

General:

We are strongly supportive of an early reform of the employment dispute bodies to streamline and simplify the current arrangements and reduce the cost of these arrangements both to the taxpayer and the users of the service. I would further add that

1. It would be appropriate to move to an appointment system for the industrial relations bodies that is based on competitive, open, skills/competency based interview for all positions. This reform may be adopted as an interim measures and should not await the overall restructuring of the bodies.
2. Given the substantial usage by public servants of the machinery, it would be appropriate for those matters to be dealt with in a public service division of the streamlined employment bodies.

Question 2.1. 2.2 and 2.3: Yes - the proposed model which would envisage early intervention supports in the workplace and thereafter a single first instance body and a single upper tier appellate body would seem both sensible and logical.

Question 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?”* - DJEI assigns civil servants to act as secretariat to the LRC and the EAT. NERA and the Labour Court staff are also remunerated out of Administrative Budget, hence none of the staff of the institutions are public servants – hence we cannot really comment on this question as we aren’t familiar with the appointment and terms and conditions of the existing staff beyond the general observation that the terms and conditions should be in line with standard civil service terms and conditions, and that the rationalization/streamlining of the structures should result in a requirement for fewer staff in the areas of HR, IT support, Accounts etc. It may be that the existing bodies already share some services with DJEI/each other. Standardized terms and conditions should continue to apply.

Question 2.8 & 2.9– A one stop website and a more coordinated approach to provision of advice and information would be very helpful as the current array of industrial relations bodies and employment rights bodies is indeed highly complex and confusing. It is understood that the individual bodies post information concerning procedures often by way of FAQ and responses on relevant website. The information posted can be of limited use in some instances as it is not sufficiently detailed and there does not always seem recourse to an official who might provide more specific information where the information cannot be derived from the website [By way of example, recently this Section encountered significant difficulties trying to obtain a clarification from the LRC in relation to a procedural matter which had arisen in relation to a claim on the Education side as there did not seem to be a central information section.] Maybe this type of service is already in place for some of the bodies (and we are just not aware of it). The fact that public/civil servants who may be more familiar

with the IR machinery encounter these informational difficulties would imply that it would be difficult for an individual employee to obtain relevant information in some instances. . A centralized call-centre to back up the website would be essential.

Question 2.13. Should there be a single application form for all individual first instance IR and ER complaints/claims? A single form seems a sensible approach.

Question 2.15. Should there be a consistent time limit for initiating all complaints/claims/appeals and if so what should it be? Yes - A single time limit would be preferable. The current varying time limits, depending on type of case and body hearing the case causes confusion. A number of instances have arisen where this Department has only been made aware of a case which could have implications across the wider public service after the time for appeal has elapsed.

Question 2.18 - Should there be a consistent method of enforcing awards of employment rights bodies and if so what should that be? –We need to respond to this. It is assumed that this only relates to disputes of rights – i.e. individual claims relating to statutory entitlements) – and not of disputes of interest (relating to individual IR grievances about pay and conditions.

In the current economic and public expenditure context, where many adjudications in respect of public servants have not been implemented as they in conflict with FEMPI (No. 2) Act 2009 and/or PSA 2010-2014 presumably we would wish to ensure that this consistent method would not encompass making all recommendations/adjudications concerning awards becoming binding .

Question 3.9 and 3.13 – Yes there would be a value from a VFM/cost control point of view in trying to ensure that certain cases were dealt with on a “preliminary hearing basis” and/or that jurisdictions might be empowered to dismiss what are adjudged to be frivolous/vexatious claims without a formal hearing.

Question 3.15 – Should there be a uniform for submitting appeals?

Many officials remain unfamiliar with all of the complexities of the institutional procedures, hence deadlines for appeals of recommendations are sometimes missed, inconsistent treatment of claims in Government Departments where they arise. Different deadlines, dependent on legislation under which claim is referred as well as depending on the nature of the claim and the particular body concerned. Simplifying the IR body structures and procedures and enhanced information provision (as referenced above at 2.8 and 2.9) by the bodies themselves is only one element of overcoming this difficulty but it would certainly help.

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?

Possible publication of a best practice document in relation to dispute resolution within the workplace with an emphasis on the expeditious handling of the claim, i.e very strict time limits within which representations to be made/responded to etc. (2 to 3 days or a week for each step for example where this is possible.) Any process should be swift and not excessively cumbersome. Otherwise the dispute will drag on which is very bad for workplace morale and is not in the best interests of either the employee or the employer.

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?

Yes. If employees and employers are clear on their legal rights/obligations, in most instances they will meet those obligations. This is not however correct for all employees/employers and in certain instances even clear advice will be insufficient to prevent the initiation of a claim.

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

The current system may be sufficient whereunder NERA provides employment rights information.

The possibility of telephone consultation with NERA should be explored.

Consideration should be given to the possibility that obligatory mediation prior to the institution of a claim runs the risk of lengthening the process substantially which could be a negative outcome for both sides, employer and employee. If mediation services are obligatory, lengthy waiting lists may ensue. This is in nobody's interests. Also, mediation by its nature is more likely to succeed if both parties are willing participants. If the state did decide to introduce compulsory mediation, the advantages of such an approach could well be outweighed by the disadvantages.

If they did so decide however, there should perhaps be a very strict time frame and it should be the case that

- (i) Once someone submits a complaint for mediation, there should be a maximum of one to two weeks to respond and the hearing date should be set for not less than two weeks from the date of the response of the employer.

If this level of commitment cannot be made, compulsory mediation runs the risk of lengthening and further complicating the process of dispute resolution rather than achieving the original aim of simplifying the process.

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

- The application procedure for making a claim should be simple and straightforward.
- Where a claim is being made by an individual who is continuing to work in the organisation, consideration should be given to fast tracking such claims in the interests of employee and employer.

Integrated structure

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

Yes with the caveat that on an organisational level the realms of expertise should be retained. Employment legislation in certain areas is complex and involved. Rights Commissioners should have particular areas of expertise for which they receive training and should hear cases primarily in those areas. The creation of a two tier system should not result in the loss of the accumulated and more specific knowledge that has been developed previously in the organisations which may now be amalgamated. Consideration could be given to allowing NERA to retain it's stand alone status.

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)?

To fully answer that question, the exact sections of legislation would need to be referenced. If the legislative provisions concerned involve legal rights and entitlements, there should always be a right of appeal.

However if the particular legislative provisions relate to the industrial relations area, there may have been strong policy reasons for the decision in the original legislation to allow the body to object at first instance and the implications/policy reasons for any change of direction should be explored in detail.

To provide a definitive answer from DPER to this question, the particular provisions of the legislation which would be amended by this decision would require to be listed and considered separately.

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?

Consideration should be given as to whether NERA should have stand alone status.

In relation to mediation services, if there is increased mediation, mediators should have adequate training so as to fully understand the legislative provisions which apply in a particular dispute. This will facilitate a mediated resolution to the dispute. As the formal adjudicators will require such training, the issue arises as to whether Rights Commissioners in the formal adjudication process may also be mediators. An individual who mediated in a particular dispute should not be involved in the formal adjudication process thereafter. From an organisational efficiency perspective however, it would seem useful to allow Rights Commissioners to perform both functions.

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?

This would seem like an appropriate forum for the resolution of such disputes.

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?

The arrangements in relation to tenure should reflect the position in the wider public service.

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?

Yes.

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

The current system with telephone enquiries and the web site

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?

Yes. Employers and employees should be encouraged to contact NERA with any queries and they should be made aware of their rights/obligations under legislation.

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?

Single application form

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

Yes

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

Consideration should be given to the shortening of the time limit for launching an appeal in the interests of the expeditious settlement of claims with the Court able to extend the time limits for appeal in accordance with the same criteria as the current statutory provisions.

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?

The rules regarding representation should be clear, transparent and consistent.

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 and in particular where the legislation involves quite complex legal concepts.

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?

If

(i) There is a dispute which if left unresolved will result in a case and

(ii) one party contacts NERA,

Should there be a telephone intervention at an early stage or an offer of same to both parties.

Should there alternatively be telephone contact as soon as claim is launched if it is a simple net issue?

Any interventions should have tight time frame and the rules in relation to launching a claim should remain. If both parties consent to an adjournment on the basis that mediation may resolve the dispute, this should be acceptable.

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?

At the earliest opportunity but crucially the manner of the intervention should be crucial and not cumbersome on either party. Could it be the case that refusal to discuss matters by telephone if requested could result in a potential award of costs against you in the event that you lose?

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?

Do not fully understand the question.

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. This may be a cost effective way to ensure that if there is more mediation, waiting lists will be kept to an absolute minimum. This should be costed to see if it is an efficient way to proceed.

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

Yes. This may lead to the clarification of issues.

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

Consideration should be given to whether all cases should be examined for potential interventions. The procedure by which this would be done would need to be looked at, for example the length of time it would take for each case to be so examined, whether this might cause further back logs, the cost of the state of this extra layer of oversight. If all factors have been weighed and a decision is made to examine all claims to explore the possibility of early intervention, the time limits for decision making should be very short and strictly enforced.

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

Respondents should potentially be able to make a preliminary application. However there is a risk of actually **duplicating** rather than simplifying in circumstances where the claim would have to be outlined to establish in the first place whether it is frivolous or vexatious and if it went to full hearing would have to be outlined again.

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

In certain instances, claimants may be unhappy not to be allowed to have an oral hearing and/or may feel that their skills in oral communication are greater than their written skills. If the process is to be user friendly to a non lawyer, perhaps it is better to allow the claim to be presented orally unless both parties agree.

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?

Any evidence in relation to previous resolution attempts should not be admissible. However perhaps if there was a simple net issue that could have been easily resolved and a finding is made against a party who refused to engage perhaps they should be penalised.

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?

Yes. Uniform, clear, standardised.

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?

Yes, although there would possibly have to be some form of appeal for the claimant in such instances.

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

All such matters should be within the public domain.

3.15 Should there be a uniform period for submitting appeals?

Yes –three weeks