Consultation on the Reform of the State's Employment Rights and Industrial Relations Structures and Procedures

Submission by County Longford Citizens Information Service

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This report is submitted by the Co. Longford Citizens Information Service. We have taken all questions asked and answered them based on the knowledge and experience of working with individuals in relation to their issues within the employment law and industrial relations context. However, given the confines of the questions v's the anticipation of the development of new and innovative processes and procedures to eliminate confusion and open up a variety of channels of access to all citizens, we have at times strayed somewhat from survey format.

Background information:

Access to the various processes of redress should be available fairly and equitably to all citizens as a basic right and entitlement to natural justice and thereby be protected by the State. This process should be accessible, user friendly and guide and support the individual whether it is employer or employee. The process should ensure that no-one is precluded access to redress underthe 9 grounds of equality or because of lack of means.

Citizens Information Services provide information advice and advocacy to the public to support them in accessing their rights and entitlements to civil and social services. The service is free, confidential and independent. In recent years the advocacy brief within CIS's has developed considerably to incorporate a variety of forms of advocacy ranging from promoting self-advocacy through information and advice to representative advocacy which includes supporting and representing clients to seek redress through a variety of fora designed to accommodate the layperson including all of the employment dispute resolution bodies. To this end Co. Longford CIS has acquired a knowledge and expertise of the channels of redress within this context.

The Citizens Information Service has been working with both employers and employees in resolving disputes at the workplace level for many years. We are ideally located at a local level through a network of 42 Key services throughout the country and our service is independent and confidential.

As we are an independent service, we are uniquely positioned to assist in disputes at this level.

At the outset of this exercise it is imperative that if this proposed reform is to succeed it must take into account "all" modern mechanisms available to persons which will allow them to access this process easily, effectively, efficiently and securely. This includes a variety of electronic channels.

Maintaining good employment relations and resolving workplace conflict

1.1 How do you think employers and employees can best be supported inresolving disputes at workplace level?

- "Prevention rather than cure". Every employer should be obliged to supply all employees with clear grievance and disciplinary procedures. These should also be made available to themby the state body in the form of a generic set of policies and procedures on its website free of charge so that there can be no acceptance of non-compliance and no excuse for employees to cite ignorance of proper procedure.

- These policies would oblige employers and employees to resolve issues informally initially through a variety of clearly defined steps before proceeding to a more formal process.

- Both parties should be acutely aware of existing supports to them respectively e.g. information/ advice and representation through the existing bodies already providingthis such as CIS Network/NERA/Trade Unions/Private Consultants/Solicitor.

- Both parties should be educated in understanding the various issues that may arise within the workplace and be clear on how to pursue these matters after exhausting the informal process. Thisshould be done by directing both parties to a clearly developed website e.g.http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/index.htm. This is a U.K. website which is located by goggling "problems at work" it is totally accessible, user friendly and is very comprehensive in its steps of redress including mediation, arbitration, and conciliation. It directs users to the appropriate links including Citizens Advice Bureaus and other support agencies.

1.2 Can the provision of timely, up-to-date factual information help to facilitate earlyresolution of grievances/ claims and stem the flow of formal cases being submitted?

- Yes of course it can. Knowledge is empoweringbut it is also enlightening and for some it can quickly advise an individual whether they have in fact an issue or not.

- It has been our experience that a lack of accurate, up-to-date information and knowledge undoubtedly leads to speculation and confusion by both parties. It is imperative that before either party embarks on a resolution process each has access to independent information and advice rather than reacting prematurely and ultimately fuelling a situation.

- In all instances practicality and common sense must prevail.

- Where there is an obligation on both parties to exhaust the informal process there is a higher success rate of resolution at this juncture without it progressing to the formal process.

- Once again we would advocate the creation of a website such as http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/index.htm.backed up with clear, reader friendly publications for those who have access to such supports and for those who do not, that "the body" would promote local support agencies which provide information and advocacy and are free of charge.

1.3 When and how should interventions be available from the State?

- Intervention should be made available from the State in instances where**all** informal processes have been exhausted and unsuccessfulwhere a statement is provided by either party outlining the reasons why.
- Intervention could be made conditional on attempting to resolve the issue by engaging in the first instance with the support agencies providing information and advocacy.
- Intervention should also be available where one party refuses to engage in the process. (It has been our experience that whilst the employee and/or our service have tried to negotiate with employers some are just not willing to engage and therefore there is an obligation to proceed to the formal process.
- Intervention at this juncture should be available electronically i.e. on-line or paper based vis-à-vis **one** detailed clear application form which can be easily split and distributed at the front line entry point to the relevant section.

1.4 How do you think access by employers and employees to a just, fair and efficientadjudication process can be ensured?

- It is important that the State body clearly define their ethos and declare this to all parties.
- All information/application forms and processes should be non-complex and accessible taking into account the 9 grounds of equality and possibly including Health & Safety in relation to employee issues.
- Parties should have access to free independent advice. (e.g.nationwide CIS network)
- The process should be as non-bureaucratic as possible. This means eliminating tiers of administration which already exists.

Integrated structure

2.1 Do you agree that the integrated two-tier model should be adopted as guiding principle?

Yes. The concept of the proposed model is one that we would agree with in principal. However, one would have to seriously look at the following;

- How is the 2 tier model to be implemented?
- Who will take on the responsibility of the front line entry point (electronic or paper based)?

- Is it proposed that this is the first point of call for all employment related issues for employees and employers?
- Is this to be an information and advice point also?
- If it is solely an information point then it would be acceptable to remain within the state structures but if advice is also part of this service then it would be reasonable to propose that an independent body would take over this role.(E.g. CIS network)
- Although NERA already has this function with regard to employment rights information; they do not provide an advice service or a mediation service to resolve cases at a workplace level unlike the CIS network.

2.2.Do you agree that "differentiation" of processing channels should be minimised tooptimise the benefits of the proposed reform and to avoid re-introduction of institutional andprocedural rigidities?

Yes. The idea of there being one unified forum for the hearing and enforcement of employment rights cases that are unresolved at local level is one that we would support. We feel that the present system is confusing and overly cumbersome for the individual to navigate without specialist support. Otherwise the proposed reform will incorporate changes and yet not be effective in reducing the complexity and administration of same. The current system can preclude someone from pursuing an issue should they be unaware or ill advised on current procedures and thereby simply failing to tick the appropriate box.

2.3 Should all claims in respect of employment related complaints/claims (includingemployment related equality matters) be submitted and dealt with by one body of firstinstance?

Yes. This mayalleviate a lot of confusion for individuals trying to access the system. However one must look at the application process

- Time frame for processing applications to relevant case workers/ departments
- Efficiency of this process
- Clarity and balance of criteria on which a determination is made

2.4 Should employment rights cases only go to the body of second instance on appeal (i.e. should the right of either side to object to the body of first instance hearing a case beremoved)?

Yes because if in the first instance there is an obligation to exhaust the informal process and engage with the support agencies then the body make the adjudication in the first instance will have all the relevant supporting documentation outlining the merits of the case and thereby be more informed at this juncture.

2.5 If minimal differentiation within a two-tier structure is to be pursued, what would theoptimum streams / chambers be within both the first instance and the appeals entity? Forexample, is there a need to retain some organisational distance / separation between thedistinctive roles of

- The **inspectorate function** (i.e. NERA's role in inspection, enforcement and whereappropriate prosecution);
- the **conciliation and mediation processes dealing with collective disputes**;
- the **advisory / mediation / investigative procedures** dealing with individual industrialrelations and employment rights claims;
- any subsequent **formal adjudication** on such individual cases.

How might a satisfactory segregation of these distinctive functions be best achieved?

Let us look at each function separately

- Inspectorate function of NERA – this should remain as a separate entity to the other processes as it deals with inspection of employers and their practices. This should still remain as a separate application form. It would be advisable that parties requiring information be made aware of the inspectorate as this may be a viable option to them.
- The conciliation and mediation processes dealing with collective disputesshould be available and exhausted at the first tier and combined with the advisory/mediation/investigative procedures dealing with individual industrial relations and employment rights claims as they are essentially addressing the same issues. These can then incorporate a formal adjudication process.

2.6 What would be the advantages and disadvantages of having statutory redundancy appealshandled on an administrative basis, perhaps through the established social welfare appealsstructure; given that statutory redundancy payments are now administered by the Departmentof Social Protection?

The advantages of such a structure would be;

- The alleviation of the lengthy delays that are currently being processed through the EAT especially for cases where there is no issue as to the legitimacy of the claim but where the employer is refusing to engage in the redundancy process.
- Channelling these claims through the Social Welfare Appeals would be cost effective if only to avoid the current bureaucratic systems of holding EAT's to endorse the legitimacy of a claim but they would have to be an understanding in Social Welfare of what qualifies a redundancy situation otherwise there would be no benefit other than the delays incurred by EAT endorsing them as a legitimate claim and the transfer to Social Welfare for payment.
- The EAT is an increasingly legalistic and intimidating setting for employees and therefore an administrative process such as the SW appeals process would be a more suitable setting.
- Redundancy payments could be prioritised as the delays in receiving this entitlement can have a huge impact on an individual's circumstances particularly where there are already financial demands.

A possible disadvantage to this structure could be;

- If such a move were to occur, it is important that the SW appeals office be sufficiently resourced to accommodate the new claims. It is already dealing with an unprecedented number of claims across a range of services and there are existing lengthy delays for claimants. Redundancy payments should be priority claims as the failure to receive these monies can have a huge impact on individuals and families dealing with huge upheaval and changes in circumstances.

- Staff of Social Welfare would require training on Redundancy Procedures.

Appointment, tenure, etc, arrangements in new streamlined employment rights bodies

2.7 Should the arrangements for the appointment and tenure of those working in/ appointed tothe new streamlined employment rights bodies be changed, and if so, what should be theguiding principles?

The guiding principles for the employment of those working within the employment rights body should be as follows;

- Background in employment rights; employment law; employer and union (industrial relations) knowledge.

- A common sense, practical approach to problem solving.

(This response requires a more specialised knowledge of public service structures and procedures for appointments)

Information and Advice

2.8 Should there be one website covering all employment rights and industrial relationsmatters?

Yes. http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/index.htm

At present there is the NERA website, The LRC website, The EAT website, Labour Court website, H&S website, Equality Tribunal website, Equality Authority website…….!!!

Recommend the establishment of a website mirroring the above website which incorporates all aspects of employment law covered by the various sections mentioned above.

2.9 Do you agree that a more coherent and co-ordinated approach to theprovision of advice and information on industrial relations and employment rights issuesshould form part of the services of the new first instance body?

Yes, however, the Citizens information services already deal with a huge number of employment related queries, as do NERA. In effect there is a doubling up of services being provided. However CIS unlike NERA provide and advocacy service as a follow on from information and advice and ultimately for the most part brings the matter to conclusion usually through the informal processes by negotiation, dialogue and the encouragement of practicality and common sense.

It may recognise the CIC's within the new structure as having a legitimate role in dispute resolution.

2.10 What is the best method of providing information and advice?

Information and advice can be provided in a variety of media today including

- Literature e.g. booklets/ leaflets
- Online websites
- Phone centres
- Face to face queries.

The Citizens Information services provide all of these forms of information and advice but also offer a follow-up advocacy service thus ensuring that individuals have all possible strands of support available to them.

When it comes to advice, this is more difficult to ascertain through literature and websites. One would need a point of contact i.e. Citizens Information Services, with the advisor in this situation either over the phone or face to face. Often the advisor requires further information from the individual in order to allow them make informed decisions and therefore advice queries can often requirefurtherconsultation.

2.11 Should non-directive advice be provided to employees andemployers on what options may be available to them on the basis of the facts provided andwhere to go for help if required?

Yes. As long as the advice being provided is impartial, based on accurate and up-to-date information and that the service providing the advice is deemed as an independent entity to the appeals and formal channels, otherwise the advice given may impact the case brought by an individual.

Single Point of Entry /Submitting Individual Industrial Relations and Employment

Rights Claims

2.12 How can a single point of entry for all individual industrial relations and employmentrights complaints/claims best be achieved?

In a one point entry point system it may be difficult to separate claims into different issues/ legislation

All staff within this body must have a thorough knowledge of the huge range of employment law and Industrial Relation legislation involved. It is often that there is more than one issue involved in an individual claim so the distribution of claims to particular sections may pose a problem. Again all staff must have an overall competency in all possible claims i.e.

- general knowledge base
- centralised sorting point
- generic case workers and individual expert areas

2.13 Should there be a single application form for all individual first instance industrialrelations and employment rights complaints/claims?

This could of course alleviate a number of issues for individuals such as filling out forms incorrectly etc. due to a lack of knowledge of the legislation and also where there are a number of claims it would mean that only one form is required. However, this could delay the initial process as claims will then have to be directed to the relevant department.

2.14 What measures could be taken to improve information gathering from complainants/applicants at application stage?

The idea of a single entry point system and a single application form in electronic and paper format will inevitably be quite detailed. A means to support individuals through this could be:

- Endorsing referrals to support agencies and recognising the competencies of services already engaging in this work e.g. Citizens Information Services
- For those more experienced applicants there could be an option to specify on the submission which section it requires to be sent to and for it to be completely processed electronically.

2.15 Should there be a consistent time limit for initiating all complaints/claims/appeals and ifso what should it be?

Yes. Time limits ensure that cases are dealt within a reasonably fast and efficient manner. The limit for complaints should be 6 months unless where the informal process has run longer than expected without resolution then the period **may** be extended to 12 months. There should also be a strict turnaround timeframe which is only extended by virtue of incomplete applications or a requirement for additional information.

2.16 Do you agree that more consistent arrangements are required for the representation ofclaimants so as to enable individuals to nominate a person to represent them at a hearing e.g.trades union official, solicitor, other representatives, etc?

Yes. Although the existing employment/ industrial relation settings were set up to not require representation, this is no longer a reality with many individuals requiring representation of some sort. In this regard a choice of representation should be offered to applicants and they should be obliged if applicable to identify their representative or representative organisation on the cover of the application similar to the Ombudsman's application (example attached).

2.17 Where the power to present/refer a complaint is currently limited to the claimant, shouldit be extended to include the claimant's trade union and, where appropriate, the claimant'sparent/guardian?

No. A claim is still the individuals right and therefore it should be the individual who refers their complaint. However, it may not necessarily be the individual who presents their claim dependent on if they have representation.

An exception to this rule could however be made under the disability act where in such instances the services of a Disability Advocate (provided by the Citizens Information Service and introduced into Law under this act) could be invoked.

Enforcement

2.18 Should there be a consistent method of enforcing awards of employment rights bodiesand if so what should that be?

Yes. All awards should be enforced through one body only and all procedures should be identical regardless of the natureof the award or the legislation under which the claim was taken. This will however require a change in legislation and establish a section given powers of enforcement to ensure that adjudications and decisions made by both first and second tiers are implemented and act as a commissioner of law enforcement within the new body.

An Example:

At present an employee with a Rights Commissioners decision under the Organisation of Working Time Act must then proceed to the labour court to have this decision enforced if the employer refuses to pay on the original decision. Subsequent to this, if payment is still not secured, the employer must then take their case to the Circuit Court (County Registrar) to be enforced. This is then sent to the County Sheriff who proceeds to engage the employer to recoup the debt.

It would be proposed that the minister also develops a penalty system for employers who refuse to pay out on decisions and awards that are made against their company or themselves as a sole trader. It is our experience that as there is no repercussion on an employer who does not pay an award, there is no incentive to pay an award. A penalty system may result in less need for an enforcement route in the first instance.

Enforcement will require guidelines for debt collection procedure (similar to the Sheriff's office) which has provision for payment plans to be implemented and/or an appeal on the basis of genuine hardship and inability to pay.

When considering the issue of enforcement, the Directorate of Corporate Enforcement must be considered as another matter to be examined. It is not uncommon that where a Company is no longer trading and past employees have already been awarded unpaid wages and/or notice through the Rights Commissioner service they are precluded from pursuing their entitlement through the insolvency payment.

In such instances there is no requirement for a Company to wind up business in any official capacity and therefore the only mechanism available to the employee is to pursue the employer to declare their situation through the High Court which is generally beyond their financial ability. This lack of enforcement by different bodies and a lack of effective communications between the bodiesinvariably could lead to an employee's issues being nullified and becomming a victim of "being caught in the middle.

Facilitating early interventions and alternative dispute resolution methods

3.1 What interventions should be available prior to a formal hearing or inspection to resolvegrievances or non-compliance e.g. telephone contact, informal hearings, more formalmediation, conciliation or arbitration?

- **It is fundamental that where it is apparent a work ethos exists this should be fostered at all costs.**
- All of the above. However the independence of the body/agency providing this service will impact on the success of the process.

3.2 What is the best method of identifying suitable cases for early intervention?

Merit and legislatively based. Documentary evidence is required at the initial stage or at least easily obtained under Data Protection or Freedom of Information where applicable. This could be provided through the Citizens Information Service initially.

3.3 At what stage should the intervention take place, for example should it be available whenthe person first seeks information, prior to them lodging a complaint/claim or after acomplaint/claim is lodged?

Prior to a complaint being made.

Information may be all that is required in some instances and it allows the individual to make an informed decision on the matter.

3.4 Is there scope for harnessing the expertise and capacity of personnel within the existingbodies to decide on straightforward issues where purely factual matters are in dispute?

Whilst as a concept this is a positive use of existing resources and expertise, one has to take into account that each of these bodies to date deal with specific pieces of legislation but not all. The rights commissioner service has possibly the broadest scope but they don't deal with redundancy, equality etc. there would have to be an amalgamation of bodies to bring all knowledge together.

3.5 Is there scope for forging positive connections between the public dispute resolutionsystem and external experts in preventive alternative dispute resolution methods at workplacelevel?

It is our experience that it is mostly small businesses and sole traders that are unaware of their obligations as employers or proper procedures that causes conflict. Larger companies have HR departments and comprehensive procedures in place however they too for the most part can rush ahead to the formal process without first exhausting the informal process. This can often be due to a lack of experience and/or the belief that the Company, having the greater power will intimidate the employee into submission or retraction.

3.6 Should parties be required to set their case out in writing?

Yes. Written submissions allow each party to relay their case in detail and uninfluenced and it reduces the chance of misinformation. This will also support the possibility of early intervention as all information would be available upon application. However individuals should have access to a service that can assist and support them in completing such submissions.

3.7 Should all complaints/claims be examined for potential interventions and should time limitsapply to the offers of conciliation or mediation support?

Yes as this may reduce waiting times for formal hearing. However one must look at the number of cases that will appeal such first point decisions etc. It sounds very much like the decision/ review/ appeal processes that dictates the SW decision and appeals process. One would have to question is this a model of best practice? The Social Welfare waiting lists for appeals in this instance is very long and could ultimately be as for employment related cases too.

3.8 Are there particular kinds of issues, for instance, where mediation is likely to beespecially helpful or, alternatively, where it is not likely to be helpful?

Obviously mediation is helpful in a situation where both parties are willing to engage. However there are instances in which one or both parties refuse to engage. In such cases there is obviously no point in providing a mediation service. In addition one would have to look at the outcomes/decisions that are formulated and question if these decisions are legally binding.If not then it ultimately becomes a pointless exercise.

3.9 Would there be merit in having a "preliminary hearing" process and if so how should itoperate?

Is it likely that this will just delay the process even further?

3.10 Should certain cases be dealt with on the basis of written submissions only?

No, as the physical and emotional impact cannot be thoroughly conveyed in writing. Also much of an individual's redress is provided for in being given the opportunity to verbally articulate their grievance.

3.11 Should attempts at resolution have any bearing on any subsequent hearing or should theprocess be confidential and not admissible in any hearing?

Yes, attempts should have a bearing on a subsequent hearing as it infers that one or both parties are "genuinely" endeavouring to resolve the conflict however, it could be the case that one or other party is only exhausting this process maliciously to waste time, exhaust the will to proceed, to create a concept of a willingness to resolve matter without being genuine.

Conduct of Proceedings

3.12 Should there be a uniform set of procedures regulating the conduct of hearings in allcases heard at first instance?

Yes. To ensure balance, fairness and equity.

3.13 Should first instance jurisdictions be empowered to dismiss what are adjudged to befrivolous, vexatious or misconceived claims without holding a formal hearing?

Yes but there must be the opportunity to appeal in such instances should motive be misinterpreted.

3.14 Should hearings of employment rights disputes /appeals be heard in public or in private?

The first tier could be held in private to encourage engagement of both parties. However the appeal tier should be public as this can deter the unwanted attention of such a forum, it also encourages both parties to consider the seriousness and the impact of the outcome from both a business and personal perspective.

3.15 Should there be a uniform period for submitting appeals?

There should be a uniform period of 8 weeks which provides ample time for appeal from both parties