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Background

Achieving Equality: Progress Report on the Equality Programme for People with Disabilities, was issued by Congress and debated at BDC 2001. The report contained recommendations endorsed by conference, on foot of an Executive Council motion.

This report is an update on Congress activities in relation to people with disabilities from 2001 to 2005. It tracks progress in relation to a range of commitments secured in social partnership agreements and in the promotion of equality for people with disabilities, within trade unions.

The report notes the increasing involvement of Congress and affiliate unions in promoting, negotiating and organising on issues related to disability in the workplace, the inclusion of disability related policies in successive partnership agreements and its involvement in programmes and publications promoting disability awareness and increasing employment inclusion for people with disabilities.

While there has been significant progress in relation to some aspects of this agenda, movement has been slow in relation to other aspects, specifically: developing mainstream training opportunities, securing increased employment opportunities (including the achievement of the three percent employment quota across the Public Service, and dismantling barriers to employment such as the 'benefits trap'.

This latest report also contains a series of recommendations. In particular, in order to promote greater participation of those with disabilities, we would urge all unions to utilise existing legislation and pursue other actions based on the following priorities:

- **Trade Union Code of Practice on People with Disabilities: and,**
- **Promotion of Employment Opportunities in Public and Private Sectors**

Context: Disability & the World of Work

Work is central to most adult lives. People with disabilities are far less likely to have a job than other people of working age and thus they will often find themselves outside the mainstream of Irish life.

Recent National Disability Authority research showed that People with disabilities are two and a half times less likely to be in work than non-disabled people. This in turn contributes to the significantly higher rate of poverty in households headed by disabled people.

People who are more severely restricted in what they can do enjoy significantly lower rates of employment than others. Only a small minority of employers have employees with a disability, relatively few have made changes to the job or workplace to facilitate disabled workers and half are unaware of the grants and supports available to employ disabled workers. Sheltered work accounts for a relatively small percentage of employment for disabled people.

About 85 percent of working-age people with a disability or chronic illness have acquired that disability. This underlines the importance of strategies to retain people in work after the onset of a disability, if we want to increase the proportion of disabled people in a job.

Participation in education by young people with disabilities is significantly lower than their non-disabled counterparts. About a third of those aged 15 to 19 are already out of the education system.

Quite clearly, much remains to be done. This report outlines work done in the past four years and makes further recommendations for the future.

Legislating for Change

There have been some major legislative developments during the period under review:

Equality Bill

The Minister for Justice Equality & Law Reform announced on July 19, 2004 the

signing into law of the Equality Act 2004. All sections of the Act came into operation on that date and it makes a number of significant changes to both the Employment Equality Act 1998 (the '1998 Act') and the Equal Status Act 2000 (the '2000 Act').

The Act seeks to give effect to:

- Council Directive 2000/43/EC: *(Implementing the principle of equal treatment between persons irrespective of Racial or Ethnic origin);*
- Council Directive 2000/78/EC: *(Establishing a general framework for equal treatment in employment and occupation);*
- Directive 2002/73/EC of the European Parliament Amending Council Directive 76/207/EEC: *(on the implementation of the principle of equal treatment for men and women as regards access to employment vocational training and promotion and working conditions).*
- The Bill revokes in part and enacts in respect of the European Communities

(Burden of Proof in Gender Discrimination Cases) Regulation 2001, which gave effect to Council Directive 97/80/EC on the Burden of Proof in cases of discrimination based on sex.

The major changes in relation to disability are:

Under the Act there is a new requirement on employers to take appropriate measures to enable people with disabilities have access to employment and training, and opportunities to advance. An employer may only refuse to provide these ('reasonable accommodation') on the basis that that they impose a 'disproportionate burden' on the employer and in this regard account will be taken of the financial resources of the employer concerned. This is a significant improvement on the previous provisions which allowed an exemption if the cost involved was more than 'nominal'. The new Act imposes a greater responsibility on employers to facilitate participation by disabled people.

'Appropriate measures' includes:

Effective and practical measures to adapt place of business

Include adapting premises, equipment, working time, distribution of tasks, training or integrated resources

Do not include any treatment, facility or thing that the person might ordinarily or reasonably provide for him/herself

'Disproportionate burden' – takes into account:

Financial burden and other costs

Scale and resources available

Possibility of obtaining public funds or other assistance

Section 23 of the Act amends section 34 of the 1998 Act, which previously allowed discrimination on the disability grounds where actuarial evidence suggested increased costs would result. The disability ground is now removed from that section.

A new section (35.4) ensures that particular rates of remuneration for people with a disability are not below the minimum rate as stated in the National Minimum Wage Act 2000.

The Act includes a provision shifting the evidential burden of proof from the complainant to the respondent once a prima facie case has been established, i.e. if the claimant establishes facts from which it can be presumed that discrimination occurred under either the 1998 Act or the 2000 Act it will then be up to the respondent to prove that discrimination did not occur. Previously this was only the case in relation to claims of discrimination on the gender ground under the 1998 Act however the case law under the 2000 Act leaned in this direction also.

Disability Bill

Congress welcomed the publication of the text of the Disability Bill, 2004 published in October 2004. The publication implemented the overdue commitments of both the *PPF* and *Sustaining Progress*.

The Disabilities Bill, 2004, is intended to form an integral part of a proposed *Disability Strategy*, which aims to develop an integrated approach to promoting equality and social inclusion and improving service provision for people with disabilities. The key components of this proposed *Strategy* comprise of:

- The Disabilities Bill, 2004
- The Comhairle Bill, 2004 (to provide personal advocacy service, as appropriate)
- Outline Sectoral Plans (Reflecting proposals for improvements in services)
 - Six departments involved: *Health & Children, Social & Family Affairs, Transport, Enterprise, Trade & Employment, Environment, Heritage & Local Government, Communications, Marine & Natural Resources*
- The Education for Persons with Special Education Needs Act, 2004
- A commitment to multi-annual Investment Programmes for disability support services.

This more comprehensive approach has been sought by Congress for some time through

- (i) the range of commitments negotiated under the social partnership agreements as well as

- (ii) proposals for a more comprehensive funding approach in Budget Submissions of recent years.

Congress submitted a response to the Disabilities Bill, in February 2004, following consultation with the Disability Committee and attempts to secure numerous textual clarifications through our participation on the National Disability Authority.

In summary Congress recognised the case for supporting this legislation:

- The legislation is ground-breaking in intent i.e. it represents an albeit limited response to the recommendations of the *Commission on the Status of People with Disabilities (1993)* by legislating for access by this *specific grouping* in Irish Society to *specific services*.
- An entirely new legislative approach has been adopted i.e. the identification of **those with greatest need** i.e. those with "substantial restriction" in their capacity to function, arising from various medical conditions. Clearly, taking account of the

considerable demand for services, **providing** appropriate services for all, in **the short term** is not realistic. **Providing** services for those most-in-need is a good starting point and a valid approach in the context of developing comprehensive needs-based services for all people with disabilities over the medium to long term.

➤ The Bill proposed a balance between the rights-based approach and improving access to and the quality of Public Services.

However, the Congress support for the Disabilities Bill, 2004 was **qualified by concerns in respect of a number of key issues:**

- There is *ambiguity* around whether or not there is a **legal right to assessment**, regardless of resource implications, particularly in dispute circumstances.
- A selective approach of providing services to those most-in-need **exclusively is not a desirable outcome** and will create a

hierarchy of disability in the absence of long term goals. There is a distinct possibility of *exclusion* of people currently in receipt of services and a potential diminution of existing levels of services for some people with disabilities.

- There are no clear guidelines which would inform prioritisation of need. The absence of guidelines or a standardised approach, which reflect prioritisation criteria, will result in different service outcomes.
- The availability of resources to implement this legislation has exerted a considerable influence on its scope. The approach would only be acceptable in the context of an overall, systematic and planned expansion of service provision, informed by comprehensive needs assessment and the systematic collection and assessment of the extent of **unmet** service need, relative to **all** citizens with disabilities. *There are overriding restrictive provisions which control the financial implications of the Bill.*

- Within the Sectoral Plans the *omission of housing or transport* as key services which exert considerable influence over the quality of life and requirements for services for people with disabilities, is serious.
- There is considerable *uncertainty with respect to the implementation of this legislation*, in so far as significant aspects of its provisions are as yet to be determined in other instruments, which may or may not have legal effect i.e.;
- The Disabilities Bill, 2004 is designed as *Framework Legislation* to be supported by Codes of Practice and Regulation.
- The **operational challenges** posed in Sections of the Bill are very significant. Much of the implementation of this legislation relies on the proposed Health Service Executive (HSE) and on the Health and Information Quality Assurance (HIQA) bodies to determine, **bodies which do not currently exist or are in their infancy.**

- There is an absence of coherent timeframes to ensure the effective implementation of the Bill.

Work is ongoing to pursue these issues through amendments and Congress has met with opposition spokespeople and sought engagement with the Department. The Bill is up for Committee Stage in May 2005.

Enactment of the Education for Persons with Special Educational Needs Act 2004

The Education for Persons with Special Education Needs Act was enacted in July 2004. When it is commenced, the National Council for Special Education (NCSE) will then draw up an implementation for the Act, to be carried out over a five year period. Initially the Bill used the term 'disability' but this was later amended to 'special education needs'. Consequently, the definition of educational disability was replaced with a definition of special education needs. This definition reads:

"in relation to a person, a restriction in the capacity of the person to participate in and benefit from education on account of an

enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition."

The Act also provides for resources for the purposes of preparation and implementation of individual education plans, a key demand of Teachers' unions. These plans identify services that are necessary for a child to participate in and benefit from education. The Act also contains an appeal process, Special Education Needs Organisers, a Special Education Council and a section on mediation before court proceedings in relation to educational services. It also identifies a strengthened role for parents.

International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

In December 2001, the UN General Assembly established an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities.

The Ad Hoc Committee of the General Assembly held its first session at UN Headquarters (New York) in 2002. The Ad Hoc Committee has now met on five occasions. Several regional meetings or seminars were organised to contribute to the work of the Ad Hoc Committee also.

The Ad Hoc Committee has recommended to the General Assembly that a convention be elaborated, and established a working group to prepare a draft text which would be the basis for discussions. To see the status of the text following the discussions held during the fifth session of the Ad Hoc Committee in 2005, visit <http://www.un.org/esa/socdev/enable/>

Using the law: Case work at the Equality Tribunal

Currently 10.7 percent of Equality Authority case files relate to the disability ground and a common feature is a failure to make reasonable accommodation to ensure the employee with disabilities is fully capable of doing their job. Making such reasonable accommodation is key to unlocking the contribution of people with disabilities in the workplace and to addressing the high levels of unemployment they experience. It has also been argued that the protection afforded in the Employment Equality Act, 1998, applies to people employed in sheltered workshops. This issue arose in one case file which was settled.

The Labour Court is also sending unequivocal messages that discrimination on grounds of disability will not be tolerated. In one example, in *A Restaurant -v- A Worker* (EEDO38), the Labour Court awarded €7,500 to a waitress who was dismissed because of her epilepsy at a time when she was fully competent and fully capable of performing the duties of her employment.

Another striking feature of the files is the number of claims brought by people with disabilities who have been discriminated against by the public/semi-state sectors at the point of access to employment. The case files reveal that in some sectors people with disabilities will not be considered for certain positions and/or will fail medicals, irrespective of their capacity to carry out the job. The effectiveness of the Employment Equality Act, 1998, in this regard is limited as the maximum that can be awarded by the Equality Tribunal is €12,700 (if the employee is not in employment at the time). This is not proving to be an effective deterrent to this type of discrimination. Some of the most serious examples of discrimination occur in the area of access to employment particularly on the grounds of disability and race.

Other significant cases included

A claimant, who is deaf, applied for a permanent position in a financial institution. She requested that her application for the permanent position be based on practical skills and experience rather than the I.Q. test which had not been adapted to meet the

needs of a deaf person. A settlement was reached through mediation. This resulted in:

- The provision of appropriate signing facilities;
- Professional proofing of aptitude test to comply with the Employment Equality Act, 1998;
- Appointment to the permanent position;
- Payment of €4,000 along with arrears of salary.

In 2004, 10 cases on disability were decided. Two found in the complainants favour (Bowes v Southern Regional Fisheries Board E2005/08 and Mr. C. v A. Distribution Company Dec E2005/12). Most decisions dealt with the issue of whether the employer had met their obligation to provide reasonable accommodation. A number of decisions referred to the Labour Court's determination in *A Health and Fitness Club v A Worker* (EED037) outlining the process to be followed by an employer in relation to providing reasonable accommodation.

In February 2005, there was a significant award which could have the effect of deterring discrimination against those with mental health problems. The Labour Court found that the employer had a marked reluctance to accommodate the complainant in returning to work after a psychiatric illness and would not accept that the respondent gave any adequate consideration to providing the complainant with the type of special treatment which would have allowed him to resume work, following his discharge from hospital.

The Court found that the respondent failed to do all that was reasonable to accommodate the complainant's needs by providing him with special treatment or facilities so as to enable him to return to work on a phased basis. It found that the employer did discriminate against the complainant on grounds of his disability when it refused to allow him to resume employment.

The Claimant had been working on an Employment Integration Project, funded by FAS and administered by a Health Board.

The aim of the project was to prepare people with disabilities for employment. The project was subsequently replaced by a new Supported Employment Scheme which employed able-bodied people. The claimant was not offered employment with the new scheme. Following negotiations by the Equality Authority, the claimant was offered permanent employment as a clerical officer with the Health Board under the three percent Employment Target for People with Disabilities in Public Bodies.

More information at:

www.equalitytribunal.ie

New Codes of Practice

ILO Code of Practice

A new ILO code was drawn up to guide employers in the private and public sectors, to adopt a positive strategy in managing disability-related issues in the workplace. While the code is principally addressed to employers, it also acknowledges that governments have an essential role to play in creating a supportive legislative and social policy framework and providing

incentives to promote employment opportunities for people with disabilities. Moreover, the ILO places great emphasis on the participation of people with disabilities, in order for the code to be effective in securing real improvements in the lives of people with a disability. The contents of the code are based on the principles underpinning international instruments and initiatives designed to promote the safe and healthy employment of all persons with disabilities. This code is not a legally binding instrument and is not intended to supersede, or replace national legislation. It is intended to be read in the context of national conditions and to be applied in accordance with national law and practice. The code was finalised and unanimously adopted at the tripartite meeting of experts in Geneva, October 2001, convened at the decision of the ILO Governing Body.

The objective of this code is to provide practical guidance on the management of disability issues in the workplace with a view to:

- ensuring that people with disabilities have equal opportunities in the workplace;
- improving employment prospects for persons with disabilities by facilitating recruitment, return to work, job retention and opportunities for advancement;
- promoting a safe, accessible and healthy workplace;
- assuring that employer costs associated with disability among employees are minimised – including health care and insurance payments, in some instances;
- maximising the contribution which workers with disabilities can make to the enterprise.

Code of Practice for Sheltered Occupational Services (SOS)

The formulation of a policy framework to address the concerns of people working in sheltered workshops was significantly impeded over the past two years as the Department of Enterprise, Trade &

Employment displayed a discernible reluctance to engage on this issue with the Social Partners, despite efforts to raise these concerns through the *Sustaining Progress* Steering Committee. While a Code of Practice on Sheltered Occupational Services was agreed under the PPF, its implementation by the Department of Health relies upon the development of a complementary sheltered employment policy framework and the development of support measures by the Department of Enterprise, Trade & Employment.

In October 2003, the Department invited Congress to discuss proposals for a *Full Time Employment Support Scheme (FTESS)* which was intended to improve the employment opportunities and make a contribution towards providing options for those engaged in sheltered workshops. In these discussions Congress made it clear that the proposals fell far short of what was required to make a meaningful contribution and implement commitments under *Sustaining Progress*. Following widespread negative reaction to the proposals, discussions were resumed in March 2005, in an attempt to secure

agreement and resolve a range of issues raised by Congress and others.

Mainstreaming Service Provision & a Dedicated Disability Authority

Disability Research and Training Project by the Irish Congress of Trade Unions

Congress received support from the National Framework Committee for Equal Opportunities, for this project. The central aim was to develop competence among trade union officials and lay activists to pursue and negotiate equal opportunities in employment on behalf of (prospective) employees with disabilities. The key deficit in competence addressed by the project was identified as a better knowledge of the relatively recent equality legislation protecting the rights of people with disabilities in relation to employment. The project was developed on a partnership basis, incorporating inputs by people with disabilities, relevant state bodies and agencies as well as selected placement agencies responsible for the delivery of the supported employment model. The main elements of the project were:

(1) Research of (Good) Practice - Reasonable Accommodation

The provision of reasonable accommodation is central to achieving greater employment opportunities for people with disabilities. The concept was, however, an internationally developed one, transposed into Irish legislation without any great conceptual or practical understanding of its importance by people operating at the level of the enterprise. It has become widely used as a legal term and the parameters of its application have been decided through the operation of the Equality Tribunal (ODEI). The term is very significant as are the various decisions associated with it. It was for this reason the research of its evolution and application (Good Practice) was undertaken as part of the project and included as a central element in the Training Programme devised.

The researcher (Martin Durack, NUI Galway) reviewed existing practices, nationally and internationally, to explore the concepts of "reasonable

accommodation and positive action and identify examples of its application". He traced the origins of the concept of reasonable accommodation and showed how it has evolved and spawned associated concepts and ideas about equality in different jurisdictions. There was general agreement following the relevant sessions that a broader understanding of the concept and its application had been achieved among the participants on the Training Programme.

(2) The development of an intensive Training Programme on the particular provisions of the Employment Equality Act, 1998 (taking account of the provisions of the *Equality Bill, 2004*, then under discussion).

The rationale for Congress undertaking this work was to encourage participation from the widest possible range of unions. The programme was almost over subscribed and participants included representatives from a range of unions including representatives with disabilities.

- The programme was designed to reflect different perspectives, taking account of views of people with disabilities as well as state bodies and agencies charged with the implementation of the legislation and the experience of selected placement agents.
- The first hours of the programme were deliberately dominated by the perspectives of people with disabilities so that the participants could absorb and be influenced by their real life experiences (positive and negative) and draw on these to discuss the technical and other inputs of the course. The definition of disability and health versus social model of disability was discussed in the early session.
- The programme was designed to provide an opportunity to reflect on the capacity of the unions to pursue legislative protections of behalf of (prospective) members with disabilities. This was achieved through case work and examination of relevant though

individual union policies, procedures and structures in group work.

➤ Finally a range of technical expertise was provided through inputs by the Equality Authority and Equality Tribunal (ODEI), Mr. Martin Durack and FAS. In addition, there was some exploration of the extent of the problems to be resolved (context/environment – evidence of discrimination, barriers to employment, examples of reasonable accommodation, the use of codes of Practice etc) following presentations by Pauline Conroy (Public Sector) and Mairead Conroy and Elaine McGrath (ICTU/IBEC Workway Project – Private Sector). The latter input also served to build cohesion between separate efforts by Congress to stimulate employment opportunities and to bring the legislative perspective into the Workway Project.

(3) Developed Training Programme materials into a Training Manual

The course explored a variety of

perspectives and these have been compiled by Ralaheen & Associates Ltd., into a Training Booklet. The manual is intended to summarise the legislative protections as well as outline key questions which could be explored by union officials seeking to represent the interests of (prospective) members with disabilities.

The Training Booklet *Negotiating Disability in the Workplace: Guidance for Trade Union Representatives* was disseminated to all unions, including those who participated on the course and is available on the Congress website.

National Disability Authority (NDA)

Much of the effort of the NDA during the period has been dedicated to facilitating the consultation process which informed and influenced the shape of the Disabilities Bill, 2004. The NDA published a comprehensive Response to the Disabilities Bill, 2004 and Comhairle (Amendment) Bill, 2004 in November 2004 and is currently conducting a consultation process on the Government

Outline Sectoral Plans in the national Disability Strategy. Other significant publications during the period included:

- *Towards Best Practice in the Provision of Further Education, Employment and Training Services for People with Disabilities in Ireland*
- *Towards Best Practice in the Provision of Transport Services for People with Disabilities in Ireland*
- *Towards Best Practice in the Provision of Health Services for People with Disabilities in Ireland*
- *Disability and the Cost of Living*
- *Review of Access to Mental Health Services for People with Disabilities in Ireland*
- *Disability and Work: the picture we learn from official statistics.*

Congress is represented on the NDA by Paula Carey.

Employment and Training

Workway Project - raising awareness and addressing barriers to increase the employment opportunities for people with disabilities;

The Workway Initiative was proposed and developed by Congress in conjunction with IBEC and supported by the Department of Enterprise, Trade & Employment. It represented the first such social partnership initiative in this area and acknowledged the key roles of unions and employers in raising awareness and promoting the employment of people with disabilities in the private sector. The regions that were selected for the networks were Donegal, Galway, the Midlands, Cork and Kerry. Workway was launched in July 2002 by the Taoiseach. Phase I (to March 2004) was funded by the Department of Enterprise, Trade & Employment (€818,000).

Agreement was reached with FAS to test / explore the output / products of Workway in pilot companies in a second phase which was funded by FAS (€223,000).

Seven strategic objectives were agreed. These were to:

- Raise awareness of the employment potential of people with disabilities;
- Explore local employee / skill availability and labour shortages i.e. local employment opportunities which require the available skills;
- Identify barriers which prevent the take-up of employment opportunities, from the perspective of both employers and people with disabilities;
- Involve people with disabilities, employers and employee representatives in identifying and implementing practical local solutions to barriers associated with the take-up of employment;
- Impart information to employers, employee representatives, people with disabilities and training agencies on programmes and schemes which are available to assist the integration of people with disabilities into the workforce

and promote the take-up of these programmes and schemes;

- Link in with existing networks of employers, business associations, trade unions and other relevant interests who can promote the employment of people with disabilities;
- Inform public policy makers and service providers of the implications for the development of employment and training services for people with disabilities arising out of the networks through a National Steering Group.

The project coordinators and administrators were Mairead Conroy (Galway, Donegal and Midlands regions) and Elaine MacGrath (Cork and Kerry regions). Two administrators, Martha Nic Giolla Bhride and Siobhan MacSweeney were employed to provide support.

Materials developed by Workway

The ICTU-IBEC coordinators worked successfully with local union officials,

employers and people with disabilities within the Local Networks, assisted by the National Steering Committee, to produce a series of joint publications, based on the insight gained through organised workshops and regular meetings, on the barriers and opportunities faced by people with disabilities seeking work.

These publications formed the basis of promotional activities over the period of the initiative, along with contributing to a policy document outlining the experience of the Workway team over the course of the initiative, from a policy perspective. Major barriers were identified - the benefits traps, lack of coordinated support services and the requirement to engage at a deeper level with employers and people with disabilities than is currently experienced by either group.

A further 12 month phase of the Workway initiative was agreed with FAS to mid April 2005 building on previous work to:

- Develop a Template to address the deficits identified at Pre-Employment stage.

- Pilot the joint IBEC / ICTU Employment and Disability Guidelines.

- Develop a one stop information and employment website.

At the end of the project the Workway products were:

- IBEC/ICTU Disability & Employment Guidelines
- DVD – Disability in the Workplace
- The Way Ahead – Workway Policy Document
- Employment Preparation, Guide for Job Seekers with Disabilities
- Employment Preparation Information Sheet
- Training Brochure
- NetWorkway – The Newsletter of the Workway initiative (x5)
- Disability & Employment

- A Directory of Kerry Based Support Services
- A Directory of Cork Based Support Services
- Resourcing Opportunities for Disability in the Workplace
 - Donegal Wallchart
 - Galway Wallchart
- The Workway Website – www.workway.ie

The Initiative was independently evaluated by Goodbody Economic Consultants / Tom Martin & Associates (Nov 2004). The conclusions and recommendations reached in the evaluation of the Workway Project (extracts thereof) were:

"Workway was a considerable success in terms of developing effective co-operation networks and in terms of preparing a wide range of information awareness raising products.

Workway demonstrated the value of a social partnership approach to increasing awareness of the employment potential of people with

disabilities and the involvement of ICTU and IBEC has resulted in the project gaining a reach and level of credibility that would not have been possible if Workway had emanated from the disability sector.

Workway benefited from access to the local networks of its main partner organisations of ICTU and IBEC. The local networks played a major role in the development of the Workway outputs.

Workway clearly identified the type of information required by employers, employee representatives and people with disabilities and has produced innovative new material aimed at addressing these information needs.

Workway demonstrated the lack of co-ordination in relation to the provision of advice and support for employers and people with disabilities in accessing training and employment supports represents a key barrier to the development of more employment opportunities for people with disabilities."

The Future of Workway

In a series of recommendations, the evaluations considered future possibilities based on the social partnership model. However, these recommendations ignored the policy issues raised in the initiative – issues which continue to present the most significant barrier to increasing employment opportunities. In discussion with the Department of Enterprise, Trade & Employment in the final stages of the second Phase of Workway, Congress indicated that any further work would have to be predicated on addressing institutional and other barriers. Much of this is highlighted in the Workway policy paper, which critically documents the project experience in the context of the existing policy framework and its implementation at local level. These reflections are intended as a contribution towards explaining and addressing:

(i) the persistent and unacceptably high level of unemployment among people with disabilities (estimated to be between 60-70 percent) and

(ii) the significant and often interrelated barriers which are inhibiting progress towards increasing employment levels.

The Benefits Trap:

A special initiative in *Sustaining Progress*, on the long-term unemployed, was secured in order to equip people with the skills to facilitate access to good quality, secure employment and to continue the reintegration of these groups into the open labour market with a focus on progression opportunities. Action five of this initiative is designed to continue measures to make work pay and to encourage participation in the labour force. This was formulated to have a proactive policy of engagement with people on social welfare to ensure that they have the opportunity to avail of employment and training options; to create new opportunities to access employment and training; and to eliminate any gaps or disincentives in the application of secondary benefits. Progress has been very disappointing in this regard.

Presently, people with disabilities who go out to work stand to lose a significant array of benefits. Recent NDA research points out that alongside loss of the weekly welfare payment such as Disability Allowance, going to work will generally put someone over the income limit of a medical card, and entitlement to linked services such as free disability aids is also forfeit. The Household Benefits Package, Free Travel, Mobility Allowance and Rent Allowance could also be lost by someone entering employment. If the state were to meet the extra costs of disability without tying that help to subsistence-level incomes, it would be more financially attractive to people with disabilities to take a job.

New policy on employment of people with a disability in the Civil Service

The Government's three percent target for the employment in the public service of people with a disability is now in place for over 25 years. A Code of Practice on the Employment of People with a Disability in the Civil Service has been in place since 1994. As part of the modernisation programme for the Civil Service, the

Department of Finance, in agreement with the staff unions, commissioned Goodbody Economic Consultants to undertake research on the career progression of people with a disability in the Civil Service.

The Report entitled *Employment and Career Progression of People with a Disability in the Irish Civil Service* proposes a new approach, while maintaining the policy of giving priority in employment to people with a disability. The new approach emphasises the two separate aspects of the policy: first, an increased emphasis on recruitment with special competitions being arranged from time to time and, second, the need to take special measures to identify and support existing staff with a disability.

The Government has accepted the main recommendations of the report:

- the present Civil Service Code on the employment of people with a disability, drawn up in 1994, should be revised, in conjunction with the Civil Service unions, to put in place modern policies to positively manage over 2,300 civil

servants with a disability (approximately seven percent of existing staff). The code is currently being reviewed and will be revised to emphasise, in particular, policies to improve the career progression of people with a disability;

- new monitoring, reporting and recording arrangements in relation to staff with a disability in government departments and offices are required to accurately record progress and employment trends, including a move towards self disclosure using an appropriate format, these arrangements to be discussed and agreed in consultation with the Civil Service unions;

- the appointment of one full-time Disability Advisory Officer (DAO), in addition to the existing part-time Departmental Disability Liaison Officers, to advise and assist departments in developing and implementing policies for existing and new staff with disabilities, and supporting individual civil servants with disabilities; it is proposed that the DAO will be part of the Equality Unit in

the Department of Finance, and the post was advertised in April 2005 and the first task of this person will be to devise a new code of practice with a strong implementation process;

- the adoption of a new approach to the recruitment of people with a disability under which special competitions or sub-panels will be held from time to time to ensure that three percent of all recruits to the Civil Service are people with a disability.

Agreement has been reached with the staff unions at General Council on the implementation of the government decision.

Blindcraft Developments

Blindcraft, one of the few institutions that has provided the dignity of work for blind people in Ireland since 1957, was threatened with closure during 2004 as part of the government's healthcare reforms. The workers there had secured full legal status as employees and full remuneration for their work and are now paid at the level of the general operative grades within the

health board structure. Employment in Blindcraft has allowed many of them to live entirely normal and independent lives. Following a meeting with SIPTU, the Minister for Health announced that a working group would be established to examine all options. The group will be made up of representatives of SIPTU, the workforce, Blindcraft management and the Department of Health, would consult with FÁS and Enterprise Ireland on developing a viable business plan for the agency.

Improving income supports for People with Disabilities

Under the PPF, an Interdepartmental Working Group was established to examine the feasibility of the introduction of a Cost of Disability Payment to offset the extra costs associated with having or acquiring disability. The Working Group accepted the conclusions arising from a research Report by Indecon / NDA that:

"there are additional costs associated with having a disability in Ireland and that these costs can vary by disability type and by severity of disability. In addition, the Working

Group considers that age and social circumstances can also have an impact on the costs of disability"....but "that a national system of individual needs assessment is a prerequisite for any Cost of Disability Payment system based on severity of disability."

Based on the findings of the study and the proposed introduction of a national system of needs assessment arising from the Disabilities Bill, 2004, Congress sought the introduction of measures to offset the extra costs associated with disability comprising of a package of adequate and appropriate secondary benefits, (e.g. equipment, transport/travel, fuel, food and clothing, telephone additional medical and care assistance). This package would then be individualised, enhanced in accordance with the findings of the individual needs assessment and tailored accordingly.

Review of Vocational Training Provision

The Department of Enterprise Trade & Employment commissioned a comprehensive review of the overall effectiveness and efficiency of vocational training provision for people with

disabilities. In response to the recommendations of this review, FÁS is currently considering a new strategy on vocational training for people with a disability which has been promised in summer 2005. It is the view of Congress that progress so far has been very disappointing.

Unions Driving Change

Trade Union Code of Practice

Congress, in consultation with the Disability Committee has developed a new code of practice for unions on disability issues. The code is a response to legal requirements that trade unions now face as employers and service providers under equality legislation. This code aims to contribute to developing equality for people with disabilities and ensuring that they are recognised and treated as having equal status with all other persons.

Congress Disability Committee (Republic of Ireland)

The Congress Disability Committee continued to meet on a quarterly basis. Brendan Conway took up the position of Chairperson of the Committee.

The main focus of the Committee has been:

- The Disability Bill 2004;
- Improving Accessibility of Public Services for People with Disabilities;
- Development of a Trade Union Code of Practice for People with a Disability;
- Code of Practice on Sheltered Occupational Services;
- The Progress Report on the Congress Equality Programme for People with Disabilities BDC 2005.

During 2003/04 the Disability Committee monitored progress in these areas.

Improving Accessibility of Public Services for People with Disabilities In 2004

Congress submitted their observations to the National Disability Authority on their Draft Guidelines *Improving Accessibility of Public Services for People with Disabilities - Seeking Your Views*. Arising from a commitment in the PPF, the NDA was given a role along with the DJELR to guide and audit progress of Government Departments to make their services accessible to people with disabilities. Successful departments can be awarded accessibility symbols. Excellence through Accessibility (EtA) was founded in 2003 and after consultations with Government Departments has developed assessment tools, carried out pilots, done awareness raising (on the Built Environment and ICT, as well as FETAC approved Equality and Disability modules) and carried out Expert Peer Reviews. Advice and support has also been made available to state agencies – Dublin Bus, Failte Ireland, Dublin Airport Authority, Local Authorities, Comhairle and the Department of Enterprise, Trade & Employment. A Guide on Access Handbook is currently under preparation.

European Year of People with Disabilities

The European Union designated 2003 as the European Year of People with Disabilities (EYPD) in order to raise awareness of the abilities, talents and participation of people with disabilities as well as the barriers to inclusion they face. Congress was represented on the National Coordinating Committee charged with organising events to mark the Year. Brendan Conway was the Congress representative. For its part Congress chaired a consortium of organisations requested by the Minister of State, Mr. Frank Fahey, T.D. to present a series of five regional conferences in Cork, Galway, Limerick, Sligo and Waterford in November and December 2003. The objective of the conferences was to present local flagship employments where people with disabilities were successfully and gainfully employed, in the Private and Public Sectors. Congress was duly honoured for its contribution at the closing ceremony early in 2004.

The Way Forward

The priority areas for Congress and Trade Unions in the coming years should be:

Civil and Public Sector Employment Opportunities

Noting the disproportionate number people with disabilities in the lower pay grades of the civil and public service and the lack of promotion opportunities, unions will work to address the needs of civil and public servants with disabilities by promoting equality of opportunity between employees with and without disabilities by:

- organising briefing and awareness sessions on disability related issues in the workplace;
- arranging with management for the regular and accurate reporting of proportions of employees with a disability at different grade levels;
- pursuing positive action measures in accordance with the Equality Act, 2004 where disproportionate levels of employment of people are recorded and;

- negotiating appropriate accommodations to employees with a disability including improvements in access.

While welcoming the legislative provision of the Disabilities Bill, 2004 aimed at underpinning the three percent employment quota in public service and proposals to adopt a complex decentralised monitoring system in the Disabilities Bill 2004, Congress is concerned that this provision could, potentially, undermine the three percent employment target and will work with affiliate unions to ensure that the commitment remains and that appropriate mechanisms to monitor the achievement of the target are established as well as a penalty for non-compliance.

Private Sector

Congress welcomes the publication of the ICTU/IBEC Joint Employment Guidelines as a significant contribution to improving employment opportunities for people with disabilities in the Private sector and will work to support all unions in their efforts to pursue the implementation of these Guidelines in all private sector employments. Guidelines available on www.workway.ie

Trade Unions & Disability

Equality is a core principle of the trade union movement. Equality and fairness at work is a universal entitlement, which should not be defined by one's disability. Congress will promote and support all unions in their efforts to adopt and implement the Equality Clause approved at the Special Delegate Conference in September '04, which includes a clear commitment to promote equality and to eliminate all forms of harassment, prejudice and unfair discrimination, both within our own structures and through all our activities, including our own employment practices.

Congress will also promote and support all unions to adopt both the general equality clause and the new Trade Union Code of Practice for People with Disabilities to ensure that people with disabilities are recognised and treated as having equal status with all other persons within the trade union movement. All unions should work to promote equality and equal opportunities and to ensure that disability can be safely accommodated within our

work environment in all our employment practices and internal union practices and procedures.

May 2005