children Aisling, Róisín, and Olan whose love, patience, humour, and support make all things possible.

## **ACKNOWLEDGEMENTS:**

I wish to acknowledge the support and guidance of my supervisor Dr. Andrew Cottey, for his advice and encouragement over the course of the last two years.

Also, I wish to acknowledge the other supervisors and lecturers across the Department of Government, Dr. Mary C. Murphy, Director of the MComm Government and Public Policy, and Dr. Liam Weeks, Dept. of Government.

A special thank you must be given to the following persons in PDFORRA:

Mr. Gerard Guinan, General Secretary PDFORRA, Mr. Martin Bright, Deputy General Secretary PDFORRA and Mr. Mark Keane, President PDFORRA.

Without the support, guidance, advice and encouragement of the above named it would not be possible to have achieved this submission.

I would finally like to thank all those who participated in the oral and written interviews, VAdm Mark Mellett PhD DSM, Mr. Emmanuel Jacob President EUROMIL, Lt. Col Earnán Naughton (Rtd), Senator Gerard Craughwell, Antoinette Cunningham, Deputy General Secretary AGSI. Your willingness to be part of this research is truly appreciated.

Go raibh míle maith agaibh go léir.

*“Óglaigh na hÉireann has been the people, is the people and will be the people. Our green uniform does not make us less the people. It is a cloak of our service, a curtailer of our weaknesses, an amplifier of our strengths.”*

*- Gen. Richard Mulcahy, Chief of Staff.*

*"As 'citizens in uniform', armed forces personnel, whether they be conscripts or volunteers, are entitled to the same human rights and fundamental freedoms as any other citizen."*

*- Ambassador Christian Strohal.*

## **ABSTRACT:**

Óglaigh na hÉireann is experiencing a crisis in the recruitment and retention of personnel, with the crisis having greater effect on the enlisted personnel. There has been a deluge of claims and counter claims of failures by the state to provide suitable levels of remuneration and conditions of service in order to ensure the Irish Defence Forces can meet all the tasks assigned to them by Government. These claims have played out across the national media over the past number of years. With these claims growing ever more serious, to a point where there are now claims that the national security of the Irish state could be compromised, if solutions are not swiftly found to the current crisis.

This thesis seeks to examine these claims by primarily looking at the industrial relations mechanisms and arrangement available to the Irish Defence Forces, through their representative bodies, and to explore if these arrangements are adequate to provide the means through which appropriate levels of remuneration and conditions of service can be achieved. Are these structures adequate in the context of recent case law, and the recent Defence Forces Conciliation and Arbitration scheme review? Can they function correctly while the representative bodies remain within the bounds of current Defence Forces Regulation and Government policy on military representation and military trade unionism?

By examining key concepts of the relationships between governments, their armed forces, and the state they serve, the human rights of the European citizen and those of the armed forces member, a view of the importance of the relationship of trust between a state and its armed service personnel is presented here. Then the Irish military representative bodies and arrangement will be compared with the systems in place and afforded to their European counterparts, and some International counterparts, and the ideals and aspirations of the European Social Charter are used to measure the current situation, and what the future vision may hold.

There is no easy answer or single solution to this complex crisis. Indeed, the current DF crisis is not unique to the just to the DF in Ireland, many other public sector workers face many similar issues. Across Europe, many militaries are suffering from the struggle to recruit enough personnel for their armed forces, as under-funding of militaries in general

and the ever-increasing cost of military personnel (as a percentile of overall armed forces funding) place huge pressure on strained resources. The current symptoms of dysfunctionality within the DF representative system, may be more reflective of the larger economic challenges within in Ireland and across the EU, than a true reflection of a systemic failure.

It will take great effort, determination, and co-operation to navigate the DF through the current crisis. It can and it must be done, and strong effective DF representation associations are a core part of those solutions. The representative bodies are on a par with any in the EU, with due regards to certain limitations and restrictions, and they will grow stronger and more effective as the reforms proposed are being implemented over the coming months and years. The relationships with the official side must be reset and rejuvenated, it is of vital importance to all sides that the members of the DF have confidence in the system which is meant to provide for their welfare and rights.

The storm clouds of BREXIT and a possible global recession are gathering, and the DF must consolidate and be ready for whatever comes. The security of the state requires a full functioning, appropriately staffed, highly skilled, highly trained, and highly motivated DF to continue to serve the nation, as they have for decades. In order for the DF be as best prepared for any eventuality, this current crisis must be halted and brought to a swift a conclusion as possible.

The volunteers of Óglaigh na hÉireann are citizens in uniform and they are proud to be the first to serve.



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## **GLOSSARY OF ABBREVIATIONS:**

<b>AB</b>	Able Rating.
<b>AC</b>	Air Corps.
<b>ACAS</b>	Advisory, Conciliation and Arbitration Service.
<b>ACOS</b>	Assistant Chief of Staff.
<b>AGSI</b>	Association of Garda Sergeants and Inspectors.
<b>ARCO</b>	Association of Retired Commissioned Officers.
<b>ATCA/P</b>	Aid to the Civil Authority/Power.
<b>C&amp;A</b>	Conciliation and Arbitration.
<b>CCR</b>	Conciliation Council Report.
<b>COS</b>	Chief of Staff.
<b>CPL</b>	Corporal.
<b>CS</b>	Company Sergeant.
<b>DCOS</b>	Deputy Chief of Staff.
<b>DCAF</b>	Democratic Control of Armed Forces (Geneva Centre ODIHR)
<b>DDFT</b>	Director of Defence Force Training.
<b>DHR</b>	Director of Human Resources.
<b>DF</b>	Defence Forces.
<b>DFHQ</b>	Defence Force Headquarters.
<b>DFR</b>	Defence Force Regulation.
<b>DOD</b>	Department of Defence.
<b>DPER</b>	Department of Public Expenditure and Reform.
<b>ECHR</b>	European Convention of Human Rights
<b>EUROMIL</b>	European Organisation of Military Associations.
<b>ECCFSRW</b>	European Community Charter of Fundamental Social Rights of Workers
<b>GOC</b>	General Officer Commanding.
<b>GS</b>	An Garda Síochána.
<b>GRA</b>	Garda Representative Association.
<b>HRM</b>	Human Resource Management.
<b>ICTU</b>	Irish Congress of Trade Unions.
<b>INS</b>	Irish Naval Service.
<b>LRC</b>	Labour Relations Commission.
<b>LT</b>	Lieutenant.
<b>LT.GEN</b>	Lieutenant General
<b>MOU</b>	Memorandum of Understanding.
<b>NASA</b>	National Army Spouses Association.
<b>NCO</b>	Non-Commissioned Officer.

<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PDFORRA</b>	Permanent Defence Forces Other Ranks Representative Association.
<b>PDF</b>	Permanent Defence Force.
<b>PSPC</b>	Public Service Pay Commission.
<b>PTE</b>	Private.
<b>RACO</b>	Representative Association of Commissioned Officers.
<b>RDF</b>	Reserve Defence Force.
<b>RDFRA</b>	Reserve Defence Force Representative Association.
<b>RSM</b>	Regimental Sergeant Major.
<b>SGT</b>	Sergeant.
<b>SLA</b>	Service Level Agreement.
<b>SNCO</b>	Senior Non-Commissioned Officer.
<b>SREC</b>	Social Research Ethics Committee.
<b>UK</b>	United Kingdom.
<b>UKMOD</b>	United Kingdom Ministry of Defence.
<b>UL</b>	University of Limerick.
<b>WO</b>	Warrant Officer.
<b>WP</b>	White Paper (Defence Forces).
<b>WRC</b>	Workplace Relations Commission.

## **Chapter One: Introduction.**

### **Introduction.**

The Republic of Ireland is a nation of some 4.8 million people which exists in the relative peaceful stability at the bosom of Europe politically, yet on the periphery of its landmass, with its Western seaboard the very edge of Europe. Although currently relatively benign in terms of international strife and terrorism, it has not always been so, and the scourge of domestic terrorism has left scars across the country's landscape, as well as across the nations psyche.

The armed forces of the nation, the volunteers of Óglaigh na hÉireann are tasked with its defence, their primary task "to defend the state against armed aggression" (Ireland, 1945). The military service personnel of the Defence Forces (DF) are citizens of the state and have often been termed the last line of defence for the state. These men and women have been lauded for their prowess internationally as peacekeepers, where 79 service personnel have perished while on overseas missions with the United Nations, and in recent years naval personnel have rescued thousands of migrants in the south central Mediterranean. Far closer to home, they are praised domestically for the maintenance of essential services during times of national difficulties such as extreme weather events, and for the provision of emergency air medical services as well as other search and rescue duties.

The DF has one of the highest public ratings of trust within our society, with 82% of the public express their trust in the armed forces in, the DF is according to that report the fifth most trusted armed force in Europe. (Public Sector Trends, 2018). Yet there has been many charges laid in the media and across social media that the praise of these trusted service personnel is merely lip service and that neglect of the DF is leading to a situation where morale is at an all-time low, staffing levels are reaching a



point where such an amount of vacancies exist that security operations are being affected, and very seriously charges are being laid that national security is at risk of being compromised due to a combination of all these factors.

Comdt Cathal Berry PhD, former Officer Commanding of the Army Ranger Wing<sup>1</sup> and former Officer Commanding of the DF Medical Corps, speaking to a public rally in Galway stated extremely strongly “The cynical exploitation of the commitment and patriotism of Defence Force families must end in order to stem this haemorrhage of experience and talent. Loyalty should be rewarded not punished.” (Berry, 2019), and further charges have been delivered on national radio that this praise and goodwill has not translated into a fair treatment of the military in comparison with other front-line public servants, President of Permanent Defence Force Other Ranks Representative Association (PDFORRA) Mark Keane speaking on radio is equally emphatic as Comdt Berry in his condemnation of the current affairs “Our members demands do not exceed anyone else. The Government chose to feed four of its children and leave one of them go hungry – that is not fair. We were the child who was left go hungry because we cannot negotiate our pay.” (Keane, 2018). This message from President Keane, has been delivered repeatedly and verbatim across the national media.

There are also claims that their rights as Irish citizens are being denied or curtailed, due to the restriction placed on them by their sworn military service which only allows them to engage with their representative bodies for what can be termed industrial relations matter, and that this representation is carried out under unique restrictions, General Secretary of the Representative Association of Commissioned Officers

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<sup>1</sup> Army Ranger Wing: The ARW are the special forces of the Irish Defence Forces. A small force whose exact numbers are classified, provide both covert and overt conventional and counter terrorism services.

(RACO) Conor King, stated while addressing the Oireachtas Committee on Foreign Affairs and Trade, and Defence, “The Department’s approach to representation is divisive, dismissive and sometimes subversive, it has led to an adversarial and dysfunctional industrial relations climate which has been to the detriment of the well-being of the most loyal citizens of this State. It is nothing short of shameful.” (King, 2019).

When such claims are being delivered by senior military officers, and the elected representative leaders of the personnel of the DF, who are themselves currently serving members of the DF, then it behoves us that serious attention be given to such claims, and that such claims be investigated. If the industrial relations mechanisms, which are designed to be the method through which the service personnel of the DF ensure that they receive fairness of treatment, appropriate levels of remuneration, appropriate conditions of employment, and an appropriate system of recompense or redress, are functioning correctly and are functioning to the levels required by their members, then the question must be raised as to why there are such levels of discontent, reports of such low morale and such a high level of voluntary retirements currently affecting the DF.

Therefore, this dissertation will seek to explore the Irish military representative bodies and military industrial relations mechanisms by examining current arrangements, then placing them in comparison with European military trade unionism and the ideals of the European social charter (ESC), and by conducting this research it may be possible to establish if these claims are warranted.

**Thesis Aim.**

This thesis seeks to examine these claims by primarily looking at the industrial relations mechanisms and arrangement available to the Irish Defence Forces, through

their representative bodies, and to explore if these arrangements are adequate to provide the means through which appropriate levels of remuneration and conditions of service can be achieved. Are these structures adequate in the context of recent case law, and the recent Defence Forces Conciliation and Arbitration scheme review? Can they function correctly while the representative bodies remain within the bounds of current Defence Forces Regulation and Government policy on military representation and military trade unionism?

By examining key concepts of the relationships between governments, their armed forces, and the state they serve, the human rights of the European citizen and those of the armed forces member, a view of the importance of the relationship of trust between a state and its armed service personnel is presented here. Then the Irish military representative bodies and arrangement will be compared with the systems in place and afforded to their European counterparts, and some International counterparts, and the ideals and aspirations of the European Social Charter are used to measure the current situation, and what the future vision may hold..

The author will briefly introduce the Irish Defence Forces in the opening chapter, and then he will give an overview of his methodology in conducting this research in Chapter Two. In order to conduct a comprehensive literature review, and to explore more fully the key concepts of military trade unionism in a fashion which will better enable a well-structured and clear dissertation, the author will compartmentalise the research into three main Chapters.

Chapter Three will examine Military Rights and Military Trade Unionism, Chapter Four will examine European Military Rights and Trade Unionism, and then in the penultimate chapter Military Rights and Representation in Ireland will be explored.

In the final Chapter the author will compare and contrast the current Irish military representative organisations, with the military unions and representative agreements afforded to other major European and Western military forces.

The Author will seek in that final chapter to present his conclusions on the primary questions raised in the research of this comparative dissertation.

**Personal Relevance.**

The author has been a member of Permanent Defence Forces Other Ranks Representative Association (PDFORRA) since the first weeks of his service with the Irish Naval Service (INS) in January 1998. A representative came to a lecture auditorium on the Naval Base, Haulbowline Is, Co. Cork and spoke about the association to his apprentice class. The class sat in ordered rows and listened attentively, signed the requisite forms and were, as he recalls, not much the wiser afterwards. The author had also been a member of Reserve Defence Forces Association (RDFA) from his time in the Reserve Defence Forces (RDF), yet again he says that he had also subscribed without any real in-depth knowledge of what he was subscribing too.

Over the following years as the author moved through the training schools etc of the INS, PDFORRA was in the background, he became more active in representation when he exited his nearly seven and a half years of technical, military and junior leadership training in 2005, therefore the author began to take a more interest in his local district, he was first co-opted<sup>2</sup> onto the local district committee of LÉ<sup>3</sup> Emer and

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<sup>2</sup> Co-option is a mechanism where a member of PDFORRA wishes to occupy a vacancy on a district committee, can be selected to do by the committee, without having been elected in a general election.

<sup>3</sup> LÉ is the abbreviation for Long Éireannach or Irish Ship.

stood in his first election with that district in 2006. The author has been activist and elected representative ever since, and a declaration of conflicts of interest on behalf of the author can be found in Appendix B of this thesis.

As he made his way progressively through the Non-Commissioned Officer (NCO) ranks, he received professional training from the military that helps prepare NCOs to be able to face the extra challenges that each new set of responsibilities brings. The author states that he has found that such training also helps one become a better elected representative. The author states that he is a firm believer that constructive representation benefits the military organisation as a whole. PDFORRA has been, in the author's own personal experience, a catalyst for positive change within the INS and DF.

**Significance of the Thesis.**

The aim of this thesis is to carry out an examination of the Irish military representative bodies and military industrial relations mechanisms in comparison with European military trade unionism and the ideals of the ESC.

This thesis is significant due to the current high-profile difficulties in recruitment and retention affecting the Permanent Defence Forces (PDF). A series of in-depth studies by the University of Limerick (UL) were conducted in 2015 and 2016, the reports produced were published with the last in 2017, together they highlighted a number of serious Human Resource (HR) issues which the Department of Defence (DOD) were urged to respond to as a matter of urgency.

The DF commissioned a major quantitative survey, titled 'Your say', in 2015 on organisational climate in the workplace. This report "revealed negative results along a number of dimensions particularly pay, organisation justice, aspects of leadership, performance management, career management, aspects of commitment." (Defence

Forces, 2015) and further to these results the qualitative study was conducted in 2016. This will be discussed in greater depth in Chapter Five.

A review of the DF Conciliation and Arbitration (C&A) scheme, which is the industrial relations mechanism available to PDFORRA and Representative Association of Commissioned Officers (RACO), was published in December 2017 and a Public Service Pay Commission (PSPC) report was published in July 2019. Neither report was met with enthusiasm by the members of the DF, RACO General Secretary Conor King stated that “It is clear that the reported €10m suite of measures in isolation will not be enough to stem the outflow of highly skilled personnel from Óglaigh na hÉireann.” (King, 2019), indeed there were claims that the PSPC report could maintain the current sub optimal levels of personnel and the rate of discharges from the DF, not stem the tide. Fianna Fail spokesperson on Defence, Jack Chambers said that “Defence Forces personnel are currently the worst-paid public servants and it seems these recommendations will keep the status quo.” (Chambers, 2019). PDFORRA General Secretary Gerard Guinan gave this comment on the report “additional measures beyond those suggested will be necessary to stem the current exodus from the Defence Forces” (Guinan, 2019).

The Chief of Staff (COS) of the DF, RACO and PDFORRA have also now all appeared before the Oireachtas Committee of Foreign Affairs & Defence, to discuss all the matters and difficulties outlined above, this is the first time that all three have appeared before an Oireachtas committee within the same calendar year.

This thesis will therefore be able to contrast the current arrangements with the most recently released proposed arrangements and solutions, and by conducting interviews

with subject matters experts, the projected impact of the reviews and reports will be ascertained.

The author considered the following to be a most significant claim, recently stated in a most grave and serious fashion by RACO General Secretary Conor King, to the Oireachtas Committee on Foreign Affairs and Trade, and Defence, “it is no exaggeration to state that the Defence Forces is staring into the abyss” (King, 2019). This claim by a senior serving military officer to an Oireachtas committee is part of his opening address in which he describes the current difficulties being faced by the DF in retention and recruitment, as representing a threat to national security and national sovereignty, as the he claimed the DF is close to becoming non-functional due the personnel ‘crisis’.

The ‘crisis’ does, have a number of contributing factors, however it is claimed that pay and conditions are the largest contributing factor in the current crisis. Given that pay and conditions are within the mandate of the representative organisations, it is legitimately the case that the government is not negotiating in good faith? or is it the case that the structures available to the representative bodies are in fact inadequate, or curtailed either by design, or by bad faith to ensure that they are unable to adequately advocate on behalf of their members? It is the authors opinion that the combined arguments from the multitude of involved parties and interested commentators, which are currently being discussed across the national media and airwaves, and inside the Oireachtas committee rooms and the Dáil, are purporting to describe a situation where the military industrial relations mechanisms of the Irish states has failed, or become dysfunctional to the point where the existence of a viable DF, able to discharge its duties to the state at risk.

This thesis is therefore significant in examining these issues, in what is an increasingly fraught and charged atmosphere, where external factors such as the British exit (BREXIT) from the European Union (EU) and possible signs of a global slow down or even a worldwide recession, will place ever increase demands on the DF for security service and on the Irish government in respect of financial planning and national budgets.

### **Óglaigh na hÉireann, (Irish Defence Forces.)**

To understand the background and context of this research submission it is necessary to introduce Óglaigh na hÉireann, its origins, structures, and its military law from which it derives its Defence Forces regulations.

The Defence Forces, Óglaigh na hÉireann, was established on the 01/08/1924 by the order of the Executive Council of the Irish Free State. The Defence Forces are the armed forces of the state and the right to raise arms or maintain military forces is vested exclusively in the government of Ireland (Bunreacht na hÉireann, 1937). The President of Ireland, Uachtaráin na hÉireann, is the designated Supreme Commander of Óglaigh na hÉireann.

The Defence Forces are governed the laws set out by the Defence Act 1954, “It shall be lawful for the Government to raise, train, equip, arm, pay and maintain defence forces to be called and known as Óglaigh na hÉireann or (in English) the Defence Forces” (Defence Act , 1954). The Defence Forces governance is the responsibility of the Minister of Defence (MOD), who exercises executive and administrative authority of the Defence Forces through the Department of Defence (DOD). Currently An Taoiseach Leo Varadkar TD is the Minister of Defence and Mr. Paul Kehoe is the Junior Minister with Special Responsibility for Defence.



### **Defence Forces Management and Chain of Command.**

It is important to understand the distinction between the military chain of command and the civil management elements of the management structure. The DOD has military and civilian components. The control of the military by an elected government, the concepts of such control and their role in supporting civil society will be explored in the next section.

“Under the direction of the President, and subject to the provisions of this Act, the military command of, and all executive and administrative powers in relation to, the Defence Forces, including the power to delegate command and authority, shall be exercisable by the Government and, subject to such exceptions and limitations as the Government may from time to time determine, through and by the Minister” (Defence Act, 1954)

In keeping with Defence Act, the civilian component of the DOD is led by the Secretary General of the DOD, currently the incumbent is Mr Maurice Quinn and the military component is led by the Chief of Staff (COS), Vice Admiral Mark Mellett PhD DSM. The Secretary General of the DOD and the COS provide the MOD with the highest level of advice with regards to the areas of their respective responsibilities.

### **Secretary General of the Department of Defence.**

The Secretary General of the DOD is the ‘principal officer’ of the DOD and is the most senior policy adviser to the MOD. He is the Accounting Officer for the entirety of defence expenditure and is appointed as such by the Minister of Finance, under the Exchequer and Audit Departments Act 1986.

The Comptroller and Auditor General (Amendment) Act, 1993 and the Public Service Management Act 1997 are also areas of legislation which lay out the Secretary General of the DOD’s authority and responsibilities.

The DF budget is laid out each year in two votes of the government's budget, Vote 35 And Vote 36.

In 2019, this combined estimate was for an expenditure of €994 million. Vote 35: Army Pensions, covers all ex-military service pensions of the three branches, and in 2019 is an estimated expenditure of some €249 million annually. The Vote 36: Defence expenditure is €744.8 million, this is divided between pay & allowances of €515.6 million, and non-pay of €123.4 million with €106 million allocated in estimates for capital expenditure. The non-pay element is for the provision, maintenance and upkeep of military equipment, military installations and infrastructure and the operational costs of a multi-armed force. (Dept. of Finance, 2019)

This budget provides for the entirety of the DF & DOD, some 9,500<sup>4</sup> military personnel, 550 civilian employees, 350 civil servants, 18 DF Chaplains and 14 DF nurses (Dept. of Finance, 2019).

**Chief of Staff of the Defence Forces.**

The COS is the most senior officer of the DF and is the most senior military adviser to the MOD. The Duties and Responsibilities of the COS are assigned by the MOD under the Defence Act, 1954.

The COS is responsible for the military effectiveness, efficiency, organisation, and economy of the DF. Under the Act, the Deputy Chief of Staff (Operations) (DCOS Ops) and the Deputy Chief of Staff (Support) (DCOS Supp) are appointed by the Government to support the COS in the execution and exercise of these functions and responsibilities. Both DCOS's have certain delegated responsibilities.

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<sup>4</sup> 9,500 is the stated desired strength of the PDF in the White Paper on Defence in 2015.

### **Roles of the Defence Forces.**

The Defence Forces comprises of both a Permanent Defence Force (PDF) and a Reserve Defence Force (RDF). The Permanent Defence Force consists three distinct components been “the Army retaining an all-arms conventional military capability including Special Operations Forces (SOF), the Air Corps (AC) operating both rotary and fixed wing aircraft and the Naval Service” (White Paper on Defence, 2015).

The White Paper (WP) on Defence 2015 lays out the main roles of the DF and states as follows:

1. To provide for the military defence of the State from armed aggression.
2. To participate in multi-national peace support, crisis management and humanitarian relief operations in accordance with Government direction and legislative provision.
3. To aid the civil power. This means in practice to assist, when requested, An Garda Síochána who have primary responsibility for law and order, including the protection of the internal security of the state.
4. To contribute to maritime security encompassing the delivery of a fishery protection service and the operation of the State’s Fishery Monitoring centre, and in co-operation with other agencies with responsibilities in the maritime domain, to contribute to a shared common maritime operational picture.
5. To participate in the Joint Taskforce on Drugs interdiction.
6. To contribute to national resilience through the provision of specified defence aid to the civil authority (ATCA) supports to lead agencies in response to major emergencies, including cyber security emergencies, and in the maintenance of

essential services, and as set out in memorandum of understandings (MOU) and in service level agreements (SLA) agreed by the DOD.

7. To provide a Ministerial air transport service (MATS).
8. To provide ceremonial services on behalf of the Government.
9. To provide a range of other supports to government departments and agencies in line with MOUs and SLAs agree by the DOD e.g. search and rescue (SAR) and air ambulance services.
10. To contribute to Irelands economic wellbeing through engagement with industry, research & development and job initiatives, in support to government policy.

**Defence Forces Establishment.**

The establishment for the PDF has been set at 9,500 personnel. The individual breakdown of the appointments of personnel across the three branches is laid on it a restricted document which is known as CS4. As of 01 April 2019, the PDF strength versus CS4 was 93.19%, while the target for the DOD work reference document for quarter two 2019 was 94.75% (DOD, 2019). Data from the DOD indicates that there has been a steady decline of personnel from the PDF across all branches and that current voluntary employee turnover rates are 7.48% (DOD, 2019) approximately across the three services. Department figures also indicate that these turnover rates are increasing. The rate in Dec 2018 was 7.31% (DOD, 2019).

To highlight the seriousness of such a turnover, the British Armed Forces considered personnel levels at 5% below their desired level in 2016, to be at crisis level. The United Kingdom (UK) Ministry of Defence (UKMOD) has been implementing a series of responses to meet their requirement of 144,200 personnel (House of Commons

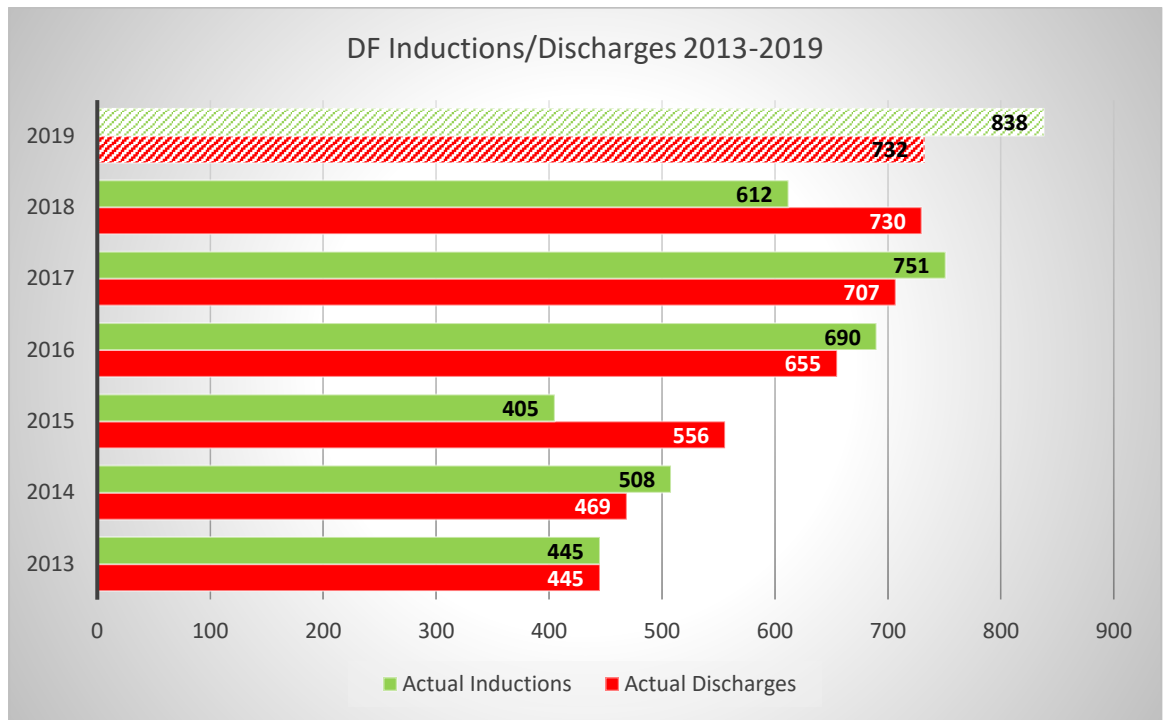
Library, 2019). In fact, it is beneficial to highlight at this point that despite their early recognition of their crisis and taking steps to address it, their personnel numbers now stand at 7% below their target, as of the 01 April 2019, the UKMOD has published figures that they have vacancies for 9,986 personnel (House of Commons Library, 2019). This inability to recruit and retain in the armed forces has led to the difficulties being faced by the Irish DF being describe by The Minister of State at the Departments of An Taoiseach and Defence with Special Responsibility for Defence Paul Keogh TD as “being experienced by other military organisations internationally” (Keogh, 2019). Hereafter, the Minister of State (MOS) Paul Keogh TD will be referred to by the shortened title MOS.

This high rate of voluntary employee turnover has led to a CS4 gap analysis in May 2019 of 829 personnel of all ranks (DOD, 2019). This figure comprises 72 commissioned officers, from Lt/S/Lt to Colonel/Commander ranks and 757 enlisted personnel, from Pte/AB to SgtMjr/WO ranks. (DOD, 2019)

The DOD has not used the term crisis. MOS Paul Keogh TD, again speaking in Dáil Eireann has used terms such as “challenges” and said that “issue of turnover in military organisations is complex.” (Keogh, 2019).

This voluntary employee turnover levels however are a clear indication that there are serious issues with regards to retention within the DF, as this another element which is exacerbating the current DF difficulties in reaching the WP establishment figure of 9,500 personnel. The annual rates of induction, through the various strands of recruitment such as general enlistment, cadetships, and direct entry officers and specialist NCOs, and discharges, both voluntary early discharges and retirement on

age grounds are not keeping pace with each other, at least not at a rate which will allow the growth of the DF to return to 9,500 personnel.



**Table 1: Defence Forces Induction and Discharge Figures.**  
*Note: 2019 figures are projected.*

### Defence Forces Budgets.

It may be useful to gain an insight into the budget of the DF in order than areas of spending might be explored, to enable a better assessment of where the DOD allocates the funding it received from government.

As we can see from the European Defence Agency<sup>5</sup> (EDA) figures, total defence expenditure in Ireland, which comprises of Personnel Expenditure, Infrastructure/Construction Expenditure, Defence Investment<sup>6</sup>, Operation & Maintenance (O&M) Expenditure, and Other Expenditure, has fallen back from a peak

<sup>5</sup> European Defence Agency (EDA) is an agency of the Council of the European Union tasked to advise on European defence capabilities.

<sup>6</sup> Defence Investment figures comprise sub budgets on Defence Equipment Procurement Expenditure, Defence R&D Expenditure, Defence R&T Expenditure (subset of R&D).

of €1077 million in 2008, having risen to that high from €920 million in 2005, to some €915 million in 2017 (European Defence Agency, 2017), while Irish DOD figures indicate further rise to €994 million in 2019 (Dept. of Finance, 2019). Within this period of 2015 to 2017 the peak of expenditure was in 2008, where the combined expenditure reached €1,077 million, and the trough of expenditure was in 2011, where the combined expenditure reached €881 million. It must be noted that these are raw euro figures, and the data does not indicate if it factors in adjustments for inflation and deflation. Therefore, comparisons can be difficult for interpretation. (European Defence Agency, 2017).

If the expenditure figures for personnel are extracted for examination, with due regard that the other segments of the budget also impact personnel in the form of equipment, installations, maintenance, new purchases etc, then we can see that there has been a reduction in personnel with both the civilian DOD staff and with the PDF. From 900 civilian personnel in 2005, to 550 civilians in 2017 (European Defence Agency, 2017). The EDA figures do not record the civil service personnel levels as outline in the introduction of this thesis to currently stand at 350 civil servants. The total military personnel have fallen from 10,500 personnel in 2005 (European Defence Agency, 2017), to 8,853 military personnel in 2019 (Dept. of Defence, 2019). This is a loss of 1,647 personnel since 2005, however this gross number does not account for the actual numbers of personnel who have passed through the DF since 2005, in what has been described as the ‘dysfunctional cycle of turnover being suffered by the DF’ (King, 2019). Between the years of 2014 and 2018 for example, 3,200 personnel are recorded as having left the DF. This represents 34.7% of the average strength of the DF. (Dept. of Defence, 2019).

In monetary terms the figures been examined represented an expenditure in 2005 on personnel (excluding civil servants) of €688 million, falling to a minimum expenditure between the years 2005 and 2017 in 2010 of €684.9 million, fluctuating figures are shown for the intervening years between 2010 to 2017, where the figure is recorded at €738.6 million. (European Defence Agency, 2017). In 2019, the figure for personnel expenditure stands at €774.8 million (Dept. of Defence, 2019). These figures can therefore on headline data be taken to represent an increase in the DF budget, however when viewed in conjunction with the fall in DF personnel numbers, and the failure of the DF to maintain their set out number of DF military personnel of 9,500 (Dept. of Defence, 2019), these figures must be inadequate in terms of providing sufficient remuneration as a whole to encourage recruitment and retention. The DF own figure of 34.7% of the average strength departing in a four-year period, points to a level of churn than is unprecedented in DF, and extreme doubts have been placed upon the DODs and DPERs response to halt this level of voluntary early retirements.

#### **Enlisted and Commission.**

It is important when discussing the DF, that that the distinction between enlisted and commissioned personnel is understood. It would be easy to simply describe the two groups as ‘workers’ (enlisted) and ‘management’ (commissioned officers). This however would be too simplistic a delineation. The junior enlisted ranks of Private/Able Ratings can be correctly termed non-management however within the next higher enlisted ranks, the non-commissioned officers (NCO) from the rank of Corporal/Leading Rate to Regimental Sergeant Major/Warrant Officer (RSM/WO), form a core of professional leaders, which could be termed junior to middle management.



NCOs from the ranks of Company Quarter Master Sergeant/Senior Petty Officer (CQMS/SPO) to ranks of RSM/WO have significant responsibilities in leadership, management, account management, human resource management, often these responsibilities would be on a par or at least complimentary to those of commissioned officers from the rank of Captain/Lieutenant (NS) (Capt/Lt NS) to Commandant/Lieutenant Commander (Cmdt/LtCdr).

Senior military management could be considered to begin from the ranks of Lieutenant Colonel/Commander (LtCol/Cmdr), rising to Lieutenant General/Vice Admiral (LtGen/VAdm).

The distinct duties and responsibilities assigned to the enlisted and commissioned ranks is beyond the scope of this thesis, however understanding that there are such differences is important when understanding the need for two representative bodies which will be described in future chapters.

Thesis Structure.

In Chapter One the author introduces the thesis, and its primary aim. Then he outlines the personal relevance of the research subject and lays down the significance of the thesis. The background of the DF, its management structure, chain of command, and the primary roles that it fulfils for the state are introduced in order to provide context and background. Then the structure of the thesis is laid out, and the opening chapter is summarised.

In Chapter Two the authors methodology, epistemology, and philosophical viewpoint are all explored and examined. The chosen research methods are outlined, and ethical considerations are highlighted. The person chosen for to be requested for interview are briefly outlined, with their detailed biographies been placed in Appendix C. The

learning outcomes experienced by the author during the research phase are also briefly highlighted.

In Chapter Three a wide-ranging review takes place of Military Rights and Military Trade Unionism in theory and practice. The sources of Human rights and Military rights are explored. The impact service has on the human rights of service personnel, through their military service is also examined.

In Chapter Four a thorough review of European Military Rights and Military Trade Unionism is conducted. The theories of the Citizen in Uniform are explored. civil and Military Industrial relations law, bodies, courts and mechanisms are researched, compared and contrasted. The various approaches to representation are studied to contrast practises both in Europe and Internationally.

In Chapter Five an examination of Military Rights and Military Trade Unionism in Ireland is conducted. Key studies into the Defence Forces are also studied in more depth to glean further understanding of the key issues affecting service personnel. The examination of the representative bodies also includes a view of the organisational changes it took to create them.

In Chapter Six the conclusions of the author drawn from the research are presented. The military representation bodies in Ireland are compared to the research conducted into current practises across Europe. Several key areas, where legitimate comparisons can be drawn, are examined and the author will deliver his conclusions of such areas. The primary research questions as outlined in the aim, and any other questions which have been uncovered during the research process will then answered if at all possible.

### **Chapter Summary.**

In this chapter, the thesis was introduced by taking a brief look at the Republic of Ireland and its armed forces. The current heightened levels of public comment from many parties, both military, elected military representatives and elected public representatives, which purports to highlight a ‘crisis’ of moral, recruitment and retention within the DF were examined, and were given as some of the primary reasons the author desired to conduct this research dissertation. The thesis aim was then outlined, and the personal relevance to the author was explored. The author personnel bias was also clearly stated. Then the significance of the thesis was laid out, with several of the main avenues for exploration in the future chapters emanating from key official reports, which originated at the governments behest and the seriousness the author places the public statements and pronouncements of senior military and elected representatives officials of the DF. Then in order to provide some guidance for readers who may not have a working knowledge of the DF or DOD, a relatively brief outline of the DF, its military management and chain of command was described, with care taken to highlight the fundamental differences between pure military operational management and civilian service departmental management. The roles of the DF in its provision of services to the state was given a very brief overlook and the DF establishment were outlined, due to the significance being placed on current staffing levels as one primary indicator of what is being termed a recruitment and retention crisis. The important differences between commissioned and enlisted ranks were explained, and the author aimed to impart an understanding of the two roles which is required to allow the reader more fully appreciate the complexities, the functions and arrangements of the two DF representative bodies. The thesis structure was then outlined chapter by chapter, to give a brief insight into the overall structure of the dissertation to come.

## **Chapter Two: Methodology.**

### **Introduction.**

In Chapter One the introduction examined the many facets of the research question and the background and context of the research where it relates to the Defence Force.

In this next chapter the authors will identify, outline and explain the research methodology employed in the conduct of the research, Gill and Johnson (2010: 6) explain that “there is no one best methodological approach but rather that the approach most appropriate for the investigation of a given research question depends on a large number of variables”. The author is of the opinion that the number of variables which impact on the main research aim, raise many other sub questions which will require different individual approaches to answer correctly, while all the time ensuring that the author bias does not overly influence or misinterpret such sub questions when they are discovered.

### **Research Methodology:**

“Methodology refers to a ‘perspective’ or broad theoretically informed approach to research, which stems from the researcher’s epistemological stance” (Ryan, 2006: 70) . The author considered that a mixed methods approach was most suitable for this research. This was described (Johnson and Onwuegbuzie, 2004) as “a class of research where the researcher mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study.”

Quantitative research was gathered from as many reliable sources as possible such as available data from reports, government policy papers and current legislation. Qualitative research was primarily gathered from semi-structured interviews with some of the leading figures and policy decision makers in the areas surrounding the

core research question, and also the wider industrial relations arena both inside and outside of the state.

During the conduct of the research the author was often engaging with materials which were just being released to the public from government agencies or departments, this greatly assisted the author in being able to investigate exceptionally recent data sets and professional opinions on many of the various strands of the research question.

“All research, whether quantitative or qualitative, must involve an explicit (i.e. auditable), disciplined, systematic approach to finding things out, using the method most appropriate to the question being asked. Consideration should be given to these common goals, although the differences between qualitative and quantitative research have often been exaggerated in the past.” (Hancock, Windridge and Ockleford, 2007). The requirement of using a disciplined and systematic approach to conducting the research was very important to the author, given the volume of materials, much of which was new knowledge to the author, which were needed to be investigated in order for a comprehensive literature review to be completed within appropriate timelines.

### **Epistemology.**

Every person has their own epistemological and ontological positions, entirely unique to the individual. “Epistemology is a study of how people or systems of people know things and how they think they know things“ (Ryan, 2006: 15). The term epistemology is of Greek origin, from the words ‘episteme’ and ‘logos’, which mean ‘knowledge’ or ‘science’, and ‘logos’ which can be taken to mean in various forms ‘knowledge’, ‘information’, ‘theory’ or ‘account’ (Johnson and Duberley, 2000:3). The epistemological position of the researcher is a key issue to understand in any research, for example in the authors case, he feels that his unique experiences of being a sailor, a Senior NCO, a representative activist, and an elected representative, all serve to give

him a perspective on this research which may not be available to someone outside of the military and representative system.

Ontology is concerned with the philosophical considerations of the society we live in and how the different parts or aspects of society work together, it is a vital component of this research that the authors ontological position remains neutral and objective throughout. As outlined in the introductory chapter, the personal relevance of this research to the author is, in the author opinion, strong enough to affect the interpretation of the reality of the current industrial relations situation in the DF.

However, despite the two strong epistemological and ontological positions of the author as outlined above, it is also the opinion of the author that he is capable of being an objective and methodical researcher. It is another facet of the authors dual role within his employment, which the author feels enables him to be so, the dual roles of that off a Senior NCO with the responsibility to discharge the authority placed in him according to DFRs, without fear or failure, and that of an elected representative and advocate for his members. It is precisely because the author must wear ‘two hats’ on a daily basis, that he feels he have developed the skills require to be objective and impartial, and most importantly to be self-aware of where the lines of objectivity and impartially begin to blur.

**Philosophical Viewpoint.**

To examine research philosophy, the author found that O’Leary (2004) presents a philosophy in which researchers can manage to be and remain creative using insightful thinking, while using logical structures throughout the research. In doing so O’Leary extols, that the researcher will manage to:

1. Be original, innovative and imaginative; while still having a primary direction.

2. Retain the ability to think outside the square or box; while ensuring that focus in on the research target.
3. Ensure the researcher remains fluid and flexible; while remaining methodical and deliberate.
4. The researcher can then be inspired, imaginative, and ingenious...in the development of methods that are realistic, practical and doable.

A positive approach in using structured research methods, using the most current quantitative data, will form part of this research, drawing on the numerous recent highly in-depth studies carried out by professional academic researchers on behalf of the Defence Forces and Public Services. It is not the authors intent to carrying out any independent quantitative research study solely for the purpose of this thesis.

Therefore, the findings of the UL studies in 2015 and 2018, will heavily influence the compilation of quantitative data used, and comparisons will be drawn where possible to indicate trends over time. Indeed, the Defence Forces should be acknowledged for publishing for publishing them, this can be said to be indicative of an organisation which is willing to look inward, past the recruitment slogans and jargon, to expose central issues and to attempt to deal with them. The author will examine if the Defence Forces has the tools required to deal with the serious issues highlighted within the reports.

Action Research.

The author was further drawn to what is titled as 'Action Research', first coined by Lewin (1946). This is due to the author been so deeply involved in the representative body PDFORRA. The author acknowledges his own bias and openly acknowledges his desire to enact positive change with the Defence Forces, the author does so in both

through his military work as a senior non-commissioned officer in attempts to influence upwards to create change and through his activism in the military representative body.

Lewin described action research as “a comparative research on the conditions and effects of various forms of social action and research leading to social action”. Within action research there is an assembly of methodologies which seek to pursue action and research at the same time. In certain forms of action research, the pursuit of understanding is the primary research component, and this is considered the primary action. Action research stands apart for other methods of research in several ways. The evolution of the person into a researcher is one of its focuses, people learn best when they do it themselves is the motivational basis for this.

There is a social dimension in this research as there is a large social dimension in the primary aims of representation, that of the improvement of remuneration and working conditions in order for the service person to be able to play a full part in society. One of the other striking characteristics of action research is that the researcher makes no attempt to remain objective and openly acknowledges his bias to participants in the research. (O’Brien, 1998)

However, the traditional action research philosophy which arises mainly from the work of Lewin, strongly suggests that the research will produce action in some form or other. The person conducting the research it suggests should be able to enact changes in the organisational structure or provide solutions to the challenges or question which prompted the research. The author, while acknowledging his bias towards the enlisted representation association, must also openly acknowledge that the



research conducted here will have has little influence if any on the military industrial relations mechanisms currently in place.

The author realises that he may not find an answer at the end of his research, that one key lynch pin, with which all could be secured. This research may only create more questions, and despite the authors zealous commitment to advancing the cause and rights of the citizen in uniform, he will attempt to temper that exuberance and enthusiasm with a more stoic and impartial attitude, more appropriate to the conduct of scientific research in the field of government and public policy.

The author will therefore try to use a post-positive position in his research and that a mixed method methodology will constitute the means through which he will conduct his research. All the time during the research the author was minded that Scandura and Williams (2000: 1248) stated that “the impact of research...will depend upon the appropriateness and rigour of the research methods chosen”

#### **Analysis of Quantitative Data.**

The author did at the beginning of his research investigate the possibility of the creation of a survey to gather empirical data from across the Defence Forces, however when the author analysed the data from the UL studies in particular during his literature review phase, he found that it was most unlikely to be able to produce any further quantitative data set which would be of an equally informative nature, or would be uniquely beneficial to the research question.

In investigating the creation of this possible survey, the author was keenly aware that participation would be most likely of a far smaller scope and scale, and during the circulation of any such self-created survey, it is most likely that a unbalanced participation would occur, given the authors profile as a PDFORRA representative which would it was projected draw greater participation from PDFORRA members,

and coupled with the author relativity small profile outside of the NS which is was projected would bring less participation from Army and Air Corps members. It would also be, in the author projective opinion, unbalanced strongly towards the enlisted ranks, who would be the persons most likely to engaged with any proposed survey.

### **Semi-structured Interviews.**

Chapter Two identified key themes to be investigated further by semi-structured interviews. The purpose of this type of interview is that “the interviewer is...free to pursue lines on thinking introduced by the interviewee” (Ryan, 2006: 77). This can greatly help to extract the reasoning behind the thoughts of the interviewee and can lead to new avenues of exploration for the researcher. A limited time factor also had an influence on the selection of potential candidates for interview. Interviews with senior military management, senior industrial relations experts, and senior political figures with proven expertise or experience in the area of the research question, and also from senior military representative leaders were carefully selected prior to contact.

Their experience, expert knowledge, and their varying perspectives across the gamut of subjects and issues been investigated would prove invaluable to the depth of the research. Both current and past occupants of various roles were sought to be interviewed in order that those who were no longer in those roles might feel freer to speak about their experiences without affecting current or on-going business, claims or relationships.

A hugely positive response was received from all persons who agreed to the interview, after a respectful request to participate for interview was issued by the author, and there was relativity few non-responses. Given that the non-responses were balanced

across the desired persons to be interview, the author has placed no inference, either positive or negative, on anyone who choose not to respond.

**Ethical Considerations.**

As the researcher, the author was keenly aware at all times that the interviewees were voluntary participants in the research, and that they could at any time withdraw from the interview, decline to answer any question they saw fit to; and that for certain interviewees who are in active leadership roles, the refusal to answer may be based on ongoing legal action or ongoing negotiations on some matter. Again, similar to the non-responses during the initial request for interview, no inference either positive or negative was placed on such refusal to answer any question.

All participants in the interviews were given a briefing document, a copy of the predetermined set of questions to be asked, and they were all also requested to sign a consent form. The documents are contained in Appendix A, D, E, F, and G.

The interview questions were specifically designed to be broad and to allow the interviewee scope to explore their own opinions on the subjects presented. The semi-structured interview also facilitates the asking of reflexive questions, which help to assist the researcher in bracketing their own opinions and attitudes on the subject. (Bevan, 2014). The predetermined set of questions which forwarded to all participants in advance. In one case requested to be altered by the interviewee, as the potential interviewee felt that it would be inappropriate from them to comment on issues with which they were unfamiliar, and/or would be given a general personal view rather than the professional role from which they would be answering. The author considered this request reasonable and issued an alternate set of questions. This set of questions can be found in Appendix A.

All interviews, bar one, were conducted over telephone communications, as scheduling with the participants diaries and the authors full time occupation as part of a ships company which is normally actively engaged on maritime defence and security operations at sea, made it impossible to complete the interviews in person within the required time frame. While, the author does not consider that this had an major impact on the qualitative data gained from the interview, an in person interview would be preferred as reflexive questioning could have being improved by being able to see subjects reactions to certain questions, and to be better able to adjust the line of enquiry accordingly.

Another highly interesting part of the ethical considerations was the data protection requirements of the promulgation of transcripts of interviews, the anonymisation of such transcripts and consent forms for long term storage on the cloud data services of UCC. The author will freely admit to having to have to learn a great deal on data protection and the ethics of the conducting research to the standard required. This entire section of learning was in the authors opinion hugely beneficial and was a field of knowledge that the author had not explored in such depth before.

The author must also freely admit that the necessity to anonymise transcripts and signed consent forms from public figures, who are not from an at risk social group or who would not be placed at risk from the disclosure of the full transcripts, and who are agreeing to be quoted in print, which would necessitate entry into the written work as citations and the bibliology, threw him quite off track.

After discussion with the Social Research Ethics Committee (SREC) on how to achieve the required level of anonymity for the required storage on UCC servers, all data protection requirements where achieved. The underlying question remains on the

usefulness of such data for any future researcher, where signed consent forms are stored will all identifying data removed, therefore one may be unable to ascertain did the interviewee in fact give consent. The anonymised transcripts, where the identifying data has been replaced by a question and response format, using Interviewer and Interviewee 1, 2, or 3 etc., could be of some value to a future researcher, however given that the transcript is anonymised and unable to be paired with a signed consent form, it would therefore not be possible to use such qualitative material in any supportive argument or citation, as the researcher would never be able to confirm the veracity of the stored transcript.

### **Chapter Summary.**

In Chapter Two the research methodology, epistemology, and philosophical viewpoint was detailed in order to develop the understanding of how this research for this dissertation was conducted. The authors exploration of action research philosophy was also examined, and the considerations on the adoption of a post positive research position were set out.

The author then outlined some of the primary reasons for his choosing not to conduct a primary survey for this dissertation, and to instead rely on in the main parts of the quantitative and qualitative studies conducted by UL.

The authors use of semi-structured interviews was then laid out, with explanations given to reasoning behind the selection of candidates for interview, the questioning technique, and the method used to conduct the interview themselves.

Then ethical considerations were explored, and the author highlighted some of the new learning gained during this section of research, on data protection, ethical research, the storage of research material and other important items which must form a part of the ethical researcher's toolbox.

In the next chapter the first part of the literature review for this research project will take place. In it the origins and concepts of military rights and military trade unionism will be explored.

In order to convey the literature review in a disciplined and systematic fashion, the traditional format of a single chapter on the relevant research literature has been foregone. The next three chapters will separate the research into three main sections.

## **Chapter Three: Military Rights & Military Trade Unionism**

### **Introduction.**

“Writing a faulty literature review is one of many ways to derail a dissertation” (Randolph, 2009). The author faced into the literature review with some trepidation. The subject chosen focuses on an area which the author was not confident was overly researched. The author however was keenly aware that “a researcher cannot perform significant research without first understanding the literature in the field” (Boote, 2005). Given the breadth of the research subject, it was decided to divide the literature review in three primary sections from Chapter Three to Chapter Five, which would allow for a more structured review.

Across the three sections the overarching aim of the literature review is the examination of the literature which exists on or in connection with, the areas of the theory or concept of the Citizen in Uniform, military service obligations, human rights, trade unionism and military representation.

The function of the Irish industrial relations system and the facilities available to other uniformed public servants are also areas which will be examined briefly. The effects of the government policy, and military service itself on military service personnel will be explored.

The ESC will be investigated, and areas where Irish government policies are not in keeping with it will be highlighted. The seminal studies carried out in 2015 and 2016 by the University of Limerick will also be reviewed.

### **In search of rights.**

During the research phase, the author was directed to a quote from Colonel Brian O’Keeffe, who in 1990 was the General Secretary of RACO, which stood out by the starkness of the problems which existed in the late eighties and early nineties at the

birth of representation. He stated in a most honest fashion in relation to the formation of representative associations in 1990, and the expectations of commission officers, who as the managers and drivers of policy implementation: "...there was a huge frustration among officers about the fact that they could do nothing for their troops at a time of economic hardship, promotion embargo and an overall impression that the Defence Forces was in a poor state. There was a drive amongst officers to change the organisation, but this was tempered with a belief that the then General Staff of the Defence Forces and the senior officials of the Department of Defence did not appear to have the imagination or willingness to drive change. In my own view, and this was my perspective at the time, the association was seen as a change agent as much as anything else". (O'Keeffe, 1990, cited in Campion 2009: 1)

The author was struck by the similarity of this statement, which was expressing the acute frustration felt nearly three decades ago, with the following statements by the current General Secretaries of RACO & PDFORRA; RACO General Secretary Conor King stated to the Oireachtas Committee on Foreign Affairs and Trade, and Defence that "The Army is struggling to fulfil its assigned tasks, domestically and internationally. Ships are unable to go to sea and aircraft are not flying as a result of personnel shortages. Yet the Department of Defence continues to prioritise costly recruitment policies in favour of tangible retention initiatives. This historically high turnover rate is leading to the creation of a crippling operational and training tempo for remaining service personnel. When is the Government going to shout stop? Does it realise that Defence capability is being ground into the dust? Does it care?" (King, 2019) and PDFORRA General Secretary Gerard Guinan who stated to the same committee on a different date "I and my colleagues in PDFORRA have seen the human cost of austerity and the denial of recognition of the problems that exist within the



Defence Forces.”, he went on to state that “It is not an overstatement to say we have lost significant numbers of highly qualified outstanding soldiers, sailors and aircrew over the past few years. These personnel left with a deep sense of betrayal and disenfranchisement that will never be assuaged. They were forced from a career that they loved and that owed them much more than they ever received. But they might have stayed if only some earlier intervention had occurred.” (Guinan, 2019).

It is the starkness of statements such as these, which has compelled the author to conduct this research. However, as the author begins this section of the literature review, he is mindful that in order to determine what has brought the DF representative bodies to this point of making such strong statements, he will need to first determine what rights and obligations are given and/or placed on the military service personnel of the DF. Therefore, the author has sought to begin with an examination of what are human rights, as all military service personnel are human underneath their uniform, and how does national law, or military law change the human rights afforded to a civilian into the rights afforded to a member of the armed forces.

#### Human Rights.

The 1948 Universal Declaration of Human Rights (UDHR) was the first international agreement to define and enumerate basic human rights; these include civil and political rights, as well as economic, social and cultural rights (Cole, 2008). Human rights are those rights which are inherent to each and every human being, all human beings are entitled to enjoy their human rights without distinction (Steiner and Alston, 2000).

As citizens of Europe, our human rights are protected and guaranteed by European legislation, which applies to all European Members states. Each member state must

abide by these human rights laws and ensure protections for individuals and groups against actions which may interfere with their rights (Rowe, 2006).

There are three universally accepted facets to human rights that Steiner and Alston (2000: 370) insist should never be interfered with: That rights are universal, the rights are inalienable, and that they are indivisible, interrelated and interdependent.

In 1953, the members of the Council of Europe adopted the European Convention of Human Rights (European Convention of Human Rights), this was incorporated in Irish law in 2003 (Ireland, 2003). Further to this, The Charter of Fundamental Rights of the European Union (the Charter) (European Parliament, 2000) was adopted by the EU member states in 2000, and upon the ratification of the Lisbon Treaty, The Charter became legally binding in 2009.

Quinn (2012) considers that 'military life brings with it certain obligations and duties which distinguish it from other professions'. Military service by its very nature can place service personnel into extremely hazardous environments where there may well be the possibility of serious injury or death, in particular such operational service such as counter-terrorism operations domestically, maritime interdiction operations at sea, and participation in overseas missions often in active war zones.

There is merit to the argument that; excluding military personnel, in full or in part, from participating in the society in which they live and work, by restricting the application of any of their human rights can only serve to create a reluctance to venture out from behind the barrack wall (Harries-Jenkins, 1977).

The concept of the 'citizen in uniform', propounds that the service person has the same rights as that of their fellow citizens, and that restrictions to those rights or negation of those rights can only be applied in a proportionate fashion in a time of war or grave

national emergency. Many EU member states have this understanding of the ‘citizen in uniform’ in regards to the rights of service persons,

What distinguishes a soldier from ordinary public servants is that they answer a calling, are dedicated to military service and the concept of duty, honour and service (OSCE-DCAF, 2008).

### **Military Law.**

In a functioning democracy which has decided to raise and maintain armed forces, it is imperative that such an armed force remains under the lawful control of the democratically elected government of the state. Young (2006:24) outlines the “traditional mechanisms of control’, used by the state political authorities are ‘mechanisms such as constitutions, laws, policies and regulations”.

The armed forces of the state are the only state employees who are authorised and employed to deliver violence on behalf of the state in the execution of their duties. The use of force by police forces of the Irish state, is exercised only to the level required to maintain the safety of the police officer. The police officers use force only to affect the arrest or apprehension of the subject, or to remove an immediate threat to life or limb. It could be termed defensive violence. The DF is strictly bound to use defensive violence in the course of the vast majority of its domestic duties, and for a great deal of its overseas duties. However, when the mission aim changes to offensive action, there the aim is often to close with and destroy the enemy.

As such the armed forces have a monopoly on the use of offensive violent force. This ability to inflict violence in order to achieve the assigned aims or tasks as set by the government, must at all times be in keeping with the Constitution, and must at all times be applied only under it. Young (2006:26) states that “soldiers, by definition, constitute a class who live apart from the general society”. This statement is strongly supported

by the training for and ability to use of violent offensive action when called on by the state.

Huntington (1957:14-15) in his work on civil-military relations states that “while all professions are to some extent regulated by the state, the military profession is monopolised by the state”. Military law is required, in order for the armed forces to function correctly. Without military law it would be impossible to carry out all the tasks as outlined in DF White Paper 2015. Military law is a system of rules and regulations underpinning robust discipline, which is required in order to achieve whatever goals or objectives set for the armed forces by the state. This law and discipline must exist both in peacetime and during war. Young (2006:21) states that “Should an officer employ his or her skill of arms for personal benefit, then that officer is immediately transformed from society’s protector into a criminal threat to social stability.”

### **Rights of the Armed Forces.**

Ambassador Christian Strohal, Director of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) stated strongly that “As 'citizens in uniform', armed forces personnel, whether they be conscripts or volunteers, are entitled to the same human rights and fundamental freedoms as any other citizen.” The tempering of these full rights should, according to Rowe (Rowe, 2006), only be the prerogative of the government during times of national crises. This due to the fact that a service persons work, under their unlimited liability contract, can lead them to conduct operational duties which can hazard their health, safety and wellbeing. They can be killed or seriously injured in the course of their duties, and they may have to kill or seriously injure others in the performance of those duties. They are the only forces empowered by the state to execute violence on the behalf of the state. They do this as

part of a regulated and disciplined force, and some, such as Bradley and Ewing (2008), argue that the same rules that are used in the general administration of society are insufficient and unsuitable for the military. Others argue that a service person who voluntarily swears into service in the military is by their own free will automatically surrender certain rights (Leigh, 2009).

The theory of the psychological contract between military personnel and their organisation has been defined by Rousseau as “the beliefs that individuals hold regarding the terms of the exchange agreement between themselves and their organisation.” (Rousseau, 1995). There is the belief that when sworn into service to the Defence Forces, that the organisation will provide an appropriate level of education and training to perform in the roles one would be assigned, and that remuneration and working conditions would be of the appropriate level in order for one to operate at the level required and to enable or afford the service person a lifestyle which could reasonably be considered as normal in society.

Rousseau further described this contract as a relational one, which is indicative of organisations with stability built on traditions and history of the relationship, high affective commitment and strong member-organisation integration (Rousseau, 1995).

### **Chapter Summary.**

In this chapter the human rights and their origins were explored, and the application of human rights with the EU was examined. Military law and how service under military law affects the rights of the armed forces was reviewed and some of the theories under which military service personnel serve their state were also introduced.

In the next chapter European military rights, and how they vary between members states, will be examined. Some international military forces will also be explored for

further context. The concept of the citizen in uniform, and concepts of military trade unionism will also be explored.

The umbrella body EUROMIL will be examined further and a deeper look at specific European legislation will also be conducted.

## **Chapter Four: European Military Rights & Military Trade Unionism**

### **Introduction.**

Now that the author has presented an understanding of where the basic rights of the armed forces member comes from, it is intention in this chapter to explore the application of these rights to a selection of the armed forces in Europe, and some non-EU member states militaries will be examined in order to gain an appreciation of the international context. To begin the concept of the citizen in uniform, and those of military trade unionism will be explored. In particular how military trade unionism and the nation state can interact. The three key forms of military representation are laid out, and then how these are applied to different militaries are explored.

### **The Citizen in Uniform.**

In the aftermath of Second World War, it was necessary for the creation of a new Germany army, an exceptional difficult project which lead to the creation of the Bundeswehr. These new German soldiers needed to formed not in the image of a member of the some elite forces such had just been defeated in Nazi Germany, but in the image of the a service person who saw themselves as a citizen and an equal member of the community in which they lives, and whom they would protect. This led to the concept of the 'citizen in uniform'. Service person must therefore enjoy the same rights as every other citizen, as a 'citizen in uniform'. It is paramount to democracy that the armed forces be fully integrated into their society, argues Nesterov and Pruefert (2006).

This is supported by Soeters and van der Meulen (1999) who argue that a military organisation must appear to be a reflection of the state's citizens and culture in general. This is a key concept that the Bundeswehr was trying to have implemented in the post-war years. Not everyone agrees with this concept, Rukavishnikov and Pugh (2003), propose that the military should be separate and distinct from its citizens, and display

a distinctive non-civilian culture. This in direct contradiction of the Bunderswehr concept of avoiding elitism in favour of an integration, which is reflective of the terrible German national experience of what can happen when an elitist group hold military power.

### **Military Trade Unionism.**

The relationship between civil society, the state, and armed forces of the state is a complex and multifaceted one. The Republic of Ireland has no traditional offensive military capacity, of the nature of major military powers such as the United State of American or Russia. However, certain principles which apply to larger militaries of other nation states throughout history do apply the DF, as it is the military institution of this state.

One of these principles is outlined by Huntington, in that military institutions are moulded by the state and society to which they belong, they are, he says “shaped by two forces: a functional imperative stemming from the threats to the society’s security and a social imperative arising from the social forces, ideologies and institutions dominant within the society.” (Huntington, 1957: 2). This, he further states leads to the need for strict control of the military institution, and with such strict controls comes inevitable detrimental effects on the rights of those citizens of the state who have chosen to serve in the states armed forces.

The desire of service personnel to exercise their rights as citizens, is therefore bound by military laws and regulations, and it has been stated that military trade unionism is “fundamentally incompatible with military service” (Lammers, 1969 cited in Pratt 1987) and indeed such statements are repeated almost verbatim in 2019 by the COS who says that “fundamentally, it is totally incompatible with military service” (Mellett, 2019) and indeed the same style of strong words were used when discussing proposals



on increasing pay through overtime payments, when representation in DF in 1989 was just beginning, by a member of the General staff who said at the time “the provision of overtime is an anathema to military service” (Unknown, cited by Guinan, 2019).

One area which can be explored is the shift away from the strict institutionalism of post-World War II militaries, and the intuitionism of the Cold War era militaries, where the serious threat of mutually assured destruction, in Western nation states was perceived as very real, was cautioned against by Moskos (1977) because it could lead to service personnel to see themselves as employees, and thus cause them to demand comparable conditions of employment as other civilian employees. This ‘occupationalism’, where military service would be seen less as a ‘vocation’ and perceived more as ‘just a job’, would Moskos (1978) believed undermine the institutional values traditionally espoused by militaries and would lead to an erosion of military cohesion and effectiveness. Moskos was prescient in identifying future trends in the military and the changing relationship with the state including; the increased desire for military unionism, the growth of private military companies providing ‘civilian’<sup>7</sup> contractors where traditional military forces would be employed, and the growth of the occupationalism.

This trend toward occupationalism has grown along large societal changes of in the post-Cold War era, civil society has changed and is changing, it has largely trended towards a more liberal and open society, even if currently trends of nationalism and neo fascism are rising. For the most part military service persons have higher levels of education, welfare and training than their counter parts of pervious decades. They less

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<sup>7</sup> Private Military Company’s supply armed soldiers for hire, often ex-military personnel who are paid a premium rate in comparison to the remuneration of their home nations armed forces.

likely to remain in service for the entirety of their careers, the modern service person has one foot firmly in always on, interconnected civilian society, while still observing adherence to the military ethos's of their nation's military. This is in part due to the perception of reduced threats to society and an acceleration of civilianising influences according to Heineken (2006: 2). The rise of 'individualism' is the means which Heineken (2006: 2) uses to describe, the pattern were all employees including those of the armed forces, are unlikely or less likely to accept intimidating or offensive behaviour from superiors, therefore the employee is more likely to seek a means of formal redress by those mechanisms open to them. Military personnel, who have not been afforded a military trade union or a representative organisation, will also show more inclination toward military trade unionism.

There is also an argument put forward by Harries-Jenkins (1977) that the armed forces of a nation represent an elite, and that military trade unionisation would be unnecessary if the armed forces remain an elite within the society or state. He also expressed the view that where military members of the armed forces of a state form an opinion that they are no longer viewed as an elite with that society or state, that the issue of representation subsequently arises. This is due to the members of the armed forces coming to perceive that, compared to other civil and public service bodies or institutions, they have lost or suffered a diminution of a previously held elite or special status. (Harries-Jenkins, 1977).

This rise of education, training and civilianising influences has not led to a lessening of the professionalism of the modern service person. A person volunteering for military service, often has a strong desire to serve, to become military professionals. Military trade unionism can be seen as one positive facet of that professional military service, the author would agree with the following observation. "professional soldiers

forming professional associations will result in them becoming more professional and better able to exercise better control over their profession” (Janowitz, as cited by Sorenson, 1994).

**Military Representation Internationally.**

There is no universal interpretation or application of what military trade unionism should be or can be, each nation has its own societally, governmental, historical and political factors which influence the presence, absence or limitation of military representation and/or military trade unionism which is afford with in each state.

Indeed, it can be argued that what the body, association or organisation is called is irrelevant if the assigned group can exercise itself for the betterment, protection and representation of the military service personnel which fall under its remit.

The right of service personnel to freedom of association varies from prohibition of representative bodies in their entirety, to non-autonomous associations which are officially state sponsored, to those with full union status including the right to strike, even those with such a right to withdraw labour are normally subject to strict limitations on taking such strike action.

**Paternalistic Prohibition.**

Paternalistic prohibition is a chain of command focused approach to representation, where the service personnel have no access to a representative body or association, industrial action is strictly prohibited, and no provision is made for machinery or mechanisms to enable collective complaints or grievances. (OSCE/ODIHR, 2008: 70).

The chain of command is seen as the traditional route where an individual subordinate will advance an individual grievance progressively higher through commanding officers until a resolution or conclusion is reached. This traditionalist approach is deemed to ensure to operational effectiveness of the service person, by ensuring their

welfare needs are met. A criticism of the chain of command approach is that it can lead to the merging of the distinct interests of the military organisation as a whole with that of the individual service person.

This chain of command method can exist alongside an independent ombudsman or other external human rights body for individual complaints. Indeed, such external ombudsman systems are in place with many other countries where paternalistic prohibition is not the primary approach.

Furthermore it may be argued that a chain of command approach which has been deemed to be non-satisfactory or non-effective in meeting the welfare needs of the service person, can lead to service persons seeking indirect representation through veterans associations, family groups etc., such as occurred in Ireland in 1989 with NASA. It can be further argued that even with systems which have some representation bodies, if those bodies are perceived to not be effective in any particular way, they can also lead to service persons seeking indirect representation. 'Vicarious or indirect representation of these kinds may to some extent fill the vacuum of direct representation, but they do so as a second best' (OSCE/ODIHR, 2008: 70).

**Prohibition with Non-Autonomous Arrangements.**

This second approach is to deliver non-autonomous associations which are officially state sponsored. Here the government of the State provides the representative machinery in order that the interests of military service members in relation to bargaining for pay, conditions of service, service pensions (OSCE/ODIHR, 2006: 71). For example, France has a prohibition on membership of professional associations, however their Higher Military Council (Conseil Supérieur de la Fonction Militaire, or CSFM) which was created in 1990 provides the opportunity for participation in discussions on legislation and regulations affecting conditions of service. The CSFM

is comprised of members elected from the seven councils of the various forces, these are ‘the Land Military Command Council, the Naval Service Council, the Gendarmerie Military Function Council, the Army Health Service, the Military Directorate of the Directorate General of Armaments, and the Military Service Board of the Department of Armed Forces’.(Ministry of Defence, France, 2016). The CSFM members are from a range of ranks, senior officers to junior enlisted personnel. A similar council approach has been provided for the military service personnel in Italy. Germany service personnel may join military representative associations, and they provide the services with a dedicated Ombudsman, known as the Wehrbeauftragter des Bundestages (WB), or Parliamentary Commissioner of the Armed Forces.

The non-autonomous approach to representation has a serious flaw in that there can be a perception from those military service personnel that they are lacking in legitimacy and/or credibility due to the composition of the groups and the fact that the service personnel do not create the arrangements for themselves, rather they accept and work within the confines and structures delivered to them by their government (OSCE/ODIHR, 2006: 71). This arrangement where the control lies in the hands of the government and military, presents a situation where there is an absence of democratic accountability to the service person whose rights or interests such groups purport to represent.

#### **No Prohibition with Authorised Autonomous Military Associations.**

The third and final approach is a system with no prohibition which allows authorised and autonomous military associations. This approach has a long history, and more countries are adopting this approach, mainly in recent year European nations, again reflecting the societal changes be experienced across Europe, where the creation of the European Union, its expansion into the relatively new democracies of the former

Eastern bloc, and the lessen of the direct threats of the Cold War, have seen an era of relative peace and prosperity of nearly seventy years. The Netherlands have had such associations since the late 19th century, and those associations in Belgium and Sweden are also very long-standing. (OSCE/ODIHR, 2006: 72).

Under this third approach, military associations have autonomy from the government of the day and the respective Departments or Ministries of Defence. They are democratically accountable to their members, most operate under an association constitution, and nearly all are bound by agreed rules and regulations, which places varying degrees of restriction on certain matters such forgoing comment on current operational or foreign policy. ‘They may be insulated from mainstream trade unionism’ (OSCE/ODIHR, 2006: 72).

### **European and International Arrangements.**

To better understand DF representative arrangements, it is necessary to first understand in greater depth the military associations and representative bodies in other European nations, and for the purposes of further contrast those of other western nations, whose militaries share very similar systems of military values, and similar styles of civilian control.

The United Kingdom (UK), Canada, New Zealand, and Australia militaries inter-operate at a very high level on a regular basis, their militaries have a very close shared history, and it is only since cessation of the Second World War that major changes began to diverge the societies from which their individual military personnel are drawn, we can therefore perhaps drawn some information from an examination of how each now independent nation deals with this issues of military trade unionism or representation. They are all still nations within the Commonwealth.

In Europe, the military forces of Italy, Spain and German can be compared to examine if these now democratic nations have any similarities in how former authoritarian states view the rights of their military service personnel, within the European Union. These three nations, along with the UK, form the backbone of the forces of the North Atlantic Treaty Organisation (NATO) in Europe. Across the rest of Europe, the militaries of Belgium, Denmark, and France will be explored, these are all nations which have been invaded or overran multiple times by larger forces and are all committed members of NATO. It will be useful to see has this past history of invasion and war shaped the way that these nations provide for the representation for their military service personnel.

Norway is also examined as a non-European Union near neighbour, yet important NATO member, so it is valuable to examine the arrangements present here as well. Due to its position as the most powerful military on earth, and the main military force in NATO, thus been one of the central actors in European continental defence, the armed forces of the USA will also be explored during this section of the research.

### **United Kingdom.**

The UK do not have any form of representation. There are no plans to introduce any form of representation. They have what is termed a 'military covenant' and an independent pay review body, which advises the government of the day, what, if any, changes or adjustments should be made to pay and allowances of all the members of Her Majesties armed forces. This review body receives submissions from service personnel, military management and the Ministry of Defence, which it then considers as part of its recommendations to the government. This body has just reported in 2019, and it has recommended a general pay rise of 2 %, and it has given several targeted responses to the current recruitment and retention issues faced by the UK armed forces.

The EU working time directive (WTD) does not apply to members of the UK armed forces.

They have no right to protest and no right to strike or to withdraw labour. (UK, 2019)

**Canada.**

Canada armed forces do not have any form of representation. There are no plans to introduce any form of representation. The pay and allowances of Canadian military service personnel are determined by their government, under national pay agreements in line with other civil and public service Organisations.

They have no right to protest and no right to strike or to withdraw labour. (Canada, 2019)

**New Zealand.**

New Zealand armed forces do not have any form of representation. There are no plans to introduce any form of representation. The pay and allowances of New Zealand military service personnel are determined by their government, as set by remuneration tables created to specifically address the military personnel and civilian employees of their Department of Defence.

They have no right to protest and no right to strike or to withdraw labour. (New Zealand, 2019)

**Australia.**

Australian armed forces do not have any form of representation. There are no plans to introduce any form of representation. Similar to the UK, they have a Defence Force Remuneration Tribunal, which has the statutory authority to investigate and determine the pay and allowances of the military service personnel. The government then will decide on the implementation of such recommendations. The military service personnel are considered “servants” of the state, under the Fair Work Act, 2009, not



“employees”, and therefore are strictly prohibited from the rights to collective or enterprise bargaining.

They have no right to protest and no right to strike or to withdraw labour. (Australia, 2019)

**Italy.**

Currently Italian service personnel have no right to freedom of association. Italy is in the process of reforming its system of military representation, and finally granting military personnel the freedom of association. “However, no legislation granting such freedom of association has been adopted yet.” (EUROMIL, 2019).

The ECSR delivered its decision on a case taken by the Italian General Confederation of Labour (CGIL) against Italy, on the 7<sup>th</sup> of July 2019. Similar to the PDFORRA case 112/2014, this case found Italy to be in violation of articles 5, 6.2 and 6.4 of the ESC.

**Spain.**

Spanish armed forces are allowed representation which is short of full trade union status. There are no plans to introduce full trade union rights. Their pay and allowances are set by a remuneration system which gives special specific regulations “given that its members are subject to a personnel regime that implies special circumstances and service in their professional performance”.

The EU WTD has been incorporated into their armed forces, with such derogations and exemptions are required under the act, for operational and training purposes.

They have no right to protest and no right to strike or to withdraw labour. (Spain, 2019)

**Germany.**

The German armed forces, both currently serving and retired are represented by an independent democratic organisation, which has a limited application of trade union

rights. It is not integrated with the German trade union movement, yet it sees its actions as being equal to the trade unions in their own right. (Germany, 2019)

The EU WTD has been incorporated into their armed forces, with such derogations and exemptions are required under the act, for operational and training purposes.

Restrictions on civil rights for military service personnel are only permitted insofar as they are expressly permitted by German law. They do not have the right to strike.

**Belgium.**

Belgian armed forces have secured full trade union status. They have permission to affiliate with the National Trade Union bodies in Belgium. Their pay and allowances are determined by an adaptation of the remuneration determination system employed with the other Belgian public service organisations.

The EU WTD has been incorporated into their armed forces, with such derogations and exemptions are required under the act, for operational and training purposes.

They are permitted to engaged in peaceful demonstration and protest, when not rostered on military time, i.e. when not on duty or military operations, normally restricted to days of national holidays. They are not permitted to wear military uniform while engaging in protest. (Belgium, 2019)

They have exercised this right in the past, for example on the 14 November 2016, Belgian military personnel protested over their government plans to increase the retirement age. This protest resulted in clashes with the police, were tear gas and water cannon were deployed against the military personnel. (Reuters, 2016)

**Denmark.**

Danish armed forces have secured full trade union status. They have permission to affiliate with the National Trade Union bodies in Denmark. Their pay and allowances are determined by an adaptation of the Danish model of collective bargaining.

The EU WTD has been incorporated into their armed forces, with such derogations and exemptions are required under the act, for operational and training purposes. (Denmark, 2019)

**France.**

French armed forces, which we have covered prior to this, are allowed representation, in the form of a non-autonomous association, however this is short of full trade union status. There are no plans to introduce full trade union rights. Their pay and allowances are determined on the same basis as other government civil and public servants.

The EU WTD has not been incorporated into their armed forces.

They have no right to protest and no right to strike or to withdraw labour. (France, 2019)

**Sweden.**

Swedish armed forces have secured full trade union status. They have permission to affiliate with the National Trade Union bodies in Sweden. Their pay and allowances are determined by a remuneration body, separate from the rest of their public service and specific to the military.

The EU WTD has been incorporated into their armed forces, with such derogations and exemptions are required under the act, for operational and training purposes.

They have the right to strike, with restrictions on this right in times of national emergency of crisis. (Sweden, 2019)

**Norway.**

The Norwegians have had military trade unions since 1896. They are politically independent, and democratically elected by their members.

Norway is not a member of the EU; therefore, the EU WTD does not apply to their armed forces.

They do not have the right to strike.

### **USA.**

It is unlawful for a member of the US armed forces to be a member of a military labour organisation, and it is unlawful for any attempt to be made to enrol a service member into any such organisation.

There are strict penalties for any form of agitation for organisation or to attempt to carry out the tasks usually associated with military representative associations or trade unions. (United States of America, 2019)

### **EUROMIL**

In 1972 eight military representative associations from Belgium, Germany, Denmark, and Holland set out to found EUROMIL. The stated object of the association was to: “Encourage understanding and friendship among peoples, to encourage regular exchange of experience between the individual member associations, to promote general, ideal, social and career interests of soldiers and to represent member associations, vis-à-vis supranational organisations.” (Rhode & Christiansen, 1997: 11)

EUROMIL states that it has used the concept of the citizen in uniform since its foundation 47 years ago. Their current President is Mr. Emmanuel Jacob, who says that ‘EUROMIL used this concept since its foundation in 1972 as one of its main principles. EUROMIL always used this concept as an example for countries where human rights and in particular the right of association was lacking or not/ only partially

implemented.’ (Jacob, 2019). He stresses that the concept does not stand for or mean that ‘that a military member is the same as a civilian and that you always should look at them in the same way.’ (Jacob, 2019). This supports the evidence presented here, that the concept represents the military armed forces member, as entitled to the same rights as a civilian, but is required to give far more than any civilian ever would be, the unlimited liability contract concept, therefore the citizen in uniform should be treated differently.

VAdm Mellett DSM believes that the members of the DF are citizens in uniform, and he feels that it has been part of the design of the DF since its foundation, and he uses the phrase that there is “a reciprocity from the state required” (Mellett, 2019), in particular because of the loyalty and also due to the oath taken by each service person, and because of the fact that the “sacrifices, men and women who serve in the Defence Forces make in the interest of that state” (Mellett, 2019). He makes a further point that because they are willing to forgo certain rights, such as the right to take industrial action or withdraw labour via a strike, that this forms a contract with the state, and he says that “contracts which are not upheld are more imaginary than real.” (Mellett, 2019).

EUROMIL, which is now present in many European nations is still facing certain amount of adversary from Governments and Military management, says President Jacob ‘ In many European countries, human rights and associated freedoms such as the right of association, are often seen as something that is not compatible with the hierarchical and disciplined organisation of the armed forces.’ (Jacob, 2019), this is in keeping with the official EUROMIL position which states that “military associations entirely respect and abide by the chain of command, and neither condones nor support insubordination and mutiny. Associations do not intend to comment on strategic or operational matters” (EUROMIL, 2013).

EUROMIL is the only organisation of its kind in the world, there are associations in South American countries, South Africa and the USA, who have attempted to organise themselves into a comparable umbrella organisation for military personnel, however their goals are not comparable with those of EUROMIL. This therefore makes the case that “EUROMIL is so important: we are the only voice of European soldiers on the international level and recognised as such by several institutions.” (Jacob, 2019).

EUROMIL has been a strong supporter of military representation in Ireland since its first beginning's, as well as having been viewed appreciatively by Irish military personnel, for example when in 1989 military service personnel in Ireland such as Cpl Jack Kiernan formed the view that “soldiers were defending everyone else’s democracy but nobody was defending theirs.” (Kiernan, as cited by Martin, 2010), further to this as a founding member of PDFORRA Cpl Kiernan, who was a mechanic in the DF, found the concept of the citizen in uniform as espoused by EUROMIL to be attractive, and stated that there was not “so much of a difference being a mechanic in another garage or one who had a uniform on.” (Kiernan, as cited by Martin, 2010). In 1990, the Chairman and Public Relations Officer of the then ad-hoc PDFORRA national executive, Mr Richard Dillion and Mr Michael Martin travelled to Rinköbing in Denmark to attend a EUROMIL conference, where all the participating military representative bodies were briefed on the progress of PDFORRA in Ireland (Martin, 2010). Chairman Dillon states that he considered at that time, that what PDFORRA had created was equal to, if not superior to, what was being experienced by many European armed forces, “They were a help, but not as much a help as they believed themselves to be. They had representation, and it worked, but what we had, turned out to be superior.” (Dillon, as cited by Martin, 2010).

This close relationship has grown over the years, and PDFORRA has a member of its National Executive elected from its National Executive to EUROMIL as a board member. PDFORRA has taken the lead in some of the areas where EUROMIL is seeking to improve representation for all military service personnel across Europe, for example President Jacob says that cases such as PDFORRA's case 112/2014 to the ECSR are very important and he points to it as an example for others to follow "because it is the first time that the right on forming and joining trade unions for the military is recognised. In other cases, like the French cases at the ECHR, there was no clear mentioning of trade union rights." (Jacob, 2019), this Irish case he hopes will "convince other countries where trade unionism is still denied, to use this case in their national discussions and to otherwise via EUROMIL introduce (a) new case(s)." (Jacob, 2019). President Jacob confirms that he feels that the Irish representation bodies have "delivered good work with the means and possibilities they had. However, joining the trade union world will guarantee them to be as an equal and recognised partner when it comes to full representation of military personnel." (Jacob, 2010). When the author questioned President Jacob why, in your opinion, has there been such resistance to the representative bodies across Europe been afforded full trade union status?, he stated that "The implementation of full trade union rights in the military is, as already said, often seen as incompatible with the hierarchy and discipline in the armed forces and the specific tasks of the military." (Jacob, 2019), the author has already shown that this is the stated position of the Irish DOD and the most senior military management in the Irish DF.

## **European Social Charter**

The ESC<sup>8</sup> was created by the Council of Europe to be a treaty which would guarantee the fundamental social and economic rights of European citizens (Council of Europe, 2019) and as we have seen previously above, it would re-enforce the ECHR, which is primarily dealing with civil and political rights as the author has shown, and 47 European and near European states have, placed their signature on or ratified, the 1996 revised Charter, the text of which lays out a great deal of rights and principles. These include but are not limited to, fundamental employment rights, children's rights, women's rights, health and wellbeing rights, educational rights, elderly rights, and social protections and housing rights. There are 31 rights in total laid down in Part I of the ESC (ESCR, 2019).

The European Committee of Social Rights (ECSR) states that “The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.”, this clearly indicates that it is the intention of the ECSR for the ESC to be a core part of the life of European citizens, and that the document is not aspirational. It is an ‘essential component’, therefore all European citizens should be afforded equality of application of the rights contained therein.

In Part II, the rights are explained in more detail in the form of articles, and it is the authors intention to give a number of these articles with greater scrutiny as it has being

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<sup>8</sup> The Revised European Social Charter is a binding human rights treaty that Ireland ratified in 2000, accepting 92 of the 98 paragraphs of the Revised Charter. (replacing the State's accession to an earlier European Social Charter that had been ratified in 1964). The Third Amendment of the Constitution of Ireland explicitly provided for the supremacy of EU law within the Republic of Ireland by providing that no other provision of the Irish constitution could invalidate laws enacted which was necessitated by membership of the then European Communities.



directly charged that the DF is in breach of certain of the articles described in the ESC, namely Articles 5 and Article 6.

Before examining the claims above, and the subsequent court case take by PDFORRA through its partner EUROMIL in 2014 to the ECSR, the following articles will be explored as they are key rights guaranteed under the European Community Charter of Fundamental Social Rights of Workers (ECCFSRW) which in 1989, was already underpinning the rights of European citizens to representation and military trade unionisation. These articles which the author has found to be very important are paragraphs 11, 12, and 13.

Paragraphs 11, 12, and 13 of the ECCFSRW are concerned with freedom of association, collective bargaining, and the withdrawal of labour. Within the paragraphs it is described that everyone has the right to freedom of association in professional organisations and trade unions, that the worker has the right to join or not to join such bodies, it describes the right to negotiate and conclude collective agreements. While the paragraphs describe the right to strike, they also describe that appropriate conciliation, arbitration and mediation procedures are to be facilitated and encouraged. In these paragraphs, we can see that the ECCFSRW envisaged that it was to be the right of every European Citizen to join a trade union, and that all European citizens should enjoy the freedom of peaceful assembly.

However, it is explicitly stated in paragraph 14 of the ECCFSRW that “the internal legal order of the Member States shall determine under which conditions and to what extent the rights provided for in Articles 11 to 13 apply to the armed forces, the police and the civil service(Council of Europe, 1989). Here we can clearly see permissions being written in the ECCFSRW, which allow for member states to set conditions of

the fundamental rights of their citizens who choose to be members of their armed forces, their police forces, and of the civil services.

As we move forward to the Charter of Fundamental Rights of the European Unions (CFREU), we can see in Article 28 of the CFREU which is concerned with the right of collective bargaining and collective action, it states that “Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practises, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action” (Council of Europe, 2000).

Unlike the ECCFSRW of 1989, there are no explicit permission written in the CFREU, which allows a member state to apply a different standard of equality of application of the articles of the CFREU to their military, police or civil service. However, the prior agreed permission of the ECCFSRW is not invalidated, as it is a signed agreement between member states. So, while representation is guaranteed by many national governments of the member states, they are also entitled to restrict such participation. There is an important point to note, that even if the current public policy of the EU member states is to entirely restrict representation or military trade unionism, agitation for and the lobbying for the creation of such bodies is also protected under the Council of Europe recommendation CM/Rec (2010) 4 of the Committee of Ministers to members (on the human rights of members of the armed forces, Appendix to Recommendation CM/Rec (2010) 4) states that “no disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation” (Council of Europe, 2010). Therefore, the situation regarding representation and trade unionism is not fixed and immutable, activists may continue to seek such representation under European law.

Now that we have covered the background of what Europe considers fundamental social rights for its citizens, we will return to examine Articles 5 and 6 of the ESC.

Article 5 is concerned with the right to organise, and it aspires in its text to “ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations” (European Social Charter, 1996), it also explicitly states that “that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom” (European Social Charter, 1996), which places European fundamental social rights law above that of the member states who are signatories. Then the article goes onto explicitly reinstate primacy of national law of the member states with regards their police and armed forces, stating that “The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.” (European Social Charter, 1996). It is the application of this article by the Irish government to the DF, which lead PDFORRA to take a case of its alleged breach to the ECSR in 2014.

Article 6 is concerned with the right to bargain collectively, the article states its aim to “ensuring effective exercise of the right to bargain collectively” (European Social Charter, 1996), it then outlines that the parties who are signatories to the ESC will undertake to, “promote joint consultation between works and employers, promote...machinery for voluntary negotiations...with a view to the regulations of terms and conditions of employment by means of collective agreement” (European Social Charter, 1996), and also to “to promote the establishment and use of appropriate

machinery for conciliation and voluntary arbitration for the settlement of labour disputes” (European Social Charter, 1996), and in its last clause it recognises “the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into” (European Social Charter, 1996). Again, it is the application of this article by the Irish government to the DF, which lead PDFORRA to take a case of its alleged breach to the ECSR in 2014.

**European Committee of Social Rights Case 112/2014.**

PDFORRA, through its European partner EUROMIL took as case to ECSR on the 4<sup>th</sup> of November 2014. The complainant organisation, EUROMIL, alleged that “Ireland is in violation of Article 5 and Article 6, parts 6§2 & 6§4, of the Revised European Social Charter (“the Charter”) on the grounds that defence force representative associations do not possess proper trade union rights.” (European Committee of Social Rights, 2017). EUROMIL in their submission had also alleged that “in particular the right to join umbrella organisations such as the Irish Congress of Trade Unions (“ICTU”), the right to take part in collective bargaining over pay, and the right to take collective action.” (European Committee of Social Rights, 2017). The Irish government responded that they did not consider that “restrictions on military representative associations, namely PDFORRA and RACO from affiliating with ICTU do not amount to a breach of Article 5 of the Charter, in light of the trade union prerogatives that are afforded to them and the unique nature of the military and its role in maintaining national security and public order.” (European Committee of Social Rights, 2017). and further to that they recalled that the ECSR has given prior recognition of Article 5 of the ESC that “authorises restrictions on or the removal of

the right to organise for two categories of employees, namely members of the police and members of the armed forces.” (European Social Charter, 1996).

It would be appropriate at this point to understand that the Irish governmental position is based on their belief that under the Defence Act 1954, section 2, that such a “impugned restriction is established by law” (European Committee of Social Rights, 2017), and they consider such a restriction to be a “legitimate objective”, which is “necessary in a democratic society” (European Committee of Social Rights, 2017). This, is as the author has shown earlier, is consistent with the position of many member states with regards to democratic control of the armed and police force. Further to this belief in a legitimate restriction, the Irish government stated that “Such affiliation, according to the Government is regarded as being irreconcilable with the unique nature of military service and its role in maintaining national security and public order, public health, morals and freedom of others. The restriction is intended to ensure the operational effectiveness of the armed forces and military discipline.” (European Committee of Social Rights, 2017). This is emphatic language and delivers no doubt as to the strength of the resistance of the Irish government at that point in 2015.

As we examine in a further chapter the changing position of the Irish government to affiliation to ICTU, it will be useful to note how in 2015, the Irish government states that one of their many reasons for the denial of affiliation to ICTU, is the fact of ICTUs own stated objective in its constitution as “To uphold the democratic character and structure of the Trade Union Movement, to maintain the right of freedom of association and the right of workers to organise and negotiate and all such rights as are necessary to the performance of trade union functions and in particular, the right to strike.” (Irish Congress of Trade Unions, 2017). In 2015, this primary objective of the ICT, would the Irish government said mean that “A condition of affiliation to ICTU is that the

trade union's objects, and policy must be in harmony with the Constitution of ICTU.” (Ireland, 2015), therefore the DF representative bodies could not affiliate without breaking ICTUs own rules for affiliated bodies in that “A Trade Union desiring to affiliate to Congress shall satisfy the Executive Council that its rules, objects and policy are in harmony with the Constitution of Congress and undertake to abide by its provisions.” (Irish Congress of Trade Unions, 2017). These items all lead the Irish government to state unequivocally that given that strike action is key part of objective of the ICTU, that in the case of the DF that “Strike action is inconsistent with the role of the Defence Force”, and that “In this respect, the Government submits that there is a clear conflict between strike action and military discipline.” (Department of Defence, 2015)

The ECSR then took the submissions of both sides and delivered their consideration in 2017. They found that “the Committee holds that there is a violation of Article 5 of the Charter on grounds of the prohibition against military representative associations from joining national employees' organisations.” (European Committee of Social Rights, 2017), and they also found that “having regard to the essential role of pay bargaining for the purposes of Article 6, the Committee considers that the situation fails to ensure sufficient access of military representative associations to pay agreement discussions. The Committee consequently holds that there is a violation of Article 6§2 of the Charter.” (European Committee of Social Rights, 2017), and further to this the Committees delivered that they found that “The Committee consequently holds that the prohibition of the right to strike of members of the armed forces does not amount to a violation of Article 6§4 of the Charter.” (European Committee of Social Rights, 2017).

The decisions of the ECSR as outlined above have been warmly welcomed by many, including EUROMIL President Emmanuel Jacob who says that ‘This case is very important because it is the first time that the right on forming and joining trade unions for the military is recognised. In other cases, like the French cases at the ECHR, there was no clear mentioning of trade union rights. With the Irish case, EUROMIL hopes to convince other countries where trade unionism is still denied, “to use this case in their national discussions and to otherwise via EUROMIL introduce (a) new case(s).” (Jacbo, 2019). Domestically the response for the representative bodies differed. PDFORRA stated that “In general the Association (PDFORRA) was pleased with the findings of the Committee. It had been hoped that the Committee would elaborate on the concept of Collective Action and what that might mean, however, the Committee focused on the right to strike and found this incompatible with military service.” (Guinan, 2019), RACO was not a party to the case. It can be seen in this, and from other statements on the issues surrounding these cases and current difficulties that opinion is diverging sharply between how the two DF representative bodies view the path forward from the current situation.

### **Chapter Summary.**

This chapter explored the concepts of the citizen in uniform and military trade unionism, where the rights of the armed forces member is balanced with the needs of the state, and it also explored how the relationship of the armed forces member is changing in line with societal changes. The author showed how some argue for military elitism, to draw the armed forces apart from the citizenry and treating them entirely differently, negating the need for military trade unions, while other argue that that there is nothing wrong with armed forces from professional associations, as they argue it will make them more professional.

The three main forms of military representation were discussed; Paternalistic prohibition, Prohibition with Non-Autonomous Arrangements, and No Prohibition with Authorised Autonomous Military Associations. Then the arrangements in place across a wide range of other militaries were outlined and examined. EUROMIL was introduced, the importance of the relationship between EUROMIL and Irish representative bodies was shown. Then the ECSR Case 112/2014, was explored, with the ideals of the articles of the ESC were discussed, and the decisions of the ECSR on the PDFORRA/EUROMIL case were then laid out.

In the next Chapter military rights and representation in Ireland is examined, with attention being given to how many of the concepts raised thus far are applied to the DF. The UL studies are examined, then the mechanisms open to DF members for dispute resolution are shown. The C&A scheme review is then discussed, and an exploration of the attitudes and atmosphere of those key personnel involved in the C&A process is reviewed. Finally, the Irish DF representative associations are compared and contrasted to the military associations and unions examined earlier in the chapter.



## **Chapter Five: Military Rights & Representation in Ireland.**

### **Introduction:**

All DF service personnel, be they soldiers, sailors or aircrew, from either the enlisted or commissioned ranks are aware, as Rowe (2006) asserts, that their military service will require them to be subject to military law, military discipline, and that their service will also require their obedience to any legal orders given to them from those placed in legal authority over them. Rowe further elaborates that while this awareness of these restrictions which would not in general apply to any civilian, such awareness is not and should not be construed as a waiver of any of their human rights (Rowe, 2006).

Such military service requires that service personnel prior to deployment on such missions, are given briefings and training on the protection the human rights of others, with particular emphasis on upholding the rights of safety from harm, safety from sexual exploitation, the maintenance of human dignity, and gender awareness. Service personnel receiving this training are often informed that the person with whom they come into contact on operational service, domestically or internationally, has the same human rights as themselves. It does raise the question is that true?

DF service personnel have entered into what is termed a “contract of unlimited liability contract” with the state (Hackett, 1963). Due to entering this contract the service personnel agree to give up certain rights, and the state in return takes on the responsibility to provide for the service personnel in those areas in reciprocation for their service. This includes protection of their own basic human rights. This also raises the question, does the Irish service person have the same rights as other Irish citizens to allow them full participation in society?

The research of this period of significant turmoil within the DF termed the ‘army crisis’ in the mid to late 1980s, would indicate that the psychological contract as laid out by

Rousseau, was considered to have being broken, the formation of the representative bodies was seen as the requirement to repair the damage caused, and the author feels that the research in this thesis will show that the contract has never been fully repaired since then, it has been oft patched, and has produced some solid advances in many areas, however it does seem that there has been a continuous and fundamental resistance to representation in some areas, which will explored in this chapter.

It is not, in the authors opinion, hyperbolic to begin to question if the current crisis presents an actual risk to the security of the state, which has a deeply understrength and increasingly demoralise military force, on which it will rely for its defence.

**The Uniform does not make us less people.**

General Mulcahy said ‘uniform does not make us less people’, implying that the members of the DF were seen by those who created the DF as being equal to other citizens of the nation. There however many differences between civilians’ legal structures and the DF. The DF operates its own system of legal and policing systems, there are unique legal structures and a dedicated court presided over by a Judge, who is a commissioned officer. There is, in addition, an appeal system which affords a service person who feels themselves wronged in any matter, an ability to seek redress for such wrongs.

Bunreacht na hÉireann is the legal text on which the human rights and civil freedoms of Irish citizens are based, and these rights exist in two major forms; specified personal rights; or unenumerated or implied rights declared by the superior courts to be of equal utility to those rights actually specified. Restrictions to those rights imposed by the state must be legitimate and proportional (Byrne and McCutcheon, 2009). Further rights are gained or underpinned through European legislation. The ECHR and ESC may be used in the Irish courts, provided that they are not in conflict with our

constitution, Bunreacht na hÉireann (Byrne and McCutcheon, 2009), as Bunreacht na hÉireann is the superior source of law. In the preceding chapter the author examined a number of areas in regards the restriction of human rights where it is claimed that the Irish government is in breach of Europe law, and that the Irish government failed to transcribe the ECHR and ESC correctly into Irish law. This mis-transposition forms some of the basis for a number of cases which have been brought before the European bodies in recent years, from many different armed forces association or representative bodies.

### **The genesis of representation.**

In 2019, it is the right of any member of the DF to voluntarily choose to join a representative body. Shortly after joining the PDF, when the author was first describing the industrial relations mechanisms available to the members of the DF and the authors own work within those mechanisms, a civilian commented that they were unaware that such bodies existed. That awareness has grown over the years yet still many people have asked the author why there are still so many complaints which they see in the media. These enquires from outside sources have raised the question in the authors mind as to why a major state organisation, with a hierarchical structure with strict regulations on military authority and clear chains of command, and which espouses an ethos of loyalty, team work, and problem solving as key parts of its ability to achieve military aims has, on the surface at least, serious issues with what are fundamental HRM issues.

The author has always been highly curious of why the catalyst for change at the formation of the representative bodies, did not come from the management of the Defence Force, in fact the resistance to the formation of the representative bodies by the senior military management and DOD was emphatic and formidable (Bartle and

Heinecken, 2006). It was the protests and affirmative actions of the enlisted personnel's families<sup>9</sup> in the first instance, which brought about the initial demands for change, these actions been followed shortly thereafter by the at first clandestine organising committees of PDFORRA, who risk careers or indeed livelihoods due to prosecution under military law.

The Defence Forces does seem to have had this concept of the 'citizen in uniform' as part of its vision from its inception, Gen Mulcahy's graveside oratory in 1922 'Óglaigh na hÉireann has been the people, is the people and will be the people', neatly captures, in the author opinion, this concept which the Bundeswehr implemented decades later. And the Defence Forces were found by Callaghan and Schönborn (2004: 133) to be "...well integrated into Irish society, living not on isolated military bases or in military enclaves but rather in homes and apartments alongside their civilian counterparts. The Irish soldier is, like his post-war German counterpart, truly a 'citizen in uniform'. Irish service members are drawn from all segments of society and remain part of civil society.". However, it is noted by PDFORRA General Secretary Gerard Guinan that "it would be fair to say that the concept of "Citizen in Uniform" is not fully integrated into the Irish Defence Forces; however, this is not a matter for military management or the Dept of Defence as opposed to the legislature." (Guinan, 2019)

### **Climate of the Workplace.**

In 2008, the DF commissioned a climate of the workplace survey, it was recommended by the Independent Monitoring Group (IMG) III in 2014, that this climate survey should be revisited to "facilitate comparing and contrasting with the results of the 2008

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<sup>9</sup> NASA: National Army Spouses Association. The copy of their constitution contained within the appendices of this thesis, may be the only copy obtainable within an Irish University. The author was unable to find any copy from academic sources during his research.

survey and to ‘to identify trends to inform practice in HR and/or training and education’ (Defence Forces, 2015). The reasons for this recommendation were according to the IMG that since 2008 the DF had experienced a period of “significant changes since the last report in 2008, including an economic downturn, a moratorium on promotion and recruitment, and a major reorganisation which saw the restructuring of many units” (Defence Forces, 2015). The 2015 climate survey would be conducted by University of Limerick, and would be have in its terms of reference to identify the HR and strategic needs of the DF in light of such a period of significant change, their goals included “To assess Defence Forces members’ attitudes and satisfaction levels regarding the Defence Forces and in particular its Human Resource Management policies and procedures, To inform and provide direction to the Defence Forces HRM Strategy, To explore issues affecting the retention of personnel, To provide a voice to serving members to express their satisfaction levels and concerns regarding the organisation and its policies, To facilitate comparing and contrasting with the results of the 2008 climate survey” (Defence Forces, 2015).

The UL researchers indicate in their report that they administered the survey to “approximately 11% of the workforce (sample size 1055)’ (Defence Forces, 2015), and that the sample was ‘representative of rank, gender and location’ (Defence Forces, 2015). The researchers also state that “while valuable in itself as a standalone quantitative analysis of satisfaction levels at a particular time, one of the real values of conducting an organisational Climate Survey lies in periodically repeating the process and using the results over time as a guide and benchmark to assess organisational climate.” (Defence Forces, 2015).

The respondents were all military members of the DF, and it was conducted on a voluntary participation basis. Many aspects of working life were explored by the survey including but not limited to “work life balance and satisfaction; organisational justice; leadership; meeting expectations; organisational commitment and Human Resource Policies and Procedures.” (Defence Forces, 2015). The researchers actively sought to replicate aspects of the 2008

survey in order that comparisons and contrasts could be made, and there were additional new aspects included, namely “peer support, stress, identification with and enactment of cultural values; attitudes around commuting and reorganisation, and specific diversity measures including LGBT, ethnicity and religion.” (Defence Forces, 2015).

### **Survey Demographics and Findings.**

The characteristics of the general sample by rank are presented in the table directly below. 1055 personnel participated in and completed the survey. The researchers say that this sample “was representative of the Defence Forces as a whole, across all aspects of rank, gender and age profile.” (Defence Forces, 2015).

<b>Rank</b>	<b>Number</b>	<b>Percentage</b>
Unspecified/missing data	63	6%
Pte	428	40.6%
NCO	47	4.5%
NCO Cpl/LS	181	17.2%
NCO Sgt/PO	94	8.9%
Senior NCO	5	.5%
Senior NCO/CQ/SPO/FQ	14	1.3%
Senior NCO CS/CPO/FSgt	16	1.5%
Senior NCO BQ/SCPO	3	.3%
Senior NCO BSM/WO	6	.6%
Junior Officer	22	2.1%
Junior Officer 2/Lt/Ens	2	.2%
Junior Officer Lt/S/Lt	28	2.7%
Junior Officer Capt/Lt (NS)	59	5.6%
Senior Officer	10	.9%
Senior Officer Comdt/LtCdr	48	4.5%
Senior Officer LtCol/Cdr	21	2%
Senior Officer		

Col/Capt (NS)	8	.8%
TOTAL	1055	100%

**Table 2: Characteristics of the general sample.**  
**Source: UL Climate of a Workplace Survey 2015.**

The results of the survey were very mixed, with satisfaction levels in certain areas such as being at acceptable to positive levels, for example 48.4% agreed that they were satisfied with military life, however the survey also indicate that this satisfaction with military life had dropped from 64% of respondents in the 2008 survey (Defence Forces, 2015) there was high level of dissatisfaction in other areas, for example only 31.3% of respondents felt, that in regards to receiving fair treatment, that their expectations were being met at a moderate to great extent. (Defence Forces, 2015).

Across the ranks significant differences were recorded, and the overall satisfaction levels were decreased since the 2008 survey. The researchers found that “that all the measures in the survey are interconnected and very much rooted in a context of change and cutbacks.” (Defence Forces, 2015). They found that the “individual’s perception and experience of their workplace will depend on a number of factors - their rank within the Defence Forces, gender, tenure and the service they work in.” (Defence Forces, 2015).

The report commended the DF on certain items such “Perceptions of work life balance and stress levels are generally healthy. In general, leaders are seen as effective (with the exception of looking after member well- being which is just below neutral – see below). There is high identification with the cultural values and mission statement.” (Defence Forces, 2015). One striking finding of the researchers is that the respondents have a real sense of pride while working in the DF. They feel, the researchers explain,

that “their work has meaning and are committed to what the Defence Forces stand for” (Defence Forces, 2015).

The areas where the report suggests further exploration is needed are in areas such as perceptions of organisational justice, where the respondents reported that they feel “feel rewards, procedures and policies and overall treatment and interaction with staff as being unfair” (Defence Forces, 2015). Other areas such as dissatisfaction with leadership in aspects of wellbeing, suggest the researchers say that there is a “need to continue to embed the importance of emotional intelligence and empathy in the leadership doctrine” (Defence Forces, 2015), and that the perception exists amongst the DF members that the “espoused values of the organisation are not being enacted on a daily basis” (Defence Forces, 2015).

Having delivered the first part of the workplace climate survey, the next phase of the research was to conduct focus group research. It is within the focus group research that the voice of respondent becomes available to the researcher as qualitative data. Some of issues exposed by the focus groups are stark and concerning, and some of the focus groups produced really positive feelings from the participants, whose identity are not revealed in the report. For example a Senior Officer said “The commitment to each other- even from day one..used to love the way people would look after each other”, while a Junior Naval NCO said their experience was “I don’t know of another job outside where if something crops up you would get the support you get here”, and a Senior NCO said “It gives you a sense of purpose. - you feel like you are doing your bit for your country. You are wearing your country’s flag on your shoulder.” (Defence Forces, 2015).



Some of the more negative views, from which the author will select only a small number of representative answers, were very concerning. For example, a Private said “I can’t get a mortgage. Some members are even on Family Income Supplement. We would be better off on the dole as we would have no bills.”, and another Private said “In 2005, 2006 and 2007 I was taking home about 150 a week more than now. I got a mortgage on the strength of that and now I have to work two jobs to pay for that.” (Defence Forces, 2015), a point to note is that the impact the great recession of 2008 had on individuals, who had built a life on the levels remuneration at the time, is still having serious effects on people across Ireland in 2019, this is not isolated to the armed forces.

A Senior Officer expresses their frustration about current conditions thusly, “Pay is a major factor why people are leaving and one of the places that can be ring fenced is the military allowance and that should be done. We as officers have a responsibility to our Privates and NCO’s many of whom are on FIS which is an absolute disgrace- and the only way to do that is to ring fence the military allowance.”, these are very strong words from a commissioned officer in a senior appointment of middle to upper management level (Defence Forces, 2015). A sailor in one focus group showed prescience in this 2015 research, by stating that “They say they can’t pay us, but they are building these big new ships. Who is going to man these new vessels?” (Defence Forces, 2015). It has come to pass that Naval vessels have been placed in ‘operational reserve’ periods by the Flag Officer Commanding the Naval Service (FOCNS) Commodore Micheal Malone, who said that “until the Naval Service can meet the required manning levels, the LÉ Eithne and LÉ Orla will be placed in operational reserve” (Malone, 2019).

All of this research indicates serious issues in many areas, for example the report calls the pay levels of the most junior ranks a “critical issue”, with it been cited to the researcher as a “major source of stress/distress on a daily basis”, and the researchers also highlight the use of the word ‘shameful’ by Officers and NCOs when referring to the pay of junior enlisted personnel. There is within the focus groups the researchers state “widespread concern”, that “the loss of experience/corporate knowledge is reaching a critical point and is already affecting operational readiness/capability.” (Defence Forces, 2015).

**Not all plain sailing.**

Representation in Ireland has been and is, as the author has shown, viewed as reasonably affective within the restrictions and constraints placed upon it. Irish military management and DOD management do have strong positive and negative views on their interactions with the representation associations, in particular PDFORRA. The attitudes and positions of the military management and DOD senior management may go some way to explaining why RACO say that dealing with the DOD is exceptionally difficult. RACO describes the situation thusly, “The Department’s approach to representation is divisive, dismissive and sometimes subversive, it has led to an adversarial and dysfunctional industrial relations climate which has been to the detriment of the well-being of the most loyal citizens of this State. It is nothing short of shameful.” (King, 2019).

This statement can be supported by statements from PDFORRA, such as “Much of the current difficulties arise from a 1989 declaration to the Gleeson Commission that ‘*the provision of overtime is an anathema to military service*’. PDFORRA has long held the view that the member of the General Staff who made that statement undermined the entitlement of our members to fair days’ pay for fair days’ work. He is, no doubt,

still held in high regard within the Department of Finance.” (Guinan, 2019), the acrimony within that statement, which may very well be justifiable, is clearly evident. Clearly, the representative associations have serious issues with the DOD and military management which could be undermining the work of all sides, these acrimonious relationships are not new and seem to be very long held, thus it may be the case that these attitudes are becoming or have become embedded in the relationships, clouding any progress and creating dysfunction. O’Halpin, in his 1999 book ‘Defending Ireland: The Irish State and its Enemies since 1922’, also describes this adversarial culture, and finds roots of this culture in the legacy of the army mutiny of 1924<sup>10</sup>. Kevin O’Higgins, the Minister for Home Affairs in 1924, stated that ‘that neither he nor the institutions of State would ever again take their stride from a soldier’s boot’ (O’Higgins, 1924, as cited by Ferriter 2005: 302). That may be considered distant history, however O’Halpin describes a ‘dead hand’ (O’Halpin, 1999) of the DOD civil service, and perhaps it can be argued that such attitudes may continue to this day in some form. It may also be possible to see some of this adversarial culture in the senior military ranks who are tasked with engaging in military representation, on the official industrial relations side not their representative body.

For example, the DF Director of HR, Colonel Brennan speaking in interview in 2013, stated on working with PDFORRA that “the type of issues that can be brought to the table can be very individual. You know their focus may be on a very small number of people and a lot of energies are expended on dealing with issues that are small in nature

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<sup>10</sup> Irish Republican Army Organisation (IRAO), a group representing the views of disgruntled Army officers felt that that ex-British army and post-Truce officers were being given preferential treatment, while pre-Truce IRA volunteers were being demoted. More than 60 officers stationed at the Curragh refused to accept their demobilisation papers. They were removed and discharged without pay.

and don't really affect the larger membership, and really the larger membership for example don't really want" (Brennan, 2013), this could be taken as an example that DF HR do not want to deal with individual cases, only with the broad and overarching concepts, he went on to say that, "some of them are, if I can use the phrase, 'off the wall' for what people are looking for. So that's a difficulty. I have a major difficulty." (Brennan, 2013). Again it must create a difficult opening to negotiations if the official side<sup>11</sup> is of the view that the proposal could be 'off the wall', and that the official side may take a position that the representative association is approaching the table with proposals or cases where they feel it "it is made without due regards to the actual facts." (Brennan, 2013).

Given the current number of legal cases been undertaken by PDFORRA to vindicate rights of their members has increased, due to what is described by PDFORRA General Secretary Gerard Guinan in 2014 as "a change of IR strategy, as we witnessed other bodies take the approach of going to court and vindicating the rights of their members." (Guinan, 2019), it is the authors opinion that the following issues been experienced in 2013 by the Director of DF HR, where he describes that he feel that an "other issue that I have in relation to representation, is that particularly in the context of PDFORRA is that they have a mechanism for members to use a legal firm to input into the system correspondence, legal correspondence that have to be dealt with that take up a huge amount of time and are quite exhaustive in the amount of work that is required" (Brennan, 2013), must still be being experienced by the DF HR management in 2019, given that the DF crisis or challenging situation has gotten worse since 2013. However,

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<sup>11</sup> Official side is the term used to describe the state or employer within a negotiation or interaction of an industrial relations issue.

notwithstanding the strength of the statements above the then Director of DF HR felt that “overall I would say that if I was to weigh the negatives and the positives that the positives far outweigh the negatives.” (Brennan, 2013)

This issue outlined above are also to be found in the statements from senior civil servants on the DOD side, Fiona Lafferty, Head of C&A branch of the DOD, speaking in interview in 2013, said that while “resistance on the part of the associations and its good, its positive conflict if you want to look at it from that.” (Lafferty, 2013), which can be interpreted as there having been negative conflicts in the relationship between the DOD, C&A and representative bodies, she is desirous that “you need the associations first of all to engage. To actually be able to discuss the issues and to come to some sort of agreement or disagreement because you have to have one or the other” (Lafferty, 2013), this is a positive statement in support dialogue and discussion, being able to agree on what two parties disagree on, is important in a negotiations process for example. Despite this positive view on the one hand Mrs Lafferty holds that “the negative impact of engaging with let’s say the likes of PDFORRA is that it has brought a lot of their own baggage to the fore. Other issues that have kind of happened in the past.” (Lafferty, 2013). This statement could be viewed as an official position being taken by DOS C&A, that PDFORRA in particular brings a negative attitude or platform to the table, she continued to say that “they will drag everything up and they will also bring it down to the low level when you are trying to put away issues. You have to keep bringing them back, this is the big picture thing here, they will stretch it out for their own purposes to actually not reach a resolution”(Lafferty, 2013), this statement support the view of RACO, that the DODs attitude is divisive and dismissive.

The RACO position is further supported in the following statement, which although it is made directly about PDFORRA, it serves to show the adversarial stance of the DOD, as Mrs Lafferty says that “they sort of side flank you then to actual go to judicial review of your decision then not to actually pay people or they will threaten legal action looking for an order of maintenance.”(Lafferty, 2013), this use of legal action which PDFORRA states they are forced to do to advance the cases of their member is viewed by Mrs Lafferty as “the negative impacts of engaging with the likes of PDFORRA in relation to the introduction of new or reformed HR practises.”(Lafferty, 2013). Worryingly in the authors opinion there is an expression of a desire for governance by fiat as Mrs Lafferty says that “It would be much easier if we could just say as they to in the Civil Service for example, is the Minister actually has the power to change the terms and conditions.”(Lafferty, 2013).

She compounds this with expressing a desire not to have to engage with the representative bodies, if such a direct control system or non-autonomous arrangement could be implemented, she says that “you don’t have to engage with employees. The Minister can just say actually, by way of circular. This is the position and that’s just it.” (Lafferty, 2013). However, these statements could also be an expression of frustration of a dysfunctional system, as she also states that “the system that is there at the moment, the conciliation and arbitration scheme, needs to change” (Lafferty, 2013).

She feels that there is also tension between the two representative bodies, which she says can cause difficulties, in a very strong statement on bi-lateral national pay discussions, “you actually do much better business in terms of moving things along, teasing through the issues, having a good I suppose nitty gritty discussion off the table and you need to isolate both associations. In order to do that. Not to have both of them

in the room let's say for the reforms which was the case for the Croke Park Agreement, we had these bi-lateral discussions where everybody was at the table and it just does not work, so it doesn't. Because they are just play acting for each other." (Lafferty, 2013). This separation of the two associations from the same table, when both can be dealt with in isolation would be preferential rather than "going over and back and having table tennis thing, going over and back with each other, and then it disintegrates and it goes to judicial review which has happened, that seems to be the way it works." (Lafferty, 2013)

PDFORRA General Secretary Mr Gerry Rooney, who would have been directly responsible for negotiations during the tenure of the individuals above, viewed the situation with a more circumspect attitude or perhaps he approached his interviews on the subject with a more reserved position. Speaking in more conciliatory terms, he states that PDFORRA would often agree with the broad principal of what the DOD and military management were implementing, however he recognised that "The disagreements will arise in relation to some of the specific measures within it rather than to the principal." (Rooney, 2013), perhaps in this statement, there is common root where Col. Brennan said focusing on individual case or what Col Brennan deemed smaller issues. Rooney, states that he felt that for the majority of the interactions that there was a "positive engagement with both the department and with the military authorities, and particularly with the military authorities at the national level where we are actually agreeing and developing new processes." (Rooney, 2013).

He also said that conflict or disagreement is a simple fact of the process of representation and that "it's inevitable, and everybody has to accept that there will be differences within issues between staff interests and management interests, but I mean that's life." (Rooney, 2013). Rooney, does feel he says that there is an imbalance in

the relationships in Irish DF representation in favour of the DOD and military management, because he says that he “would suggest in Defence it is because there is no, there is no industrial action threat from the workforce, so you know, management has a, has a, I suppose stronger hand in relation to that, cause they can sit it out you know” (Rooney, 2013).

The Head of the military branch of C&A, LtCol Fogarty explains felt that both the representative bodies has some illusions of the amount of power they had to wield on behalf of their members, he said that “both representative associations I think at times may often think that they have greater power then they actually have.” (Fogarty, 2013). He pointed out that despite the ability to represent their members, enter talks, begin legal actions, and pursue claims, he plainly states that “the representative associations can in emergency be suspended completely in the morning and stood down.” (Fogarty, 2013), and he goes on to state very clearly his views on the processes of consolation and negation, which are key to any successful representative process.

He says that “while consultations can and do take place, we may ultimately reach a situation where a decision must be made, and the decision will be made by the military chain of command or by the Department of Defence. And that those decisions may be at distinct variance to both the requirements and the desires of the representative associations. But being members of a military organisation, they have no option but to live with it and comply with it. They may continue to object but they ultimately are in a military organisation.” (Fogarty, 2013). The author sees an echo of Mrs Lafferty desire to enforce the will of the DOD by diktat in this statement. Col Fogartys statement could be interpreted as the military C&A branch being willing to only negotiate as far as it is desirous of the official side, then the process can be guillotined and forced through, without agreement from the representative side, because the sworn



service members will just have to absorb and endure it, as they have no recompense to further industrial action.

Col Fogarty is quite dismissive of PDFORRA when he discusses the different approaches to representation by both DF associations. “it depends on the strategic aim of the representative association in particular. I have a feeling that PDFORRA in particular go for more short term aims, whereas RACO are quite willing to leave the odd body on the battlefield to achieve their strategic aim or their overall objective. If I could describe it as strategic versus lower level almost parish pump politics.” (Fogarty, 2013). This the author would offer as a further indication of a dismissive attitude, as expressed by RACO, yet aimed in this case at PDFORRA. In relation to negotiations of the most serious kind, such as those for the Haddington Road<sup>12</sup> negotiations, he is again dismissive of the both representative associations, he says that “the thing to remember to is that when it comes to these agreements the military representative associations are at the bottom of the food chain. They are the last to be considered.” (Fogarty, 2013), the author would consider this to be a clear indication that the official side consider the scale tilted fully in the favour when it comes to national pay agreements. LtCol Fogarty goes on to state that he feels that they are “almost they are like an afterthought in the negotiations.” (Fogarty, 2013), and he further express doubt that in the public sector negotiations that the representative associations are given due regard or respect, he says that “the Defence associations are looked as a kind of underclass by the elite of the union world.” (Fogarty, 2013).

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<sup>12</sup> The Haddington Road agreement was the title of the Public Service Stability Agreement 2013-2016.

The industrial relations landscape painted by vividly by RACO and PDFORRA in their submissions, addresses and questioning to and by the Oireachtas Committee on Foreign Affairs and Trade, and Defence does in fact seem to be supported by the statements and opinion of persons employed in key roles with the military C&A process. The relationship between the representative associations and the DOD, and military management does appear to be dismissive, adversarial and subversive. Key members of the C&A process on the official side state that the C&A process is not working, and that it must change.

**Conciliation and Arbitration.**

The DF C&A scheme is the formal mechanism through which PDFORRA and RACO, can enter into negotiations and discussions on issues affecting their members with the official side. The C&A scheme has been in place since 1998, and it is very similar to the C&A scheme which are provided for An Garda Síochána, and other civil servants. As with other C & A Schemes “the existence of the scheme does not imply that the Government have surrendered or can surrender their liberty of action in the exercise of their Constitutional authority and the discharge of their responsibility in the public interest.” (Depart. Of Defence, 1998). The primary purpose of the scheme is to facilitate a forum for the determination of claims and proposals from both of the representative bodies and the official side, primarily related to issues of remuneration and conditions of service. There are two distinct sections or processes with the C&A scheme; Conciliation and Arbitration/Adjudication.

The Conciliation Council comprise of a Chairperson, representatives of the DOF and DOD, and representatives of RACO & PDFORRA. The Chairperson will be a serving civil servant nominated by the MOD. The Departmental or Official side, who represent the MOD, comprises not more than six representatives, four of whom shall be civil

servants and two of whom shall be members of the PDF. The representative side is comprised of not more than six representatives, all of whom shall be members of the PDF.

At this council both sides will attempt by negotiation to reach agreement on matters consider appropriate for discussion at said council. Where agreement is reached on a matter, the council will issue a report, this report is signed by both sides and records that which has been agreed. If it has not been possible to reach an agreement that is also recording in a report, and the two sides add their signature to the disagreement. If the subject which has been formally disagreed on is considered to be arbitrable, which would primarily be a matter of pay or financial base claim, then this disagreed matter can be advanced forward by the representative association thus affected for arbitration.

Matters considered appropriate for discussion at C&A Council are listed as follows on the formal C&A agreement of 1998:

5. Remuneration etc. under the following headings: -
  - a) claims relating to remuneration and other emoluments whether in cash or kind (for this purpose "remuneration" means, pay, allowances, gratuities, or grants payable to a member of the Permanent Defence Force or any pension, retired pay, or gratuity for which a member may be eligible in respect of or arising out of his/her service as such a member). While, due to the nature of military service, claims for overtime payments may not be entertained, claims for specific allowances for any type of duty, including those duties which of their nature involve long hours, may be submitted under this heading.
  - b) claims relating to compensation for loss of earnings;

- c) the administration of remuneration;
  - d) deductions from pay in respect of accommodation, rations and welfare services;
2. Other Conditions of Service and Career Development under the following headings: -
- a) criteria governing the entry of personnel into the Permanent Defence Force other than the number of such personnel;
  - b) changes in systems of performance appraisal;
  - c) general criteria governing selection for overseas service;
  - d) systems and general criteria governing promotion;
  - e) the allowances and the occasions of the granting of all categories of leave including the quantum;
  - f) medical and dental benefits provided by the Department of Defence;
  - g) standards of living accommodation officially provided and general criteria governing the allocation of married quarters;
  - h) procedures for dealing with redress of wrongs and grievances;
  - i) the question of the provision of legal representation for members of the Permanent Defence Force against whom legal proceedings have been instituted arising out of their duties;
  - j) the application of the Safety, Health and Welfare at Work Act, 1989;
  - k) changes in the existing scheme of third level education;
  - l) the question of the recognition by outside bodies of training and qualifications gained in service;
  - m) changes in retirement ages and the procedures regarding voluntary retirement, resignation or discharge;
  - n) the application to the Permanent Defence Force of legislation which affects matters coming within the scope of this scheme;
    - i. amendments of the Defence Acts, 1954 to 1998;
    - ii. amendments of Defence Force Regulations;
    - iii. amendments to General Routine Orders;
    - iv. the implementation of reports which come within the scope of this scheme; and
    - v. amendments to Administrative Instructions which come within the scope of this scheme;

- o) secondment/release of personnel to the Association;
- p) affiliation to other bodies;
- q) welfare schemes in the Permanent Defence Force; and,
- r) Suggestions, within the scope of representation, for the promoting efficiency and effectiveness in the Defence Forces in a spirit of partnership.

Matters considered arbitrable under the C&A are listed as follows on the formal C&A agreement of 1998,

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

Facilitation is also available as an aid to the negotiations process within the C&A council, if both sides should agree to the appointment of a facilitator. The person appointed to the role of facilitator, shall be agreed on by both sides and their function is to seek to bring both sides to an agreement. The facilitator can assist in matters that are arbitrable, or in matters which are not arbitrable, or in matters which doubt exists as to arbitrable nature of the matter. If the facilitator can bring the sides to agreement, then they will prepare a report recording the final positions both sides, therefore an intractable issue can then have a C&A council report produced and signed by both parties.

#### **C&A Review.**

Given that all parties to the C&A process currently in use within the DF have express serious doubts as shown in this dissertation, the MOS Mr Paul Kehoe, T.D. Minister with responsibility for Defence appointed Mr Gerard Barry As an independent

chairperson to carry out a review of the Conciliation and Arbitration Scheme for members of the Permanent Defence Force on the 24th January 2018.

On the day of the appointment of Chairman Barry, the MOS Mr Paul Kehoe, TD gave the following reasons for his decision to conduct this review. “I announced recently that one of my priorities for 2018 would be a review of the C&A Scheme for members of the Permanent Defence Force. The scheme has been in existence since the early 1990’s and since then it has provided the framework to progress many successful negotiated agreements between Defence management, PDFORRA and RACO. However, in the intervening period there have been many changes in the industrial relations landscape, and it is now appropriate that the Scheme is reviewed in order to ensure that it remains efficient and effective.” (Kehoe, 2018).

The terms of reference of the review are contained in full in appendix, these terms included the following:

“The review shall:

1. Consider the redress and dispute resolution processes that are available to members of the Defence Forces and the issues that are within the scope of those processes.
2. Review the purpose, scope and the key features of the PDF C&A scheme – up to and including arbitration.
3. Consider the PDF C&A Scheme in the context of the current Defence Forces redress and dispute resolution processes, broader public sector pay negotiation processes and agreements, and any other relevant legislative provisions.
4. Consider the findings of the European Committee on Social Rights in the recent case of *Euromil v Ireland*.

5. Identify impediments to the efficient processing of claims within the PDF C&A scheme.
6. Examine other C&A schemes in operation in the public service and benchmark the Defence scheme against these.
7. Make recommendations regarding:
  - a) The scope of the PDF C&A scheme.
  - b) The operation of the scheme, including the lodging and processing of claims.
  - c) The constitution and operation of the Conciliation Council including the appointment of, and role of, the Chair, and options for third party facilitation and/or mediation.
  - d) Options for third party arbitration in relation to matters not resolved at Conciliation Council.
  - e) A review of the PDF C&A Scheme will be undertaken.” (Barry, 2019).

Chairman Barry held the first plenary session to discuss the C&A review on the 26th February 2018. In attendance were the Secretary General, Department of Defence, Chief of Staff of the Defence Forces, representatives from the Permanent Defence Forces Other Ranks Representative Association (PDFORRA), the Representative Association of Commissioned Officers (RACO), the Department of Public Expenditure and Reform (DPER), C & A Branches (military and civil), the Military Human Resources Branch (J1), the Defence Forces Personnel Policy Branch and Mr Gerard Barry, Chairperson of the Review (Barry, 2019). At this meeting which was addressed by the Secretary General of DOD and by the COS, Chairman Barry laid out that a number of projects would be undertaken under the scope of the review.

These projects were:

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

All sides to the review made detailed submissions to Chairman Barry. These submissions can be examined, and highlights extracted and paraphrased in order to get an overview of the positions adopted by the many sides. It is valuable to examine these submissions as they are the most recent and detailed research material available on the official position of both sides to the many current DF issues. It is beyond the scope of this dissertation to even begin to surmise the positions within the written material here. However, the submissions make for exceptionally interesting and informative research material, and the submissions are presented in the appendices J, K, L, M, N and O.

The Chairman then conducted a compare and contrast exercise with other C & A Schemes, the civil service C&A scheme is the senior scheme and all other C&A schemes are modelled on it. This exercise was undertaken in order the Chairman says to ‘show the similarities and differences between the schemes under the following headings: ‘Structure & Process, Subjects for Discussion, and Usage.’ (Barry, 2019)

Chairman Barry found that the schemes were identical under all the headings, with the only difference being the method of appointment of the Chairperson, where ‘In the case of the Civil Service, Permanent Defence Force and Garda Síochána C & A



Schemes, the Chairperson is a serving Civil Servant nominated by the Minister, while the Chair of the Teachers scheme is independent of the parties to the scheme (a WRC staff member) and is nominated by the minister following consultation with the parties' (Barry, 2019). Appendix P displays this table in full.

Chairman Barry found that there were many commonalities to all schemes. He says that "the Permanent Defence Force have a greater number of subjects for discussion, many of which relate to their unique role of military service. Under the PDF C & A Scheme claims for overtime payments are not entertained, however discussion on claims for specific allowances relating to long hours may be discussed. The other schemes also have a small number of subjects for discussion which are unique to their sector." (Barry, 2019). Appendix Q displays this table in full.

Chairman Barry found that when he created a table of all the cases referred through the various C&A scheme to Adjudication or Arbitration between the years 2004 - 2017, in order that usage of this part of the industrial relation mechanism in the DF be compared to the other C&A schemes, that he could "Having considered the statistics, I can draw no inference from them." (Barry, 2019). Appendix R displays this table in full.

Chairman Barry concluded that the current DF C&A scheme is "dispute resolution mechanisms are on a par with the other Conciliation and Arbitration Schemes in the public service" (Barry, 2019), and that he would make the report reflect his "recommendations for an improved system of dispute and redress mechanisms and consideration of the Euromil findings" (Barry, 2019). He went on to say that "given the restrictions of military service and in particular the prohibition on taking strike action, it is my view that it is of paramount importance that the Defence Forces have

access to dispute resolution machinery that is comprehensive, easy to access, timely in its operation, independent and enjoys the confidence of all the parties who use it.” (Barry, 2019).

Chairman Barry also highlighted in his review that from discussions with all the parties to the scheme, that there were high levels of dissatisfaction and of frustration, with emphasise being placed in the submissions on how the business of the scheme was conducted. He then made several recommendations which are currently under discuss by the parties, they included recommendation on the appointment of an independent chairperson, broadening of the scope of the scheme to all matters related to terms and conditions of employment, revising the scheme to allow adjudicators findings to be appealed. These he said should be implemented, if accepted by government, after consultation to identify the measures to take priorities and for a realistic timescale to be adhered to.

### **Examination of Comparisons.**

In a previous chapter we viewed the rights, mechanisms, and arrangements available to other European and International militaries. Here the author will create a comparison chart to measure Ireland against other European militaries. Namely the UK, Belgium, Sweden, France, and Ireland. This comparison will be carried out under five headings, keeping in mind what has been explored in the preceding chapters with regards to European fundamental rights, and the varying rights afforded to the militaries across Europe and internationally. These nations have been chosen as they are all at the time of writing in the EU, Ireland has served overseas with these nations on the same UN missions so it legitimate to infer some parity of military capability in certain circumstances despite very different comparative overall strengths and policies. Further to this these nations all have different approaches to representation,

yet there are under these five headings we can examine the questions and get firm answers.

	Freedom of Association	Right to Organise	Right to Bargain Collectively	Right to Strike	EU Working Time Directive
UK	No.	No.	No.	No.	No.
Belgium	Yes.	Yes.	Yes.	No. Protest Only.	Yes.
Sweden	Yes.	Yes.	Yes.	Yes.	Yes.
France	Yes.	Yes.	No.	No.	No.
Ireland	Yes.	Yes.	Limited.	No.	Yes.

**Table 3: Comparison Chart of European Military Associations.**

Here we can see that Irish armed forces members, in common with the majority of the nations selected, have the right to freedom of association. Irish armed forces members have the right to organise, and we have shown in the preceding chapters that there are a wide range of levels of the right to organise across Europe. Irish armed forces members have a limited right under the heading of collective bargaining, as do most of the other nations. Only one nation has the right to strike, and only one nation has a right to peaceful protest as an alternative to strike, therefore Ireland is not unusual in this restriction. With regards to the EU WTD, Irish armed forces members have only recently been acknowledged as being covered by the EU WTD, with exact details of the application of the EU WTD to the DF currently under discussion, given that military working time is considered a restricted category of information by the DF, it is not permissible by the author to describe any details of such in this thesis.

### **Chapter Summary.**

Within this chapter the application of human rights and the rights of the armed forces to the DF was explored, and a brief look was taken at how the concept of the ‘citizen

in uniform', is applied within the DF. The genesis of representation was also examined and the need for such representation in the 1980s was outlined. Using the research studies commissioned by the DF from UL, the current issues within the DF were laid out. The observation and attitudes of all parties to the C&A scheme were examined in depth, and then the C&A scheme, which the mechanism currently in place to resolve some of the issues raised with the UL study was also examined. The review of C&A which was clearly indicated by all parties as desirable was then also teased out. Finally, the current DF representative arrangements were compared to some of the military representative associations explored in previous chapters.

## **Chapter Six: Conclusions**

### **Introduction:**

When examined in comparison to other EU member states, the research indicates that Defence Forces personnel are afforded more expansive rights than many other military forces in Europe. Some EU member states, as it has been shown, partially exclude their service personnel from a wide range of rights. Some do not permit any form of representation at all. However, this is not to state that being afforded more expansive rights in certain areas, than some of their counterparts in other European armed forces, mean that all is well within the industrial relations atmosphere or machinery of the Irish DF. Clearly, this research has shown that there are serious issues currently being experienced, and that there is a crisis of recruitment and retention within the DF.

### **When is a crisis not a crisis?**

The power of language used by senior figures in any organisation, within any period of difficulty, is such that terms used to describe the difficulties are carefully chosen, and couched in the terms best used to defend the position being taken by either side in a dispute. Given that the DF is at the core to the national security of the Irish state, it is not surprising that the Government, DOD, and military management demur to use the word crisis. The use of the word is according to VAdm Mellett DSM “an indication of a loss of control or management. We have not lost control, we have challenges we are working to fix.” (Mellett, 2019).

### **Off course:**

In the closing days of drafting the final draft of this dissertation there was a dramatic public intervention by the Supreme Commander of the DF, President Michael D. Higgins, he said, while presenting awards for exemplary service in the display of DF

values<sup>13</sup> to service members, that he noted with some concern “that there is gap opening-up between our expressed appreciation of their work, and the circumstances we deliver for it practise” (Higgins, 2019, and he went on to say that “it is not too much, I would suggest, to expect that serving men and women should have conditions, including income and prospects that are sufficient to provide for the selves and their families.” (Higgins, 2019). This is a most unusual occurrence, as the President in general is meant to stay aloof from politics, and it was met with a certain amount of resistance from within the government party, it was down played by the Taoiseach, who said “I totally agree with that, but I wouldn’t stop there. I would say it applies to everyone in society and especially those who work in the public service” (Varadakar, 2019), and in fact some government ministers agreed with President Higgins, such as Minister for Social Protection Regina Doherty who said “to be honest, I think I agree with him.” (Doherty, 2019).

Given the research presented here which supports to an extent the assertions made about the relationships between the representative associations and the official side, ie DOD, DPER, and military management, that they can be categorised as acrimonious, difficult, and tense. It is not at this point within the ability of the author to label this relationship or industrial relations machinery as dysfunctional or broken. This difficult relationship needs to change course, or it will veer into the territory of dysfunction. The fact that the President, who occupies an office which is normally circumspect in its political announcements, sees the issues as being so great as to make public

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<sup>13</sup> The DF Values are: Loyalty, Respect, Moral Courage, Physical Courage, and Integrity.

statements on it, is a clear indication of the level of concern with which this current crisis is being viewed.

**New Course:**

PDFORRA and RACO have being shown to be effective on behalf on their members within the limits of the restrictions placed upon them. This current DF crisis cannot be laid at the feet of either of the two representative associations, nor was not created by the great recession following the financial crash of 2008, although it was and is being exacerbated by the aftermath or that recession. It is outside the scope of the author research to examine if government policy on defence and security is also off course. Some of the facets of national defence and security which have been explored in the authors research, would indeed give the author concern that the security of the state, is not in an optimal position, should a major security crisis occur. The furthest the author could state is that if a hard BREXIT occurs, then there is a real risk of a need for heightened security on the inevitable hard border, and it may be a security need which the DF in its current state of personnel crisis, may not be able to respond to at the levels required, if violence began in earnest across the meandering border.

It appears to the author that the current arrangements have reached the limits of what can be achieved within the current representative structures, in regard to the ability to negotiate on remuneration during national pay talks. PDFORRA President Mark Keane says that ‘we have sought affiliation with ICTU for the sole reason of getting a voice in pay talks.’ (Keane, 2019). PDFORRA and RACO both express the strong desire to be inside ‘the room’ when the key pay deals are being done. The ability to achieve a certain amount of legal satisfaction for their members, by bringing targeted litigation to bear on individual cases, will not achieve the levels of remuneration or conditions of service which are desired by the members of the associations. Something

must change to bring the current crisis to a point of resolution, the churn of staff with the DF must be halted. A new course is needed. What that new course will be will become far clearer as the next six to twelve months progress, this is due to the current actions being taken by both of the representative associations. However, the author would be at pains to highlight that this new course is destined for some exceptionally stormy waters, as both the representative associations are diverging from each other.

**Independent Pay Commission:**

RACO has indicated strongly that an independent pay commission is what they desire to have created in order to deal with the remuneration issues faced by their members. General Secretary Conor King said, “a comprehensive external review, similar in nature and scope to the Gleeson Commission in 1990, or the recent Commission on Future Policing should now be considered by Government where Management are unable or unwilling to address the underlying organisational issues.” (King, 2019), and he then indicated that RACO “RACO strongly recommends the adoption of a specific DF Pay Review Body, to ensure military personnel are fairly treated.” (King, 2019). The COS said that “If the UK, Australia, and New Zealand are examined, what has been arranged in those cases, is an independent mechanism for the determination of remuneration.” (Mellett, 2019), VAdm Mellett then indicated to the author, that he had made very recent proposals on this subject to the MOD, and that he awaited a reply on his proposals. RACO would view an independent pay commission as structured along the model used by the UK, with an independent Chairperson, making recommendations to government.

**ICTU Affiliation:**

PDFORRA has indicated as emphatically as RACO, that they view affiliation to ICTU as the only way to achieve the solutions to the remuneration issues faced by their members. PDFORRA applied for affiliation to ICTU on the 3<sup>rd</sup> of September 2019,



and ICTU has approved in principle their application as of 19th of September 2019. ICTU General Secretary Patricia King has said that she disagreed that trade union membership could be incompatible with military service and while she said that “further discussions are necessary to bring this matter to conclusion” (King, 2019), she also said that PDFORRA had indicated to ICTU that they were not pursuing the right to strike, adding that “they are representing workers, public service workers, and that we think there is no reason whatsoever, security or otherwise, we don’t accept any of that. We think these people deserve to have their voices heard and have the fullest possible representation.” (King, 2019). As this research indicated in an early chapter, the right to withdraw labour or take other forms of industrial action is a key part of ICTUs constitution, they appear willing to accommodate PDFORRA in their very strongly stated declination to strike or any other form of industrial action. PDFORRA President Mark Keane said that “we will not, nor ever will, seek the right to take any form of industrial action, and we are willing to sign anything to that affect.” (Keane, 2019). The COS has come out very strongly against any such affiliation, he stated that “I find an association or an affiliation to an institution...one of whose main freedoms is the right to strike, even if PDFORRA are allowed a caveat that they will never strike, I find it a dangerous move” (Mellett, 2019), and he went on to say that “The Defence Forces are unique, they do not have a union, they are subject to unlimited liability, they are subject to military law, and they will never withdraw labour. Those four points differentiates the Defence Forces from other parts of the public sector” (Mellett, 2019). This then creates the battle ground which will be fought over by the public sector unions, ICTU, DPER, DOF, DOD, and military management over the coming months as the entire public service prepares for the next public sector pay talks, due to begin sometime in 2020.

**Finale:**

Here the author must reach the conclusion of this research project, as indicated in the opening chapters there were a great many questions within the overarching thesis aim, and as the research progressed a great many more were raised. The author has attempted to bring illumination to the representative associations of the DF, and to their industrial relations mechanisms and processes in order that answers to as many of those questions as possible, can be given appropriate answers. The author throughout confronted his own strong bias towards the enlisted representative body, including being constantly strongly drawn toward straying into action research, where an answer or solution must be provided, he feels that he has managed to maintain his objectivity throughout.

There is no easy answer or single solution to this complex crisis. Indeed, the current DF crisis is not unique to the just to the DF in Ireland, many other public sector workers face many of similar issues, as is clearly evident by strike action by nurses and even threatened strike action by An Gardaí. Across Europe, many militaries are suffering from the struggle to recruit enough personnel for their armed forces, as under-funding of militaries in general and the ever-increasing cost of military personnel (as a percentile of overall armed forces funding) place huge pressure on strained resources. The Irish economy is approaching levels of employment which can be considered as peak, this creates a buoyant jobs market. This also has an effect where personnel are drawn out into civilian employment towards more attractive prospects. The current symptoms of dysfunctionality within the DF representative system, may be more reflective of the larger economic challenges within in Ireland and the across the EU, than a true reflection of a systemic failure.

It will take great effort, determination, and co-operation to navigate the DF through the current crisis. It can and it must be done, and strong effective DF representation association are a core part of those solutions. The representative bodies are on a par with any in the EU,

with due regards to certain limitations and restrictions, and they will grow stronger and more effective as the reforms proposed are being implemented over the coming months and years. The relationships with the official side must be reset and rejuvenated, it is of vital importance to all sides that the members of the DF have confidence in the system which is meant to provide for their welfare and rights.

The storm clouds of BREXIT and a possible global recession are gathering, and the DF must consolidate and be ready for whatever comes. The security of the state requires a full functioning, appropriately staffed, highly skilled, highly trained, and highly motivated DF to continue to serve the nation, as they have for decades. In order for the DF be as best prepared for any eventuality, this current crisis must be brought halted and brought to a swift a conclusion as possible.

The volunteers of Óglaigh na hÉireann are citizens in uniform and they are proud to be the first to serve.

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## Appendices

## **Appendix A: Interview Questions.**

The following are the primary questions from the interviews.

### **Questions for Interviewees in Ireland.**

1. The concept of the 'citizen in uniform' implies that members of the armed forces are entitled to the same fundamental human rights and associated freedoms as all other citizens of a nation states, subject to certain defined national limitations. Are you aware of this theory? Do you feel that the Defence Forces has put this concept into practice?
2. In following the European Convention of Human Rights (ECHR) what rights or freedoms do you feel need to be addressed in order to for the Defence Forces to be fully compliant, and why do you feel this?
3. Are you aware that the European Committee on Social Rights (ECSR) case taken by PDFORRA through EUROMIL in 2014, with the complaint that Ireland had violated Articles 5 & 6 of the European Social Charter in regard to the Defence Forces Representative Bodies? What are your opinions on the case? What are your thoughts on the subsequent ECHR Ruling on the case?
4. Why, in your opinion, has there been such resistance to the Defence Forces Representative bodies joining the Irish Congress of Trade Unions (ICTU)? Given the assurances from ICTU that special arrangements would be considered to apply to such membership?
5. Why, in your opinion, has it taken so long to apply the European Working Time Directive (EWTD) to the Defence Forces? What do you think will be some of major stumbling blocks of its implementation if any?
6. Are you aware of the University of Limerick Study conducted in 2016? If you are, what is your opinion on its finding?
7. Are you aware of the Public Service Pay Commission investigation which is currently in progress? If you are, what in your opinion would be possible positive outcomes from it? And what would be possible negative outcomes from it?
8. Are you aware of the review of Conciliation and Arbitration which delivered its report in 2018? If you are, what is in your opinion would be possible positive outcomes from it? And what would be possible negative outcomes from it?
9. How would you currently the describe the current status of recruitment and retention within the Defence Forces? What in your opinion could be possible solutions to the current situation?
10. Do you think that Irish Defence Forces Representative bodies are capable of delivering the services required to their members as they in their current format? Or do you think that full trade union status would a better arrangement?
11. Restrictions and limitations to freedom of expression, freedom of association, and political activity are contained in the 1954 Defence Act. Do you agree with the policy which restricts the Defence Forces Personnel the right to strike and/or participate in public protest? Do you also agree with the restriction on

personnel from speaking about their pay and conditions of service (non-operational service) in public?

12. Are you aware of other European Military Representative bodies and trade unions? How do the Irish Defence Forces Representative bodies compare to the bodies in operation in these other European countries in your opinion?

## Questions for President of EUROMIL, Mr. Emmanuel Jacob

1. The concept of the ‘citizen in uniform’ implies that members of the armed forces are entitled to the same fundamental human rights and associated freedoms as all other citizens of a nation states, subject to certain defined national limitations.
  - a . Are you aware of this theory?
  - b . Do you feel that the European nations have put this concept into practice?
2. Do you feel that EUROMIL is important to military representation in Europe?
3. What do you feel are the greatest challenges facing military representation in Europe in the coming years?
4. Has EUROMIL any key priorities which you would like to see it achieve in the near future?
5. In following the European Convention of Human Rights (ECHR), what rights or freedoms do you feel are most important to ensure are fully secured and realised for military service personnel?
6. EUROMIL played a central role in bringing PDFORRA’s case before the European Committee on Social Rights (ECSR) in 2014. With the complaint that Ireland had violated Articles 5 & 6 of the European Social Charter in regard to the Irish Defence Forces Representative Bodies.
  - a . What are your opinions on the importance of this case?
  - b . What are your thoughts on the subsequent ECHR Ruling on the case?
7. Why, in your opinion, has there been such resistance to the representative bodies across Europe been afforded full trade union status?
8. Why, in your opinion, has it taken so long to apply the European Working Time Directive (EWTD) fully to many armed forces across Europe, including Ireland?
9. Do you think that European Representative bodies are capable of delivering the services required to their members as they in their current format?
  - a . Or do you think that full trade union status would a better arrangement?
  - b . Have you any thoughts on the establishment of independent pay review bodies instead of trade unionisation?
10. Restrictions and limitations to freedom of expression, freedom of association, and political activity are common across Europe for members of the armed forces.
  - a . How do you feel about policies which restrict armed forces personnel from the right to strike and/or participate in public protest?
  - b . Do you also agree with the restrictions places on personnel from speaking about their pay and conditions of service (non-operational service) in public?
11. How do you feel the rights, mechanisms and structures afforded to Irish Defence Forces Representative bodies compare to the bodies in operation in these other European countries, in your opinion?



## **Appendix B: Declaration of Conflicts of Interest.**

I declare the following conflicts of interest:

1. That I am a member of PDFORRA.
2. That I am an elected representative of PDFORRA.
3. That I am the District Secretary of LÉ Samuel Beckett District Committee.
4. That I am a working member of the Naval Regional Committee.
5. That this research was part funded by PDFORRA.

## **Appendix C: Interviewee Biographies.**

### **VAdm Mark Mellett PhD DSM, Chief of Staff, Irish Defence Forces.**

Vice Admiral Mark Mellett has over 40 years' service as an officer in the Irish Defence Forces. He is the first naval officer in the Irish State to serve as Chief of Staff, having previously served as Deputy Chief of Staff and Chief of Navy. He has extensive experience at home and abroad, including in Afghanistan and Lebanon, in combined and joint operational missions. Holder of a Doctorate in Political Science and a Masters in Government and Public Policy, Admiral Mellett has a keen interest in research with a focus on European security, innovation, diversity and values-based leadership. He has been a member of the European Security Research Innovation Forum (ESRIF) and has completed the EU Senior Mission Leaders Course. He has also been a Visiting Professor abroad in Liverpool Hope University and is currently an Adjunct Professor of Law at University College Cork.

### **Gerard Guinan, General Secretary, PDFORRA.**

Mr Gerard Guinan is the General Secretary of the Irish Permanent Defence Force Other Ranks Representative Association (PDFORRA, which is also a member of EUROMIL). He has been in this position since 2016 and has also served as the Deputy General Secretary for several years. PDFORRA has observer status on the Public Service Committee of the Irish Congress of Trade Unions (ICTU).

### **Lt. Col Earnán Naughton, Former General Secretary, RACO.**

Lt.Col Earnan Naughton was elected President of RACO in March 2010. He holds an MSc in Supply Chain Management from Dublin Institute of Technology and an MA in Leadership, Management and Defence Studies from NUI Maynooth. He is a graduate of the Command and Staff School of the Military College. He retired in 2018. He has seven tours of duties overseas.

**Emmanuel Jacob, President, EUROMIL.**

Mr Emmanuel Jacob has been the elected President of the European Organisation of Military Associations (EUROMIL) since September 2006. He is founding member of the Belgian All Ranks Association (ACMP-CGPM) and was their elected Secretary General from 1991 till the end of November 2011. Additionally, he is Administrator and former Vice President of the “Central Service of Social and Cultural Action” and administrator and Vice President of the Belgian Veteran Institute. Since March 2010, he is the co-ordinator of the defence sector for the health insurance company Euromut. Emmanuel Jacob joined the Belgian Armed Forces in March 1979 and is now Chief Warrant Officer. He also studied social sciences at the Genk Academy.

**Senator Gerard Craughwell, Former President Teachers Union of Ireland.**

Senator Gerard Craughwell is an elected Senator. He is a teacher in the further education sector and past president of the Teachers Union of Ireland. He was elected to the Culture and Education Panel of the Seanad and is a member of the Joint Oireachtas Committee on Education and Social Protection. He is veteran of the armed forces of both the United Kingdom and the Republic of Ireland.

**Antoinette Cunningham, Deputy General Secretary, AGSI.**

Antoinette Cunningham is the first female full-time official of any Garda representative group. She is the Deputy General Secretary of the Association of Garda Sergeants and Inspectors. She is the former President of the Association of Garda Sergeants and Inspectors. Ms Cunningham joined the Garda 26 years ago and has worked as a training sergeant at the Garda College in Templemore, Co Tipperary, for the past decade. She holds a master's degree in adult training and learning.

## **Appendix D: Invitation to Interview via email/letter.**

Dear Sir/M'am,

I am currently a student with University College Cork, studying for a Masters in Government and Public Policy.

My research is on civil-military industrial relations in Ireland. It seeks to compare our current arrangements against those which are available to other militaries and to see if the current system is in keeping with the ideals of the European Social Charter.

I am currently conducting research for my thesis and would like to respectfully request your participation in a short interview.

This research has received ethical approval from the Social Research Ethics Committee (SREC), UCC.

I have attached a copy of the questions I would be asking during the interview, an information sheet, and an informed consent document, which would be signed by you if you consent to the interview.

The interview can be conducted in person, via telephone or via email/letter which ever would be of your preference and choosing.

I thank you for taking the time to read this and I hope that I will get to speak to you in the very near future.

Is mise le meas,

Ruairí de Barra.

42 Riverside Ave,  
Rushbrooke,  
Cobh,  
Co. Cork

0861540587

ruairidebarra@gmail.com

## Appendix E: Information Sheet



### Information Sheet

Thank you for considering participating in this research project. The purpose of this document is to explain to you what the work is about and what your participation would involve, so as to enable you to make an informed choice.

The purpose of this study is to examine civilian and military industrial relations. Should you choose to participate, you will be asked to take part in a one-to-one interview with a member of the research team. This interview will be audio-recorded via telephone or in person as you choose and is expected to take 20-30 minutes to complete.

Participation in this study is completely voluntary. There is no obligation to participate, and should you choose to do so you can refuse to answer specific questions or decide to withdraw from the interview. Once the interview has been concluded, you can choose to withdraw your details at any time in the subsequent cooling off period of two weeks from the date of the interview.

All of the information you provide other than explicit answers to the agreed questions will be kept confidential and will be available only to the researcher. The only exception is where information is disclosed which indicates that there is a serious risk to you or to others. Once the interview is completed, the recording will immediately be transferred to an encrypted laptop and wiped from the recording device. The interview will then be transcribed by the researcher. Once this is done, the audio-recording will also be deleted and only the transcript will remain. This will then be anonymized by having all personal identifiable data removed, and it will then be stored on the University College Cork OneDrive system and subsequently on the UCC server. The data will be stored for 10 years. The information you provide may

contribute to research publications, and/or conference presentations. The information you provide will contribute to the researcher's thesis.

We do not anticipate any negative outcomes from participating in this study, however should you be in an active appointment or position where it would not be prudent to comment due to active issues or negotiations, should you wish to do so, you can choose not to answer a question/s, and/or to bring the interview to an end at any time. At the end of the procedure, I will discuss with you how you found the experience and how the data will be used.

This study has obtained ethical approval from the UCC Social Research Ethics Committee.

If you have any queries about this research, you can contact my supervisor or I at:

Ruairí de Barra, 42 Riverside Ave, Rushbrooke, Co. Cork <a href="mailto:ruairidebarra@gmail.com">ruairidebarra@gmail.com</a> 0806154087	Dr. Andrew Cottey, Dept. of Government & Politics, UCC, Cork. 021 490 2009 a.cottey@ucc.ie
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If you agree to take part in this study, please sign the consent form overleaf. It can be signed digitally, or a physical copy can be sent to the researchers address on the left above. This consent form will then be anonymized by having all personal identifiable data removed, and it will then be stored on the University College Cork OneDrive system and subsequently on the UCC server. The data will be stored for 10 years.

**Appendix F: Consent Form.**



**Consent Form**

I.....agree to participate in Ruairí de Barras research study.

The purpose and nature of the study has been explained to me in writing.

I am participating voluntarily.

I give permission for my interview with Ruairí de Barra to be audio-recorded.

I understand that I can withdraw from the study, without repercussions, at any time, whether before it starts or while I am participating.

I understand that I can withdraw permission to use the data within two weeks of the interview, in which case the material will be deleted.

I understand that extracts from my interview may be quoted in the thesis and any subsequent publications if I give permission below:

(Please tick one box:)

I agree to quotation/publication of extracts from my interview

I do not agree to quotation/publication of extracts from my interview

Signed: .....

Date: .....

PRINT NAME: .....

## **Appendix G: Debrief Information Sheet**



### **Debrief Information Sheet**

Thank you for participating in this research project. The purpose of this document is to debrief you post interview on what the work is about and what your kind participation will involve, so as to enable you to make an informed choice.

The purpose of this study is to examine civilian and military industrial relations. You chose to participate, in a one-to-one interview with a member of the researcher. The interview was audio-recorded via telephone or in person and was expected to take 20-30 minutes to complete.

Participation in this study was completely voluntary. There was no obligation to participate, and you could freely choose to refuse to answer specific questions or decide to withdraw from the interview at any point. Now that the interview has been concluded, you can choose to withdraw your details at any time in the subsequent cooling off period of two weeks from the date of the interview.

All of the information you provide other than explicit answers to the agreed questions will be kept confidential and will be available only to the researcher. The only exception is where information is disclosed which indicates that there is a serious risk to you or to others. Once the interview is completed, the recording will immediately be transferred to an encrypted laptop and wiped from the recording device. The interview will then be transcribed by the researcher. Once this is done, the audio-recording will also be deleted and only the transcript will remain. This will then be anonymized by having all personal identifiable data removed, and it will then be stored on the University College Cork OneDrive system and subsequently on the UCC server. The data will be stored for 10



years. The information you provide may contribute to research publications, and/or conference presentations. The information you provide will contribute to the researcher's thesis.

I do not anticipate any negative outcomes from participating in this study, however should you be in an active appointment or position where it would not be prudent to comment due to active issues or negotiations, should you have wished to do so, you could have chosen not to answer a question/s, and/or to bring the interview to an end at any time.

This study has obtained ethical approval from the UCC Social Research Ethics Committee.

If you have any queries about this research, you can contact my supervisor or I at:

Ruairí de Barra, 42 Riverside Ave, Rushbrooke, Co. Cork <a href="mailto:ruairidebarra@gmail.com">ruairidebarra@gmail.com</a> 0806154087	Dr. Andrew Cottey, Dept. of Government & Politics, UCC, Cork. 021 490 2009 a.cottey@ucc.ie
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Again, thank you for your participation.

Is mise le meas,

Ruairí de Barra

## Appendix H: European Defence Data

Ireland	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017e
<b>Total Defence Expenditure (A+B+C+D+E)</b>	€ 920 Mln	€ 922 Mln	€ 979 Mln	€ 1,077 Mln	€ 988 Mln	€ 911 Mln	€ 881 Mln	€ 900 Mln	€ 891 Mln	€ 893 Mln	€ 891 Mln	€ 899 Mln	€ 915 Mln
Defence Expenditure as % of GDP	0.5%	0.5%	0.5%	0.6%	0.6%	0.5%	0.5%	0.5%	0.5%	0.5%	0.3%	0.3%	0.3%
Defence Expenditure as % of Government Spending	1.6%	1.5%	1.4%	1.4%	1.2%	0.8%	1.1%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%
Defence Expenditure per capita	€ 221	€ 216	€ 222	€ 239	€ 218	€ 200	€ 193	€ 196	€ 194	€ 193	€ 192	€ 192	€ 191
<b>A. Personnel Expenditure</b>	€ 688.0 Mln	€ 704.8 Mln	€ 731.3 Mln	€ 777.7 Mln	€ 757.0 Mln	€ 684.9 Mln	€ 714.3 Mln	€ 747.6 Mln	€ 740.2 Mln	€ 698.3 Mln	€ 694.2 Mln	€ 700.1 Mln	€ 738.6 Mln
<b>B. Infrastructure / Construction Expenditure</b>	€ 13.7 Mln	€ 18.2 Mln	€ 24.7 Mln	€ 23.1 Mln	€ 15.9 Mln	€ 10.8 Mln	€ 7.6 Mln	€ 5.2 Mln	€ 5.9 Mln	€ 6.4 Mln	€ 7.8 Mln	€ 7.2 Mln	€ 14.2 Mln
<b>C. Defence Investment</b>	€ 94.2 Mln	€ 85.5 Mln	€ 96.4 Mln	€ 94.1 Mln	€ 61.0 Mln	€ 84.4 Mln	€ 70.3 Mln	€ 63.3 Mln	€ 67.8 Mln	€ 86.7 Mln	€ 76.0 Mln	€ 88.0 Mln	€ 59.0 Mln
Defence Equipment Procurement Expenditure	€ 94.2 Mln	€ 85.5 Mln	€ 96.4 Mln	€ 94.1 Mln	€ 61.0 Mln	€ 84.4 Mln	€ 70.3 Mln	€ 63.3 Mln	€ 67.8 Mln	€ 86.7 Mln	€ 76.0 Mln	€ 88.0 Mln	€ 59.0 Mln
Defence R&D Expenditure	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
Defence R&T Expenditure (subset of R&D)	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
<b>D. Operation &amp; Maintenance (O&amp;M) Expenditure</b>	€ 60.2 Mln	€ 88.1 Mln	€ 97.4 Mln	€ 124.0 Mln	€ 100.0 Mln	€ 94.2 Mln	€ 89.3 Mln	€ 84.5 Mln	€ 76.7 Mln	€ 101.4 Mln	€ 113.4 Mln	€ 103.6 Mln	€ 103.1 Mln
<b>E. Other Expenditure</b>	€ 63.9 Mln	€ 25.8 Mln	€ 29.1 Mln	€ 57.9 Mln	€ 54.4 Mln	€ 36.2 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
Operations Costs (Deployed) <sup>1</sup>	:	€ 3.9 Mln	€ 2.2 Mln	€ 3.2 Mln	€ 3.6 Mln	€ 5.3 Mln	€ 11.5 Mln	€ 16.0 Mln	€ 17.0 Mln	€ 14.8 Mln	€ 14.8 Mln	€ 15.4 Mln	€ 16.5 Mln
Defence Expenditure "Outsourced"	€ 28.2 Mln	€ 31.1 Mln	€ 23.7 Mln	€ 29.1 Mln	€ 25.8 Mln	€ 21.4 Mln	€ 19.1 Mln	€ 14.9 Mln	€ 16.0 Mln	€ 15.8 Mln	€ 20.0 Mln	€ 20.1 Mln	€ 20.0 Mln
Capital Investment "Outsourced"	€ 19.3 Mln	€ 21.9 Mln	:	:	:	:	:	:	:	:	:	:	:
O&M "Outsourced"	€ 8.9 Mln	€ 9.2 Mln	:	:	:	:	:	:	:	:	:	:	:
Total Civilian Personnel	900	871	840	832	768	730	730	593	536	508	821	479	550
Total Military Personnel	10,500	10,477	10,350	10,377	9,950	9,550	9,450	9,367	9,318	9,280	9,140	9,126	9,500
Army	:	6,111	6,230	6,834	6,768	6,401	6,366	7,518	7,504	7,457	7,309	7,332	7,519
Maritime	:	1,071	1,035	1,049	1,035	1,032	997	1,058	1,028	1,057	1,083	1,090	1,094
Air Force	:	851	828	834	799	769	791	791	786	766	748	704	887
Other <sup>2</sup>	:	2,444	2,257	1,660	1,348	1,348	1,296	0	0	0	0	0	0
Other gendarmerie-type forces (optional)	:	0	0	0	0	0	0	0	0	0	0	0	0
Defence Investment per Military	€ 8,971	€ 8,159	€ 9,311	€ 9,063	€ 6,133	€ 8,836	€ 7,434	€ 6,753	€ 7,275	€ 9,347	€ 8,311	€ 9,645	€ 6,211
Collaborative Defence Procurement Expenditure	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
European Collaborative Defence Procurement	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
Collaborative Defence R&T Expenditure	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
European Collaborative Defence R&T	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln	€ 0.0 Mln
Average Number of Troops Deployed	766	808	621	659	766	560	333	466	460	418	465	479	:
% of Total Military Personnel	7.3%	7.7%	6.0%	6.4%	7.7%	5.9%	3.5%	5.0%	4.9%	4.5%	5.1%	5.2%	:
Total Deployable (Land) Forces	850	850	850	850	850	850	850	850	850	850	850	850	850
% of Total Military Personnel	8.1%	8.1%	8.2%	8.2%	8.5%	8.9%	9.0%	9.1%	9.1%	9.2%	9.3%	9.3%	8.9%
Total Sustainable (Land) Forces	850	850	850	850	850	850	850	850	850	850	850	850	850
% of Total Deployable Forces	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

### Notes:

<sup>1</sup> Operations Costs (Deployed) are concurrently included in the respective defence expenditure sub-categories, according to the nature of expenditure.

<sup>2</sup> From 2012, Support & Command military personnel are shown under the Army/ Maritime/ Air Force categories, rather than under Other personnel, as in the previous years.

## **Appendix I: NASA.**

### **National Army Spouse Association Constitution.**

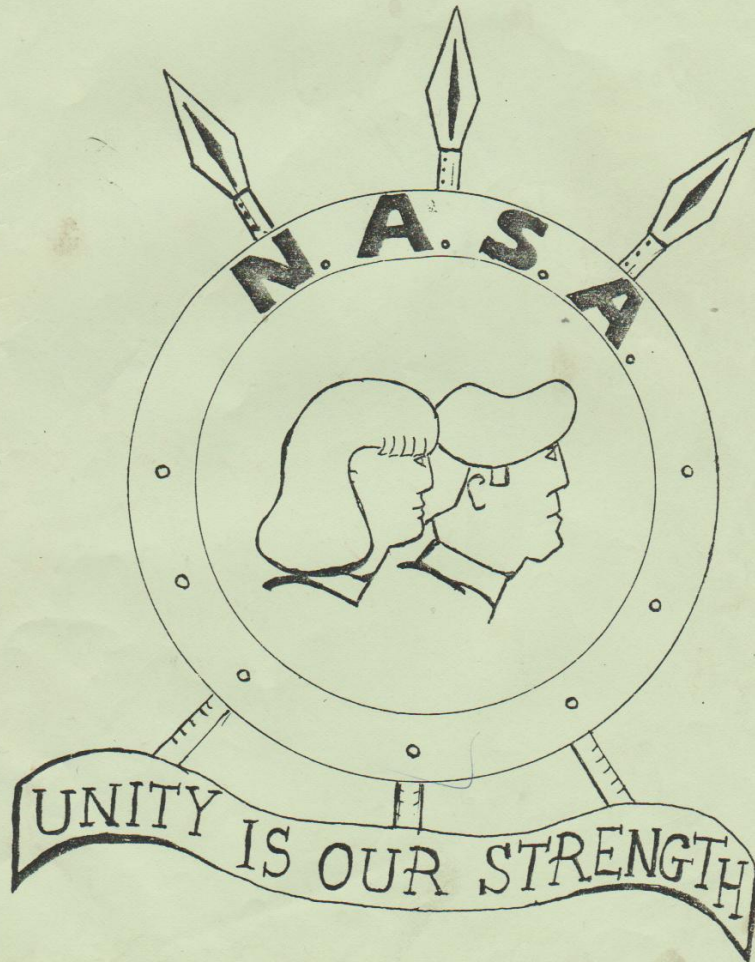
The author includes here these images of the NASA constitution as, the author was unable to find any copy from academic sources during his research.

This copy of their constitution may be the only copy obtainable within an Irish University.

This copy was obtained from Mrs June Kieran, and is reproduced here with her kind permission.

June Kieran

# CONSTITUTION AND RULES



THE NATIONAL ARMY SPOUSE'S ASSOCIATION.

-----  
Constitution and Rules.  
-----

1. NAME  
=====

The name of the Association shall be the "National Army Spouse's Association", '(N.A.S.A.)'.

2. AIMS  
=====

The aims and objectives of the Association shall be:-

- a. To seek and improve the pay, allowances and conditions of single and married male and female members of the Permanent Defence Forces.
- b. To develop a mutual comradeship between the families of serving and ex serving members of the Permanent Defence Forces.
- c. To organise effective methods of setting up a modern Military welfare service for serving members of the Permanent Defence Forces and their families.
- d. The setting up of a lawfully constituted Representative Body for the members of the Permanent Defence Forces.
- e. To achieve all the above aims and objectives through peaceful and legitimate means.
- f. The Association shall be strictly non-political and non-sectarian and shall not have any affiliation with any Political Party.

3. BRANCHES  
=====

- a. The Association shall organise Branches as required.
- b. Application for affiliation by Branches shall be made in writing to the Secretary of the Association.
- c. The National Executive may in its absolute discretion refuse Membership of the Association to any applicant Branch.
- d. No Branch of the Association shall take part in any Public Meeting or demonstration if of a political or sectarian nature.

4. DISCIPLINE  
=====

- a. Each Branch of the Association shall be answerable for the conduct of its members.

contd ...

- b. A Branch which does not comply with this Constitution and honour its commitments shall be liable to suspension from the Association.
- c. Such suspension shall be notified in writing to the appropriate Branch Secretary within seven days.
- d. Suspension may be lifted by a decision of the National Executive on such terms as it seems fit.

5. MEMBERSHIP.

=====

- a. Subject to Clause 3 hereof, membership of the Association will be open to any Dependants of any serving or ex serving member of the Permanent Defence forces, who are over eighteen.
- b. To gain membership of the Association a dependant must be accepted as a member of a Branch of the Association and accept the Rules and Constitution of the Association.
- c. A member may hold membership in one Branch only but may transfer to a different Branch subject to acceptance by that Branch.

6. CONTROL AND ADMINISTRATION.

=====

- a. The overall control and administration of the Association shall be vested in the National Executive.
- b. The National Executive shall consist of two delegates from each Branch of the Association, which delegates shall be nominated by the Branches of the Association.

The National Executive shall elect the following Officers of the Association from the membership of the National Executive:-

- 1. Chairperson.
- 2. Vice Chairperson.
- 3. Secretary.
- 4. Assistant Secretary.
- 5. Treasurer.
- 6. Vice Treasurer.
- 7. Public Relations Officer.
- 8. Assistant Public Relations Officer.
- c. The National Executive shall hold meetings as often as may be necessary for the proper conduct of business.
- d. Not less than four such meetings shall be held in each period of twelve months.
- e. The National Executive shall arrange the time, date and venue of such meetings.
- f. Decisions of the National Executive shall be made by a majority of members of the National Executive present and voting at such meetings.

7. GENERAL MEETINGS

=====

- a. An Annual General Meeting of the Association shall be held in each period of twelve months, the date and venue of which shall be determined by the National Executive.
- b. Not less than 21 days notice of such Annual General Meeting shall be given by the National Executive to affiliated Branches of the Association.
- c. All paid up members of the Association shall be entitled to attend and vote at all general meetings of the Association.
- d. Decisions of the General Meetings of the Association shall be made by a majority of members present and voting at such meetings.
- e. The National Executive of the Association shall be entitled to summon an Extraordinary General Meeting of the Association at any time on 7 days notice to each affiliated Branch of the Association.
- f. The National Executive shall, on receipt by it of a requisition in writing of not less than one quarter of the affiliated Branches of the Association, cause an Extraordinary General Meeting to be held and shall cause 7 days notice of such Extraordinary General Meeting to be given to each affiliated Branch of the Association.
- g. The Agenda for all General Meetings shall be circulated by the National Executive to all affiliated Branches of the Association not less than 5 days prior to such General Meeting.

8. FINANCE

=====

- a. Each member of the Association shall contribute a subscription of £1.00 per month to the Branch of which he or she is a member.
- b. Each affiliated Branch of the Association shall forward each month to the Treasurer of the Association a sum equivalent to not less than 50% of all subscriptions received by it in the previous month.
- c. Each affiliated Branch of the Association shall meet the expenses of its members attending Meetings of The National Executive, ~~and of its members dealing with the business of the National Executive.~~
- d. The National Executive shall open and operate such Banking Accounts as may be required from time to time. All such Accounts shall be in the name of the Association and withdrawals from such Accounts shall be made only by cheques approved by the National Executive.
- e. The National Executive shall at all times ensure that cheques drawn on the Banking Accounts of the Association shall be valid only if signed by not less than two of the following Officers of the Association:-

contd. ....

e. contd. ....

1. Chairperson.
2. Secretary.
3. Treasurer.
4. Vice Treasurer.

9. AMMENDMENTS TO THE CONSTITUTION

=====

- n.b.
- a. This constitution may be amended only by a majority of members of the Association present and voting at a General Meeting of the Association at which not less than 5 days notice of such proposed Amendment has been given to all affiliated Branches of the Association.
  - b. Any matter pertaining to the effective operation of The Association which is not provided for in this Constitution shall, pending a General meeting of the Association, be at the discretion of the National Executive whose decision on the matter shall be final and binding until altered or set aside by a General Meeting of the Association.

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Rules of the Association  
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1. Subject to the provisions of the Constitution of the National Army Spouses Association (hereinafter referred to as "the Association"), the rules hereinafter set out shall be the Rules of the Association and shall be binding upon all members of the Association.
2. At the Annual General Meeting of the Association in every subsequent year, one-half of the Officers of the Association for the time being or, if their number is not two or a multiple of two, then the number nearest one-half shall retire from office. Retiring Officers shall be eligible for re-election. The Officers to retire in every subsequent year as aforesaid shall (unless they otherwise agree amongst themselves) be determined by lot.
3. A member of the National Executive who fails to attend three consecutive meetings of the National Executive shall be deemed, in the absence of proper reason, to have vacated and forfeited his or her membership of the National Executive".
4. In the event of any disagreement or dispute arising amongst a Branch of the Association, the Branch in question shall first endeavour to resolve such dispute within the Branch. In the event of such dispute not being resolved as aforesaid, within a time to be determined by the Chairperson of such Branch, the Chairperson of such Branch shall refer the matter to the National Executive together with a full report of all matters relating to the dispute and the National Executive shall consider the matter as soon as may be practicable and shall make its decision known to the said Branch and such decision shall be final.
5. Each Branch of the Association shall keep an up to date Register of all its members and may, at its discretion, issue an acknowledgement of membership to its members in writing. In the event of a person ceasing to be a member of a Branch of the Association, such person shall deliver any such acknowledgement to the Branch Chairperson on request.
6. The duties of the Chairperson of the Association from time to time shall include the chairing of all meetings of the National Executive and the Association, to preserve order at such meetings, to rule on questions of procedure and points of order and to represent the Association in the carrying out of its activities.
7. In the absence of the Chairperson, the Vice-Chairperson of the Association shall perform the duties of the Chairperson.
8. The Secretary of the Association shall be responsible for preparation of minutes of all meetings of the National Executive and the Association and shall in addition be responsible for all correspondence between the Association, its Branches and other parties. In the absence of the Secretary the said duties shall be performed by the Assistant Secretary of the Association.

contd. ....

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9. The Treasurer of the Association shall be responsible for all Accounts and monies of the Association and shall keep books and Accounts showing Income and Expenditure of the Association. In addition, the Treasurer shall prepare financial statements as required from time to time by the National Executive of the Association and shall report to the National Executive of the Association as required. In the absence of the Treasurer, the said duties shall be performed by the vice Treasurer of the Association.

N.B. 10. The Public Relations Officer of the Association will be responsible for the promotion in the media of the aims and activities of the Association and shall report on same to the National Executive of the Association from time to time as required. In the absence of the Public Relations Officer, the said duties shall be performed by the Assistant Public Relations Officer.

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## **Appendix J: Terms of Reference C&A Review.**

### **Terms of Reference C&A Review**

The review shall:

1. Consider the redress and dispute resolution processes that are available to members of the Defence Forces and the issues that are within the scope of those processes.
2. Review the purpose, scope and the key features of the PDF C&A scheme – up to and including arbitration.
3. Consider the PDF C&A Scheme in the context of the current Defence Forces redress and dispute resolution processes, broader public sector pay negotiation processes and agreements, and any other relevant legislative provisions.
4. Consider the findings of the European Committee on Social Rights in the recent case of *Euromil v Ireland*.
5. Identify impediments to the efficient processing of claims within the PDF C&A scheme.
6. Examine other C&A schemes in operation in the public service and benchmark the Defence scheme against these.
7. Make recommendations regarding:
  - a) The scope of the PDF C&A scheme
  - b) The operation of the scheme, including the lodging and processing of claims
  - c) The constitution and operation of the Conciliation Council including the appointment of, and role of, the Chair, and options for third party facilitation and/or mediation
  - d) Options for third party arbitration in relation to matters not resolved at Conciliation Council.
8. A review of the PDF C&A Scheme will be undertaken. The Minister has appointed Mr. Gerard Barry, as the independent chairperson for the review.
9. The parties contributing to the review will comprise a representative from C&A Branch, Military C&A, Defence Forces Personnel Policy Branch, Defence

Forces J1 Branch, PDFORRA, RACO and the Department of Public Expenditure and Reform.

10. The Chairperson is to be provided with secretarial and research support by a nominated Department of Defence staff member who is not assigned to the C&A Branch. A member of the Permanent Defence Force nominated by the Chief of Staff will act as a contact point for the Chairperson and the person providing research and secretarial support to the chairperson. The nominee shall provide support and research regarding matters relevant to the Permanent Defence Force as may be required from time to time.
11. The parties shall meet at the direction of the chairperson and the chairperson shall seek a written submission from key stakeholders including Civil/Military Management, PDFORRA, RACO and any other individuals, groups or organisations that he deems appropriate.
12. The Chairperson is to provide a report to the Minister for Defence no later than six months from the commencement of the process. Said report is to be drafted by the Chairperson, taking into account the submissions and discussions that take place between the parties. The report should reflect the agreed positions of the parties, and where there is no such agreement it is open to the Chairperson to make his own recommendations and for these to be included in his report.

## **Appendix K: Dept. of Defence Submission C&A Review.**

### **Department of Defence Submission Summary**

#### **C & A Scheme**

##### **Structure**

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

##### **Council**

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

##### **Chairperson**

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

##### **Facilitation**

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

##### **Arbitration**

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

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

##### **Scope – Matters encompassed by the Scheme**

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

As per Section 2(1) of the Defence (Amendment), Act 1990 all matters relating to operations, raising, maintenance, command, constitution, organisation and discipline

of the Defence Forces and offences in relating to the DF and military property are excluded.

### **Individual Claims**

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

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

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

### **Process**

#### **Presentation of Claims**

Many claims submitted are deficient in terms of detail and necessitates requests for additional information and clarity before the merits and extent can be assessed. In order to expedite the process and thus minimise delays a standard format should be put in place for the initial presentation of claims.

#### **Parallel dispute resolution process**

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

#### **Circulation of Management Initiatives**

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

#### **Redress of Wrongs Process/ Defence Forces Ombudsman**

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

#### **Euromil v Ireland – Consideration of Findings**

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

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

The feasibility of the Defence Forces Associations becoming associate members of the Irish Congress of Trade Unions (ICTU) should be explored. The ICTU should be approached to ascertain the conditions attached given that any form of industrial action is irreconcilable with military service. Where the Government decides to deploy the Defence Forces for the maintenance of essential services, the ability of the Defence Forces to perform all duties as assigned by Government cannot be impeded by affiliation with any organisation.

### **General Data regulation**

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

## **Appendix L: DF Military Management Submission C&A Review.**

### **Defence Forces Military Management Submission Summary**

#### **Introduction**

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

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

#### **C & A Scheme**

##### **Conciliation Council:**

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

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

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

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

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



to implementation and be subject to a Conciliation Council Report in a time sensitive manner.

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

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

#### **Facilitation:**

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

#### **Arbitration:**

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

#### **Adjudication.**

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

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

#### **International Comparators**

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

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

#### **ECSR Findings:**

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

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

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

### **National Pay Talks/ Pay Determination**

Many of the current DF IR issues originate from the economic downturn and subsequent National Agreements and Acts such as FEMPI, the Haddington Road Agreement (HRA) and Lansdowne Road Agreements (LRA) 1 and 2, the Pensions Act of 2012 and the Defence Forces Reorganisation in 2012. These Agreements and Acts reduced pay and allowances across the Public Service and additionally within the Defence Sector through cost saving initiatives.

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

### **Pay Determination Recommendation**

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

### **Redress of Wrongs**

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

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

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

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

### **Recommendations for improving the Scheme**

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

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

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

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

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

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

## **Appendix M: DPER Submission C&A Review.**

### **Department of Public Expenditure & Reform Submission Summary**

#### **DPER**

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

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

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

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

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

#### **C & A Scheme**

##### **Background:**

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

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

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

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

##### **Chairperson of Conciliation Council:**

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

**Council role in the dissemination of Information:**

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

**Process:**

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

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

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

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

**Scope:**

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

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

**Euromil v Ireland:**

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

## **Appendix N: RACO Submission C&A Review.**

### **RACO Submission Summary**

#### **Summary of RACO's perspective;**

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

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

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

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

#### **Summary of RACO's observations on scheme operation;**

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

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

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

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

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

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

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

Where the DF Associations are unable to influence disputes by the threat or conduct of industrial action, more considered management engagement is a system requirement in order for any DF C&A scheme to be successful. Management must demonstrate respect for the Government's DF C&A Scheme and the restricted rights of those who serve Óglaigh na hÉireann.

#### **Summary of RACO observations on Conciliation Council structure;**

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

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

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

The current practice of nominating a Chairperson from DOD does not lend itself to a situation where the Chair can build positive engagements and relations, mutual trust, confidence in the process, a sense of calmness or stability, deliver for both parties,

provide a focus, manage outcomes and ultimately reach early solutions before inevitably going to adversarial 3rd party mechanisms.

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

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

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

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

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

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

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

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

- Conflicting opinion between Military and Civilian management.
- A lack of delegated authority of those attending Sub-Committees to negotiate positions or settlements.
- Inability of Civilian management to prepare informed positions based on relevant and considered research and functional applicability to military organisations.
- Competing complexity of White Paper Strategy Projects with Organisation Strategy Statement Objectives is strangling any form of practical and effective operational decision making.
- There would appear to be deliberate efforts to avoid dealing with the clear organisational issues which predominately emanate from the Human Resources spectrum and efforts to avoid dealing with the scope of representation by extension.



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

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

### **Summary of RACO's observations on Military Forum;**

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

### **Summary of RACO's observations on Scope;**

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

### **DF C&A Scheme 1998.**

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

### **Summary of RACO's observations on impediments;**

#### **Corporate Knowledge and IR Experience:**

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

#### **Decision Making Efficiency and Defence Autonomy:**

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

#### **Role of Chairman of Conciliation Council:**

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

### **Labour Court & WRC - Sectoral Judgements and Equivalent relationship with DF:**

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

### **Status of Council Agreements:**

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

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

### **Summary of RACO's observations on alternative models;**

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

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

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

**Summary of RACO’s observations on ECSR findings;**

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

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

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

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

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

## **Appendix O: PDFORRA Submission C&A Review.**

### **PDFORRA Submission Summary**

#### **C & A Scheme**

##### **Experience with C & A Scheme:**

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

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

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

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

##### **Scope:**

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

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

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

##### **Process:**

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

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

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

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

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

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

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

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

#### **Ministerial role in the process:**

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

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

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

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

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

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

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

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

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

**Additional considerations:**

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

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

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

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

## Appendix P: C&A Structure & Process

**Table 1: Structure and Process.**

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

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



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

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

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

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

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

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

**Appendix Q: C&A Scope**

**Table 2 Subjects for Discussion under the C & A Schemes**

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



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

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

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

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

## Appendix R: Usage Findings

**Table 3 Adjudication and Arbitration Claims 2004 - 2017**

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

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