

Joint Committee on Enterprise, Trade and Employment

STATEMENT

by

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We would like to thank the Committee for affording us the opportunity to articulate our observations pertaining to forthcoming Pensions legislation and to inform the committee of possible difficulties that may not be apparent to legislators and, as former employees of Waterford Crystal, to highlight our own difficulties of dealing with the pensions industry over the last thirty years.

Background.

Between 1990 and 1992 a group of some 445¹ employees of Waterford Crystal agreed a Voluntary Redundancy Package with their employer. Although the 1990 Pension Legislation stipulated certain actions by employers and trustees of pension schemes in the event of employees being made redundant, we would assert that certain of the mandated actions in the Pensions Act did not occur at the time.

In 2009, following a ten year legal battle in The High Court, our pension provider offered a compensation package to the Plaintiffs, based on a depleted pension fund, on a Without Prejudice basis. The Plaintiffs accepted the offer from The Defendants, Agreement was reached (under seal) and the case was struck out on 13 January 2010. The existence of this settlement proves that those employees who accepted Voluntary Redundancy in 1992 should, at the time, have been offered the option of remaining members of the Waterford Crystal Pension Scheme, by way of the Deferred Pension option.

Following Waterford Crystal's insolvency in January 2009 and the insolvency of its employee pension scheme in March 2009, *Unite the Union* initiated Litigation against the Irish State stating that it had failed in its obligations to establish a pension protection system in the event of the insolvency of its employer in accordance with Article 8 of European Directive 2008/94EC² (previously 80/987/EEC).³

On 25 April 2013, the European Court of Justice (ECJ) found in favour of the litigants and referred the decision back the Irish High Court for consideration and to determine the level of compensation that the Irish State would have to provide. The government referred the issue to the LRC where Mr K. Mulvey was appointed mediator in the administration of the Compensation Fund, arising from which former employees of Waterford Crystal were compensated by the Government, resulting from the deficit in the Pension Fund. ⁴

Those employees of Waterford Crystal who had accepted the Voluntary Redundancy in 1992 were not included in this process, although they clearly should have been, arising from the above referenced 2010 Settlement arrived at between the Plaintiff and

Defendants. Indeed, according to Joan Burton TD, Minister for Social Welfare, one did not have to be a member of the Union to benefit from the Directive.⁵

Observations.

Our primary objective in addressing your Committee is to ensure that what has befallen us in our thirty year struggle does not occur again for those that may happen to be victims of a similar insolvency. Our interaction with and experience of the Pension Industry and the Political System may assist the Committee in ensuring that the new Pension Legislation safeguards the rights and entitlements of the members of Pension Schemes and indeed we have included some observations and recommendations in this brief Document,

Had the trustees of our pension scheme adhered to the provisions of the Pensions Act (1990) and, in 1992 issued us with our pension Options Forms, we would not be here today still advocating for our Legal entitlements from this Government. We believe that this Key Legal requirement be enshrined in the forthcoming Legislation and should be enforceable.

The Hogan & others ECJ case (initiated by *Unite the Union*) was taken as a **consequence of the loss of benefits for active and deferred members of the pension scheme.**⁶ As outlined above we are covered by the ECJ Directive and should have been included in the Government compensation fund but are confident that this should now occur in 2023.

In 2009, the **Unite the union** was contacted requesting that our group be included in the union's ECJ litigation. However, no reply was forthcoming. Again in 2016, Mary Butler TD wrote to the **Unite** Regional Secretary regarding our situation but again no reply was ever received. Subsequent correspondence to various Ministers for Social Welfare/Protection, up to the present, has elicited similar responses that were disturbingly replete with inaccurate and contradictory information. In short, we are convinced that the government has not implemented ECJ Directive 2008/94EC in respect of our entitlements.

We believe that forthcoming legislation should also protect those who leave pension schemes early. Unlike our situation, members of a Pension Scheme should be furnished with their three options and be compensated similar to Waterford Crystal workers in the event of any shortfall in a Pension Fund with the Government contributing the balance, or shortfall.

We are aware that pension providers are subcontracting portions of their pension portfolios to other providers who then become their agents. This makes it very difficult for individuals to ascertain who their actual pension provider is and more importantly makes it extremely difficult to access personal information. It is important that forthcoming legislation recognises this development and addresses it.

In the UK, following the Carol Robins case where having taken a case against the British government after a company's insolvency left her and others with only between 20% and 49% of their pension entitlements, the ECJ in January 2007 found in her favour stating that compensation should be in excess of 49%.⁷ We believe that the forthcoming Legislation should include a stipulation of a minimum % compensation for members of a Pension Scheme in the event of a company ceasing trading.

We believe that the Legislation should stipulate that companies make annual returns regarding their Pension Scheme so as to ensure an early warning system that would highlight potential problems in the funding of Pension Schemes by companies.

We are also of the opinion that the forthcoming Pension Legislation should mandate the Government to establish a fund exclusively for the compensation of members of a Pension Scheme in the event of their employer experiencing financial difficulties. This would be similar to the UK's Pension Protection Fund which was established in 2009 following the ECJ ruling in the Robins case. Ireland was a party with the UK in trying to limit in time the effects of a judgement favourable to the Claimants to proceedings brought before the date of delivery.

Conclusion.

We would like to conclude this brief Statement on a positive note.

In April 2022 we met with then Minister Damien English. This meeting was arranged by Senator John Cummins while the minister was in Waterford. On presenting him with the facts and supporting documentation pertaining to our situation the Minister was visibly taken aback at the contents therein and assured us that 'this can be fixed'.

Subsequent meetings with Minister Mary Butler, Sean Kelly, MEP, Ivana Bačik, TD, Matt Shanahan, TD, David Cullinane, TD, Marc O'Cathasaigh, TD, Paul Murphy, TD and Senator John Cummins were held, and all accepted the veracity of our argument i.e. that the presence of the Without Prejudice Agreement of January, 2010 between the Plaintiffs and Defendants meant that those of us who departed Waterford Crystal in the early 90's are entitled to receive the same level of compensation from the Government as that of all other employees of Waterford Crystal.

We now await constructive proposals and action from Government, but we are confident based on the observations of then Minister English and other TDs that our thirty-year struggle will, by the end of 2023, be finally 'fixed' to the satisfaction of all concerned.

Thanking this Committee again for the opportunity to make this Statement.

¹ This number refers to those whom the pension provider in an **Internal Report** in 1993 identified as not having returned their Option Forms.

² This Directive was the result of the Robins case and it clarified and strengthened the protection for employees outlined in Directive 08/987.

³ Thomas Hogan and others v Minister for Social and Family Affairs and other (Case C-398/11).

⁴ This refers to a separate Fund which the ECJ recommended that each country should have in place to protect employees. In 2009, following the Robins case the UK established a Pension Protection Fund. There is no such Fund in Ireland and no safety net for employees of insolvent Defined Benefit pension schemes of which there are over 490 in Ireland. Ireland still depends on the Pensions Act (1990) and its amendments to regulate such schemes. This is why Central Funding was used to compensate Waterford Crystal Workers in 2015.

⁵ *WLRFM* interview c.2014.

⁶ Investments and Pensions Europe, 10 December 2014. (www.ipe.com) accessed 7 January 2023. See also, RTE NEWS 25 March 2015.

⁷ In the UK compensation is set at 90%. (ECJ Case C-278/05). The Waterford Crystal workers received on average 82%. Those whose pensions were between €12,000 and €24,000 received 90%.