



**Submission by Pat Brady, Workplace Solutions on  
Department of Jobs, Enterprise and Innovation suggested reforms of the State's  
Employment Rights and Industrial Relations Structures and Procedures**

Introduction

Please see separate sheet

**Maintaining good employment relations and resolving workplace conflict**

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

Training; too many HR professionals engage in dispute management by procedures manual. There needs to be a greater awareness of dispute resolution techniques

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?

No, not on its own. In fact it may have the opposite effect. Addressing the litigious mindset and the grievance industry requires a significant change in the approach to workplace dispute management.

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

As at 1.1 the ideal place to resolve disputes is where they arise. However the provision of information especially on mediation of other ADR options will contribute to the reduction of delays

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

By first making the system itself intelligible and then making it accessible (simpler forms.)

**Integrated structure**

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

Yes.

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?

Yes, and this does not require separate channels as at present. Cases could be assigned to divisions of a 'new' Labour Court (my preferred term) on the basis of known expertise. (One could have a redundancy/unfair dismissal division, general appeals, industrial relations etc. rather as we have a Commercial court, a dedicated Arbitration judge etc. See introductory comments. One division should specialise in small business disputes)

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?

Yes

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)?

Yes. Also appeal to the circuit court should be on a point of law only.

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

- o The **inspectorate function** (i.e. NERA's role in inspection, enforcement and where appropriate prosecution);

- o the **conciliation and mediation processes dealing with collective disputes**;

- o the **advisory / mediation / investigative procedures** dealing with individual industrial relations and employment rights claims;

- o any subsequent **formal adjudication** on such individual cases.

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

By effective case management at first instance, then overall management within an integrated structure.

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?

No comment

## **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 to the new streamlined employment rights bodies be changed, and if so, what should be the guiding principles?

Adjudicators; All positions at the level of current Rights Commissioners/EAT members and Labour Court members should be subject to open competition in line with public service norms and a panel of private arbitrators should be established.

Mediators. The existing mediation and conciliation services should be supplemented with a panel of private accredited mediators

## **Information and Advice**

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

Yes

2.9 Do you agree that a more coherent and co-ordinated 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?

Most definitely

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

Website, social media (IBEC has an Employment Law 'app'!) and by telephone. The Citizens Information networks have very accessible employment law advice

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?

As currently with NERA

## **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 employment rights complaints/claims best be achieved?

Merge the LRC, the Rights Commissioner service and the EAT. Retain NERA as a separate body with close links to the new body with a clear role as a clearing house in minor or non contentious matters. Once there is an integrated structure this will send a message that the system has been streamlined which should be accompanied with simpler forms.

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

Yes. However, many claimants and respondents (including solicitors) do not take the forms seriously. I have experience of turning up to a Rights Commissioner hearing with only the scantiest information about the claim. No claim should be processed until a form is correctly completed

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

Simple. If the form is not completed to a reasonable standard that communicates the necessary information to the other side then it should not be processed. It is a basic requirement of fair procedure that a respondent, say is in a position to defend a claim by knowing what gives rise to it. The stock invitation to parties from the Rights Commissioner service to attempt to resolve matters should be strengthened and enforced, perhaps as a condition of being granted a hearing, (although the mediation requirement would take care of this )

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

Yes. Six months as at present. Reference to mediation should however 'stop the clock' for a duration of reasonable length, say one month.

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?

No.

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?

Yes, including in relation to appeals.

## **Enforcement**

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

Circuit Court.

## **Facilitating early interventions and alternative dispute resolution methods**

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?

Mediation should be made a requirement as a default position and only in extreme circumstances should a party be excused from doing so. (see the principles laid down in Halsey v Milton Keynes NHS trust)

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

Vigilance!

### 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?

Both. There needs to be a stronger culture of this at workplace level and NERA should audit Discipline & Grievance procedures to ensure they contain a mediation option and that parties understand its use.

### 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?

Yes

### 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?

Yes. Here are some proposals.

The Arbitration Act 2010 should be amended to remove the exclusion of employment related disputes.

A panel of suitably qualified private mediators should be established to provide early intervention or following referral to the new body.

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

No, but encouraged to do so as they may be at a disadvantage if they do not.

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

Yes. But conciliation or mediation should not be an offer, but a requirement with adverse consequences for those who unreasonably refuse to cooperate

### 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?

Mediation is helpful in almost all cases. An exception may be matters related to bullying or sexual harassment, for example.

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

No, or very rarely. If mediation becomes a norm this is an unnecessary extra layer.

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

In arbitration this is referred to as 'Documents only' arbitration and is common practise. Another option is Online Dispute Resolution (ODR) practised for example with great success by Ebay. This might work for simple non compliance disputes.

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?

Yes, in the case of wilful refusal to participate in mediation or obstruction at it. Otherwise absolutely not. The idea of mediation is grounded in confidentiality and being without prejudice.

**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?

Not necessarily. Some standardisation might help. Rights Commissioners have different styles in relation to presentation of submissions etc but this is not necessarily harmful to the process (although apparently particularly disliked by lawyers).

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?

Probably not! But a costs penalty might assist in such cases.

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

In public with a power to hold sensitive hearings 'in camera'.

3.15 Should there be a uniform period for submitting appeals?

Six weeks