

**SIPTU RESPONSE
TO
THE CONSULTATION DOCUMENT FOR
REFORM OF THE STATES EMPLOYMENT
RIGHTS AND INDUSTRIAL RELATIONS
STRUCTURES AND PROCEDURES**

SIPTU RESPONSE TO THE CONSULTATION DOCUMENT

FORMAT

In responding to the Consultation Document we have attempted as far as possible to comply with the format proposed.

Accordingly our response consists of the following

- (A) INTRODUCTION**
- (B) KEY OBJECTIVES**
- (C) CONSULTATION QUESTIONS (SIPTU responses in bold)**

The responses below are informed by extensive “hands-on” experience of our union over decades in representing workers at all levels of dispute resolution, collectively and individually, nationwide and in all fora of the state’s dispute resolution machinery.

Currently our Member Information and Support Centre which specialises in Individual Grievance Handling is dealing, at any one time, within excess of 4,000 grievances at various stages of dispute processing at any.

SIPTU

Liberty Hall

September 2011

(A) INTRODUCTION

Appendix 1 to the Consultation Document and the accompanying press release from the DETI make it clear “...it is not envisaged that the proposed streamlining of individual industrial relations and employment rights redress mechanisms will alter or affect the well-established, and well-trusted, statutory mediation and conciliation processes that deal with collective disputes under the remit of the labour Relations Commission and the Labour Court under the Industrial Relations Acts ,1946 to 2004...”

Accordingly the commentary below on behalf of SIPTU will respond in the context of that statement.

- It is important to recognise that there is a distinction between a genuine desire to make dispute resolution machinery work for disputant workers and employers, as well as those tasked to conciliate, mediate or adjudicate on claims, and simply responding to representations from vested interests that have no remit for the public good.**
- More importantly there is the inconvenient but inescapable truth of the” inequality of arms” between worker and employer in the fundamental relationship of the employment contract.**

Accordingly the latter has been variously described as a “legal

figment” and more a “command disguised as an agreement” (Otto Kahn-Fruend). Another distinguished labour lawyer points to the fact that”...the individual worker brings no equality of bargaining power to the labour market and to this transaction (the employment contract) central to his life whereby the employer buys his labour power (Lord Wedderburn) .

- **Nevertheless, both common law and statute persist in the further legal fiction that this palpable inequality is somehow eliminated or neutralised at the point of dispute, where both protagonists enter the (increasingly juridified) ring to do battle . However much this unequal relationship may be subject to the countervailing influence of a Trade Union in an organised employment, there is no possibility of rebalancing the relationship in a non- or anti-union environment. Accordingly, any realistic attempt to render dispute resolution more meaningful, certainly to workers, must at some stage face up to the devastatingly obvious necessity to factor in the legal right to Collective Bargaining in order to assist in redressing the “inequality of arms” and, often, fear of the employer in the workplace.**
- **That having been said, there is doubtless merit in consistency of procedures and in streamlining processes of dispute resolution for the ease of all parties who face the challenges posed by the emerging world of work. For that to happen it is necessary to take account of such fundamental problems as outlined above and to recognise that the drift towards the increased “juridification “**

of industrial relations has not served any party well ,and a simpler , more accessible and less costly way needs to be found . Indeed, insofar as the consultation paper refers to “building on recognised strengths “, a good place to start would be with the relative and enduring success of the state’s Industrial Relations machinery, both at the level of pre-hearing intervention(Conciliation) and adjudication (the Labour Court and Rights Commissioner Service).

- However, a key issue to be addressed in whatever structure emerges, apart from the question of accessibility to workers, is the question of delay. This has been an issue raised in previous reviews and one which appears to be deteriorating with the passage of time. It is now par for the course to experience delays of well in excess of 12 months for Employment related claims, with significantly longer for Equality complaints. This leaves workers in the invidious and unacceptable position of having vital issues in their lives and that of their families examined judicially long after they have been made redundant or had their employment terminated in disputed circumstances.**
- At the other end of the scale , there are an increasing number of employers who ignore original or appellate decisions of Third Parties, thereby exposing the worker to still further delay in the often lengthy (and frequently toothless and fruitless) enforcement process. Accordingly any revamp of the current system has to tackle these issues. Overall any resulting system**

must be impartial (State), consistent, competent, authoritative, responsive to the needs of workers and most importantly properly resourced.

- **Fundamental to this whole process of examination is that it be informed by the views of those, such as SIPTU, who are very familiar with the existing structure and are well positioned by experience to what does and does not work. At any one time our Membership Information and Support Centre , which handles Individual Grievances of SIPTU members, has well in excess of 4,000 claims or complaints, the many of which find their way into the state's dispute machinery.**

(A) KEY OBJECTIVES

KEY OBJECTIVE 1.

Resolution of grievances and disputes as close to the workplace as possible and as early as possible after they arise.

SIPTU RESPONSE:-

- **This is obviously a desirable objective and has been a longstanding and fundamental Trade Union approach. However, there is an assumption behind this that all players are fair minded, reasonable, knowledgeable and amenable to resolution.**

Regrettably that is not always the case, with the result that there are many disputes capable of early resolution that find themselves propelled into the (external) dispute resolution arena.

- **This position is more acute in non-union employments, where the implied voluntarist approach behind the Objective just doesn't wash with employers. The result is that the worker(s) in question with disputes of interest have no prospect of getting their employer into the LRC, the Labour Court or the Rights Commissioner under the Industrial Relations Acts, are thereby forced to find a lengthy (and, for them, and indeed for some employers,) costly legal process under Employment law, or probably in most cases simply give up. Ultimately, the balance of forces in terms of power and pocket determines the extent of dispute resolution avenues open to workers in such circumstances.**

KEY OBJECTIVE 2

- A simple and efficient institutional structure offering high quality customer service, including a single authoritative source of information and a single entry point for claims;
- Minimal scope for “forum shopping” and a system which respects differences between categories/types of cases (e.g. disputes of right and disputes of interest) but not to the point where they are an overriding influence on structure.

SIPTU RESPONSE:-

- **A single entry point may be beneficial provided it does not dilute the fundamental purpose of the dispute resolution process itself for workers in their often unequal relationship with the employer. We have already referred above to this under the introduction. In other words, there is little point in simplifying to a single entry point if it reduces dispute resolution possibilities at either the pre-hearing or adjudication stage. Apart from that, what is required is a strengthening and enhancement of SI 146 to provide for access for all workers as of right to external dispute resolution machinery in disputes of interest as well as disputes of right,, particularly where early access to conciliation or mediation could deliver a greater prospect of speedy resolution. Such enhancement should include clear timelines for responding to employees grievances. Moreover it should be mandatory for all employers to have such an enhanced SI 146 in place.**
- **However , key to facilitating active access for all workers to dispute resolution mechanisms , both internal and external, is the enactment of anti-victimization measures to ensure that all workers can do so as of right and cannot be penalized for exercising that right.**
- **While a single authoritative source of information is also obviously desirable, there is a significant role for Trade Unions Representative bodies and NGO's in the dissemination of information. Further, there should also be space for parties to be**

given information about such organizations so that enquirers may wish to contact for further information and/or advice.

- **Regrettably the term “forum shopping “is often used in a pejorative sense. Moreover, the perceived or alleged problem is vastly overstated. The reality is, for example, that in the case of say Unfair Dismissals, which comprises the bulk of the EAT’s workload, there are only two avenues of original jurisdiction, the Rights Commissioner and the EAT itself. In the case of the former forum, “shopping “ can only take place if the other party agrees within the 21 day statutory period , leaving only the latter, the EAT, if they do not . For most employment rights disputes there is usually only one first instance forum specified.**

Therefore, critics who articulate the complaint of “forum shopping” may , wittingly or unwittingly, be confusing the question of choice ,with the fact that, as the fields of employment law and industrial relations have developed, a number of different fora have emerged ,- hence the question raised as to the scope for simplification/streamlining, which is a different matter entirely Moreover, there is the fact, in this jurisdiction and elsewhere that a number of “conjoint “claims may often arise particularly in the case of dismissals.

- **Above all, there is absolute necessity to have a system capable of dealing effectively with both disputes of interest and of right. This must be a structural imperative.**

KEY OBJECTIVE 3

Minimising the number of cases that present for resolution at formal hearings through active case progression and an increased range of interventions

SIPTU RESPONSE:-

- **Again, minimizing the number of cases that present for adjudication through mechanisms such as conciliation and mediation is a desirable objective for reasons which are obvious.**
- **However, with regard to “active case progression “it is necessary to be vigilant in order not to be saddled, down the line, with the unintended consequence of another layer of bureaucracy with resultant delay to parties.**

(C) CONSULTATION QUESTIONS

The consultation paper poses a number of specific questions. What follows here is a restatement of those questions followed by the SIPTU response to each (in bold)

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

SIPTU RESPONSE:-

- **Ultimately the best support for employees and employers in resolving disputes in the workplace is that they come to the table with equal status and rights to attempt to resolve the dispute that has arising from the differences between them . In the case of those employees who chose to be in a Trade Union, the right to Union representation and to Collective Bargaining. It must also mean the equal right to refer disputes of interest as well as of right to the state's (external) dispute resolution machinery.**
- **Where this is in place in union –organized employments there is a wealth of experience which points to the identifiable benefits in securing settlement at the level of the enterprise.**
- **As above, a good start would be the enactment of a strengthened and enhanced SI 146 to be incorporated into all internal procedures providing access to the state's dispute resolution machinery for all disputes whether of interest or of right. Such should rank as a legal requirement similar to the Safety Statement and appropriate compliance measures should be put in place in terms of legal requirement and compliance.**
- **The earliest intervention and access to intervention in the form of conciliation or mediation offers a good prospect of resolution as the experience of the LRC Conciliation service and the Mediation wing of the Equality Tribunal has demonstrated.**
- **While guidance, properly and impartially available may have a role, it is one which is limited for workers in the absence of the statutory underpinning of the right to Collective Bargaining.**

1. 2. Can the provision of timely, up-to-date factual information help to facilitate early resolution of grievances/ claims and stem the flow of formal cases being submitted?

SIPTU RESPONSE:-

While information, impartially and accurately delivered to both parties has a role to play, it is very doubtful if this is an answer in its own right. However, that having been said, any information should be direct, concise and easily understood in the several languages in which it is disseminated.

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

SIPTU RESPONSE:-

- **Where disputes arise whether of right or interest, intervention must be available to the parties from the state's dispute resolution machinery to promote and facilitate, in the first instance, bargaining, dispute resolution or problem solving at the level of the enterprise. Failing that, interventions have to provide for conciliation/mediation and ultimately adjudication. It is fair to say that often, but not always, the best method of solving disputes is through the medium of collective bargaining. However, while there are undoubted benefits to having disputes dealt with and resolved thus, and while for example, the Labour**

Court has been undeniably successful where others have failed, the reality is that not all disputes can be resolved collectively and therefore consideration under this question must focus on the resolution of individual disputes.

- If state intervention is to be available, offering the possibility of resolution then it should be available in the form of conciliation /mediation at the earliest , and every stage thereafter to deal with disputes of interest and of right.**

1.4 How do you think access by employers and employees to a just, fair and efficient adjudication system can be ensured.

SIPTU RESPONSE:-

Any system should not be overly “legalistic”, though in disputes of right, adjudications should obviously have the authority and force of law. Moreover there is the necessity to encourage and promote compromise and require the use of conciliation opportunities pre adjudication, for all the obvious reasons,(without, of course, the “a priori” requirement of the parties to agree regardless). What is essential here is the opportunity and the desirability to reach agreement, but not the injunction to do so. This best delivered by a structured requirement to engage in Conciliation as a preliminary step.

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

SIPTU RESPONSE:-

Insofar as any such model comprising first instance and appellate tiers can make dispute resolution for workers more accessible, speedy and meaningful and reflects existing and tried and trusted strengths as evidenced in the state's long standing IR machinery, then it should have merit.

In such a model, all individual referrals, whether of right or of interest should go to the Rights Commissioner as an adjudicating body of first instance. The Rights Commissioner could also be given a formal power to facilitate conciliation/mediation as appropriate, either directly themselves with the agreement of the parties or via a designated officer. Appeals should be made to the Labour Court with an enhanced jurisdiction to encompass disputes of right and interest.

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

SIPTU RESPONSE:-

Yes, insofar as it is practical , but the main objective always in view, which in the case of disputant employees means the opportunity to resolve disputes via conciliation and if that fails , adjudication.

While an eye must be kept to structural issues it cannot be at the expense of the substantive mandate of dispute resolution in the interests of all parties.

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

SIPTU RESPONSE:-

This appears to make sense as long as it works and does not serve to undermine or dilute the effective vindication of either employment rights or claims of interest. Key to this would be questions of competence and capacity, not to mention resources.

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 be removed)?

SIPTU RESPONSE:-

Yes, other than appeals on a point of law to the High Court.

As stated above, our view is that the appellate body should be the Labour Court.

However consideration may have to be given to the particular circumstances of Unfair Dismissals cases where claimants, having won their remedy at first instance in this most important part of their life,

may be put to further delay , not to say other burdens ,by virtue of an employer appeal, motivated solely by their deeper pockets.

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

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

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

SIPTU RESPONSE:-

- **There should be a clear separation between the functions of:-**
 - **Inspection**
 - **(Conciliation)Advisory/Mediation /Investigation of individual disputes and that of**
 - **Formal Adjudication.**

(NB -In order to be consistent with the undertakings in Appendix 1 of the Consultation Document, as above in the Introduction, the Conciliation/Mediation of Collective Disputes should remain unaffected, and therefore separate from this overall process.

- Effective inspection and enforcement requires its own mandate resources (see below) and should be separate from other functions. Consequently we do not see it appropriate, for example for the NERA inspector to be involved in the other functional areas of activity.**
- If Conciliation/Mediation of individual disputes is to be effective and secure the confidence of users, then it must jealously guard its relative “independence” from the adjudicatory function. Equally, in order for it to be seen as a necessary and hopefully successful preliminary stage intervention it needs to avoid being regarded as nothing more than a “turnstile” into the next stage, adjudication. Overall, the prime driver here should be the effective , speedy, relatively cost effective and informal resolution of disputes at the earliest stage.**
- However, separation does not necessarily mean there is no communication or co-operation within one organizational structure and there should be no conflict .Indeed, where possible identifiable synergies between the different functional arms should be encouraged and accommodated, such as in the area of research, information sharing or in complex multiple individual disputes within the one enterprise or sector, joint co-operation.**

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

SIPTU RESPONSE:-

If there is an obvious factual dispute , say re computation , there could be merit in having an earlier stage assistance to the parties , rather than have a redundant worker wait for a year or more for a full blown judicial process to resolve that which may in fact be relatively simple. If that is to be of any use then it must be capable of kicking in without delay and the Social Welfare Appeals mechanism may not necessarily be the best way of delivering what may essentially be a simple problem solving exercise. There may be a more direct avenue available.

However, of paramount importance; there must be the opportunity to appeal on any issue that may arise if unresolved.

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

SIPTU RESPONSE:-

- **The tri-partite nature of the present structures brings confidence, experience and generally, a very high degree of**

competence in the discharge of its dispute resolution functions.

- **This is particularly, but not exclusively, so in the case of the Labour Court. Notwithstanding the voluntarist nature of its Recommendations within its industrial relations jurisdiction, the fact that in excess of 70% of Recommendations are accepted by disputant parties', points to the established acceptability and authority of the Court,(as does the fact that the remainder often provide the basis of subsequent resolution).**
- **Further, in its various "legal "jurisdictions the Court has proved itself capable, over the years, of handling often extremely complex matters in the areas of equality and so on.**
- **As well as aptitude, skill and wisdom in dispute resolution, key to all this is the mix of backgrounds, experience and knowledge of the workplace which promote acceptability and authority to employers and employees alike.**
- **The same guiding principle extends to other areas of dispute resolution structures in the field of labour law and industrial relations.**
- **Consequently there remains much merit in the current methodology of appointments, with some adjustment to :- ensure that conciliators, mediators and adjudicators are competent to do so, engage in appropriate forms of development (CPD) and that appropriate measures are**

taken to promote and ensure consistency of approach in each discipline.

- If the overall purpose is to encourage early resolution of disputes, vindication of employees rights and minimization of costs for all parties within a framework that is both accessible and timely , then it is absolutely necessary to build on the existing strengths, experience , credibility and the rigorous, yet relatively informal delivery of solutions .
- The increased “juridification “or “legalization “of dispute resolution in the workplace has not served disputant parties well. With the exception of termination disputes, most workplace disputes are between parties who intend to carry on the relationship. The law (and some of its practices)can be a very blunt and even destructive instrument , where what is required is the restoration or the inculcation of harmony into the relationship.

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

SIPTU RESPONSE:-

Yes, with the research and backup and one that is easily accessed and accessible. Further, it should also give contact details of Trade Unions, Representative bodies and NGO’s who the person may wish to contact for further information specific to them.

2.9 Do you agree that a more coherent and coordinated approach to the provision of advice and information on industrial relations and employment rights issues should form part of the services of the new first instance body?

SIPTU RESPONSE:-

- **There may be a problem here with regard to conflict of interest of any first instance body. While the giving of information can present its own challenges, the rendering of advice is a much further step up the line and it is difficult to see how a body which would have a dispute resolution mandate at various levels could also give advice to one or other disputant parties without running into a conflict with its impartiality?**

For example, NERA, as currently constructed is confined to an information (and,, separately an inspection) role. It does not give advice. On the other hand the Membership Information and Support Centre of SIPTU has a mandate for providing Information, Advice and Advocacy to the union's members,- with no conflict of interest, given the union's representative role.

- **So essentially it very much depends on what kind of advice would be envisaged? Of course in any event, as noted above, it would be quite feasible to point enquirers to the various representative bodies, trade union, employer or NGO that could assist with advice.**
- **Overall, in any discussion on this, the prime consideration must always be the impartiality of the body.**

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

SIPTU RESPONSE:-

- **FAQ's, websites, telephones and so on, can be, and in practice are, very useful media for the dissemination of information. As previously noted there is also the option of onward referral to representative bodies that may be able to assist.**
- **However, again, care needs to be exercised with the imparting of advice. While few could disagree with the sentiment behind the desire to assist putative claimants particularly those who are under pressure or who may have fluency problems in the English language, extreme caution needs to be exercised in case the caller is unwittingly drawn into disclosing issues pre-conciliation/mediation or pre-hearing, which the person giving the advice might be obliged to disclose to the other side.**
- **While the best first port of call in an authoritative source of accurate information, the advice as to how to proceed to the next stage is usually best provided by their advocate representative. As noted above, conflict of interest could arise with a body of first instance becoming involved at the advice stage.**

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

See above

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

SIPTU RESPONSE:-

From an organizational point of view there is an existing framework which operates on a national basis within the Labour Relations Commission in terms of the Conciliation Service and the Rights Commissioner Service This should provide the template .

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

SIPTU RESPONSE

Yes. However, again the form should be simple and straightforward in “plain English/Irish” and any other language variant.

It should also be capable of being read as a whole, so that, for example if a claimant lodges a claim of unfair dismissal, states it clearly in the body of the form, describes the circumstances of their unfair dismissal, even adding supplementary information, but forgets to tick an administrative

box notwithstanding,- this essentially administrative oversight should not necessarily tell against the claimant if the rest of the completed form is clearly one for unfair dismissal.

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

SIPTU RESPONSE:-

As above, the question needs to be approached with caution to avoid the unintended consequence of claimants being unwittingly drawn into disclosure which would be properly in the realm of Conciliation/Mediation or Adjudication. A better way to proceed might be to build in as a formal preliminary step at Conciliation/Mediation or first instance adjudication where the claimant is likely to be advised and represented.

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

SIPTU RESPONSE:-

Firstly, the time limit for submission of claims should be extended to a uniform 12 month. This essentially just means the removal of the existing conditionality around the extended period in most pieces of employment rights legislation. In the case of disputes of interest (IR Acts) the current position should prevail with no time limit.

Secondly, given that the majority of referrals to the Rights Commissioners (and the Industrial Tribunal in NI) are reported to be post-employment, claims should be permitted to be made after the employment relationship has ceased. This issue has arisen, for example in relation to pension related matters which only surface after the person has retired and, because claimants are no longer employees for the purpose of the Industrial Relations Acts. Indeed, an amendment to the IR Acts was/is due to be enacted to cure this mischief. Finally, time limits should be paused if conciliation or mediation has been availed of.

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

SIPTU RESPONSE:-

As above, a strengthened and enhance SI146 would assist in this area , allowing, in the case of Trade Union members, the right to be represented internally and externally by the union in all circumstances.

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

SIPTU RESPONSE:-

Yes

Enforcement

2.18 Should there be a consistent method of enforcing awards of employment rights bodies

SIPTU RESPONSE:-

Enforcement is becoming a significant problem as instanced above. What is required is a faster, more robust, cheaper method of enforcement of 3rd party decisions which are a particular problem for employees. The current system, which was understandably designed with other matters in mind, presents a considerable array of “obstacles “to workers seeking to enforce their awards. Also, the “jurisdiction “of enforcement must also be extended to cover specific performance and not just the discrete amount awarded. Consideration should be given to a separate category for enforcement of 3rd party awards, to avoid impinging on the overall protections around debt recovery.

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

SIPTU RESPONSE:-

- **There is much merit in the suggestion that there would be an initial “scoping “ exercise conducted by an experienced**

practitioner, say an Industrial Relations officer of the Conciliation Service provided the person is represented,(in the case of a union member, by their union representative). This could be part of the Conciliation /Mediation process.

- **Moreover, with regard to the broad question of Conciliation and Mediation there is a breadth of experience to draw on from within the existing systems, with regard to the conduct and security of such processes and issues such as confidentiality, registration of ensuing agreements and rules around disclosure. Indeed in the case of the Equality Tribunal Mediation there is plenty of experience around the security and enforcement of agreements reached at that level.**

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

SIPTU RESPONSE:-

An initial interview as above would seem logical. However, it should ultimately be up to the claimant(s) as advised by their union or other representative to have the final say as to how their rights/interests should be vindicated. This may well be resolved at first contact.

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

SIPTU RESPONSE:-

Any intervention should be at the earliest opportunity with the emphasis on settlement, if at all possible at all stages of the procedure. In any event every effort should be made in the circumstances of disputes of right to have such intervention prior to adjudication as noted above. However, it needs to be again borne in mind that many if not a majority of personal rights claims in this jurisdiction and others are referred post-employment or when positions have become extremely entrenched on either or both sides of the equation.

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

SIPTU RESPONSE:-

As with the question directed to Redundancy above, there may be merit where there are clearly factual issues involved, and where there may be the risk of inordinate delay to claimants, to attempt to resolve at early stage intervention. However, this must be without prejudice to the right to proceed to first instance adjudication and ultimately appeal on the matter.

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

SIPTU RESPONSE:-

- **There is a wealth of experience, knowledge and expertise within the current public dispute resolution system which has been built up over decades. In general it has proven to be effective in discharging its functions as well as giving value for money to the taxpayer. Whatever the merits, and they exist, of re-examining the structures from the standpoint of consistency and ease of process, there should be no question of diluting the “sine qua non” of impartiality and neutrality that a public system of dispute resolution brings with it.**
- **There is also the point that private sector expertise in this area can be very expensive. While, undoubtedly there can be the occasional circumstance where, by agreement, independent mediators can have a role, they are very occasional and any extension of the practice would not only affect cost, but would undermine consistency and most fundamentally the perception of neutrality and impartiality that is at the core of any accepted and successful system between the parties. Of paramount importance is the right of any worker claimant to be represented in the process by the representative of their choice.**

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

SIPTU RESPONSE:-

They should as a general rule but allowances should be made for those with English literacy problems who. However, the reality is that this is not a problem for Trade Union organized employments where claims are generally set out in written submissions as a matter of course.

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

SIPTU RESPONSE:-

Any assessment of claims for potential intervention has to be without prejudice to the right of claimants to ultimately proceed to adjudication. There should be time limits in order to guard against delay in the processing of grievances and disputes.

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

SIPTU RESPONSE:-

Conciliation has a proven track record both in this jurisdiction with the LRC and also in the North with the LRA, in dealing with the broad gamut of employment related disputes, both collective and individual. Mediation as practiced by the Mediation Service of the Equality Tribunal has also been relatively successful.

Beyond that, however, caution is to be exercised as to the type of mediation in prospect. Some forms may be very suitable for interpersonal conflict, but may be entirely unsuitable for workplace disputes.

However, key to the success of any intervention, such as conciliation, is the support of the party's representative being involved in the process with them

3.9 Would there be merit in having a “preliminary hearing” process and if so how should it operate?

SIPTU RESPONSE:-

- **By having a “Preliminary Hearing “as part of the overall there the danger of adding another layer into the procedures, which in turn adds to delay and expense. (The Industrial Tribunal /Fair Employment Tribunal in NI have such a step with fairly elaborated procedures to comply with).**
- **However, that having been said, the Labour Court appears to employ occasional case management in a more informal way in more complex cases in order to isolate net or preliminary issues.**
- **A preliminary scoping exercise might be useful in establishing the issues in dispute , as well as any “preliminary” issues in a more informal way**

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

SIPTU RESPONSE:-

Cases should generally be commenced on the basis of written submissions, supplemented by oral submissions, with latitude on the part of those dealing with the case as to how they run the case.

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

SIPTU RESPONSE:-

They should be conducted, with the disputant parties and their representatives, in private, in order to aid the conciliation and settlement process.

Also it goes without saying that those involved in any pre-adjudication resolution should not take part in any hearing. However, there should be a report to the adjudication body as to the attempts to resolve at that pre-adjudication

Conduct of Proceedings

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

SIPTU RESPONSE:-

There should be broad simple but flexible guidelines to maintain good order, to aid the effective conduct of the hearing and to allow disputant parties and their representatives, as well as the adjudicating body reasonable time to be heard.

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

SIPTU RESPONSE:-

No. it would possibly be unconstitutional, not to say conflict with entitlements under Human Rights legislation .The issue as to frivolous and vexatious must be subject to adjudication and ultimately appeal.

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

SIPTU RESPONSE:-

Conciliation and Mediation should be in private but Hearings at first instance and appellate stage should be in public except in certain circumstances. All decisions should be accessible to the public, subject to the law.

3.15 Should there be a uniform period for submitting appeals?

SIPTU RESPONSE:- Yes