



Dear Sirs,

RGDATA is a representative body for the independent grocery trade in Ireland. Our members own and operate retail grocery stores throughout the State. Collectively our members employ close to 90,000 employees, with a mix of unionised and non unionised employment.

We welcome the opportunity to respond to this consultation process on the reform of the State's employment rights and industrial relation structures and procedures.

Before submitting specific comments in relation to the proposal, there are a number of issues that I wish to address and which apply regardless of the particular forum through which employment rights or industrial relations matters are dealt with.

- **Onus is always on the employer**

Consistent feedback from RGDATA members is that in disputes or hearings which relate to the assertion of employment rights by current or former employees the structure is militated against the employer, who must satisfy what is an undue and excessive burden or proof in most instances. In the context of the reform of the employments rights structures and procedures it is important that a more balanced approach be taken so that the interest of employers and employees are balanced and one is not seen as having an unfair advantage over the other.

- **Spurious and vexatious claims**

A recent feature of our members' experience with employment rights bodies has been a practice whereby certain claimants and in particular certain lawyers acting their behalf, will engage in "fishing expeditions" in an attempt to secure a settlement in cash terms from an employer on what is often a spurious and vexatious claim. From the employer's perspective, the claims are received in relation to an employee who may have left employment months previously and in many cases would have left the jurisdiction by the time the claim is received. The employer is then required to prepare for a claim, instructing a solicitor and allocating the management and owner's time to attend the hearing. Often when they attend the hearing, there is no appearance by the claimant and the employer has been put to excessive cost in processing a claim which is not advanced. There should be some mechanism for sifting claims so that claims that are genuine are entertained whereas claims that are spurious or speculative are weeded out. An onus for a claimant to fully set out a claim in writing at the outset would help. Plus an onus on the claimant regarding attendance at the hearing should also be considered.

- **An appellate system**

At present the situation in relation to Rights Commissioners and the Employment Appeals Tribunal in relation to certain categories of claims is cumbersome and unwieldy. In particular the fact that an appeal by an employer or an employee to the Employment Appeals Tribunal Rights Commission's decision involves a full re hearing of the case rather than an appeal on the decision of the Rights Commissioner is excessive and involves considerable duplication of work and effort. It also involves a duplication of cost from the employer's perspective again given that they will have to usually instruct Solicitors or Counsel to advise and assist in presentation of a case. Some mechanism for streamlining the conduct of hearings and appeals, to remove the necessity for instructing lawyers would be welcome. In particular in any mechanism designed to reform the employment rights structures and procedures, it should be essential that no award is made against an employer for legal costs. It would be a retrograde step to facilitate the involvement of lawyers in these cases given that they tend to prolong the process, and remove the level of informality that should be the hallmark of conduct and proceedings between employers and employees in these hearings.

- **De minimus level or threshold**

Another common complaint relates to the need to introduce some de minimus level or threshold for claims. At present an employer can be put to a considerable amount of work and effort defending a claim for a payment of less than €100 to a former employee. Some mechanism to secure or address such issues around low level claims should be introduced. The structure based around the small claims court and in particular the mediating role played by the District Court Clerk in such instances might provide a model that could be employed here.

- **Delays**

One of the central most dysfunctional elements of the resolution and appeals process for employment rights bodies in Ireland relates to the excessive delays in the hearing of cases in the first instance and their subsequent treatment on appeal. It is in no one's interest, either the employer or the employee, for these cases to be dragged on for years from the original incident giving rise to the complaint. From an employer's perspective, staff move on and it is often hard to retain the evidence necessary to defend a case when the instance giving rise to it occurred three years previously. The maxim of justice delayed is justice denied applies equally to respondents to claims as it does to claimants. It should be a requirement in the event that if the State is not able to process these claims in an expeditious manner, that the claims could be outsourced to an external agency under service level agreements. There is no reason for the organs of the State to be involved directly in the scheduling and conduct of these cases. This could easily be subcontracted to an outsource service provider who could conduct the administration of the claims process on behalf of the State.

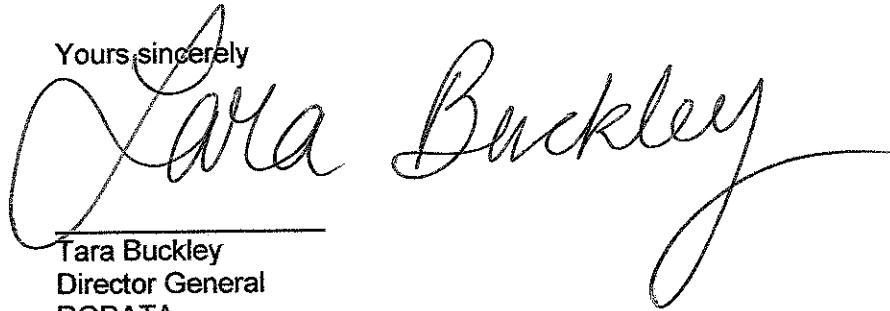
In relation to some of the specific questions arising under the consultation document we respond as follows;

- 1 RGDATA agrees that an integrated two tier model should be adopted as a guiding principle for the structure to address the usual IR grievances and claims relating to statutory entitlements and equality issues. As stated previously it is important that the appeals process should not duplicate work carried at the initial hearing. Allowing a full hearing on appeal, rather than an appeal on a matter that has been decided is both wasteful and unnecessary. There should also be streamlining of all claims to a single body in the first instance. This would be consistent with the commitment in the Programme for Government for a reduction in the regulatory burden on business and approved efficiencies in the administration of such bodies. In particular we believe all claimants should be compelled to go directly to the body of first instance and not have the right to elect between a Rights Commissioner and an Employment Appeals Tribunal as the case may be. **The structure should also make provision for mediation as an alternative to a full blown hearing or determination between an employer and an employee. There should be an onus on both the employer and the employee to explore a mediated settlement rather than allow the matter go to a full hearing.**
- 2 Vexatious claims – It is also important that the claimant who is taking the claim should be compelled to provide a full and detailed outline of the basis of the claim and send accompanying documentation that forms the basis of that claim when lodging the complaint in the first instance. Similarly a defendant who wishes to defend a claim should set out the full basis of the defense. This should be done in simple plain English rather than in a legalistic manner. In addition there should be a time limit for initiating complaints, claims and appeals – a limit of three months would seem reasonable in all the circumstances.
- 3 In terms of representation in front of an Employment Rights body, RGDATA believes that a claimant and a respondent should be able to nominate any person to represent them.
- 4 As stated above we believe that there is significant scope for the exploration of alternative dispute resolution methods including mediation in dealing with disputes from employers and employees. The advantage of such forums is that they are more cost effective, do not involve public ground standing by the employer or the employee and provide a basis on which matters can be resolved and normal relations restored between employers and employees who remain in a contractual relationship.
- 5 It is possible that certain types of cases including cases below a particular threshold should be dealt with upon a de minimus basis and as such be dealt with only in writing. It would seem that a financial threshold level should be introduced for such claims so that they are dealt with in writing, but with the right for appeal should the written resolution not prove appropriate.
- 6 In terms of dealing with vexatious appeals, RGDATA believes that these should be weeded out in the first instance and an employer should be able to make representations to the employment bodies in relation to claims that a matter is being approached in a vexatious, frivolous or misconceived basis.

- 7 RGDATA also believes that given the nature of the relationship between employers and employees such cases should be heard in private and should not be the focus for a media circus. This does not mean that the outcomes of such hearings should not be published in the current manner in which they are published.

In general RGDATA believes that there are substantial reforms required to the employment rights industrial relation structures or procedures. This note has set out some of the key observations arising for RGDATA members in their daily work and it is hoped that some of these reforms will be reflected in the legislation brought forward by the Minister.

Yours sincerely

A large, fluid handwritten signature in black ink that reads "Tara Buckley". The signature is written over a horizontal line.

Tara Buckley
Director General
RGDATA