

Mr Richard Bruton TD
Minister for Jobs, Enterprise and Innovation
Kildare Street
Dublin 2

BY POST & EMAIL minister@djei.ie / employmentreform@djei.ie

Our Ref: CF/DH

16th September, 2011

Re: Restructuring of current system of employment law disputes fora.

Dear Minister

On behalf of the Employment Law Association of Ireland ("ELAI") I enclose a Submission in respect of your proposals to reform the employment rights disputes fora.

ELAI established a Sub Committee of the Association and took soundings from members and interested parties. We also convened an extraordinary general meeting on the 1st September, 2011 where the issues were discussed comprehensively. The attached Submission represents a consensus arising from the contributions made at that EGM.

On behalf of ELAI I wish to convey to you that the Association is willing to contribute to make the necessary changes to make the system more efficient, user friendly and cost effective to the State. In that regard we are willing to meet with you to advance the points being made in our Submission.

I look forward to hearing from you.

Yours sincerely



Carol Fawsitt
Chair ELAI

Employment Law Association of Ireland EGM

Points of consensus re submission to Department

1. As the ELAI is an association formed for the purposes of promoting discussion and debate about **employment law** and **employment rights (including employment equality)** it is appropriate that the ELAI make a submission to the Department in response to the Minister's proposals to reform the employment rights adjudicative process.
2. The ELAI should seek to be represented on the 'user's forum or council' which the Minister has proposed to establish in tandem with the reforms.
3. The structures that emerge from the reform should clearly differentiate between the processes that, on the one hand, will provide mechanisms for the resolution of issues of interest (industrial relations disputes), and on the other, those that will be in place for the resolution of issues of right (employment rights; employment equality rights).
4. All appointments to the new structures should be by open competition administered by the Public Appointments Service (PAS).
5. Mediation should be available to parties in employment rights disputes. The current position under the Employment Equality Acts whereby a party must opt out of mediation should be considered. Rights Commissioners have a useful role to play in supporting mediation.
6. Other than mediation meetings, all hearings are to be in public.
7. For the purposes of greater efficiency, cases should be listed sequentially and heard to completion on a continuous sitting.
8. The first instance body should consist of a panel of members who are all appropriately qualified and experienced. The panel should include employment lawyers and other suitably qualified and experienced persons (e.g. with proven expertise in employment law or employment equality law). Appropriate cases should be heard and determined by a single member sitting alone. A tripartite panel may be required to sit to deal with cases that involve the submission of detailed evidence from witnesses.
9. At first instance level, both sides to a dispute of right should have equal access to information and support at the form-filling stage. This information and support should be provided by an impartial administrative office whose personnel will be distinct from those who support and/or staff the adjudicative function. This administrative function should also actively intervene by telephone or in writing to clarify the issues in dispute and to ensure that claims are prima facie within jurisdiction.
10. Appeals to the appellate body should be 'de novo' appeals.
11. The Chair of the appellate body should be a qualified lawyer with a track record in employment law. It should be a tripartite body with all members appointed through PAS following open competition.
12. Subsequent appeals will be on a point of law only to the High Court.
13. A unified approach to case management from submission of a claim right through to final resolution is required.