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Client

Department of Jobs, Enterprise and Innovation

Project

The Evaluation of Workplace Relations Pilot Early Resolution

Final Report – September 2013

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1 EXECUTIVE SUMMARY

1.1 Introduction

RSM McClure Watters was appointed by the Department for Jobs, Enterprise and Innovation in January 2013 to conduct an evaluation of the Workplace Relations Pilot Early Resolution Service.

1.2 Terms of Reference

The terms of reference required and the sections that each are dealt with in the report are asset out below:

Table 1:1: Terms of Reference

Terms of Reference	Relevant Section
<ul style="list-style-type: none"> Identify the programme objectives and examine the validity of objectives and compatibility with overall strategy; 	Section 2
<ul style="list-style-type: none"> Define and identify the outputs; 	Section 2
<ul style="list-style-type: none"> Examine the extent to which objectives have been achieved and the effectiveness to which they have been achieved; 	Sections 4, 6 and 10
<ul style="list-style-type: none"> Identify the costs and staffing resources applied and the efficiency with which objectives have been achieved having regard in particular to alternatives and appropriate benchmarks including those of similar services and by comparison with adjudication; 	Sections 5,6 and 9
<ul style="list-style-type: none"> Evaluate the degree to which objectives warrant the allocation of public funding and the specification of potential future performance indicators; 	Sections 9 and 10
<ul style="list-style-type: none"> Identify other issues such as: <ul style="list-style-type: none"> The factors that encouraged or discouraged parties from using the Pilot ERS; The factors that made the ERS intervention successful or prevented ERS intervention from being successful in resolving the dispute; The impact of representation by various parties such as individual, legal, employer body, trade union etc. on the process; The level of preparation and where possible cost undertaken by parties using the ERS by comparison with those going to adjudication hearings; and 	Section 7 and 8
<ul style="list-style-type: none"> Make recommendations in relation to any matters within the scope of the evaluation 	Section 10

(Source: Department of Jobs, Innovation and Enterprise Terms of Reference, January 2013).

1.3 Methodology

Based on the terms of reference, RSM McClure Watters designed a seven stage methodology to meet the Department of Jobs, Enterprise and Innovation's requirements. This involved:

- A desk review of the rationale for setting up the Pilot Early Resolution Service.
- A desk review of the data relating to the service.
- Interviews with the management and staff responsible for the delivery of the service and with the Workplace Relations Reform Programme Office of the Department of Jobs, Enterprise and Innovation.
- A survey of users of the service.
- A desk review of other comparable schemes.
- A comparison of the performance of the Pilot Early Resolution Service with the other services.
- Analysis and reporting of the information.

A Steering Committee was put in place to agree the scope and monitor progress on deliverables.

1.4 Conclusions and Recommendations

1.4.1 Introduction

The Pilot Early Resolution Service (Pilot ERS) was established over a short time-frame, and operated for 6 months from May 2012. The evaluation of the Pilot ERS highlights the progress made and the results achieved, but it also highlights the extent that the service warrants further allocation of public funding and makes recommendations concerning the future direction of the service.

1.4.2 Programme Objectives and Fit with Strategy

The Programme for Government (PfG)¹ states that there is a need for mediation to reduce the wasted cost of court proceedings and reduce the time taken to resolve disputes. The Department of Jobs, Enterprise and Innovation Strategy² sets out the need to implement fast and effective resolution of workplace relations issues in the interests of reducing costs to users and minimising impact on the productivity of enterprises. The Workplace Relations Reform Programme is seeking, among other matters, to reduce the bureaucracy and cost involved in resolving workplace relations complaints/disputes.

¹ Department of the Taoiseach Programme for Government 2011

² Department of Jobs, Enterprise and Innovation's Statement of Strategy 2011-2014

This report concludes that the Pilot ERS is needed in order to provide a cost effective alternative to going to adjudication or inspection. The service should also increase the opportunity to support positive workplace relations.

1.4.2.1 Need for Objectives That Fit With Strategy

The overall objective of the Pilot ERS was to resolve the maximum number of complaints / disputes through early intervention over the course of the pilot; however there was no target specified for this. Given that the service was in a pilot stage, the absence of specific measurable outcome targets is to be expected.

An administrative target was set, which required the Pilot ERS to progress at least 1,199 referrals to the service, and to complete these within 6 weeks.

To demonstrate a contribution to the PfG, the Workplace Relations Reform Programme and the Department strategy, the ERS needs to have outcome targets. These should include efficiency and effectiveness measures. The efficiency measure should track costs in order to ensure that the cost of delivering a resolved dispute through the ERS is considerably less than going to adjudication or inspection for the same dispute. The effectiveness measures should track the extent to which the ERS avoids the need for adjudication or inspection and assess the benefits derived by the public sector, employers/ employees in terms of costs saved.

1.4.3 Programme Outputs and Effectiveness of the Service

Complaints referred initially to the Equality Tribunal were considered beyond the scope of the Pilot ERS and were excluded from the selection process. Complaints to the Labour Court and the National Employment Rights Authority (NERA) were considered to be within the scope of the Pilot ERS; however no complaints to the Labour Court and only two complaints to NERA were selected for the Pilot ERS. As such, the performance of the Pilot ERS regarding these complaints could not be evaluated.

The Pilot ERS exceeded the administrative target for the number of complaints referred to the service (1,199) by six. A target of six weeks was set for the length of time to be taken to progress each complaint to conclusion; however, on average the time taken was 8.3 weeks.

A total of 1,205 complaints were selected for ERS intervention during the pilot, and 64%³ of these engaged with the service. Half of those who did not engage with the service stated that this was because the other party declined to participate. Other reasons included that the issue was thought to be too complex for the ERS, or that the issue was resolved before engagement with ERS.

³ 776 cases

As of March 2013, 96%⁴ of the cases had been concluded. In total, 33% of the 746 concluded cases were resolved or withdrawn due to the ERS. This equates to 246 resolved or withdrawn cases in the pilot following intervention.

Of the cases referred to the Pilot ERS, 431 (36%) were Employment Appeals Tribunal (EAT) referrals, and 731 (64%) were Rights Commissioner Service (RCS) referrals. In total, 265 (61%) of EAT referrals and 512 (66%) of RCS referrals engaged with the service.

Successful interventions for the service were considered on the basis of successful resolution of the complaint following intervention, or withdrawal of the complaint following intervention. Complaints which had been withdrawn prior to intervention by the service were not included in the success figures.

If all of the referrals to EAT and RCS in 2011 were offered the service⁵, a total of 3,731⁶ complaints could have been expected to be resolved⁷ prior to adjudication or inspection. As the Pilot ERS did not include complaints referred in the first instance to the Equality Tribunal, NERA or the Labour Court we are unable to conclude on the expected results that could have been achieved in those cases.

1.4.4 Cost

The total cost of the service during the pilot period, based on staff and associated costs, was €184,890. This represents a cost of €153.44⁸ per case referred to the Pilot ERS and €751⁹ per case resolved or withdrawn after engagement with the service.

Table 1.2 shows that the cost of the Pilot ERS per decision (cost per cases resolved or withdrawn) is higher than the cost per decision (cost per recommendation) for the Rights Commissioner Service but lower than the cost per decision (cost per referrals allowed or dismissed) for the Employment Appeals Tribunal. However, it should be noted that the costs included in Table 1.2 are estimates based on the most recent data available as detailed programme level budgeting and costing is not currently employed within the ERS, EAT and RCS.

⁴ 746 cases

⁵ Data for 2012 is not currently available. In 2011 there were 8458 referrals to EAT and 9,206 referrals to RCS. Source: Employment Appeals Tribunal Annual Report 2011, Labour Relations Commission Annual Report 2011

⁶ Total referrals in 2011 to RCS + EAT (17,664) multiplied by the rate of engagement (0.64) and the success rate (0.33)

⁷ The respective success rates were 26% for EAT complaints and 37% for RCS complaints. (65 EAT referrals were resolved during Pilot ERS or withdrawn after intervention, 181 RCS referrals were resolved during Pilot ERS or withdrawn after intervention)

⁸ €184,890 / 1,205 complaints.

⁹ €184,890 / 246 complaints withdrawn or resolved.

Table 1.2: The cost per decision for the Pilot ERS compared to the cost per decision of adjudication or inspection

	Cost per Decision ¹⁰
Rights Commissioner Service ¹¹	€496.29
Employment Appeals Tribunal ¹²	€980.00
ERS ¹³	€751.00

One of the objectives of the Reform Programme is to reduce the costs of adjudication. At present adjudication involves either three-person tribunals plus secretaries if at the Labour Court or Employment Appeals Tribunal or a single adjudicator sitting alone if before a Rights Commissioner. The Reform Programme will provide for a single adjudicator sitting alone in the case of all first instance complaints which reach a hearing. Given that the cost of adjudication is going to be reduced, then the performance of the ERS needs to increase significantly if it is to deliver value for money.

At present, the data would indicate that resolving cases through the Rights Commissioner instead of the Pilot ERS would represent greater value for money, but the benchmarks show the changes that are required to turn this situation around.

1.4.4.1 The factors that encouraged or discouraged parties from using the Pilot ERS

Responses from the survey and consultations detailed a number of factors that encouraged and discouraged parties from using the Pilot ERS. The respondents who felt encouraged to use the Pilot ERS did so due to the following stated reasons:

- The process cost less than going to adjudication or inspection. (“Costs” in this instance refers to the cost in terms of money and the time-value of money for the parties to the complaint/dispute rather than the cost to the taxpayer.)
- Pilot ERS was informal.
- Pilot ERS facilitated quicker resolution of the complaint than other forms of dispute resolution such as EAT and RCS.
- There were less time commitments involved than in adjudication or inspection.
- Facilitated greater understanding of the issues to be resolved.
- Pilot ERS did not require direct contact with the other party.
- Made the user aware of how much the other side was willing to offer to deal with the complaint.

¹⁰ See Section 5, Table 5.1

¹¹ Cost per recommendation

¹² Cost per referrals allowed or dismissed

¹³ Cost per cases resolved or withdrawn

Reasons as to why survey respondents or those consulted either didn't use the service or wouldn't use it again in the future, included:

- Low level of awareness of the service;
- Narrow scope: no face to face meetings/tripartite discussion;
- Lack of explanation of strengths and weaknesses of complaint.

If an agreement is reached through the RCS or EAT then there may be tax advantages of the award made if they meet the Irish Tax and Customs tax exemption criteria¹⁴.

1.4.4.2 The factors that made the ERS intervention successful or prevented ERS intervention from being successful in resolving the complaint

The factors that made the Early Resolution Service successful were given as follows by survey respondents:

- Usefulness and quality of draft agreements;
- Ease of contact with CROs;
- Impartiality of CROs;
- Timeliness of response.

Reasons given by survey respondents as to why the service had not been successful in resolving the complaint included:

- Either party felt complaint merited a full hearing, or
- Issues were too complex for a telephone based discussion with both parties.

¹⁴ The tax exemption applies to -

a. payments arising out of complaints made under a relevant Act following a formal hearing before a relevant authority (or through a mediation process) on foot of a recommendation, decision or determination by that relevant authority, and

b. subject to certain conditions, payments arising out of complaints made under a relevant Act made under an 'out of court' settlement [i.e. an 'out of court' settlement which has been agreed between an employee and his or her employer as an alternative to a formal hearing before, and a recommendation, decision or determination of, a relevant authority.

The tax exemption does not apply to a payment in respect of actual remuneration or arrears of remuneration arising from a claim under a relevant Act (e.g. the non-payment of wages, the termination of an office or employment or the compensation for a reduction or possible reduction in future remuneration).

1.4.4.3 The impact of representation by various parties such as individuals, legal representation, employer body and/or trade union on the process

Our evaluation shows that the Pilot ERS was used by individuals, trade union representatives, HR representatives and legal representatives. Representatives (including solicitors and trade unions) unanimously stated that they would use the service again. The CIPD¹⁵ representing HR professionals noted that they would use the service. CRO's highlighted that solicitors and trade unions use the ERS on a regular basis and do so effectively.

1.4.4.4 The level of preparation and where possible cost undertaken by parties using the ERS by comparison with those going to adjudication hearings.

The survey and consultations asked parties about the preparation time and costs involved in using the Pilot ERS. All felt that the service was easy to use and whilst respondents were unable to provide costs, they all felt that the time and effort was minimal (2-3 hours per case was quoted by survey respondents) and appropriate. Business community representatives were unanimous in stating that the level of preparation for cases through the ERS was significantly less than that required for adjudication or inspection. Trade Union representatives stated that very little time was required in preparation for ERS complaints.

1.5 Benchmarking

The evaluation compared the Pilot ERS with other similar services provided by the LRA¹⁶ and Acas¹⁷. However the benchmarks used, whilst similar, are not directly comparable for the following reasons:

1. The Pilot ERS has only been in operation for less than a year, whereas the benchmark services have been in operation for over 10 years.
2. Agreements reached through the LRA and Acas are legally binding, whereas this is not the case with the Pilot ERS agreements and this has implications for their enforceability and tax status.
3. CRO's currently lack the ability to issue a "reality check" for those cases where precedents were costly or had low success rates. At present determinations of the Labour Court, Equality Tribunal and EAT are published and therefore cases are available; however Inspectors' reports and RCS determinations have not been made available to CRO's. The Reform Programme intends to publish all determinations of Workplace Relation Commission Adjudicators through a single source in the future.

¹⁵ Chartered Institute of Personnel and Development is the professional association for human resource management professionals.

¹⁶ Labour Relations Agency

¹⁷ Advisory, Conciliation and Arbitration Service

4. The Pilot ERS did not enjoy the advantage of dealing with complaints in respect of which hearing dates had already been set. The experience of the CRO's has been that parties become more focused on resolving the case if it is possible to do so, once they are given a hearing date. To focus on cases once they have been given a hearing date will allow for a more efficient use of the ERS resource.

The benchmarking in Section 9 demonstrates that the Pilot ERS is not delivering the success rates of its comparators. The key differences have already been mentioned with regard to the different contexts within which the schemes are operating, and these differences are hindering the success of the ERS. The other key differences are:

- The LRA/ Acas services are mainly telephone based, but both services will provide face to face meetings if the Conciliator feels that this approach will help get the complaint resolved. Both organisations are clear that having the ability to use face to face meetings is important to their success. They use whatever intervention they feel will deliver the best chance of success.
- The LRA/ Acas staff involved in providing the service are all trained on the job, as were the Pilot ERS staff. The one difference is that the LRA/Acas staff all joined the service with a background in HR or other relevant discipline, whereas the Pilot ERS staff had more administration backgrounds. It is not clear how significant this difference is, but LRA/ Acas feel that coming from an HR or related background has helped their Conciliators on occasions with difficult cases.

The processes used within the Pilot ERS are very similar to the LRA/ Acas processes, and therefore did not account for the differences in the success rates.

The resolution rate for the Pilot ERS was 33% compared to 62%-82% for the comparators. The key reasons for these differences are: being able to make legally binding agreements; being able to use previous case information to provide reality checks to complainants and having to deal with complaints in respect of which hearing dates had not been set. The only other issue stressed by Acas and LRA was that they felt it was important to be able to use face to face meetings if required and they didn't wish to rely solely on a telephone based service.

1.6 Need for Public Funding

Early Resolution Services for workplace relations complaints can reduce the costs for individuals and the State and in this situation the report concludes that there is a need for public funding of such a cost effective service as it supports the high level objective of resolving complaints/ disputes at an early stage prior to costly intervention.

Research¹⁸ has shown that involving legal advisors is more costly than going through a mediated process. There are other benefits from using Early Resolution. For example,

¹⁸ It was found that early resolution as a result of judicial mediation saved £822 worth of time for employers and employees. Source: Evaluating the use of judicial mediation in Employment Tribunals, Ministry of Justice (2010).

the Acas services evaluation¹⁹ demonstrated that the early resolution service had a positive impact on post-dispute unemployment, where it was found that employees involved in a dispute that reached a hearing at an Employment Tribunal were 3.5% more likely to be unemployed.

Market failure exists at present, as using the legal process is strongly engrained in the Irish culture and it will take time to change attitudes and behaviours. The survey results show that 63% of Pilot ERS users would have sought legal advice from solicitors if the service had not existed.

This report concludes that there is a need for a government funded ERS that can deliver a cost effective service which, by preventing complainants from going through adjudication or inspection, saves more public money than it costs to deliver. The pilot ERS is not yet cost effective and a number of changes are needed as set out in the recommendations below.

1.7 Recommendations

Recommendation 1:

We recommend that an Early Resolution Service is provided which is measured on the extent to which it provides a cost effective service which results in workplace complaints not going to adjudication or inspection. Suggested performance indicators include:

- Indicator 1: The number of complaints resolved through the ERS and kept out of adjudication or inspection. The Acas and LRA Early Resolution Services provide a benchmark of 20% of disputes going to adjudication or inspection. For ERS, the present level is that 70%²⁰ of complaints are going to adjudication or inspection. This can only change significantly if the areas identified in recommendation 2 are implemented.
- Indicator 2: The cost per complaint resolved through the ERS. This cost needs to be less than the cost per complaint resolved through adjudication or inspection.

Other Performance Indicators include:

- Indicator 3: Staff complete 5 days of Continuous Performance Development (CPD) per annum to ensure they keep up to date with employment legislation and have on-going development of their skills in resolving workplace disputes.
- Indicator 4: Extent to which the service has created greater awareness between the two parties of the others point of view.

¹⁹ A Review of the Economic Impact of Employment Relations Services Delivered by Acas, National Institute of Economic and Social Research (2007).

²⁰ Extract from BearingPoint Ireland report on hearing costs for RCS and EAT (2010 data)

Recommendation 2:

We recommend that the ERS is developed, as follows:

- CRO's are able to access and use published first instance decisions to help with reality checking of complainants, regarding their complaints;
- The ERS service is linked to adjudication hearing dates to ensure that all parties are focused on the complaint, and provide the best chance of the complaint being resolved; and
- The agreements reached through the ERS have legal status.

These developments are required to allow the ERS to operate effectively. At present, the service is being hindered by these elements not being in existence.

Recommendation 3:

We recommend that the launch of the Early Resolution Service is supported by an appropriate education and awareness programme which not only ensures that employers and employees are informed of the service but also the benefits it can bring if the workplace complaint is resolved before adjudication or inspection whilst still ensuring that everyone's access to justice is maintained. Potential users need to understand how easy the service is to use, that they can still go to adjudication or inspection if they wish, but that there are costs which could be saved if the complaint is resolved without going to court or a tribunal.

Recommendation 4:

The Service is developed so that cases are categorised and provided with the support they need in the most efficient way without reducing the chance of resolving the complaint. This would be similar to the approach taken by the Acas Early Resolution Service, in segmenting their service provision.

- Simple cases (i.e. cases that can easily be resolved by providing both parties with information). Both parties would be provided with the information needed to resolve the dispute by telephone to explain the information and employees rights. (These are likely to include issues regarding the right to wages, time in lieu, holidays etc. The target for resolution on these cases should be between 70-80% based on benchmarks elsewhere).
- Other cases which are more complicated in areas such as unfair dismissal, will need to be dealt with through telephone and if required face to face contact. The face to face contact should only be used if absolutely necessary to resolving the dispute. This is in line with the Acas and LRA schemes. The target success rate for these cases should be between 60% and 80%²¹.

²¹ Approximately 84% for LRA and 62% for Acas.

Recommendation 5:

We recommend that CRO's role should be developed to allow them to set out the information on the strengths and weaknesses of each case (using previous case information), if this information is requested by one party. In this situation it should also be shared with the other party involved in the dispute.

Recommendation 6:

The management information systems should be developed in order to ensure that a cost effective service is being delivered in line with customer's needs:

- The time spent by each CRO on each complaint should be recorded. This should be analysed by complaint type to ensure that the time allocated to cases is appropriate to their complexity;
- An email survey should be completed with employers, employees and their representatives who use the service, in order to assess their satisfaction with the service provided; their willingness to use the service again and the extent to which the service provided and the outcome achieved has helped with workplace relations.
- A complaints process should be set up and information on it should be communicated to service users. Complaints made through the process should be investigated and any learnings taken on board to continuously improve the service.

Recommendation 7:

This assessment of the ERS is focussed on cost savings involved in resolving complaints before adjudication and fails to include an assessment of the other benefits that can be derived which relate to both employers and employees involved in employment disputes. We recommend that information should be collected on a sample of projects going through the ERS in the future, in order to get a complete view of the benefits obtained by the tax payer, employers and employees.

2 METHODOLOGY

2.1 Introduction

RSM McClure Watters was appointed by the Department for Jobs, Enterprise and Innovation in January 2013 to conduct an evaluation of the Workplace Relations Pilot Early Resolution Service.

2.2 Terms of Reference

The terms of reference required RSM McClure Watters to:

- Identify the programme objectives and examine the validity of objectives and compatibility with overall strategy;
- Define and identify the outputs;
- Examine the extent to which objectives have been achieved and the effectiveness to which they have been achieved;
- Identify the costs and staffing resources applied and the efficiency with which objectives have been achieved having regard in particular to alternatives and appropriate benchmarks including those of similar services and by comparison with adjudication or inspection;
- Evaluate the degree to which objectives warrant the allocation of public funding and the specification of potential future performance indicators;
- Identify other issues such as:
 - The factors that encouraged or discouraged parties from using the Pilot ERS;
 - The factors that made the ERS intervention successful or prevented ERS intervention from being successful in resolving the dispute;
 - The impact of representation by various parties such as individual, legal, employer body, trade union etc. on the process;
 - The level of preparation and where possible cost undertaken by parties using the ERS by comparison with those going to adjudication hearings; and
- Make recommendations in relation to any matters within the scope of the evaluation.

(Source: Department of Jobs, Innovation and Enterprise Terms of Reference, January 2013).

2.3 Background to the Early Resolution Service

2.3.1 Introduction

This section sets out the context within which the Pilot Early Resolution Service was introduced. It demonstrates that the service was set up at a time of significant change with the Workplace Relations structures undergoing reform.

2.3.2 Reform in Ireland

A major reform of the State's Workplace Relations Services was announced by the Minister for Jobs, Enterprise and Innovation in July, 2011. The overall objective of the Reform Programme is to establish a two-tier Workplace Relations structure i.e. a single Workplace Relations Commission (WRC) of first instance and a separate appeals body (the Labour Court) to deal with all employment related disputes will be achieved. The current complex and outdated system will be replaced with a simpler, more efficient and user-friendly two-tier structure with simplified procedures.

The reform will deliver a modern, user-friendly world class workplace relations system that will provide significant benefits for its users and society as a whole and make a significant contribution to better business regulation, employee relations and public service reform.

The Reform Programme will also result in earlier and less expensive resolution of workplace disputes and greatly enhanced service for employers and employees together with a significant reduction in both costs and delays for users and significant savings for the taxpayer.

In April 2012, Richard Bruton, T.D. published a blueprint²² document which set out in detail the proposed shape of the new Workplace Relations structures. It outlined, among other matters, the new processes and service standards to apply. The Minister stated there was a need for reform of these services as,

“Promoting and supporting harmonious relationships in the workplace is an important element in achieving lasting economic growth.”

The Blueprint for Workplace Relations reform stated the 'proposed Early Resolution element will deliver maximum opportunities for early resolution of disputes, as close as possible to their point of origin'. The rationale was an effort to move away from the original default position where every individual complainant, regardless of how large or how small, was to always result in a time-consuming and expensive formal hearing.

It was the almost unanimous view of respondents to the initial consultation process on the Reform Programme that early intervention in employment disputes should be encouraged and supported.

²² DJEI, Blueprint to Deliver a World-Class Workplace Relations Service, April 2012.

The **key improvements** that have been delivered to date, in addition to the Pilot Early Resolution Service, are as follows:

- The establishment of a **Single Contact Portal** called “Workplace Relations Customer Services” which provides a single point of entry into the system for employment rights and industrial relations information and complaints. Complaints are now acknowledged and the employer is also notified within two weeks of the complaint being lodged. Prior to the introduction of the Workplace Relations Customer Service this process was taking up to eight months in some cases. This prompt notification increases the likelihood of employers and employees resolving issues sooner. The introduction of this service has also assisted in reducing the backlog for Rights Commissioner hearings and as a result there is now no backlog for Rights Commissioner hearings.
- The design and launch of **Single Complaint Form** that deals with some 130 first instance complaints and replaces over 30 forms previously in use. Over 80% of all complainants in 2012 used the new form. Enhanced and improved versions of the form were released in March and June, 2012. The latter incorporated feedback received from users and stakeholders.
- The design and launch of the Interim **Workplace Relations Website** (www.workplacerelations.ie) which brings together, in one place, information on all aspects of employment rights and industrial relations.
- Two public consultation processes and two policy papers on the Reform Programme were completed.
- The detailed organisational structures for the Workplace Relations Commission and Labour Court (including indicative staffing levels) have been designed and agreed.
- The Equality Tribunal was transferred to the Department of Jobs, Enterprise and Innovation with effect from 1st January, 2013.
- The Government approved the drafting of a Workplace Relations Bill to give effect to this new structure.

The Minister is committed to enactment of the legislation at an early date, with a view to having the proposed new structures in place from 2014. The legislation will provide for the orderly wind down of the Labour Relations Commission (LRC), the National Employment Rights Authority (NERA), the EAT and the Equality Tribunal and the transfer of all the services of the LRC, NERA and the Equality Tribunal together with the first instance functions of the EAT and the Labour Court to the Workplace Relations Commission. The appellate functions of the EAT will be amalgamated into a reconfigured Labour Court.

A Single Corporate Services Unit for Workplace Relations and a Single Hearings Scheduling Unit will be established. Each Body currently has a Corporate Services Unit and a Scheduling Unit.

Work is at an advanced stage on the development of a version of the Single Claim Form which can be submitted online. This will be available in Q3 of 2013.

The final Workplace Relations Website is under design and development at present and is expected to be launched in Q3 of 2013. The new site will replace the websites of the five existing workplace relations bodies and the interim website.

A Single Determinations Database will be launched in Q3 2013. This will provide a single, searchable source for decisions of the workplace relations bodies. Three such databases are in place at present.

Business Process Reviews of all workplace relations business areas are continuing. These will deliver new business processes in support of the new structures and framework and will be completed by the end of Q3 of 2013.

Detailed planning work has commenced on the design and development of a state-of-the-art Customer Relationship Management Solution (CRMS) which will support the operations and activities of the Workplace Relations Commission and the Labour Court and underpin the savings to be achieved by the Reform Programme.

2.3.3 Pilot Early Resolution Service

The Pilot Early Resolution Service (Pilot ERS) commenced in May 2012, at an early stage of the Workplace Reform Programme's implementation. The service was set up to provide a mechanism by which parties to a complaint to the Workplace Relations Bodies (i.e. the Rights Commissioner Service, the National Employment Rights Authority (NERA), the Employment Appeals Tribunal (EAT) and the Labour Court²³) could avail of a neutral third party to provide assistance in the resolution of the issues in the dispute and so avoid the requirement for formal adjudication or an inspection/investigation.

The service aimed to provide prompt intervention in a dispute through directly contacting the parties, or party representatives, to attempt to secure their voluntary participation. The pilot service was provided by Case Resolution Officers (CROs) assigned to the Labour Relations Commission. Their role is to explore various possible avenues of settlement with the parties in dispute, primarily through the use of telephone with scope to utilise e-mail if required. Where the service was declined by either of the parties or if resolution was not been achieved within the set time period of six weeks, the case was referred on to the relevant service for a formal hearing.

The Pilot ERS operated until the 16/11/12 during which time it selected 1,205 cases for intervention. This report evaluates the performance and impact of the Pilot ERS over its duration, including the contribution it made to delivering on government policy.

²³ Complaints to the Equality Tribunal were not included within the scope of the Pilot

2.4 Methodology

Based on the terms of reference, RSM McClure Watters designed a seven stage methodology to meet the Department of Jobs, Enterprise and Innovation's requirements. This involved:

- A desk review of the rationale for setting up the Pilot Early Resolution Service.
- A desk review of the data relating to the service.
- Interviews with the management and staff responsible for the delivery of the service and with the Workplace Relations Reform Office of the Department of Jobs, Enterprise and Innovation.
- A survey of users of the service.
- A desk review of other comparable schemes.
- A comparison of the performance of the Pilot Early Resolution Service with the other services.
- Analysis and reporting of the information.
- A Steering Committee, comprising Brendan Hogan, Workplace Relations Reform Programme Manager, Department of Jobs, Enterprise and Innovation and Jenny Irwin, Partner, RSM McClure Watters was put in place to agree the scope and monitor progress on deliverables.

2.5 Contents of this Report

The rest of this report is to be set out as follows:

- Section 3: Policy, strategy and review of literature
- Section 4: Workplace Reform and Pilot Early resolution service
- Section 5: Review of Performance of Pilot ERS
- Section 6: Survey Results and Analysis
- Section 7: Consultation Findings
- Section 8: Benchmarking - Workplace Dispute Services
- Section 9: Conclusions and Recommendations

3 POLICY, STRATEGY AND REVIEW OF LITERATURE

3.1 Introduction

This section sets out the key policy drivers relevant to this study as well as a review of available evidence regarding the use of mediation/conciliation in employment disputes. This information is used to assess the validity of the objectives set for the Early Resolution Service (ERS) and their compatibility with the overall strategy.

3.2 Policy and Strategy

Government policy over the last 2 years is focused on speeding up the resolution of disputes and reducing costs for the tax payer.

3.2.1 Programme for Government (PfG) 2011

The Programme for Government's overall aim is to introduce measures that will help Ireland recover from the current economic climate.

Merging, rationalising, and streamlining existing regulatory enforcement structures are actions described within the Programme for Government Action Plan.

Central to aiding this is reform in Law, Courts and Judiciary, of which one specific aim is to "encourage and facilitate the use of mediation to resolve commercial, civil and family disputes in order to speed up the resolution of disputes reduce legal costs and ameliorate the stress of contested court proceedings". The pilot Early Resolution Service supports this intention, as it aims to resolve cases out of court and in a timely manner.

3.2.2 The Public Service Agreement 2010-14 (The Croke Park Agreement)

The Public Service Agreement states that there will be a focus on fewer public service organisations, working closely together to deliver cost-effective services. Containing costs is a key outcome, and this will be achieved through restructuring and reorganisation of work processes. The commitment to developing better business processes in the agreement states that outdated and inappropriate practices will be eliminated. This reflects the commitments in the PfG for merging, rationalising and streamlining existing services.

The Pilot Early Resolution Service supports the intent to restructure work processes to bring about cost-savings in public service delivery.

3.2.3 Department of Jobs, Enterprise and Innovation’s Statement of Strategy 2011-2014

One of the Department’s goals is “to make markets, including the labour markets, work more efficiently through smart regulation which encourages innovation, keen competition, and high standards of compliance and consumer protection but without unnecessary regulatory costs” (Statement of Strategy 2011-2014).

The strategy has as one of the objectives “Reforming Employment Rights and Workplace Relations” in order to deliver ‘a world class system for fast and effective resolution of workplace relations issues in the interests of reducing costs to users and minimising impact on the productivity of enterprises”.

Section 9 of this report compares the pilot Early Resolution Service, with other similar services operating in the UK.

3.2.4 Department of Jobs, Enterprise and Innovation’s Action Plan for Jobs 2012

The Action Plan for Jobs states that the Department of Jobs Enterprise and Innovation will reform and consolidate the five existing employment rights institutions into two simplified and streamlined bodies. This fits with the PfG and the Public Service Agreement 2010-14, as a measure to merge and streamline existing services in order to contain costs.

3.2.5 Workplace Relations Reform Programme

The Pilot ERS took place within the context of the new Workplace Relations Reform Programme. The overall objective of the Workplace Relations Reform Programme is to deliver a world-class workplace relations service and employment rights framework that serves the needs of employers and employees and provides maximum value for money.

The specific objectives include:

- Promoting maximum compliance with employment law.
- Providing a single authoritative source of information on employment law.
- Ensuring employers and employees understand their respective rights and obligations.
- Providing access to services within a reasonable timeframe.
- Simplifying access to and navigation of the employment dispute resolution processes.
- Resolving grievances and disputes as close to the workplace as possible.
- Resolving workplace grievances and disputes as early as possible after they arise.

- Providing credible enforcement and an effective, risk based inspection regime.
- Providing simple, accessible, independent, fair and timely adjudication or inspection.
- Providing a simple, accessible, independent, fair and timely means of appeal.

The reforms are driven by the need to improve customer service, in light of the acknowledged complexity, backlogs and delays in the resolution of grievances and disputes, provide greater value for taxpayers' money, in light of current fiscal constraints and rationalise institutions in light of the Government's public service reform agenda.

The Project envisages the development of a two tier Workplace Relations structure by merging the activities of the National Employment Rights Authority, the Labour Relations Commission, the Equality Tribunal and the first instance functions of the Labour Court and the Employment Appeals Tribunal into a new Body of First Instance - the Workplace relations Commission (WRC). The appellate functions of the Employment Appeals Tribunal will be incorporated into an expanded Labour Court.

3.2.6 Pilot ERS Objectives and Targets

The overall objective of the Pilot ERS was to resolve the maximum number of complaints/disputes through early intervention over the course of the pilot, however there was no target specified for this.

The administrative targets set for Pilot ERS focused on providing an early resolution service to 1,199 complaints during the pilot period (May 2012 to November 2012 – In reality, 1,205 complaints were offered participation in the pilot), and that the intervention would last for 6 weeks from initial contact.

The focus during this period was to get the new service up and running, the staff trained and the systems in place to deliver and monitor it.

The terms of reference require the examination of the validity of the objectives and their compatibility with the overall strategy.

The overall objective of the service which was to deliver a service which supports the resolution of employment related cases without going to adjudication or inspection is entirely compatible with government strategy. The objectives should be developed in any future service to include specific targets regarding success rates and cost per service provided. Section 9 provides benchmark data which could be used to in the discussion and development of these targets.

3.3 Mediation across the EU

Over the last decade, there has been a marked shift in policy across Europe regarding resolving workplace disputes. Since 2000, some 15 countries have introduced new laws or procedures to provide alternatives to court proceedings²⁴.

3.3.1 Eurofound Study: Alternative Dispute Resolution (2010)

Eurofound (the European Foundation for the Improvement of Living and Working Conditions) is the EU body set up by the Commission to provide information, advice and expertise on living and working conditions, industrial relations and managing change in Europe.

Eurofound completed research²⁵ in 2010, reviewing the use of Alternative Dispute Resolution (ADR) as a means of settling individual workplace disputes before they go to a court hearing. The report is based on the national reports from the EIRO26 correspondents for 27 countries.

The report states that ADR is growing across Europe. However there is a lack of data and the terms mediation and conciliation are used interchangeably.

Table 3.1 details the extent to which judicial mediation has been successful in three countries detailed in the report.

Table 3.1: Success Rate of Judicial ADR in 3 Countries (%)

% of Cases Submitted to Labour Court	Germany (2007)	Greece (2008)	UK (2008) ²⁷
Settled at conciliation	51	48	43
Withdrawn from court	31	23	31
Proceeded to court	18	29	27

Source: Eurofound: *Alternative Dispute Resolution 2010*

The success is measured through measuring those cases settled at conciliation and those cases which are withdrawn after the conciliation process begins. The report suggests that cases are withdrawn by claimants after early discussion with a conciliator resulting in a more realistic assessment of success. Partial data available from Italy estimates that half of individual disputes are resolved at conciliation stage, and in Spain the figure was 58%. The figures produced by countries in the report relating to the success of judicial mediation, showed varying figures, with the most optimistic estimate being that judicial ADR²⁸ practices led to a two third reduction in

²⁴ Eurofound (2010) *Individual disputes in the workplace: Alternative Dispute Resolution*

²⁵ *Individual Disputes at the Workplace: Alternative Disputes Resolution 2010*

²⁶ European Industrial Relations Observatory

²⁷ Excludes Northern Ireland.

²⁸ Alternative Dispute Resolution covers Conciliation, Mediation and Arbitration.

labour court or tribunal hearings, which would constitute a substantial reduction in cost to the state and provide a greatly reduced time for dealing with cases.

The report notes it has insufficient information to complete a detailed analysis on the type of ADR by type of dispute. It did find that the most common disputes were those related to the employment contract- e.g. non-payment of wages, hours of work, holidays and flexible working.

3.3.2 Evaluating the use of judicial mediation in Employment Tribunals, Ministry of Justice (2010)²⁹

This report concludes on the findings of a judicial mediation service piloted in Newcastle, Central London and Birmingham by the Employment Tribunal Service (ETS) between June 2006 and March 2007. The aim was to evaluate whether judicial mediation would enable resolution without the need for a formal hearing, whether costs to the ETS were low, and whether there were associated benefits for claimants and employers in terms of outcomes and improved processes. The study involved a comparison of those who had volunteered for judicial mediation and received it, and those who had volunteered but who had not received it. The sample consisted of 80 cases where the parties had volunteered for judicial mediation but did not receive it, 116 cases where the parties received judicial mediation, and 672 cases where the parties were offered judicial mediation but were unwilling to avail of the service.

It was found that there was a small difference (of 13 percentage points) between the proportion of cases going to a hearing between cases involved in judicial mediation and those which had unsuccessfully volunteered for judicial mediation. It was found that, in 79% of cases where parties had volunteered unsuccessfully for judicial mediation, the cases were resolved through Acas, privately, and/or through “other” methods.

Amongst those who had received judicial mediation, 72% reported that their case had been resolved as a result, and 76% stated that they would use the process again.

The report estimated that the average cost per mediated case in terms of time involved for claimants and respondents was €4,411³⁰, and the effect of savings due to early resolution reduced the net cost to €1,038³⁰ for each party. Indirect benefits such as psychological wellbeing and the benefits of saving the employment relationship were not estimated by the report, but it was stated that these effects would need to be “substantial” in order to offset the cost of judicial mediation.

The report concluded that judicial mediation was an expensive and additional process in an environment where the majority (60%) of cases were resolved without a hearing, and where a variety of alternative dispute resolution services such as Acas were

²⁹ Urwin et al, *Evaluating the use of judicial mediation in Employment Tribunals*, Ministry of Justice (2010)

³⁰ Converted to € based on exchange rate of £1:€1.18 (25th June 2013).

available. It was recommended that the judicial mediation pilot should not be rolled out to other areas in its original form.

3.3.3 A Review of the Economic Impact of Employment Relations Services Delivered by Acas³¹, National Institute of Economic and Social Research (2007)³²

In 2007, Acas commissioned the National Institute of Economic and Social Research (NIESR) to undertake an independent review of the economic impact of employment relation services delivered by Acas.

The report aimed to calculate economic impact by assessing the reduction in opportunity costs³³ as a result of Acas employment relations services. The review was primarily based on data³⁴ concerning the cost and number of dispute resolution activities during 2005/06.

The report described Acas's activities during 2005/06 as costing €57.82m³⁰ in grant-aid from the Government, half of which was as a result of individual dispute services. Twenty per-cent of expenditure was incurred through offering free advisory services, 15% through fee-based consultancy and training, 10% through publicity and partnership and 5% through the resolution of collective disputes.

The report estimated that Acas's individual conciliation services³⁵ cost €28.32m³⁶, but had net economic benefits of €181.6m³⁷, with a benefit/cost ratio of 6.4. In 2005/06 Acas dealt with approximately 141,000 cases of individual disputes between individuals and employers of which 109,700 involved Employment Tribunal (ET) complaints. Disputes would commonly involve cases under more than one jurisdiction³⁸; the average number of jurisdictions per complaint was stated to be 1.8. The purpose of individual conciliation is to mitigate the costs to individuals and taxpayers that accompany Tribunal hearings through helping the parties to a dispute reach settlement without the need for a Tribunal hearing. The detail on how the €181.6m was arrived at is detailed in Table 3.2.

³¹ Advisory, Conciliation and Arbitration Service.

³² Meadows, P. *A Review of the Economic Impact of Employment Relations Services Delivered by Acas*, National Institute of Economic and Social Research (2007).

³³ "Opportunity costs in this case were described as measures of: the management time lost as a result of managing disputes, the loss of output as a result of low morale and absenteeism, and the output lost as a result of disputes.

³⁴ Data sources included the Acas 2005 Helpline survey, Acas Annual Report 2005/06, and the Department for Business, Innovation and Skills Survey of Employment Tribunal Applications (2003)

³⁵ Acas receives notification of actual or potential Employment Tribunal cases. Conciliation aims to highlight the strengths and weaknesses of both parties' arguments, and subsequently encourage a settlement outside of an Employment Tribunal.

³⁶ Includes direct salary costs and overheads. Converted to € based on exchange rate of £1:€1.18 (25th June 2013)

³⁷ The number of Employment Tribunals avoided was multiplied by the net cost to the taxpayer per Tribunal. From this, the cost of delivering conciliation was subtracted. Converted to € based on exchange rate of £1:€1.18 (25th June 2013)

³⁸ Jurisdictions are the areas of legislation under which a dispute can be made. Disputes tend to cover multiple jurisdictions.

Table 3.2: Economic Impact of Individual Conciliation³⁹

	Net Economic Impact (€ ⁴⁰ ,000)
ET Complaints (2005/06)	
Employers	241,216.8
Employees (and former employees)	19,854.68
Taxpayers	78,868.84
Third Parties ⁴¹	-165,281
Total	174,658.9
Non-ET Complaints (2005/06)	
Employers	22,693.76
Taxpayers	5,525.94
Third Parties	-21,251.8
Total	6,966.72
Total (all cases)	181,625.6
Cost of Delivering Service	28,320
Benefit/Cost ratio	6.4

Source: Meadows, P. (2007), *A Review of the Economic Impact of Employment Relations Services Delivered by Acas*, National Institute of Economic and Social Research, Pg.29

To summarise the table, over 2005 / 06 intervention by Acas in individual disputes:

- Reduced the employer's potential costs by €274.94m⁴². This is constituted from €162.84m⁴² in lower legal fees, recruitment costs resulting from replacement of employee and higher turnover of staff resulting from involvement in an Employment Tribunal and lower compensation costs;
- Provided net economic benefits to claimants of €19.8m⁴² resulting from more wages and less time out of work, but €7.1m less in compensation payments and €3.54m⁴² less in legal fees;
- Provides a saving to the taxpayer of €84.37⁴²m as a result of fewer cases heading to hearing; and
- Results in a loss to third parties, e.g. Solicitors, of a total of €186.4m through a lower requirement for their service, while organisations providing support to claimants (CAB, unions etc.) save around €4.25m from a lesser requirement on their service and representation through having cases settled rather than proceeding to adjudication or inspection.

³⁹ The rationale for these economic impact estimates is detailed below.

⁴⁰ Converted to € based on exchange rate of £1:€1.18 (25th June 2013)

⁴¹ Third parties cover other organisations and individuals involved in the dispute e.g. Solicitors, Trade Unions, Citizens Advice Bureau etc.

⁴² Converted to € based on exchange rate of £1:€1.18 (25th June 2013)

3.3.3.1 Basis of Estimates

Employment Tribunal Complaints

The estimate is based on the number of cases recorded as having been settled via conciliation with Acas plus a third of cases withdrawn or settled privately due to the contribution of Acas involvement to the resolution of these cases. It was estimated that during 2005/06 Acas involvement produced a total of 30,056 cases where a hearing was avoided, representing approximately 27.4% of all Employment Tribunal cases.

Non-Employment Tribunal Complaints

Almost all of the 31,576 cases in this respect were equal pay complaints which had the same potential to involve tribunal cases in the same way as actual ET complaints.

The assumption was made that many of these complaints were multiple complaints against a single employer and therefore it was assumed it would average that one hearing would be generated for every twenty cases. However the complexity of these cases would double the average length of time involved therefore savings to the taxpayer from reduced hearings had been doubled.

Employers

Managers spend on average 8.5 days on a complaint settled by Acas and 13.8 days on a hearing which proceeds to a Tribunal hearing⁴³. With a day of management time roughly equated to €247.8⁴⁴, the savings from each case not proceeding to a Tribunal hearing are €1313.34⁴⁴.

For non-ET complaints, owing to many cases relating to groups of complainants the savings in management time have been divided by five as an assumption.

The savings in costs to employers also includes the lower disruption and staff turnover resulting from the company avoiding a Tribunal complaint. The costs were based on CIPD's estimate of the cost of recruiting administrative, service and manual employees⁴⁵. Cost considerations include the disruption in the period where the post remains vacant and loss of output, staff training and induction.

There are also important savings in terms of legal fees which are €3347.66⁴⁴ higher in cases proceeding to Tribunal⁴⁶. However, savings to the employer also constitute a loss to legal professionals so does not in itself constitute a net economic gain.

⁴³ Hayward B., et al (2004) *Findings from the Survey of Employment Tribunal Applications 2003*, DTI Employment Relations Research Series No.33.

⁴⁴ Converted to € based on exchange rate of £1:€1.18 (25th June 2013).

⁴⁵ CIPD (2006) *Recruitment Turnover and Retention*.

⁴⁶ SETA 2003.

Employees

Only 5% of employees who lodge a complaint to Tribunal remain in the same job⁴⁶. Even if the case is resolved without having to go to Tribunal it is unlikely the employee will avoid having to change jobs. Intervention by Acas allows mitigation of post-complaint unemployment⁴⁷ as evidenced by 80% of employees being in paid employment post Acas involvement at the time of the follow up survey compared to 76.5% of those whose complaint went to Tribunal.

Those whose complaint goes to Tribunal have a 3.5% lower probability of being in paid employment in the intermittent period post-dispute representing an average loss per complainant over the year of €541.62⁴⁸. This amounts to a total loss avoided of €19.4m⁴⁴.

In addition in 913 cases Acas intervention secured the reinstatement of a dismissed employee. It is assumed an average of 14 weeks unemployment was avoided with a total benefit to these employees of €3.78m⁴⁴.

Taxpayers

The Tribunal system has consisted of two costs to the taxpayer, administration costs and hearing costs for cases that proceed to Tribunal. The savings to the taxpayer are estimated⁴⁹ at €1749.9⁵⁰ per case saved, however as the cases dealt with by Acas PCC tend to be more complex and result in higher costs to the Tribunal system this figure was increased by 25% to €2183⁵⁰ resulting in a total saving to the taxpayer of €77.88m⁵⁰.

For non-ET cases again the report makes the assumption that one in twenty complaints would proceed to adjudication or inspection but that hearings would be double the length. The cost saving to the taxpayer was estimated as €5.55⁵⁰m.

Other third parties

Around 14% of applicants were represented over the course of their complaint by a Trade Union official and 18% by an employment rights adviser or CAB. These advisors are the only group of third parties that experience net economic benefits rather than net losses. These benefits offset some losses to businesses, providing support to employers and employees that would benefit from cases going to adjudication or inspection.

⁴⁷ Period of time post-claim where the employee is out of paid employment.

⁴⁸ Based on 3.5% of the average earnings of ET claimants (17,500) less 25% to account for Income Tax and NI. Converted to € based on exchange rate of £1:€1.18 (25th June 2013).

⁴⁹ Based on the number of cases and the programme and non-programme expenditure in the ETS Annual Report 2005/06

⁵⁰ Converted to € based on exchange rate of £1:€1.18 (25th June 2013)

3.4 Mediation beyond the EU

3.4.1 What makes Employment Mediation Successful? Perceptions and Expectations of Participants in New Zealand, (2011)⁵¹

This report examines the benefits of mediation as a means to resolve employment rights disputes in New Zealand. The research was funded by the New Zealand Department of Labour (DOL) and Marie Curie.

A survey was conducted with employers, employees and representatives who had availed of the DOL Mediation Services during November 2010 to January 2011. Of the 1000 questionnaires which were distributed, there were 116 responses. Amongst these, there were 21 employees, 43 employers and 52 representatives.

The DOL Mediation Services employs 34 full-time mediators, and offers mediation services free of charge to employees and employers. It was described that mediators in the service tend to be experienced, with half having practiced mediation for more than 10 years. They also tended to be educated to third level, typically possessing a law degree. It was stated that the DOL mediators used a hybrid approach to mediation, occasionally incorporating evaluative elements.

The report states that 78% of employment relationship problems were resolved through the Mediation Services in 2009/10, with a further 2% being partially resolved.

In 2009, it was found that customer satisfaction for the services was 83%, and the 2010/11 survey found that 95% of users highlighted the presence of positive qualities in their mediators. The most important qualities were found to be impartiality, ability to relate to people and employers, and control over the mediation process.

Users stated that they were happier with the mediation process than with the outcomes. On a scale of 1 to 5⁵², respondents rated their happiness with the outcomes of mediation as 2.23, and their happiness with the process of mediation as 1.65. Respondents disagreed (4.16) with the statement that their case would have been settled without mediation. Users of the service also disagreed (4.32) that they would have preferred to go directly⁵³ to the Employment Relations Authority⁵³.

⁵¹ Risak, M., McAndrew, I., *What makes Employment Mediation Successful? Perceptions and Expectations of Participants in New Zealand* (2011).

⁵² 1 represented “strongly agree” whilst 5 represented “strongly disagree.”

⁵³ The Employment Relations Authority adjudicates cases which are not settled through mediation.

3.5 Summary

Alternative dispute resolution in an employment context is being encouraged and is experiencing a more widespread use across Europe, with many EU countries adopting policies promoting mediation and conciliation.

The Programme for Government 2011 sets out the need to encourage and facilitate the use of mediation to resolve commercial, civil and family disputes in order to speed up the process and reduce legal costs. The Workplace Reform Programme is set to deliver on these objectives through the reform and consolidation of the five existing employment rights institutions into two simplified and streamlined bodies and the provision of simplified, efficient and effective early resolution processes.

The overall objective of the Early Resolution Service was to deliver a service which supports the resolution of employment related cases without going to court and is entirely compatible with government strategy.

The objectives for any future ERS should be developed in any future service to monitor the effectiveness and efficiency of the service.

Evidence of the effectiveness of Early Resolution Processes is growing but is still sparse. The evidence that does exist highlights that mediation and conciliation services should be measured on a range of indicators, namely:

- The number of disputes the Early Resolution Service has resolved, but also those that have withdrawn from the adjudication process after being able to access information;
- Extent to which the service has created greater awareness between the two parties of the others point of view;
- Extent to which the service has improved workplace relations; and
- Efficiency of the ERS should be measured through the cost of providing the service (including results achieved) against the alternatives of going to adjudication or investigation/inspection.

A key objective of the Government, in the short and medium term, primarily concerns the rebuilding and rebalancing of the Irish economy. Having a sound framework to deal with employment relations and the avoidance of damaging effects of work place disputes that become long drawn out and costly court proceedings has become a key component of this objective.

4 WORKPLACE REFORM AND PILOT EARLY RESOLUTION SERVICE

This section sets out the Workplace Relations structures pre-reform and post-reform, and details where and how the Pilot Early Resolution Service (Pilot ERS) fits into the overall provision. The section aims to define and identify the outputs of the Pilot ERS, and identify the costs and staffing resources associated with the service.

4.1 Workplace Relations Complaints Process and Structures

The existing and proposed workplace dispute structures in Ireland are demonstrated in Figure 4.1 and Figure 4.2.

Figure 4.1 shows the workplace dispute resolution structures in Ireland before the introduction of the Pilot ERS. It is shown that disputes such as Unfair Dismissal (UD) could progress to the Rights Commissioner Service (RCS) or the Employment Appeals Tribunal (EAT) in the first instance. It shows that appeals from the RCS could be directed to either the EAT or the Labour Court (LC). The figure shows that first instance employment disputes could be directed towards the LC, the RCS, the EAT, the National Employment Rights Authority (NERA) or the Equality Tribunal (ET).

Figure 4.2 demonstrates how the structures will change under proposals dated April 2012⁵⁴. In the first instance under the proposed structures, complaints will be referred to the Workplace Relations Commission for Inspection, Adjudication, or Early Resolution. Thus, there will be one body where first instance complaints will be referred, instead of the 5 at present (excluding the Early Resolution Service). The services of the RCS, the EAT and NERA will be realigned under the new structures, with an emphasis on workplace disputes being resolved via early resolution in the case of a number of complaints. The new structures for workplace dispute resolution will provide a much more streamlined process, with a strong focus on early resolution.

The reform will aim to establish a diverse panel of adjudicators which will provide experienced industrial relations and HR practitioners, civil servants and employment lawyers with appropriate skills and qualifications. Where a case is referred for hearing it will be assigned to a Workplace Relations Commission Adjudicator and a date for hearing assigned. All first instance complaints will be determined by a single adjudicator sitting alone who will hold a hearing where both parties are given the opportunity to be heard and to decide the matter.

⁵⁴ Source: Blueprint to Deliver a World-Class Workplace Relations Service, Department of Jobs, Enterprise and Innovation (April 2012)

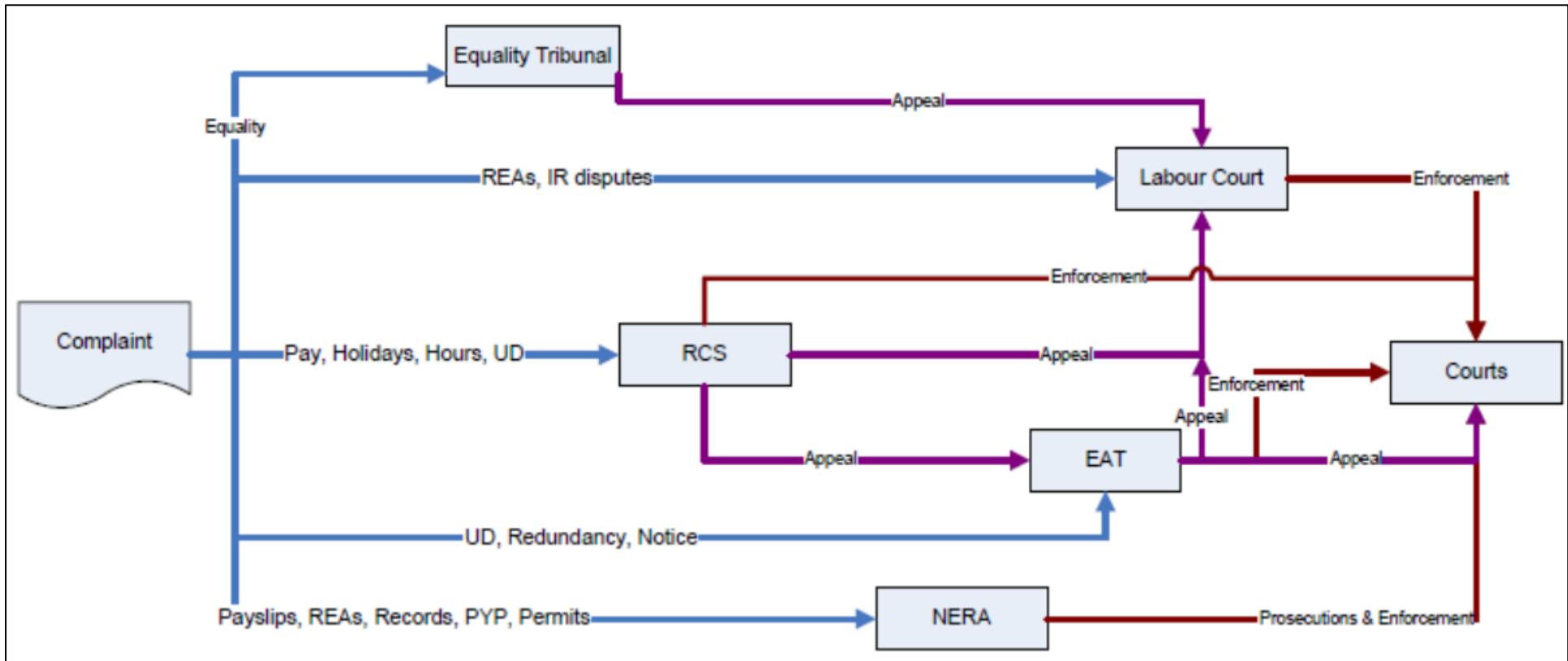
Currently, all complaints under the Equal Status Acts 2000-11 (other than those that relate to licenced premises and registered clubs) are heard at first instance by the Equality Tribunal and on appeal by the Circuit Court. The District Court will retain its jurisdiction over complaints under the Equal Status Acts against licenced premises and registered clubs. The matter of where all other complaints (and appeals) should be directed is still under consideration.

The new workplace reform will provide a just, fair and efficient adjudication service provided by well-trained, professional, impartial and fair decision-makers. It is intended to greatly reduce the waiting time for hearings and decisions by putting in place a target period of three months from the time of complaint to hearing, and written, reasoned decisions within 28 working days of the hearing in 90% of cases.

A consistent time limit of six months for initiating all complaints requiring adjudication or inspection will be introduced together with consistent criteria under which in exceptional circumstances such time limit may be extended to twelve months. The issue of whether a fee for making a complaint should be introduced is also under consideration. The provision of workplace relations services has considerable cost implications for the state. It would seem logical that users of the service would be asked to contribute in some way towards the service. Any fee introduced would be a modest administration fee somewhere in the region of €50. It would be configured in such a way as to encourage early resolution. For example there may be no fee for Early Resolution with the fee only being charged when a case progresses to a hearing.

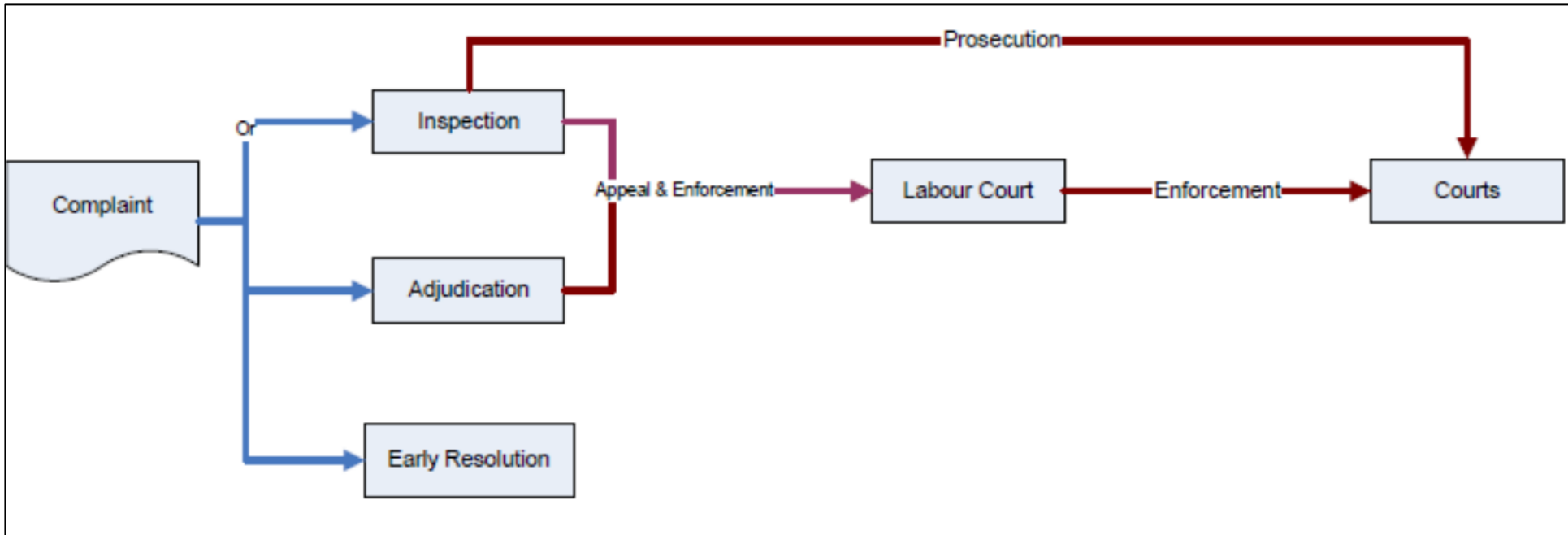
Clear criteria will be established with regard to the knowledge, experience and skills of WRC Adjudicators who will in future be appointed through an open and transparent system. Induction and on-going training will be provided to all those appointed to this role, who will be subject to a Code of Conduct for Workplace Relations staff. In addition they will be subject to annual performance appraisal and the normal public sector performance management and development process will apply. This will require certain standards and targets to be met on an annual basis.

Figure 4.1: Workplace Dispute Structures Pre-Reform

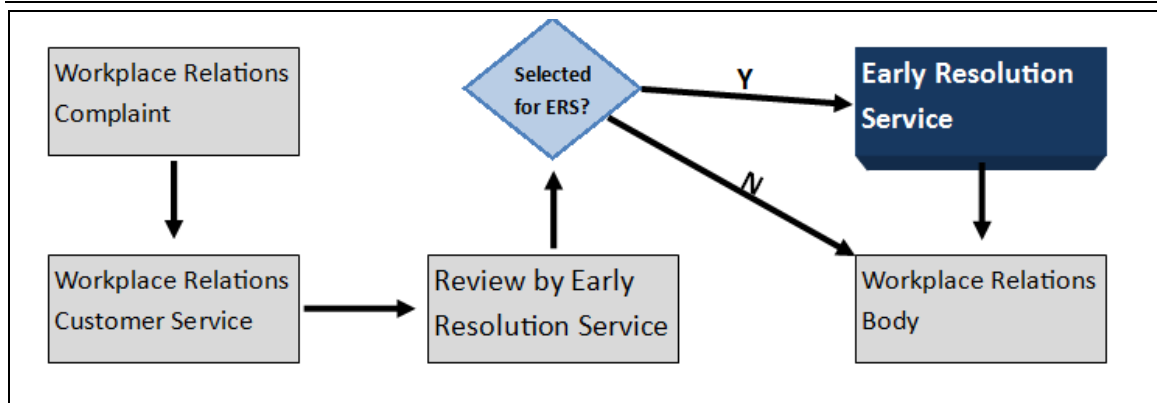


Source: Blueprint to Deliver a World-Class Workplace Relations Service, Department of Jobs, Enterprise and Innovation (April 2012)

Figure 4.2: Proposed Workplace Dispute Structures Post-Reform



Source: *Blueprint to Deliver a World-Class Workplace Relations Service*, Department of Jobs, Enterprise and Innovation (April 2012)

Figure 4.3: Early Resolution Service Process


Source: RSM McClure Watters 2013

Figure 4.3 demonstrates how workplace relations complaints progressed through the ERS selection process during the pilot phase from May 2012 to November 2012. Complaints to the Workplace Relations Bodies are received and registered by Workplace Relations Customer Services and referred to the relevant Body. Complaints so registered were reviewed by the Pilot Early Resolution Service; complaints not selected for ERS were progressed by the relevant Body. The scope of the Pilot as determined by the Department was that RCS, EAT, Labour Court and NERA complaints were to be examined but, in the event, only RCS and EAT complaints were considered. The evaluation therefore can only comment on the effectiveness of the pilot in dealing with Labour Court and NERA complaints.

Complaints which were not resolved through the Pilot ERS would progress either to the Rights Commissioner Service (RCS) or the Employment Appeals Tribunal (EAT) in the first instance. From the RCS, decisions could be appealed through either the EAT or the Labour Court (LC) depending on the legislation involved.

Table 4.1 shows the relevant Body for complaints and appeals under the relevant legislation.

Table 4.1: First Instance⁵⁵ and Appeals Body by Legislation

Legislation	Forum	Target Timeframe	Appeal
Adoptive Leave Acts	RCS ⁵⁶	6 months	EAT
Carer's Leave Act	RCS	6 months	EAT
Employment Equality Acts	ET ⁵⁷	6 months	LC
EC (Protection of Employment) Regulations	RCS	6 months	EAT
EC Transfer of Undertakings Regulations	RCS	6 months	EAT

⁵⁵ First instance complaints refer to new complaints being made to specific body which have not been processed or adjudicated on by any other organisation within the Workplace Relations structure

⁵⁶ Rights Commissioner Service, see Section 5

⁵⁷ Equality Tribunal, see Section 5

Legislation	Forum	Target Timeframe	Appeal
Industrial Relations Acts	RCS / LC ⁵⁸	6 months	LC
Maternity Protection Acts	RCS	6 months	EAT
Minimum Notice	EAT ⁵⁹	6 months	High Court ⁶⁰
National Minimum Wage	RCS/NERA	6 months	LC
Organisation of Working Time	RCS / EAT	6 months	LC
Parental Leave Acts	RCS	6 months	EAT
Payment of Wages	RCS	6 months	EAT
Protection of Employees	RCS	6 months	LC
Redundancy payments	EAT	6 months	High Court ²⁸
Safety, Health and Welfare at Work	RCS	n/a	-
Terms of Employment	RCS	6 months	EAT
Unfair Dismissal	RCS / EAT	6 months	EAT

Source: www.employmentrightsireland.com

The organisations responsible for adjudicating employment complaints/disputes are therefore the Rights Commissioner Service, Labour Court, Equality Tribunal and the Employment Appeals Tribunal. Equality complaints/disputes were outside the scope of the Pilot Early Resolution Service. Details on the Bodies which came within the scope of the Pilot are set out below.

4.1.1 Labour Relations Commission

The Labour Relations Commission's (LRC) overarching function is "the development and improvement of Irish industrial relations policies and practices through the provision of appropriate, timely, and effective services to employers, trade unions and employees" (Labour Relations Commission 2005).

The LRC has three main divisions, namely:

- Conciliation Service;
- Advisory and Research; and the
- Rights Commissioner Service.

⁵⁸ Labour Court

⁵⁹ Employment Appeals Tribunal, see Section 5

⁶⁰ On a point of law only

A working paper on the role of the LRC⁶¹ stated that the key principles of the LRC's conflict prevention and dispute management system are:

- Providing employees with access handling complaints regarding employment rights;
- A proactive approach to dispute prevention and/or resolution;
- The promotion of joint working and collaboration between managers, employees and trade unions;
- Emphasising improved employment and industrial relations practises;
- The development of Codes of Good Practise; and
- Development of procedures for arbitration and adjudication.

4.1.1.1 Conciliation Service Division

Conciliation is the basis of the LRC's ADR⁶² offering, aiming to facilitate and encourage mutual agreement between parties involved in a dispute. Table 4.2 details the number of referrals⁶³ received by the Conciliation Service of the LRC from 2009 to 2011.

Table 4.2: LRC Conciliation Service Division 2011

	2009	2010	2011	% Change
Referrals Made				
Referrals Made to the LRC	1,571	1,193	1,155	- 26.5%
Referred to Labour Court	279	217	180	- 35.5%
Rate of Successful Resolution	82.2%	81.8%	84.4%	2.2%

Source: LRC Annual Reports 2009, 10, 11

Key points to note include;

- While overall referrals from 2000 to 2011 have decreased by 416 (26.5%), the number of cases being referred on to the Labour Court has been decreasing at a faster rate of 35.5%
- Overall the success of the LRC Conciliation Service in achieving successful resolution to referrals it receives has increased by 2.2% from 2009 to 2011.

⁶¹ Teague, P., 2013, Resolving Workplace Disputes in Ireland: The Role of The Labour Relations Commission

⁶² Alternative Dispute Resolution

⁶³ Cases received by the LRC

The Strategic Plan 2011-13⁶⁴ for the LRC sets out some key issues facing the Conciliation Service of the LRC and set out some key actions to address the issues. These are summarised below;

- A focus on the efficiency of their administrative systems;
- A focus on Officer support in the delivery of effective conciliation – peer review, performance management etc.;
- A focus on knowledge of international best practise in dispute resolution techniques;
- A focus on the refinement of management information flows; and
- A focus on the timeliness of Service responses to requests for conciliation, referrals to the Labour Court etc.

4.1.1.2 Rights Commissioner Service

The Rights Commissioner Service (RCS) was set up in 1970 as an independent function operating as part of the LRC. The service is delivered by individual Rights Commissioners who are an independent group of industrial relations experts drawn from trade union and business circles. Their role is the investigation of disputes, grievances and complaints referred under specific legislation⁶⁵. The approach of the service is to seek to address problems in ways that are speedy, non-legalistic and solution orientated.

Under the current Reform Programme, a Single Contact Portal, known as Workplace Relations Customer Services (WRCS) s has been set up under the aegis of the Department of Jobs, Enterprise and Innovation. The WRCS arose from a streamlining and amalgamation of the information services previously provided by the National Employment Rights Authority's Contact Centre and the general enquiries and complaint receipt and registration areas of the five Workplace Relations Bodies.

This section has responsibility for:

- a) information provision in relation to employment, equality and IR rights and obligations,
- b) the receipt and registration of all complaints currently referred to the five Workplace Relations Bodies, and
- c) dealing with enquiries concerning all complaints.

⁶⁴ Labour Relations Commission, Strategic Plan for 2011-2013

⁶⁵ Adoptive Leave Acts 1995-50, Carers Leave Act 2001, Competition Acts 2002-06, Employees (I&C) Act 2006, Employment Permits Act 2006, Industrial Relations Acts, Maternity Protection Acts 1994-04, National Minimum Wage Act 2000, Organisation of Working Time Act 1997, Parental Leave Act 1998, Payment of Wages Act 1998, Payment of Wages Act 1991, Protection of Employees Acts, Protection of Young Persons (Employment) Act 1996, Safety, Health and Welfare at Work Act 2005, Terms of Employment Act 1994, Unfair Dismissals Act 1977-05, European Communities Regulations.

The RCS provides third party procedure to help solve employment disputes. Unlike the Conciliation Service which is primarily concerned with collective disputes, the RCS targets individuals or small group disputes. Similarly to conciliation, the RCS attempts to find early resolution to disputes before they escalate to large scale stand offs between employers and employees (or trade unions) or progress to the Labour Court.

The RCS has the power to obligate that employers answer complaints of breaches of employment rights and standards in the first instance. However, parties to a dispute can object to an RC investigation referred under the Industrial Relations and Unfair Dismissals Acts whereby the applicant can request the Labour Court or Employment Appeals Tribunal to hear the case. This right of objection does not apply to referrals to the RCS made under other legislation.

The Rights Commissioners encourage a focus on the informal resolution of workplace disputes but retain the ability to impose determinations on cases. This aims to provide the power to Rights Commissioners to solve disputes without being too bureaucratic or legalistic. At present settlements agreed through the RCS are tax-free whereas settlements through the Pilot ERS are taxed as income. This is a clear incentive to complainants to use the Rights Commission and not settle through the ERS.

Table 4.3 details the number of referrals received by the Rights Commissioner Division of the LRC in 2009- 2012.

Table 4.3: LRC Rights Commissioner Service 2012

Referrals made to RCS by Act	2009	2010	2011	2012	% Change
Industrial Relations Acts 1969-90	1,521	1,542	1,143	1,304	-14.3%
Organisation of Working Time Act 2007	1,577	1,396	1,288	1,308	-17.1%
Payment of Wages Act 1991	4,681	8,266	3,040	2,806	-40.1%
Terms of Employment (Information) Acts 1994 - 01	1,812	1,514	1,233	957	-47.2%
Unfair Dismissals Acts 1977 - 05	2,110	1,588	1,355	1,271	-39.8%
Total	11,701	14,306	8,059 ⁶⁶	7,646	-

Source: LRC Annual Report 2012

⁶⁶ This represents a significant decrease from 15,671 in 2010/11

4.1.1.3 Advisory Service

The primary objective of the Advisory and Research Division of the LRC is to help build and maintain positive working relationships and develop effective prevention and dispute resolution mechanisms in the workplace. Its assistance is focussed on enhancing the capacity of organisations and their employees to manage relations “in-house”. The assistance offered by the division is categorised below.

- Training - covering grievance, disciplinary, communication etc.
- Industrial Relations Reviews – In-depth assessments of industrial relations within workplaces.
- Facilitation - assisting parties to reach mutually acceptable solutions to a variety of workplace issues such as work practice and procedure change.
- Voluntary Dispute Resolution - the provision of a framework for the processing of disputes arising in situations where collective bargaining is not in place.
- Workplace Mediation - provision of a mediation service in companies on issues around interpersonal workplace relationships and grievance and disciplinary procedures.

4.1.2 Employment Appeals Tribunal (EAT)

The EAT is an independent body established in 1967 to provide adjudication of disputes on employment rights that fall within the Tribunal’s remit. The Tribunal has a jurisdiction in the resolution of employment rights as distinct from collective interest disputes.

It is regarded as the traditional venue for unfair dismissal cases despite these cases being eligible to be heard by a Rights Commissioner providing there is no objection from either party.

There was an approximate waiting time for a hearing of 76 weeks in Dublin and 77 weeks nationwide between 2010 and 2011⁶⁷.

Table 4.4 details the number of referrals received by the Employment Appeals Tribunal (EAT) from 2009 to 2011.

⁶⁷ EAT Annual Report 2011

Table 4.4: Employment Appeals Tribunal 2011

	2009	2010	2011	% Change
Referrals Made to the EAT	9,458	8,778	8,458	-10.6%
Disposed ⁶⁸	4,680	6,064	6,723	+43.6%
Referred to Hearing	4,778	2,714	1,509	-68.4%
Rate of Successful Resolution	49%	69.1%	79.4%	

Source: *Employment Appeals Tribunal Annual Review 2009, 2010, 2011*

Some of the key points to note from the table include;

- The rate at which the EAT has achieved a successful resolution of referred cases has shown a significant increase from 49% in 2009 to 79.4% in 2011.
- The number of EAT cases that have been referred to a hearing has decreased by 3,269 (68.4%) from 2009 to 2011.
- This is also partially the result of a trend of decreasing referrals being made to the EAT with 1,000 less referrals being received in 2011 than in 2009. This constitutes a decrease of 10.6%.

Table 4.5 shows the breakdown of the cases disposed by the EAT in 2011 by legislation and outcome.

Table 4.5: Breakdown of Disposed EAT Complaints 2011

Legislation	Allowed	Dismissed	Withdrawn During Hearing	Withdrawn Prior to Hearing	Total
First Instance					
Redundancy	1,121	319	160	816	2,416
Minimum Notice and Terms of Employment	560	327	223	502	1,612
Unfair Dismissal	280	323	290	517	1,410
PoE (Employer Insolvency)	0	30	0	0	30
Organisation of Working Time	186	142	160	238	726
Total	2,147	1,141	833	2,073	6,194
Appeals					
	Upheld	Upset	Varied	Withdrawn	
Unfair Dismissal	46	20	19	49	134
Maternity Protection	1	1	0	3	5

⁶⁸ Complaints that were withdrawn prior to hearing, withdrawn during a hearing or where a determination was issued.

Legislation	Allowed	Dismissed	Withdrawn During Hearing	Withdrawn Prior to Hearing	Total
Payment of Wages	46	18	10	80	154
Terms of Employment	40	14	8	39	101
Parental Leave	1	0	0	0	1
Total	134	53	37	171	395
Implementations	Upheld	Upset	Varied	Withdrawn	
Unfair Dismissal	43	0	0	12	55
Terms of Employment	58	0	0	21	79
Total	101	0	0	33	134

Source: *Employment Appeals Tribunal Annual Review 2011*

The largest number of referrals to the EAT in 2011 concerned cases related to redundancy. These constituted 39% of the 6,194 first instance referrals the EAT disposed of in 2011. This may be an illustration of the effect of the current economic climate on referrals to the EAT. All 30 complaints referred to the EAT relating to Protection of Employees (Employers Insolvency) were dismissed, this would appear to suggest the complaints were part of a collective dispute against a single employer.

Thirty percent of the complaints that go to EAT were withdrawn before the hearing. A further 13% were withdrawn at the hearing. These 2,906 complaints would be target cases for the ERS; we do not have 2012 figures to check for any changes in these levels of withdrawing.

4.1.3 Equality Tribunal (ET)

The Equality Tribunal is an independent and quasi-judicial body whose decision and mediated settlements are legally binding. They have the responsibility for mediating and investigating complaints of unlawful discrimination under the following legislation;

- Employment Equality Acts 1998-2011;
- Equal Status Acts 2000-11; and
- Pensions Acts 1990-2009.

In 2011 the ET transferred from the administration of the Department of Community, Equality and Gaeltacht Affairs to that of the Department of Justice and Equality. In 2011, changes to the Employment Equality Acts and Equal Status Acts included amendments intended to improve the efficiency and user friendliness of the ET in handling complaints, these changes include:

- An extension of the deadline, from 28 days to 42 days, for resumption of an investigation of a complaint in situations where mediation has failed;

- Provision for the ET to state a case to the High Court and avoid further litigation by way of appeal; and
- Adjustment to the maximum amount which may be awarded by the ET in Employment Equality cases.

Between 2010 and 2011 the average time to progress a case from referral to closure fell from 21 months in 2010 to less than 18 months in 2011⁶⁹.

Table 4.6 details the performance of the Equality Tribunal (ET) Mediation Service across 2010/11.

Table 4.6: Equality Tribunal Mediation Service

Outcome	2010	2011	% Change
Cases closed through Mediation Agreements	92	69	-25%
Cases closed during the Mediation process	35	26	-26%
Cases closed through not proceeding to investigation	21	33	+57%
Cases not resolved at Mediation ⁷⁰	72	78	+8.3%
Total Cases	220	206	-6.3%
Rate of successful resolution	67.2%	62.1%	

Source: Equality Tribunal Annual Report 2011

From 2010 to 2011 the ET experienced a decrease in the number of referrals to its mediation service of 6.3% (14). The rate at which the ET has been successful in resolving disputes has dropped from 67% to 62%.

4.1.4 The Labour Court

The Labour Court was established to provide free advice on the resolution of disputes concerning industrial relations and a range of employment related issues. The Labour Court operates as an industrial relations tribunal, not a court of Law, which sets out its opinion on disputes and the terms by which they should be settled. The Labour Court is an appeals body and a court of last resort where all other efforts at resolution of a dispute have been exhausted. The Labour Court also functions as a first instance body for some employment rights complaints, and it was for this reason that the Labour Court was included in the scope of the Pilot Early Resolution Service.

Table 4.7 details the performance of The Labour Court in 2011.

⁶⁹ Equality Tribunal Annual Report 2011

⁷⁰ Returned to investigation

Table 4:7: The Labour Court 2011

	2009	2010	2011	% Change
Referrals made to the LC	1,433	1,452	1,254	-12.5%
Hearings	878	1,139	1,019	+16.1%
Recommendations etc. issued	638	831	774	+21.3%
Cases settled at/prior to hearing	235	255	245	+4.3%
Rate of Resolution⁷¹	61.3%	78.4%	81.3%	

Source: *The Labour Court Annual Review 2011*

Overall the Labour Court has experienced an overall decrease in the level of referrals from 2009 to 2011 of 179 (12.5%). At the same time the Court has been successful in increasing the rate at which it gets cases resolved through Hearing from 61.3% to 81.3%.

In 2011, 245 complaints settled at or prior to a hearing. These complaints would be target cases for the ERS. We do not have 2012 figures to check how the ERS impacted on these figures.

4.1.5 National Employment Rights Authority (NERA)

NERA was established on an interim basis in 2007 with the aim of ensuring and securing compliance with employment rights legislation, underpinned by adequate enforcement, and to provide free and unbiased information on employment rights to employers, employees and other relevant parties;

- Employer inspections to ensure compliance with employment legislation;
- Enforcement of the determinations of the Labour Court or EAT;
- Prosecutions arising from breaches in employment legislation compliance identified through inspections; and
- The protection of young persons through The Protection of Young Persons (Employment) Act 1996.

The primary functions of NERA are to provide information on employment rights and obligations to employers and employees and to enforce, by means of inspection and associated enquiries and, where necessary, by prosecution through employment legislation. NERA may also, on request, enforce, in the case of non-compliance, the determinations of the Labour Court or EAT.

⁷¹ Hearings as a percentage of referrals

Almost 800 complaints were made to NERA in 2012. Almost, 4,700 cases were concluded in that year and some €856,000 recovered for employees in terms of unpaid wages arising from contraventions of employment legislation. Although these complaints were within the scope of the Pilot ERS as determined by the department, only a very small number (2) of NERA complaints were selected.

4.2 Pilot Early Resolution Service

The Pilot Early Resolution Service was set up to provide less formal, less costly and faster intervention to resolve a complaint/dispute than through formal adjudication or inspection/investigation.

4.2.1 Type of Disputes to be involved in the Pilot

Complaints to the Labour Court, the EAT, the RCS and the National Employment Rights Authority (NERA) were considered to be within the scope of the Pilot ERS; however no first-instance complaints to the Labour Court and only two complaints to NERA were selected for the Pilot ERS.

Cases were selected for the Pilot in order to proportionally reflect the total number of complaints referred under each area of legislation in 2011. In addition to proportionality the following factors were also considered in case selection.

- Companies Registration Office status of the organisation involved in the dispute, where anything other than 'normal' was not selected;
- Date employment had been terminated to ensure it was within the statutory time limits; and
- Whether an interpreter was required; as it is a telephone only service any case with a requirement for an interpreter was not selected.

The selection template was amended from the 1st August 2012 as a result of the loss of 1 of the 6 CROs to the service.

Table 4.8 details the proposed selection template for case referral and the revision of the template along with the actual recorded referrals to the Pilot ERS. From the table there are some variations to the Pilot ERS from the proposed template for complaints.

Notably there were three areas of legislation Employees (Information and Consultation) Act, EC (Protection of Employment) Regulations and Protection of Employees (Employers Insolvency) Acts, that were originally proposed to have three, five and four referrals assigned to the Pilot ERS respectively. However, there were subsequently no referrals assigned to the Pilot ERS under these areas of legislation.

Referrals for the EAT under the Organisation of Working Time Act were also significantly lower than the originally 33 proposed, 31% lower than the originally proposed 57 referrals to the service.

There were areas of legislation where there were a significantly larger number of referrals made to what was originally proposed. Redundancy Payments referrals were slightly over 10% greater than what was originally proposed with 16 more referrals than the originally proposed 156.

Overall, the total number of the recorded referrals to the Pilot ERS was 6 (0.5%) more than the originally proposed 1,199 referrals to the service.

Table 4:8: Outcome of Cases by Legislation (Feb '13)

Legislation	2011 Referrals	%	Proposed Pilot Referrals	Revised Pilot Referrals	Recorded Pilot ERS Referrals	Difference (%) ⁷²
Payment of Wages Act (1991) RCS	3,040	33%	304	254	262	+8 (3.1%)
Unfair Dismissals Act 1977 – 2005 RCS	1,355	15%	138	115	114	-1 (0.8%)
Unfair Dismissals Act 1977 – 2005 EAT	1,758	24%	124	104	113	+9 (8.7%)
Redundancy Payments Acts 1967 – 2007 EAT	2,598	36%	187	156	172	+16 (10.3%)
Organisation of Working Time Act (1997) RCS	1,288	14%	129	108	115	+7 (6.5%)
Organisation of Working Time Act (1997) EAT	828	11%	57	48	33	-15 (31.3%)
Minimum Notice and Terms of Employment EAT	2,070	28%	145	121	114	-7 (5.8%)
Terms of Employment Information Acts 1994 - 2001	1,233	13%	120	100	104	+4 (4%)
Industrial Relations Acts 1969 - 1990	1,143	12%	111	93	96	+3 (3.2%)
Protection of Employees (Fixed Term Work) Act 2003	306	3.3%	30	25	21	+4 (16%)
EC (Transfer of Undertakings) Regulations 2003	393	4.3%	40	33	17	-16 (48%)
National Minimum Wage Act 2000	129	1.4%	13	11	16	+5 (45.5%)

⁷² Extent to which Recorded referrals match the revised referral template

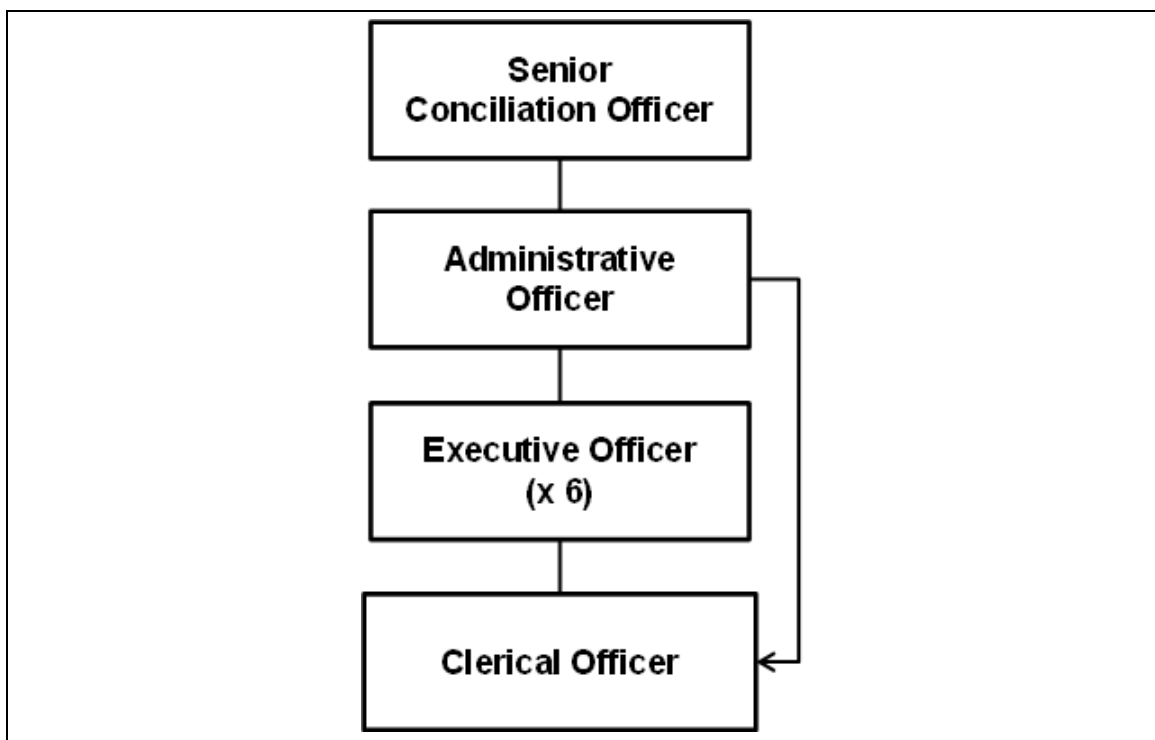
Legislation	2011 Referrals	%	Proposed Pilot Referrals	Revised Pilot Referrals	Recorded Pilot ERS Referrals	Difference (%) ⁷²
Safety, Health and Welfare at Work Act 2005	95	1%	9	8	9	+1 (12.5%)
Protection of Employees (Temp. Agency Worker) Act 2012	n/a	n/a	n/a	n/a	7	+7
Maternity Protection Acts	41	1%	9	8	6	-2 (25%)
Protection of Employees (Part Time Work) Act 2001	61	0.7%	7	6	4	-2 (33.3%)
Parental Leave Act 1998	7	0.1%	1	1	2	+1 (100%)
Employees (Information and Consultation) Act 2006	29	0.3%	3	3	0	-3 (100%)
EC (Protection of Employment) Regulations 2000	67	0.7%	6	5	0	-5 (100%)
Industrial Relations (Miscellaneous Provisions) Act 2004	12	0.1%	1	0	0	-
Protection of Employees (Employers Insolvency) Acts EAT	48	0.7%	4	4	0	-4 (100%)
Total EAT Referrals	7,302		517	431	433	+2 (0.5%)
Total RCS Referrals	9,206		921	768	772	+4 (0.5%)
Total	16,508		1,438	1,199	1,205	+6 (0.5%)

Source: Template for Assigning Files to Pilot ERS & RSM McClure Watters analysis of Pilot ERS Lotus Noyes Database (Feb '13)

4.2.2 Structure of Pilot ERS Management and Staffing

The Pilot ERS was delivered under the overall direction of the Conciliation Division of the LRC. The division is headed by a Director of Conciliation along with a Deputy Director. A Senior Conciliation Officer was assigned to oversee and assist the project as an addition to his normal conciliation duties. The officer played a key role in the early stages in selecting cases for assignment to the ERS. Over time this function was taken on by the Administrative Officer assigned full-time to the project, with on-going assistance from Conciliation Officers. Figure 4.4 demonstrates the organisational delivery structure for the Pilot Early Resolution Service:

Figure 4.4: Pilot Early Resolution Service Organogram as at May 2013

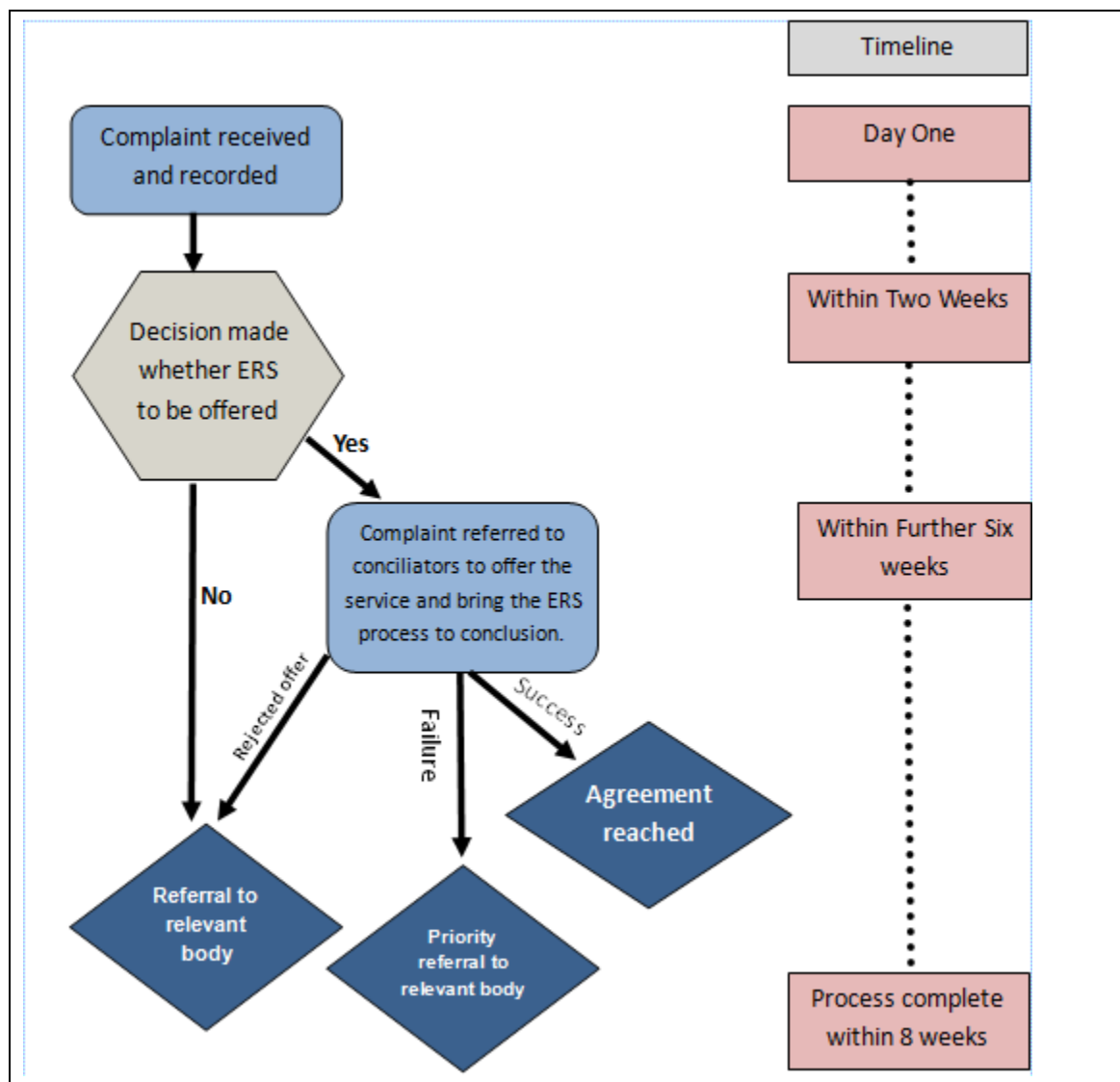


Source: RSM McClure Watters 2013

The Pilot ERS was delivered by newly appointed CROs who were specially trained. Bespoke in-house training was provided to CROs by Conciliation Officers and by Rights Commissioners with a view to the development of their conciliation skills. The staff had background knowledge in employment rights and industrial relations and were provided with 5 days intensive training followed by 8 weeks of supervised on the job work followed by a further 5 days of training.

The proposed process to be used for the Pilot Early Resolution Service was developed and it set out how the service could be delivered over a period of time up to 6 weeks. Figure 4.5 details the processes for the Pilot ERS.

Figure 4.5: The Early Resolution Service Case Processes



Source: RSM McClure Watters 2013

The process used was in line with the proposed process with the following exceptions:

- Labour Court complaints were not selected during and Pilot ERS and only 2 NERA complaints were selected;
- Complaints were selected for intervention following review⁷³. Complaints were rejected for the Pilot ERS if the complaint was outside statutory time limits; an interpreter was required or the company was in liquidation.

All complaints were received and registered by Workplace Relations Customer Services (WRCS⁷⁴), recorded by complaint type and assigned a unique number. Over the course of the Pilot ERS, complaints to the RCS and first instance referrals to the EAT were forwarded to the ERS management on a daily basis.

All complaint forms were scrutinised and evaluated by an experienced team of IR practitioners and the ERS had 2 weeks from the date of receipt of the complaint to decide whether to offer early resolution to the relevant parties. The actual case selection was carried out by the Senior Conciliation Officer with the support of the Administrative Officer and the Officers of the conciliation service.

The allocation of complaints to the CROs was based on:

- Even distribution of cases among CROs;
- Training and experience of the CROs so to allow for their development during the Pilot to develop an expertise in all aspects of the relevant legislation;
- Multiple complaints for the same employer allocated to the same CRO in order to avoid duplication of effort; and
- Outcomes of previous cases to ensure consistency. If a CRO has had a successful conclusion and has built a successful relationship with a party to a dispute they may be assigned a repeat complaint regarding the party.

The CROs contacted the parties or their representatives within 2-3 days of receipt of complaint. CROs have had to spend time in the pilot explaining the service to parties involved as it was a new service. The 6 week timeframe was to be made clear to participants from the outset.

In the event if either side declined the ERS, the complaint was forwarded to programming for scheduling of a Rights Commissioner or an Employment Appeals Tribunal hearing.

Case outcomes were recorded in the Pilot Early Resolution Service database under eight categorisation headings, these are detailed below:

⁷³ 251 cases of 1024 were to go through ERS but were deemed 'unsuitable' – source: PERS Notes database

⁷⁴ WRCS was established in January, 2012 as the single point of contact for all workplace relations complaints and enquiries and information provision

- Parties not willing to proceed, whereby the Pilot ERS was unable to engage with a case due to one or both parties to a complaint refusing the opportunity to utilise the service;
- Unable to contact parties, whereby the Pilot ERS was unable to engage with a case due to the CRO not being able to make contact with one or both parties to a complaint;
- Unsuitable for ERS, whereby the Pilot ERS was unable to engage with a case as the case was deemed unsuitable for the service e.g. Company in receivership;;
- Withdrawn with no intervention, whereby the Pilot ERS was unable to engage with a case due to the complaint being withdrawn prior to any intervention from the CRO;
- Not resolved through intervention, whereby the Pilot ERS intervention in a case was concluded with no agreement or positive resolution having been reached;
- Agreement reached, whereby intervention from the Pilot ERS has yielded a positive case outcome and withdrawal from the system is pending;
- Withdrawn following intervention, whereby intervention from the Pilot ERS has yielded a positive case outcome and the complaint has been withdrawn from the system; and
- On-going, whereby Pilot ERS intervention in a complaint is continuing.

CRO's were working during the Pilot ERS in a situation where limited information on historical complaints was made available.

Specifically recommendations from the RCS and Inspection reports from NERA were not published or made available to the ERS team. Information and statistics that are normally provided on completed cases by the Ministry of Justice⁷⁵ include:

- Complaints accepted by Employment Tribunals;
- Employment Tribunals disposals and outcomes by jurisdiction;
- Details of unfair dismissal complaints disposed of at a hearing;
- Representation of claimants at Employment Tribunals; and
- Compensation awards by Tribunals

As the CRO's did not have access to RCS historical information on previous complaints, they were unable to inform parties accordingly which could have been helpful to resolving the disputes.

⁷⁵ Employment Tribunals and EAT Statistics, 2011-12

The Pilot ERS did not have a formal complaint management process in place to deal with customer complaints regarding the service. RSM understand from the Pilot ERS team that any complaints received were dealt with informally and whilst there was no formal record kept, the feedback is that there were only a “few” in the region of 2-3 complaints made.

4.2.3 ICT Support and Recording of Data

Microsoft Excel spread-sheets were utilised during the first six weeks of operation (commencing May 2012) but were found to be not user friendly. A Lotus Notes database was utilised for the entering and capturing of data for the remainder of the pilot. There were concerns that Lotus Notes did not allow full statistical data to be extracted with only direct access to the database likely to yield this information.⁷⁶

The ICT Solution (CREST) to facilitate the registration of complaints by the WRCS and, in due course, to allow the submission of complaints online was introduced on 7th January 2013. CREST also provides certain case management functionality for the ERS. Work is currently taking place on the pre-procurement phases of the design and commissioning of a Customer Relationship Management Solution (CRMS) which will support the operations and activities of the proposed Workplace Relations Commission and the Labour Court. Full case management and reporting functionality will be provided to ERS on that solution.

4.3 Monitoring

Monitoring and performance reports were developed from the Lotus Notes system and used to inform the monthly reporting to the LRC Board and requests for reports by the Workplace Relations Reform Programme Office.

Caseloads are monitored by the ERS manager through weekly meetings and reports from the Lotus Notes system.

4.4 Staffing, Management Structure and Associated Costs

As previously detailed the Pilot was delivered under the overall direction of the Conciliation Division of the LRC.

The Senior Conciliation Officer (SCO) assigned to oversee and assist the project did so in addition to his normal conciliation duties. The involvement of the SCO decreased as the function was taken on by the ERS Administration Officer. For the delivery of the service the Pilot ERS proposal paper set out the intention to follow the UK and NI model whereby the service is distinct from the collective conciliation function and provided by staff at an Executive Officer equivalent level.

⁷⁶ Note on meeting of ERS Project Team, 18th June 2012

The staff numbers involved in the management and delivery of the ERS service on a day-to-day basis are detailed below;

Senior Conciliation Officer x 1:

Providing assistance as required and the training and mentoring of newly appointed CROs.

Administrative Officer x 1:

The Administrative Officer engaged in the selection and allocation of cases for ERS, monitoring and management of case progression through the ERS, ensuring timely referrals, provision of support and advice to the CROs and facilitation of staff learning and development. The Administrative Officer was also responsible for maintaining statistics and providing briefing as required, updating of the case management system, and helping to develop a new case management system.

Executive Officer x 6⁷⁷:

Case Resolution Officers were engaged almost exclusively in telephone contact with parties to a dispute to explain and offer the service and assist them in resolving their issues.

Clerical Officer x 1:

Table 4.9, details the annual staff costs of the Pilot Early Resolution Service based on the numbers of staff and the percentage of time they allocated to the service.

⁷⁷ One CRO (executive officer level) left the Pilot ERS as a result of promotion on 1st August 2012

Table 4:9: Staff Costs of ERS (based on annualised salaries)

Staff and Level	Salary (€)	Percentage of time spent on Pilot ERS	Salary Cost (€) Per Year	Salary Costs (€) for Period of Pilot
Senior Conciliation Officer (Assistant Principal)	61,966	20%	12,393	6,197
Administrative Officer (Higher Executive Officer)	50,204	60%	30,122	15,061
Case Resolution Officers (Executive Officer) x 6	38,337	100%	230,022	115,011
Clerical Officer	29,108.61	80%	23,286	11,643
Total			295,824	147,912

The details of other non-salary costs were not available. Instead, the costs involved in delivering the service were estimated as including a further 13% of the direct salary costs to account for pension contributions for Civil Servants⁷⁸ and an additional 25% of the salary costs to account for overheads⁷⁸. These overheads would include for example:

- Telephone Costs – these are included in the overall LRC phone costs and not separately quantifiable;
- IT Costs – 7 additional PCs on the Department's network and printers;
- Miscellaneous Stationery and Consumables – these are included in the overall LRC costs and not separately quantifiable; and
- Heat, Light and Office cleaning – these are covered as part of the overall LRC costs and not separately quantifiable.

These costs have not been quantified, and the estimate of 25% of salary costs has been included in the costs to account for these.

⁷⁸ This is based on the recommendations of the Department of Public Expenditure & Reform : *The Public Spending Code: E. Technical References*

Costs not incurred by the ERS are;

- Accommodation – as the service is accommodated within the LRC’s existing offices which are provided rent free; and
- Travel Costs – as there is no travel element associated with this service.

The total cost of the service during the Pilot period based on staff and associated costs were therefore €184,890⁷⁹. As the Pilot ERS ran over a 6 month period, the cost for a full year at the same level of activity and staff would be €369,780. These costs are assessed further in Section 5.

4.5 Areas for Development

As noted the Pilot ERS did not operate a formal complaints process or conduct any reviews of customer satisfaction. As will be seen in the benchmarking section Acas conducts regular reviews of the satisfaction of its customers of its Conciliation Services and this is an area that should be considered in the future.

The complaints coming into the ERS are all treated equally. Whilst there is an assessment process which checks that they are eligible for ERS (i.e. they are within time, they are not duplicates, etc.) the assessment does not lead to a formal categorisation based on its complexity or the amount of time and resources which may be required for resolution. An assessment of cases based on the allocation of resource and time would be helpful in ensuring that resources are being used most efficiently. This assessment should identify which cases are fairly straightforward for example wages disputes and can be dealt with in a short space of time, as opposed to other cases which will need more involved support to keep them out of adjudication or inspection. The benchmarking section provides an example of how Acas separates out cases based on complexity.

CROs need to have access to the outcomes from previous RCS complaints in order to ensure that complainants are aware of what has happened in the past and can better able assess their own chances of success. Without this information being provided, the task of a CRO is much harder and complainants may be going ahead with their dispute without realising when they have limited chance of success.

⁷⁹ Note: This figure incorporates staff costs of €147,912 and overheads of €36,978. Overhead costs are estimated as 25% of the base salary costs involved in delivering PERS. Additional staff costs such as pension contributions are estimated at an additional 13% of the base salary costs for Civil Servants (€19,228 for the period) however for the purposes of comparison with the other dispute resolution services such as the EAT and the RCS, this has been omitted. Including pension and other non-salary benefits, the total cost for the Pilot ERS would be €204,118.

The Pilot period has been focused on getting the resources and processes in place to operate the service. There has been limited promotion of the Service, beyond informing those that the service is being offered to. It will be important that the service is promoted to stakeholders such as companies/ trade union representations; employment lawyers etc. based on the results achieved.

The Pilot ERS set targets with regard to the processes being used rather than the outcomes to be achieved. It will be important any future service focuses on setting outcome based targets as well - such as measuring the number of cases that are kept out of the court/tribunal system. The benchmarking section later demonstrates that Acas has taken an outcome based approach to setting targets for their conciliation service - namely that only 20% of their cases remain in the court/ tribunal system.

At present, complaints which are settled through the RCS or the EAT have the potential to be tax free.⁸⁰ As the ERS does not have the authority to make recommendations, decisions or determinations, it does not meet the tax exemption criteria. As a result some complainants may feel that they prefer to use the RCS as it offers this advantage over the Pilot ERS.

4.6 Summary

The Pilot ERS was set up and delivered as part of the Workplace Reform Programme. The programme plans, among other matters, to reduce the number of organisations and streamline the processes introduced in employment disputes. The Pilot ERS was one of the first elements of the Workplace Reform Programme to be actioned, and others are in the process of being implemented.

Factors to consider when evaluating the success of the Pilot ERS are as follows:

- First it is important to recognise the fledgling nature of the service, and the work that went into training the CROs, setting up the necessary processes to deliver and monitor the service.

⁸⁰ The tax exemption applies to -

a. payments arising out of complaints made under a relevant Act following a formal hearing before a relevant authority (or through a mediation process) on foot of a recommendation, decision or determination by that relevant authority, and
b. subject to certain conditions, payments arising out of complaints made under a relevant Act made under an 'out of court' settlement [i.e. an 'out of court' settlement which has been agreed between an employee and his or her employer as an alternative to a formal hearing before, and a recommendation, decision or determination of, a relevant authority.

The tax exemption does not apply to a payment in respect of actual remuneration or arrears of remuneration arising from a claim under a relevant Act (e.g. the non-payment of wages, the termination of an office or employment or the compensation for a reduction or possible reduction in future remuneration).

- There are mediation type services still happening through RCS and ET and any complaint settled through RCS is tax free compared to any complaint settled through the Pilot ERS, which is taxed.

The information management systems in place for the Pilot ERS identify progress toward the delivery of key outputs; however they do not provide a mechanism to assess the efficiency of the service. Areas for development include;

- Recording of the time spent by each CRO on each complaint through a time recording function. The time spent on a dispute should be in line with the complexity of the dispute and the cost savings that could be obtained if the complaint does not go to adjudication or inspection – see benchmarking section;
- Qualitative information from parties to a dispute concerning the success of intervention and the extent which it developed, or prevented further deterioration of, relations between employee and employer. This could take the form of a post-intervention follow up survey; and
- The monitoring system will need to be developed to include any new targets set for the future service. The targets should be focused on outcomes in line with benchmarks as well as targets set for processing activities.

In addition,

- CROs need to have access to the outcomes from previous RCS complaints so that this information can be shared with complainants as appropriate to their dispute;
- The benefits of using the service need to be promoted to potential users for example employees/ employers/ trade union representations; employment lawyers etc. This will decrease the amount of time CROs need to spend explaining the service and getting both parties bought into using it, therefore releasing time to be spent on resolving the complaint.

5 COMPARISON OF PILOT ERS AND ADJUDICATION COSTS

5.1 Introduction

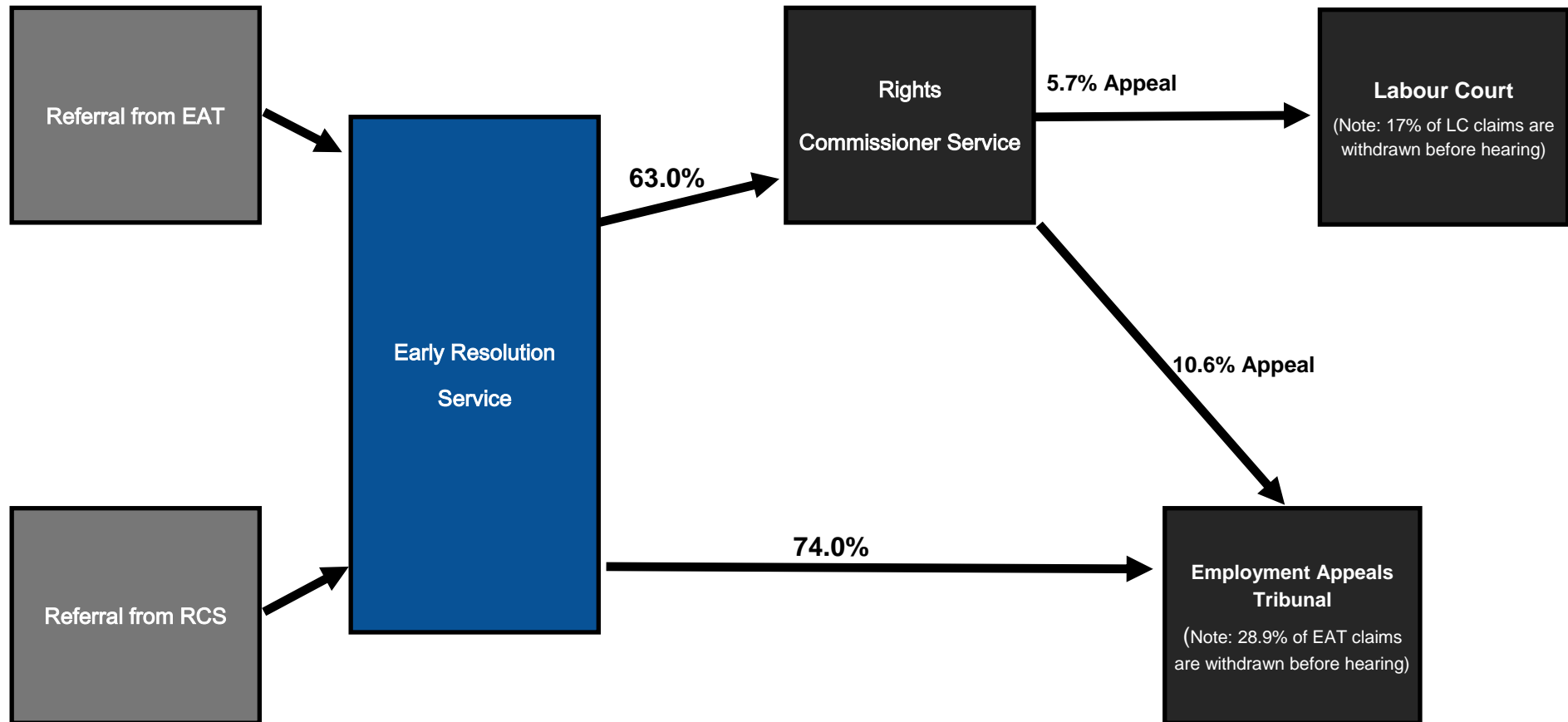
This section compares the costs of the Pilot ERS with those of adjudication. As equality complaints were not within the scope of the Pilot and given that complaints to NERA and the Labour Court were not selected for ERS intervention during the Pilot, the identification and analysis of costs has been confined to the ERS, the Employment Appeals Tribunal (EAT) and the Rights Commissioner Service (RCS).

Detailed programme level budgeting and costing is not currently employed within the ERS, EAT or RCS. It has not been possible, therefore, to compile accurate data on the cost per referral, complaint, hearing, decision, etc. It should also be noted that data collection and statistical methodologies are not consistent between the three organisations. For example, cases in one body may comprise individual complaints/referrals while in another cases may encompass a multiple of complaints/referrals. It is also difficult to draw reliable conclusions given the disparity in case complexity across the Bodies.

The analysis has necessarily, therefore, relied on published data in annual reports relating to annual expenditure, inputs and outputs. We have also referred to analysis undertaken by Bearing Point in 2010 which, among other matters, identified hearing costs for the EAT and RCS. Figure 5.1 shows that the resolution at ERS of a complaint (either by formal agreement or withdrawal of the complaint) originally presented to the EAT or RCS avoids the need to progress the complaint to adjudication. Each step represents an investment of time on the part of employers and complainants, and a cost to the State.

In order to demonstrate cost-efficiency, the cost of the ERS must be offset by the savings to the State arising from the resolution of the complaint/dispute without recourse to a formal adjudication hearing. Given that a complaint which is not successfully resolved at ERS will then proceed to a hearing and will, therefore, give rise to costs at both early resolution stage and at adjudication, the higher the success rate at ERS, the greater the potential for cost reduction in complaint/dispute administration generally.

Figure 5.1: Process Diagram for Employment Dispute Resolution with proportion of complaints not resolved at each stage



Sources: RSM McClure Watters analysis of Pilot ERS Lotus Notes Database, February 2013 (See Table 6.4), Labour Court Annual Report 2011, Labour Relations Commission Annual Report 2011

Figure 5.1 demonstrates the process for complaints which were not resolved during the Pilot ERS. During the pilot, 63%⁸¹ of the RCS complaints that were selected for ERS and 74%⁸² of the EAT complaints that were selected for ERS resulted in an unresolved outcome. Complaints which were subsequently unresolved at RCS were referred as appeals to the Labour court and EAT, at a rate of 5.7%⁸³ and 10.6%⁸⁴ respectively.

Table 5.1 below shows a number of cost-efficiency ratios for the RCS, ERS and EAT. We have already pointed to the limitations and assumptions associated with the use of this data. However, it is considered that a number of general conclusions can be drawn from the composite of the data available.

⁸¹ Total number of RCS referrals that were not resolved through ERS / Total number of RCS referrals concluded through ERS (See Section 6, Table 6.4)

⁸² Total number of EAT referrals that were not resolved through ERS / Total number of EAT referrals concluded through ERS (See Section 6, Table 6.4)

⁸³ Number of referrals progressed to the Labour (528) / Number of referrals to the RCS (9,206) (Sources: Labour Court Annual Report 2011; Labour Relations Commission Annual Report 2011)

⁸⁴ Number of referrals progressed to the EAT from the RCS (978) / Total number of referrals to the RCS (9,206) (Sources: Labour Court Annual Report 2011; Labour Relations Commission Annual Report 2011)

Table 5.1: Cost of Rights Commissioner Service, Employment Appeals Tribunal and Pilot Early Resolution Service

Data	Result		
	Rights Commissioner Service	Employment Appeals Tribunal	Pilot Early Resolution Service
Total Cost of delivery	€2,467,080 ⁸⁵	€3,541,000 ⁸⁶	€184,890 ⁸⁷
Total number of referrals	9,206	8,458	1,205
Total number of referrals engaged in the service	9,206	6,723	776 ⁸⁸
Total number of referrals resolved, dismissed or resulting in recommendations	4,971 ⁸⁹	3,613	246
Cost per Total number of Referrals	€268.00 ⁹⁰	€419.00 ⁹¹	€153.00 ⁹²
Cost per case in which parties engaged with service	NA	NA	€238.00
Cost per Disposal	€344.00 ⁹³	€527.00 ⁹⁴	€239 ⁹⁵
Cost per Decision	€496.00	€980.00 ⁹⁶	€751.00 ⁹⁷
Cost per Hearing	€411.00 ⁹⁸	€1,100.00 ⁹⁸	n/a

⁸⁵ Labour Relations Commission Annual report 2011. Note: 2012 data not currently available.

⁸⁶ Workplace Relations Reform Programme Office, DJEI (2010 expenditure)

⁸⁷ Note: This figure incorporates staff costs of €147,912 and overheads of €36,978. Overhead costs are estimated as 25% of the base salary costs involved in delivering PERS. Additional staff costs such as pension contributions are estimated at an additional 13% of the base salary costs (€19,228), however for comparison with RCS and EAT costs, this has not been included.

⁸⁸ Number accepting the offer to engage with the Pilot ERS

⁸⁹ 54% of referrals result in recommendations

⁹⁰ Total cost of running the RCS €2,467,080 / number of referrals (9206)

⁹¹ Total cost of delivery / Total number of employment dispute referrals

⁹² Cost of service / Total number of referrals

⁹³ Cost of service/ number of hearings (78% of referrals result in a hearing)

⁹⁴ Total cost of delivery / Total number of referrals disposed of (i.e. allowed, dismissed, withdrawn during hearing and withdrawn prior to hearing)

⁹⁵ Total cost of delivery / number of cases engaged with the service

⁹⁶ Total cost of delivery / Total number of referrals allowed or dismissed

⁹⁷ Total cost of delivery/Total number of cases resolved or withdrawn

5.2 Cost Savings of Pilot Early Resolution Service (Pilot ERS)

During the pilot, 1,205 employment disputes were chosen as pilot complaints for the service. Because complaints to NERA and the Labour Court were not selected for participation in the pilot, it is not possible to directly assess the cost savings for complaints referred to NERA and the Labour Court in the first instance.

Of the 1,205 complaints selected for ERS during the Pilot, 776 (64.3%) proceeded to ERS intervention and resolution was achieved in the case of 246 complaints (33%). The overall cost involved in delivering the Pilot ERS is estimated at €184,890, which includes the cost of salaries and a provision for overheads for the period of the pilot. Table 5.1 demonstrates that, on average, dealing with a dispute had a cost of €153.00 per referral to the service and the cost of the Pilot ERS per resolved or withdrawn⁹⁹ complaint was €751.

Table 5.2 demonstrates that, in the first instance, 52.1% of complaints were referred to the RCS and 47.8% of the complaints were referred to EAT during 2011. A further 5.7% of the total initial RCS referrals were progressed to the Labour court, and a further 10.6% of the initial referrals were progressed to EAT from the RCS.

Table 5.2: Proportion of complaints moving through adjudication if ERS was not involved

	Percentage
Proportion of referrals moving to RCS in the first instance	52.1% ¹⁰⁰
Proportion of referrals moving to EAT in the first instance	47.8% ¹⁰¹
Percentage of complaints moving to appeal in Labour Court from RCS.	5.7% ¹⁰²
Percentage of complaints moving to appeal in EAT from RCS.	10.6% ¹⁰³

⁹⁸ Source BearingPoint report

⁹⁹ Acas and LRA include withdrawn complaints in their performance measures.

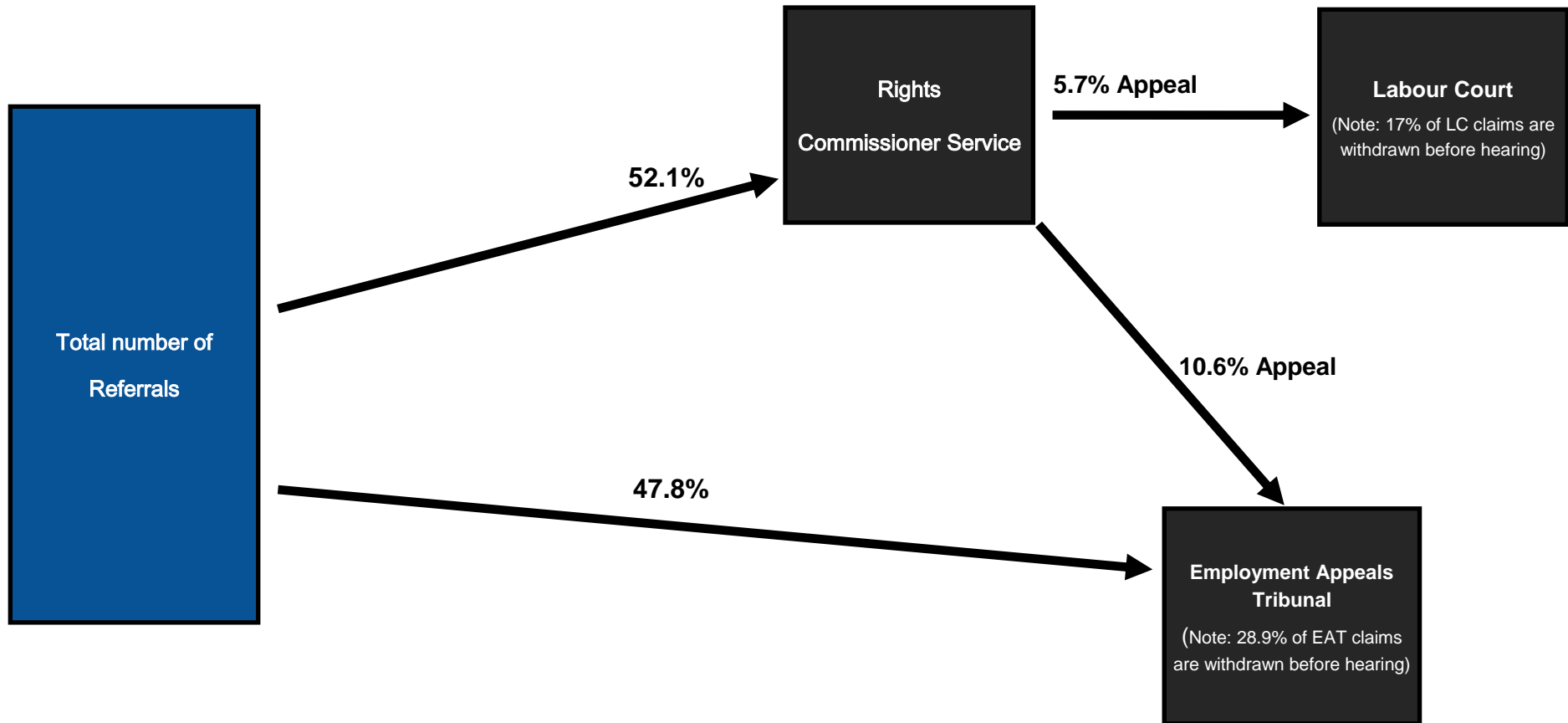
¹⁰⁰ Total number of referrals made to RCS / Total number of referrals made to RCS + Total number of referrals made to EAT (Sources: Employment Appeals Tribunal Annual Report 2011; Labour Relations Commission Annual Report 2011)

¹⁰¹ Total number of referrals made to EAT / Total number of referrals made to EAT + Total number of referrals made to RCS (Sources: Employment Appeals Tribunal Annual Report 2011; Labour Relations Commission Annual Report 2011)

¹⁰² Number of referrals progressed to the EAT from the RCS (978) / Total number of referrals to the RCS (9,206) (Sources: Employment Appeals Tribunal Annual Report 2011; Labour Relations Commission Annual Report 2011)

¹⁰³ Number of referrals progressed to the Labour (528) / Number of referrals to the RCS (9,206) (Sources: Labour Court Annual Report 2011; Labour Relations Commission Annual Report 2011)

Figure 5.2: Process Diagram for Employment Dispute Resolution if ERS had not existed (2011)



Sources: Labour Court Annual Report 2011, Employment Appeals Tribunal Annual Report 2011, Labour Relations Commission Annual Report 2011 (See Table 5.2) Note: proportions moving to appeal are based on most recent available data (2011/12 for RCS, EAT and Labour Court)

Figure 5.2 demonstrates the process for complaints if the ERS had not existed and identifies the proportions going through to the RCS and EAT.

Using these proportions and the cost per referral to the EAT and the RCS, it is possible estimate the cost savings for having the ERS involved. Of the 246 complaints where an agreement was reached during Pilot ERS or the case was withdrawn following intervention:

- 128¹⁰⁴ would have reached the RCS, at a cost of €34,304¹⁰⁵;
- 118¹⁰⁶ would have reached EAT, at a cost of €49,442¹⁰⁷;
- An additional 7¹⁰⁸ would have reached the Labour Court. The cost of these 7 complaints could not be calculated accurately due to the fact that Labour Court costs vary greatly depending on the nature of each case.
- An additional 14¹⁰⁹ would have reached the EAT from the RCS, at a cost of €15,400¹¹⁰.

Thus, the total saving as a result of the Pilot ERS was €99,146 excluding the costs of the 7 additional complaints which would have reached the Labour Court. The Pilot ERS was estimated as costing €184,890, therefore demonstrating that, in pure cash terms, the Pilot ERS was not economic based on the success rates achieved during the Pilot. However, this was a pilot and the benchmarking section of this Report demonstrates that the success rate could increase to over 80%¹¹¹.

This assessment is focused on cost savings involved in resolving complaints before adjudication. It does not include an assessment of the other benefits that can be derived which relate to both employers and employees involved in employment disputes. This information should be collected on a sample of projects going through the ERS in the future, in order to get a complete view of the benefits derived by the tax payer, employers and employees.

¹⁰⁴ Total number of referrals made to ERS where an agreement was reached or where the case was withdrawn following intervention (246) multiplied by proportion of referrals moving to RCS (52.1%)

¹⁰⁵ Cost of RCS per referral (€268.00) multiplied by number of referrals reaching the RCS (128)

¹⁰⁶ Total number of referrals made to ERS where an agreement was reached or where the case was withdrawn following intervention (246) multiplied by proportion of referrals moving to EAT (47.8%)

¹⁰⁷ Cost of EAT per referral (€419.00) multiplied by number of referrals (118)

¹⁰⁸ Referrals to RCS where an agreement was reached or the case was withdrawn following intervention (128) multiplied by proportion of RCS referrals which are appealed to LC (5.7%)

¹⁰⁹ Referrals to RCS where an agreement was reached or the case was withdrawn following intervention (128) multiplied by proportion of RCS referrals which are moved to appeal in EAT (10.6%)

¹¹⁰ Assuming that due to their nature all appeals will be heard, the average cost per hearing of €1,100 was used in this instance instead of the cost per referral to the EAT. Calculated by multiplying number of appeals to EAT (14) by cost per appeal (€1,100).

¹¹¹ Labour Relations Agency PCC - achieved 82% success April 2011-March 2012.

5.3 Conclusions

There are a number of conclusions that can be made when comparing the costs of the Pilot ERS to those of adjudication:

1. ERS has the lowest cost per referral (€153.00). However, the number of referrals to the ERS includes complaints in which the parties did not engage with the service or were un-contactable. The costs associated with such complaints would be negligible in terms of ERS time and effort. The ERS cost associated with complaints (€239.00) compares favourably with the cost of referrals to the RCS (€268.00) and EAT (€419.00).
2. The cost per ERS decision (€751.00) is greater than the cost per decision associated with the RCS (€496.00) and the EAT (€980.00). This is to be expected given the success rate achieved in the Pilot. The greater the success rate, the lower the cost per ERS decision.
3. Based on the outcomes of the Pilot and making certain assumptions concerning the progression of complaints beyond ERS, the savings to the State in complaints resolution/adjudication amounted to some 54% of the cost of the Pilot during that period.

Table 5.3 overleaf shows the impact of increasing the resolution rate on the ERS's cost effectiveness. If the success rate of the Pilot ERS was 50%, there would have been approximately 387.5 resolved or withdrawn complaints. With a success rate of 50%, the cost per resolved or withdrawn complaint would therefore be €477.14; this would represent a cheaper alternative to recommendations issued through the RCS and EAT hearings. With a success rate of 55%, the cost per resolved or withdrawn complaint would have been €434.01. At a success rate of 70%, the cost per resolved complaint would fall to €340.50¹¹², and a success rate of 80% would result in a cost per resolved or withdrawn complaint of €298.21¹¹³.

There are a number of points that should be noted:

- It should be highlighted, that 28.9% of complaints referred to the EAT and 17% of the complaints referred to the Labour Court were resolved prior to hearing in 2011¹¹⁴, and whilst these complaints will have resulted in an administrative cost, the full cost of a hearing would not have been incurred for every complaint. It was not clear which stage these complaints had reached, and whether staff time and facilities had been incurred. It is therefore likely that a significant portion of the withdrawn complaints would have been withdrawn regardless of Pilot ERS intervention.

¹¹² €184,890 divided by 543 (the number of withdrawn or resolved complaints at a success rate of 70%)

¹¹³ €184,890 divided by 620 (the number of withdrawn or resolved complaints at a success rate of 80%)

¹¹⁴ Source: Employment Appeals Tribunal Annual Report 2011, Labour Court Annual Report 2011.

- This report does not attempt to benchmark the cost of ERS against the new adjudication framework and arrangements which will be introduced under the Reform Programme (i.e. adjudicators sitting alone to consider and make a determination on all first instance complaints other than those appropriate for inspection), as this information is not yet available. The new adjudication arrangements will be considerably more cost effective than existing arrangements given that the latter incorporate, in the case of the EAT and the Labour Court, hearings by three-person tribunal/court and provide for court/tribunal secretaries. For the ERS to be value for money it needs to be costing less to resolve a complaint than the cost of resolving a complaint through adjudication or inspection.
- Resolution targets need to be set for the ERS which ensure that the cost per resolved complaint is less than the cost of getting resolution by going to adjudication or through inspection. Given that adjudication costs will decrease under the Reform Programme, the success rate of any new ERS will need to be above 50% (and possibly much higher and in line with Acas benchmarks of 80%) to be cost effective.
- The Resolution Rate is only one measure of the Pilot ERS and excludes the savings to employees and employers as a result of resolving the dispute early. This information should be collected on a sample of projects going through the ERS in the future, in order to get a complete view of the benefits derived by the tax payer, employers and employees.

Table 5.3 Cost of Options for the Future of the Early Resolution Service

	Do Nothing	Retention of Current ERS Scope	Retention of Current Scope with 50% Success Rate	Retention of Current Scope with 80% Success Rate.	Phased Expansion
Description	No action is taken through the ERS	No change is made to the current scope of ERS	No change is made to the current scope of ERS but 50% of complaints are resolved	No change is made to the current scope of ERS but 80% of complaints are resolved	The ERS is offered to all complaints currently made to RCS and EAT
Number of complaints for which service is offered pa.	0	2,410	2,410	2,410	16,508 ¹¹⁵
Complainants who accept offer to engage with service per year	n/a	1,550	1,550	1,550	10,615 ¹¹⁶
Costs of running service (€) pa.	0	369,780 ¹¹⁷	369,780	369,780	2,532,916 ¹¹⁸
Expected Success Rate	0	33%	50%	80%	33% ¹¹⁹
Expected number of withdrawn or resolved complaints during or after intervention per year	0	511	775	1,240	3,502
Cost per resolved or withdrawn complaint (€)	n/a	723	477.13	298.20	723

¹¹⁵ Based on data from 2011: Referrals to RCS and EAT (Labour Relations Commission Annual Report 2011, Employment Appeals Tribunal Annual Report 2011)

¹¹⁶ Based on a rate of engagement with the service of 64.3

¹¹⁷ Based on 12 months – 184,890 based on 6 months.

¹¹⁸ Costs for expanded service based on assumption that costs would increase in line with each complaint.

¹¹⁹ Note: this assumes that the success rate will remain the same despite the ERS being offered to all complaints made to the RCS and EAT

Table 5.3 shows a number of options for the future of the Early Resolution Service. These show that if the resolution rate stays at approx. 33% (the current resolution rate) the cost per resolved complaint is high at €723 per complaint. The opportunity exists however to increase the resolution rate and if it could reach the benchmark rate of 80% of complaints resolved as per Acas conciliation service then the cost will fall to € 298.20.

5.4 Wider Benefits of Pilot Early Resolution Service

During the Pilot ERS, 246 complaints were either resolved or withdrawn. Information does not exist on the cost savings this produced to employers or employees or the additional taxes accruing to the State. However, a piece of research¹²⁰ conducted by Acas in 2007 estimated the savings that were generated through the Acas Individual Conciliation Service. If it could be assumed that the same level of savings could be generated per complaint, then the following figures set out the economic impact of the Pilot ERS:

- Savings for employers: €190,650¹²¹; and
- Savings for Employees: €61,347¹²².

Both employers and employees are likely to have saved on legal expenses; however this data was not collected in the Acas research, and the transfer of payments for legal advice and representation would likely have remained economically neutral.¹²³ Savings on legal advice are therefore not represented.

¹²⁰ A Review of the Economic Impact of Employment Relations Services Delivered by Acas- Pamela Meadows 2007 National Institute of Economic and Social Research.

¹²¹ Total number of cases resolved/withdrawn (246) * Average savings per employer per case resolved through PERS (€775)

¹²² Total number of cases resolved/withdrawn (246) * Average savings per employee per case resolved through PERS (€249.38)

¹²³ Third parties such as solicitors would have benefited from these payments.

5.5 Summary

There are difficulties in accessing comparable information across the EAT, RCS and ERS services. However based on the information available, the Pilot ERS cost €790.13 per resolved or withdrawn complaint compared to €496 for decisions through the RCS or €980 for decisions through the EAT.

The ERS needs to increase its success rate in order to demonstrate VFM. The benchmarking section shows how this can happen and it provides useful detail on the areas for development as part of the Workplace Reform Programme overall. If the ERS were to achieve a 55% success rate, the ERS would represent a cost-effective alternative to adjudication in pure cash terms.

This assessment is based purely on looking at costs and does not include the other benefits of early resolution, such as the cost savings for employees and employers, and the potential benefits to the employment relationships and hence economic productivity.

6 REVIEW OF PERFORMANCE OF PILOT ERS

6.1 Introduction

One of the research objectives for this report is to examine the extent to which objectives of the Pilot ERS have been achieved and the effectiveness to which they have been achieved. This section details the performance of the Pilot Early Resolution Service. The data was drawn from the Lotus Notes database utilised for the recording of the following complaint data;

- Complainant and respondent;
- The CRO assigned to the complaint;
- Body of referral;
- The legislation under which the referral was made;
- The outcome of each complaint;
- The current operational status complaint;
- The date the complaint entered and was removed from the system; and
- General notes from the CRO on the progress of the complaint.

6.2 Performance of Pilot ERS

Table 6.1 presents the breakdown of the 1,205 total complaints selected for the Pilot Early Resolution Service, between mid - May to mid-November 2012 by Act.

Table 6.1: Total Cases Referred to Pilot ERS by Legislation Type

Legislation	Number of Referred Cases	(%)
Payment of Wages	262	21.7%
Unfair Dismissal	227	18.8%
Redundancy Payments	172	14.2%
Organisation of Working Time Act	148	12.3%
Minimum Notice	114	9.4%
Terms of Employment	104	8.6%
Industrial Relations	96	8%
Fixed Term	21	1.7%
Transfer of Undertakings	17	1.4%
National Minimum Wage	16	1.3%
Safety, Health and Welfare at Work	9	0.7%

Legislation	Number of Referred Cases	(%)
Protection of Employment (Temporary Agency Workers) Act	7	0.5%
Maternity Protection	6	0.4%
Protection of Employment (Part Time Workers) Act	4	0.3%
Parental Leave	2	0.2%
Total	1,205	100%

Source: RSM McClure Watters analysis of Pilot ERS Lotus Notes Database Feb'13

The main complaints referred related to Payment of Wages (21.7%), Unfair Dismissal (18.8%) and Redundancy Payments (14.2%).

Table 6.2 demonstrates the outcomes across all of the complaints selected by the Pilot Early Resolution Service.

Table 6.2: Total Complaints by Outcome

Outcome	Number of Referred Cases	(%)
Not resolved through intervention	500	41.4%
Parties not willing to proceed	251	20.8%
Withdrawn following intervention	182	15.1%
Unable to contact parties	178	14.8%
Agreement reached	52	4.3%
Withdrawn with no intervention	12	1%
On-going	30	2.5%
Total	1,205	100%

Source: RSM McClure Watters analysis of Pilot ERS Lotus Notes Database Feb'13

Some key points from Table 6.2 are:

- Of the 1,205 complaints selected, in 251 cases one or more parties were not willing to proceed with the dispute while the service was unable to make contact with the parties in 178 cases¹²⁴. 30 cases were still on-going during the time of the pilot. This left 776 complaints that were engaged with by the Pilot Early Resolution Service. Of these 246 (33%) were resolved or withdrawn following intervention. 12 complaints (1%) were withdrawn from the service with no intervention.

¹²⁴ Includes referrals where ERS was not possible e.g. unable to contact parties, unsuitable for ERS (company in liquidation etc.)

- 33% (n = 246¹²⁵) of all complaints were resolved after being selected by the ERS. This includes all complaints where agreement is reached and withdrawal is pending or where the complaint was withdrawn.
- 429 complaints (35.6%) did not engage with the Pilot ERS. This includes complaints where the parties were not willing to proceed with the ERS process, the parties who were not able to be contacted or complaints which emerged unsuitable for the ERS (but which had initially been assessed as suitable) i.e. the company was involved in liquidation or the representatives were out of the country for more than 6 weeks.
- 41.4% of all complaints (1,205) selected by the ERS did not reach a successful resolution through participation in the service. 64% of the cases that engaged with the Pilot ERS (776) were not resolved.

Table 6.3 shows the breakdown in Pilot Early Resolution Service cases by Body.

Table 6.3: Number of Complaints by Body

Body	Number of Cases selected for ERS	(%)
NERA	2	0.2%
Labour Court (LC)	0	0%
Rights Commissioner Service (RCS)	772	64%
Employment Appeals Tribunal (EAT)	433	35.8%
Total	1,205	100%

Source: RSM McClure Watters analysis of Pilot ERS Lotus Notes Database Feb'13

¹²⁵ Total complains resolved = Complaints where agreement was reached (52) + Complaints withdrawn (182 + 12)

Table 6:4: Outcome of Cases by Legislation (Feb '13)

Legislation	Referrals Selected for ERS	Unable to Contact Parties ¹²⁶	Declined ERS ¹²⁷	Engaged with ERS	ERS on-going	ERS Concluded	Agreement Reached – Withdrawal Pending	Withdrawn Post-ERS	Not Resolved	% Agreed / Withdrawn (of files concluded)
Total Referrals	1,205	178	251	776 (64%)	30 (4%)	746 (96%)	52	194	500	33%
Payment of Wages Act (1991) RCS	262	39	49	174 (66%)	3	171	8	46	115	28%
Unfair Dismissals Acts 1977 – 2005 (RCS)	114	18	22	74 (65%)	7	67	6	11	50	25%
Unfair Dismissals Acts 1977 – 2005 (EAT)	113	19	33	61 (54%)	1	60	5	5	50	17%
Redundancy Payments Acts 1967 – 2007 EAT	172	32	27	113 (66%)	4	109	12	23	74	32%
Organisation of Working Time Act (1997) RCS	115	15	22	78 (68%)	1	77	8	30	39	49%
Organisation of Working Time Act (1997) EAT	33	1	11	21 (64%)	1	20	1	4	15	25%

¹²⁶ Includes referrals where ERS was not possible e.g. unable to contact parties, unsuitable for ERS (company in liquidation etc.)

¹²⁷ Includes instances of limited engagement with ERS but whereby the parties declined to proceed with ERS

Legislation	Referrals Selected for ERS	Unable to Contact Parties ¹²⁶	Declined ERS ¹²⁷	Engaged with ERS	ERS on-going	ERS Concluded	Agreement Reached – Withdrawal Pending	Withdrawn Post-ERS	Not Resolved	% Agreed / Withdrawn (of files concluded)
Minimum Notice and Terms of Employment EAT	114	17	27	71 (62%)	5	66	5	13	48	27%
Terms of Employment Information Acts 1994 - 2001	104	20	19	65 (63%)	1	64	7	18	39	39%
Industrial Relations Acts 1969 – 1990	96	6	20	70 (73%)	1	69	-	36	33	52%
P o E (Fixed Term Work) Act (2003)	21	2	5	14 (67%)	-	14	-	3	11	21%
Transfer of Undertakings Regulations 2003	17	-	6	11 (65%)	3	8	-	2	6	25%
National Minimum Wage Act 2000	16	5	2	9 (56%)	-	9	-	4	5	44%
Safety, Health and Welfare at Work Act 2005	9	1	2	6 (67%)	1	5	-	-	5	-
P o E (Temporary)	7	1	1	5 (71%)	-	5	-	-	5	-

Legislation	Referrals Selected for ERS	Unable to Contact Parties ¹²⁶	Declined ERS ¹²⁷	Engaged with ERS	ERS on-going	ERS Concluded	Agreement Reached – Withdrawal Pending	Withdrawn Post-ERS	Not Resolved	% Agreed / Withdrawn (of files concluded)
Agency Worker) Act 2012										
Maternity Protection Acts 1994 – 2004	6	1	2	3 (50%)	-	3	-	1	2	33%
P o E (Part Time Work) Act 2001	4	-	2	2 (50%)	1	1	-	-	1	-
Parental Leave Act 1998	2	1	1	-	-	-	-	-	-	-
Total Referrals Overall	1205	178	251	776	30	746	52	194	500	33%
Total EAT Referrals	433	70	98	265 (61%)	12	253	23	42	188	26%
Total RCS Referrals	772	108	153	511 (66%)	18	493	29	152	312	37%

Source: RSM McClure Watters analysis of Pilot ERS Lotus Notes Database Feb'13

It is apparent from Table 6.4 that there are wide variances in the outcomes achieved by complaint type. Complaints to the Labour Court and the National Employment Rights Authority (NERA) were considered to be within the scope of the Pilot ERS however no first-instance complaints to the Labour Court and only two complaints to NERA were selected for the Pilot ERS. As such, it is not possible to draw any conclusions in relation to the potential success of ERS in these areas. Some of the key themes to emerge from the table are detailed below.

- 37% of RCS complaints recorded a successful resolution compared to 26% of EAT complaints. Neither of the 2 complaints referred to NERA had been resolved through the Pilot ERS, though the small number makes the data unreliable for NERA. No first instance complaints to the LC were selected for the Pilot ERS.
- The variances in success rates of intervention between RCS and EAT complaints is further highlighted in the case of unfair dismissal referrals with 25% of RCS referrals resolved compared to 17% of EAT referrals. Similarly, in terms of complaints concerning the Organisation of Working Time 44% of RCS referrals were resolved compared to 25% of EAT referrals.
- EAT referrals for complex issues such as unfair dismissal were proportionally more frequent (26%) than for the RCS (14.7%).
- Complaints under the Industrial Relations Acts had a success rate¹²⁸ of 52%; this is the only instance where the rate of successful resolution was over 50% while complaints under the National Minimum Wage ACT 2000 achieved a successful success rate of 44%.
- The Pilot Early Resolution Service achieved a success rate of 33% of all complaints where the parties were willing to engage with the service and 20.4% of all complaints selected.

Note: It is not possible to draw reliance on figures from referrals relating to the Protection of Employment (Fixed Term Work) Act and below in comparison to areas of legislation with a higher referral rate due to the significantly smaller sample size.

6.3 Time Invested per Case

The Pilot ERS had set 3 hours for each case. A client could have a number of complaints, but the target was still 3 hours. No distinction was made on the complexity of the complaint.

The Pilot ERS did not have a time recording system in place, so it is not possible to assess the amount of time recorded per complaint. Nor is it possible to analyse if certain types of complaints required more than 3 hours and others less, on a consistent basis.

¹²⁸ Success rate is comprised of those employees or employers where an agreement was reached or where the complaint was withdrawn.

6.4 Time Taken to Progress Cases

The database recorded the date each complaint was entered into the process along with the date the complaint was referred on or withdrawn following intervention and removed from the service’s system.

Of the 776 complaints that engaged with the Pilot ERS, 693¹²⁹ were recorded as having been closed at the end of the pilot period. The time taken for each of these complaints to be closed is detailed by outcome in Table 6.5.

Table 6.5: Time Taken to Complete Complaints

Outcome	Number	Number of Complaints dealt with under 6 weeks (%)	Number of Complaints dealt with over 6 weeks (%)	Total Average Time (Weeks)
Agreement Reached ¹³⁰	26	3 (11.5%)	23 (88.5%)	16.6
On-going ¹³¹	1	-	-	8.4
Not resolved following intervention ¹³²	477	222 (49.6%)	255 (50.4%)	7.9
Withdrawn following intervention ¹³³	189	99 (52.3%)	90 (47.7%)	8
Total	693	324 (46.7%)	369 (53.3%)	8.3

What is apparent from Table 6.5 above is that the 6 week target duration for closure of complaints is not being achieved. CROs have achieved closure in 6 weeks or less in half (46.7%) of the 693 complaints that engaged with the service and were closed. The highest variance from the 6 week target is apparent in complaints marked as “Agreement Reached” where 88% of complaints took over 6 weeks. The average time taken on complaints that were resolved was 16.6 weeks, over twice as long as the target time.

It would appear that the target 6 week period turnaround for the resolution or closing of a complaint was optimistic. There is a requirement to investigate the underlying causes for complaints marked as “Agreement Reached” taking much longer to progress through the system.

¹²⁹ Cases within the Lotus Notes database with a marked date of closure in the system.

¹³⁰ 26/52 cases classified as Agreement Reached had a date of closure in the system, 26/52 did not.

¹³¹ 1/30 cases classified as on-going had a date of closure in the system, 29/30 did not.

¹³² 477/500 cases classified as not resolved had a date of closure in the system, 23/500 did not.

¹³³ 189/194 cases classified as withdrawn following intervention had a date of closure in the system, 5/194 did not.

An area to explore relates to CROs highlighting they had difficulties in getting clients to return calls and therefore get the process moving. They found that once clients had been given an adjudication hearing date it was easier to make contact. The earlier provision of a hearing date may encourage clients to engage with the service sooner and therefore reduce the time required to process the complaint.

6.5 Summary

There are a range of factors to consider when evaluating the success of the Pilot ERS. The service was set up to manage 1,199 referrals, and this target was achieved. A further target was set with regard to delivering the ERS on all complaints within 6 weeks. It was found that, on average, this target was not achieved; the average time taken per case was 8.3 weeks.

No targets were set regarding success rates, customer satisfaction, or the cost of providing the service. These should be included in any future service.

The Pilot ERS team has been focused on delivering the service with minimal cost. The service is delivered through telephone contact, therefore keeping costs low. Interpretation costs will need to be included in any future service.

The rate of positive complaint resolutions from referrals that engaged with the Pilot ERS was 33%. Of the 246 positive resolutions, 194 (78.8%) complaints were withdrawn following intervention by the service, and 52 (21.1%) were resolved by means of agreement reached between the parties.

The Pilot ERS has been more successful for RCS referrals (37%) than EAT referrals (26%). The variance in success rates of intervention between the RCS and EAT are further highlighted as the rate of resolved complaints is lower for EAT referrals (17%) than RCS referrals (25%). This is a reflection of more complex complaints such as unfair dismissal being referred to the EAT in the first instance.

7 SURVEY RESULTS AND ANALYSIS

7.1 Introduction to Survey Approach

A survey of users and non-users was used to investigate the following areas;

- The factors that encouraged or discouraged parties from using the Pilot ERS;
- The factors that made the ERS intervention successful or prevented ERS intervention from being successful in resolving the dispute;
- The impact of representation by various parties such as individual, legal, employer body, trade union etc. on the process; and
- The level of preparation and where possible cost undertaken by parties using the ERS by comparison with those going to adjudication hearings.

The Department of Jobs, Innovation and Enterprise provided a list of 180 contacts who agreed to take part in the survey.

The survey was piloted with 10 Pilot Early Resolution Service Users and 10 Non-Users. All contacts were then sent the survey link by email (contacts in which no email was provided, or a wrong email address was provided, were contacted by phone).

The survey was re-sent a week after initial contact, to those who had not completed the survey online or by phone.

67 respondents completed the survey online; while a further 75 contacts were phoned 3 times, resulting in a total of 93 surveys. A number of respondents did not provide comprehensive responses, however those who completed surveys over the phone provided the most complete responses.

7.2 Users of the Pilot Early Resolution Service

7.2.1 Background Information

Figure 7.1 below shows that of the 92 respondents, 20% were employee representatives¹³⁴ and 10% were employer representatives¹³⁵ (10%). However the majority (70%) of respondents were employers or employees directly involved in the dispute.

¹³⁴ Employer Representatives (N=9): Solicitors HR specialists, Business representatives and representatives undefined (i.e. they did not belong to a solicitor/trade union/HR specialist or other identifiable body)

¹³⁵ Employee Representatives (N=19): Solicitors HR specialists Trade Unions Citizens Information and representatives undefined (i.e. they did not belong to a solicitor/trade union/HR specialist or other identifiable body)

Figure 7.1: Number of respondents which were represented compared with those not represented N = 92 (1 skipped)

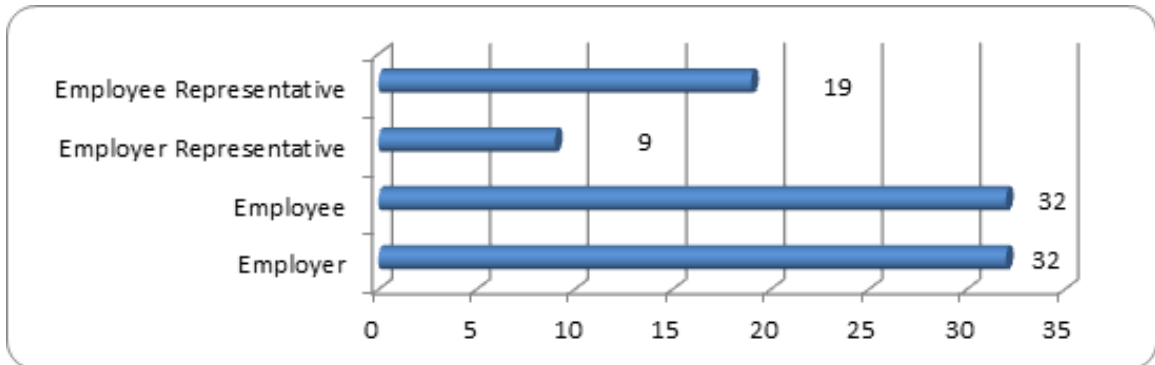


Figure 7.2 shows that of the 28 representatives who responded to the survey, the majority of employer representatives (67%) were not specified (they did not belong to a solicitor/trade union/HR specialist or other identifiable body). In comparison the majority of employee representatives were trade union representatives (53%) or from a solicitor's firm (32%).

Figure 7.2: Occupation of Employers Representatives (N =9) compared with Employee Representatives (N =19) (skipped = 0)

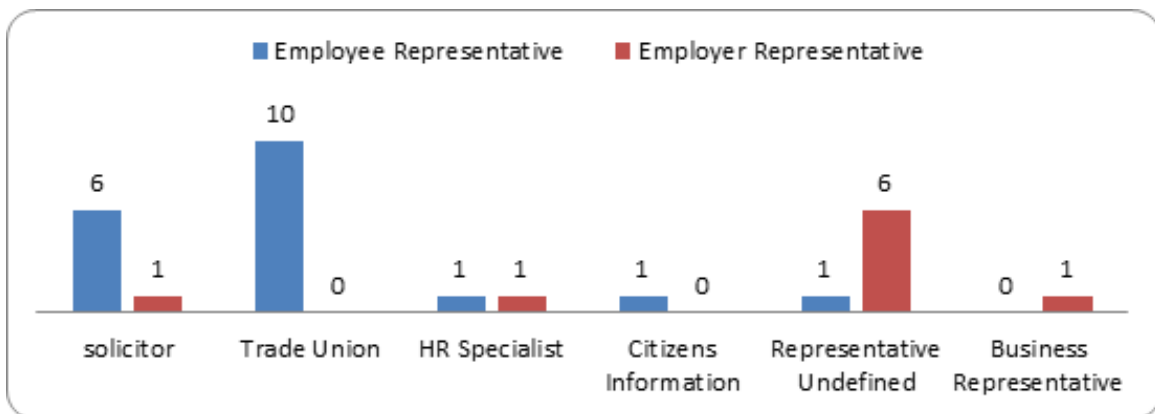
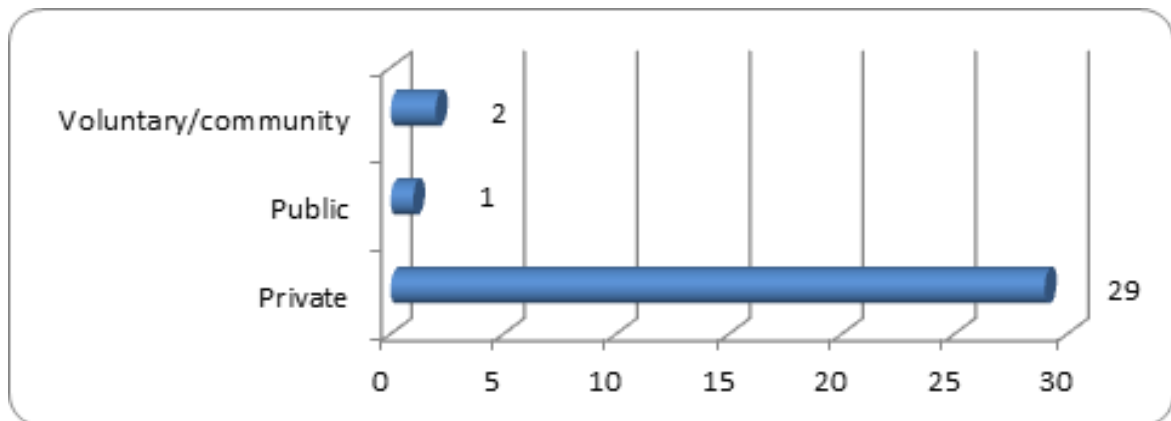


Table 7.1 provides a breakdown of the success or status of the complaint of those who were represented. The figures indicate that 50% of complaints were resolved and 50% were unresolved.

The table also shows that the majority of respondents (50%) chose to go through the process via the Rights Commissioner or the Employment Appeals Tribunal or during a hearing by hearing of the relevant body (i.e. the Rights Commissioner or the Employment Appeals Tribunal).

Table 7.1: Status of Complaint N=28 (skipped =0)

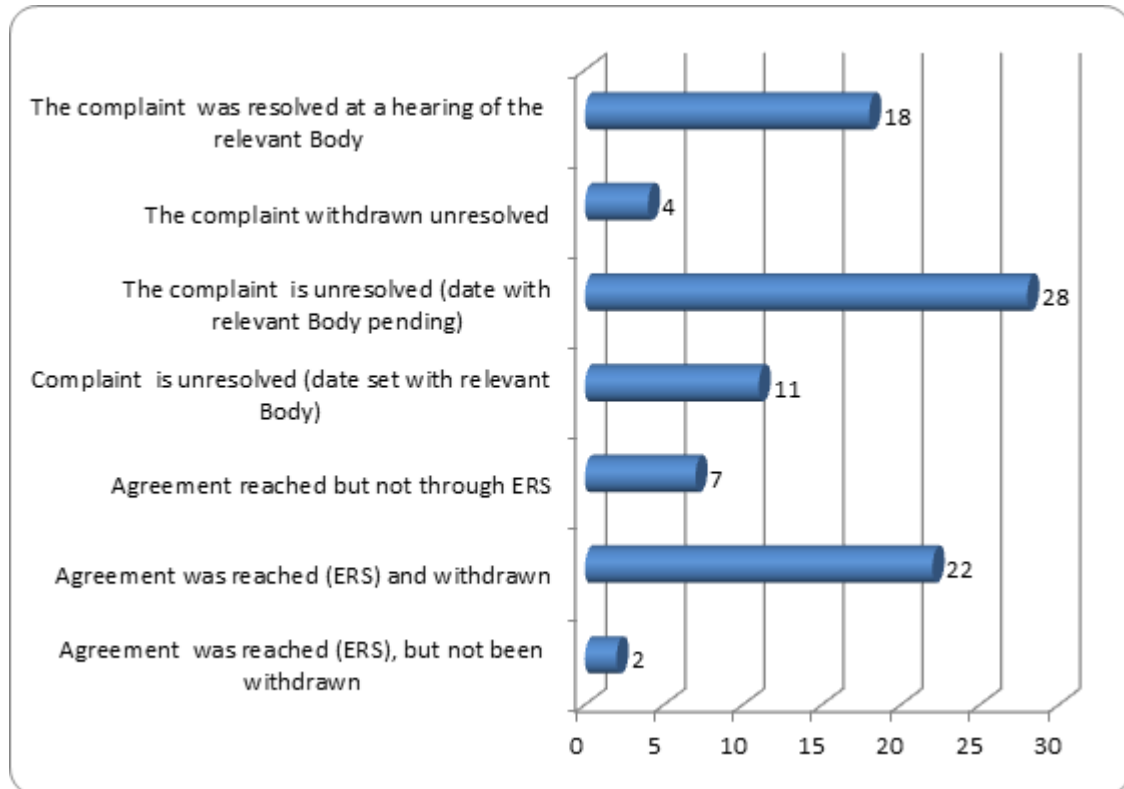
	Complaint status	Total Percentage
Resolved via ERS – not yet withdrawn	Complaint Resolved	14%
Resolved via ERS – withdrawn		7%
Resolved – not via ERS		4%
Resolved through a hearing of the relevant body		25%
Not resolved – hearing with the relevant body has been set	Complaint Unresolved	18%
Waiting for a date with the relevant body		25%
Complaint withdrawn		7%

Figure 7.3: Company sector of respondents N = 32 (skipped = 61)


100% of employers answered this question. Although all respondents were asked this question; none of the other 3 categories (i.e. employee, employer representative or employee representative) provided a response. Almost all respondents (90% of 32) were employed in the private sector.

7.2.2 Outcome of dispute

Figure 7.4: Status of respondents' complaint N = 92 (skipped = 1)



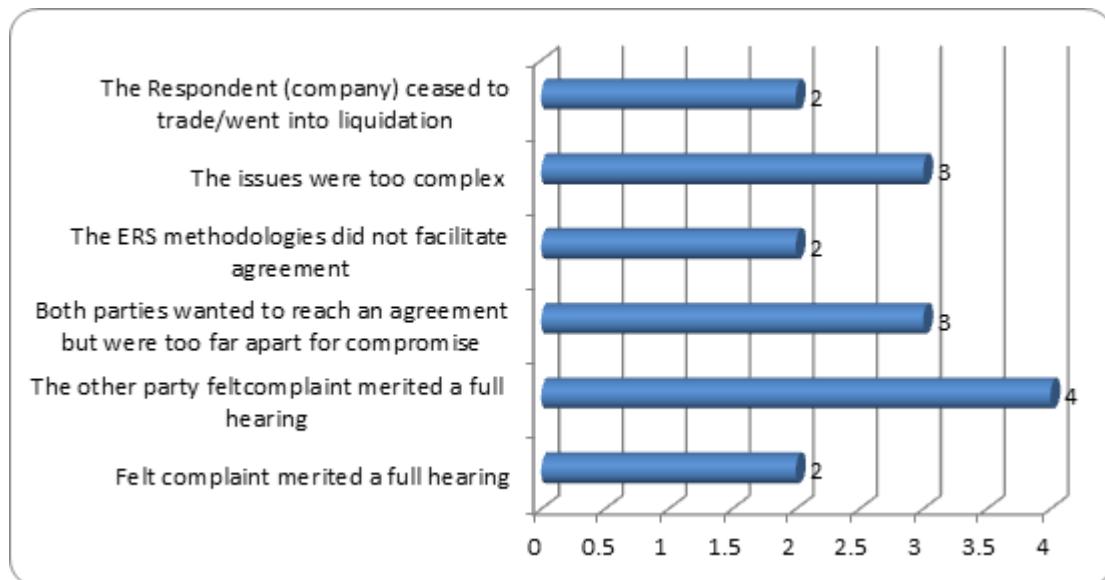
Of the 92 respondents to this question 30% stated that the complaint was still on-going and they were awaiting a date from the relevant dispute resolution body. However **54% of all respondents had reached an agreement**, 24% (N= 22) through engagement with the Early Resolution Service; an additional 2% (N=2) through engagement with the Early Resolution Service and were waiting for the complaint to be withdrawn; 20% (N= 18) through engagement with the Rights Commissioner or the Employment Appeals Tribunal and 8% reached an agreement (and was not specified what method this was facilitated through) however it was not through the Early Resolution Service¹³⁶. Therefore from our sample, 26% of respondents had their complaints resolved with help from the Pilot Early Resolution Service.

The remaining **46% (disputes were not resolved)**, was comprised of 42% of disputes which were on-going (30% were waiting for a date to be set by the relevant Body; 12% had received a date for a hearing). 4% of the respondents stated that the dispute remains unresolved but the complaint has been withdrawn.

¹³⁶ Complaints settled via other means i.e. mediation or informal discussions between both parties etc.

If these 4 respondents were added to the previous numbers resolved through the Pilot Early Resolution Service, then 28 complaints or 30% of the sample have been kept out of adjudication or inspection.

Figure 7.5: Respondent feedback on why an agreement was not reached through the Early Resolution Service? N = 22 (skipped = 46)



NOTE: Respondents could pick more than one answer.

Of the 68 respondents that stated an agreement was not reached through the ERS (as shown in figure 5) only 22 responded to a question on why this was the complaint. With the exception of the category 'other' the majority (N = 4) stated that the other party involved in the dispute requested a full hearing as opposed to using through the Pilot Early Resolution Service. The 6 respondents who provided 'other' reasons included:

- 1 respondent felt they could not negotiate over the phone, feeling that face to face contact was necessary;
- 3 respondents stated that the other party was unwilling to negotiate. Specifically; respondent 1) stated the other party would not accept their offer; respondent 2) stated their complaint was considered false by the other party, respondent 3) stated the other party would not engage in negotiations over the phone; and
- 1 respondent stated that the Early Resolution Service recommended that they should be heard by the Rights Commissioner because the ERS did not understand the complaint sufficiently.

Figure 7.6: Employment status following/pending the outcomes of the dispute N = 32 (skipped = 0)

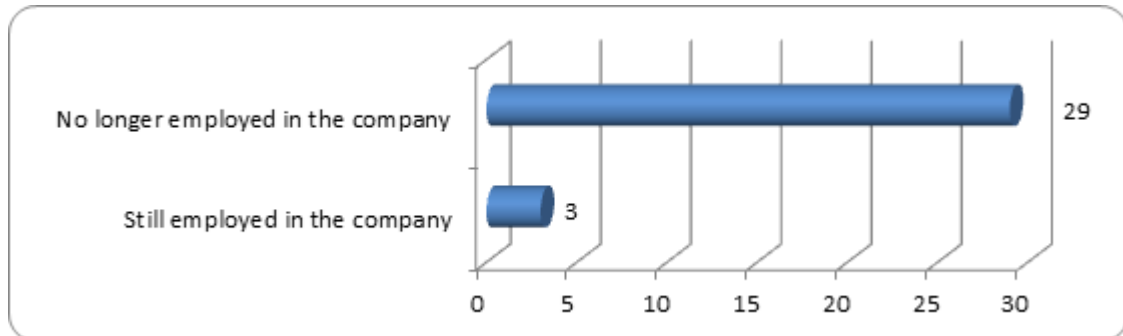
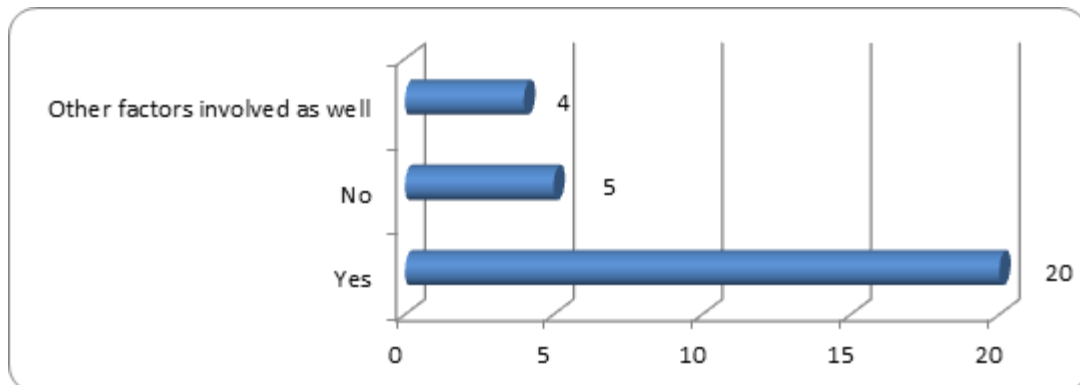


Figure 7.6 show that only 9% of the employees are still employed with the same company in which the dispute occurred. Figure 7.7 shows that 69% of the 29 respondents stated that they left the company as a result of the dispute. An additional 14% felt that the dispute had partially contributed to their decision to leave while 17% felt that their reason for leaving was not directly related to the dispute.

Figure 7.7: Influence of dispute on complainant's employment N = 29 (skipped = 3)



7.2.3 Support Received from the Early Resolution Service

Respondents were asked to assess how long it had taken to reach an agreement through the Pilot Early Resolution Service.

Table 7.2: Number of weeks taken to reach agreement from the date of first contact by the ERS (This question includes only those which DID reach agreement through the ERS) N = 24 (skipped = 0)

Additional responses	
Employee	17 weeks
Employee Representative	8 weeks

Additional responses	
Employee Representative	12 weeks
Employer Representative	10 weeks

Only 24 respondents have resolved their dispute through the ERS. From the figure above the majority (29%, N= 7) of these respondents stated that it took 5-6 weeks to achieve an agreement through engagement with the Pilot Early Resolution Service. This was closely followed by 25% (N= 6) who stated it took between 3-4 weeks. A further 12% (N=4) said it took more than 6 weeks.

Table 7.3: Number of weeks taken to reach agreement from the date of first contact by the ERS (This question includes only those which reached agreement *NOT* through ERS) N = 7 (skipped = 0)

Employer	1 x Don't know
Employee	1 x Don't know
Employee	12 weeks
Employee	28 weeks
Employee	24 weeks
Employee	1 x No answer
Employer Representative	3-4 weeks

Table 7.5 shows that 7 respondents resolved their dispute but not through the Pilot Early Resolution Service and on average it took 17 weeks to complete the process.

Comparisons of Table 7.2 and Table 7.3 show that it takes over half the time to get a complaint reduced through the Pilot Early Resolution Service compared to not using the service. The numbers of respondents to both questions are small and therefore may not be representative of the total population.

Table 7.4: Respondents that specified 'Longer than six weeks'

Additional responses	
Employee	12 weeks
Employee	24 weeks
Employee	28 weeks

7.2.4 Ratings of Early Resolution Service (ERS) Users

Tale 7.8 provides a summary of the respondent's assessment of the service provided by the Case Resolution Officers. Each characteristic is further broken down in the subsequent figures.

NOTE: A considerable number of respondents stated this question did not apply to them. They have been removed from the tables below to provide a more accurate representation of those who had experienced the services listed. Care should be taken when interpreting the results due to the small sample sizes of those who responded to the ratings.

Table 7.5: Assessment of services provided by ERS Case Resolution Officer

	Excellent	Very Good	Good	Fair	Poor	Total respondents
Timeliness of response from and interventions by the Case Resolution Officer	21 (28%)	29 (39%)	16 (21%)	4 (5%)	5 (7%)	75 (100%)
Ease of contact with the Case Resolution Officer	23 (32%)	28 (39%)	10 (14%)	4 (6%)	7 (10%)	72 (100%)
Explanation by the Case Resolution Officer of the ERS process	24 (33%)	24 (33%)	19 (26%)	3 (4%)	2 (3%)	72 (100%)
Extent and quality of information provided on employment rights and legislation as relevant to your complaint	14 (25%)	20 (36%)	9 (16%)	6 (11%)	7 (13%)	56 (100%)
Effectiveness in terms of relaying proposals and offers to and from parties	13 (23%)	16 (29%)	13 (23%)	4 (7%)	10 (18%)	56 (100%)
Helping you to consider the pros and cons of resolving the problem with the ERS	15 (25%)	20 (34%)	9 (15%)	2 (3%)	13 (22%)	59 (100%)
Helping you to understand the strengths and weaknesses of the complaint	9 (17%)	16 (30%)	8 (15%)	8 (15%)	13 (24%)	54 (100%)
The time and effort given by the Case Resolution Officer in finding solutions	15 (25%)	17 (28%)	9 (15%)	8 (13%)	11 (18%)	60 (100%)

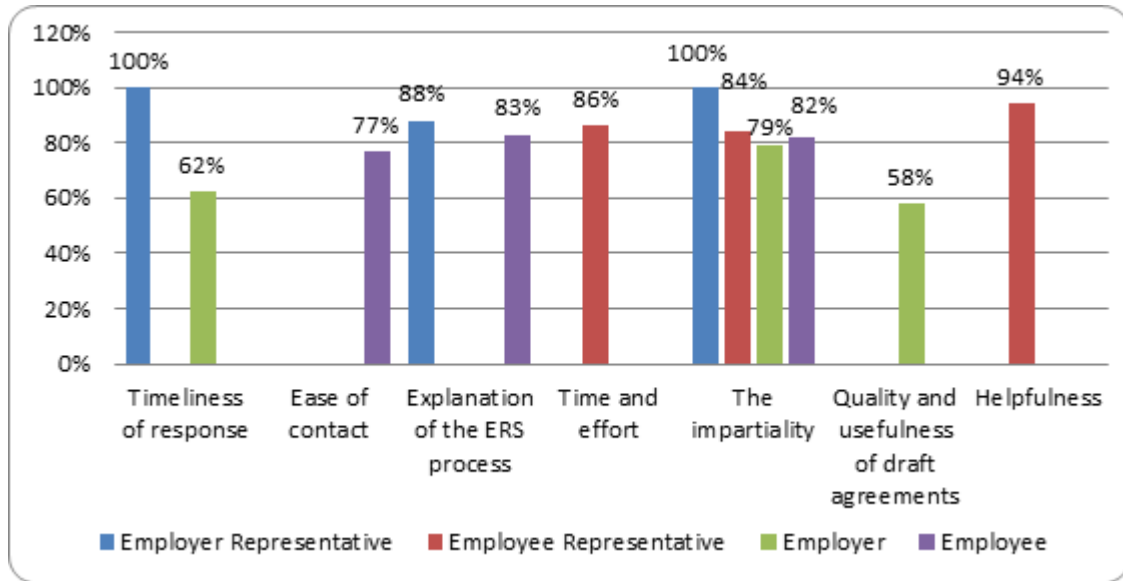
	Excellent	Very Good	Good	Fair	Poor	Total respondents
The impartiality of the Case Resolution Officer	28 (47%)	21 (36%)	6 (10%)	1 (2%)	3 (5%)	59 (100%)
Quality and usefulness of draft agreements drawn up by the Case Resolution Officer	9 (32%)	10 (36%)	5 (18%)	-	4 (14%)	28 (100%)
Helpfulness of the Case Resolution Officer	23 (34%)	19 (28%)	13 (19%)	9 (13%)	4 (6%)	68 (100%)
Overall Customer Service	25 (37%)	18 (27%)	11 (16%)	7 (10%)	6 (9%)	67 (100%)

The most positive rating (***calculated by adding excellent and very good together***) was attributed to the 'impartiality of the Officers' (83%) followed by the 'ease of contact' (71%) and 'quality and usefulness of draft agreements' (68%) by Case Officers.

Adversely those areas receiving the most negative ratings (***calculated by adding fair and poor ratings together***) included the effectiveness in relaying the proposals, Officers explanation of the 'strengths and weaknesses of the complaint' (24%) to help them to understand the issues involved. This was followed by the 'explanation of the pros and cons of resolving the problem' (22%) and 'time and effort' contributed by the Officers to the complaint (18%).

Figure 7.8 compares the highest responses by respondent group.

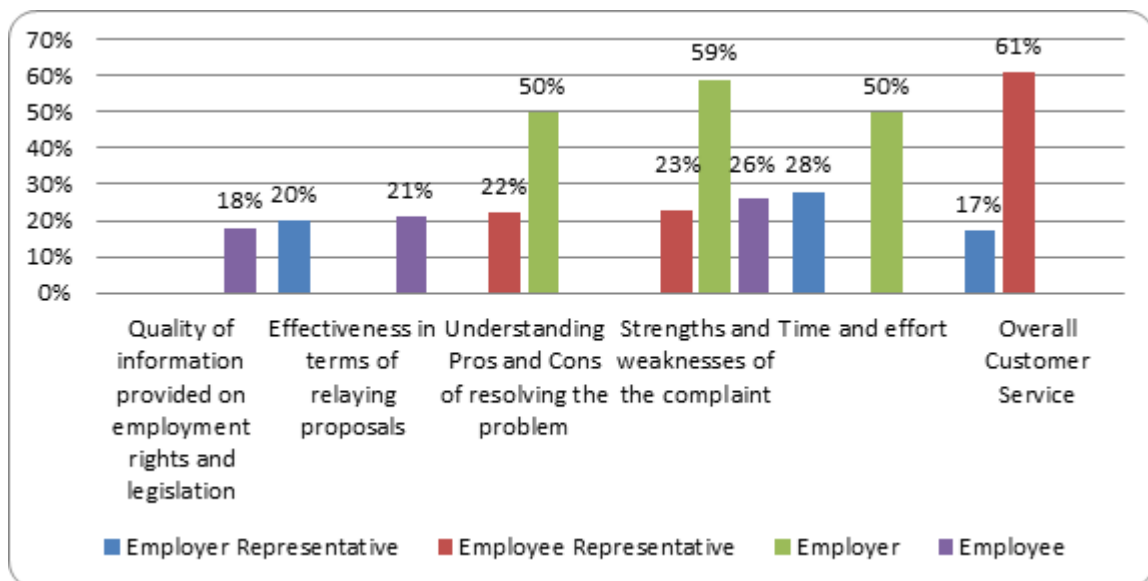
Figure 7.8: Top 3 positively rated aspects of ERS Case Resolution Officers



The impartiality of Case Officers, explanation of the ERS process and timeliness of response, received the highest ratings.

The figure also shows that employer representatives provided the most positive ratings followed by employee representatives. Employers were the least positive overall.

Figure 7.9: Top 3 negatively rated aspects of ERS Case Resolution Officers

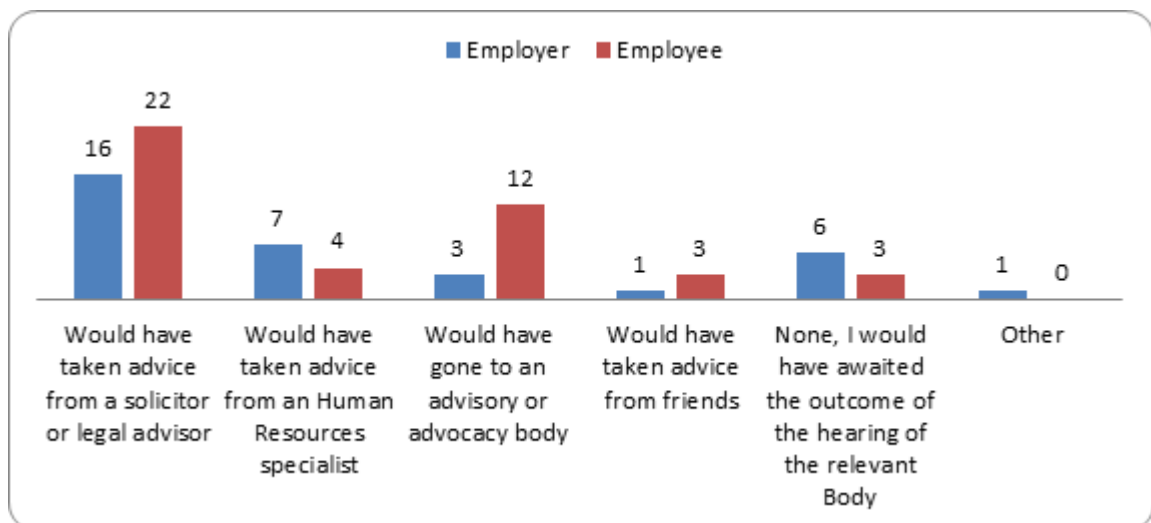


The figure above shows that helping users to understand the ‘strengths and weaknesses of the complaint’ was most frequently rated poorly. As indicated previously, employers provided the least positive rating, and similarly provided the highest negative ratings of the four groups.

7.2.5 Alternative Dispute Resolution Services

Respondents were asked what they would have done if the Pilot Early Resolution Service had not been available. The majority (63%) said they would have approached a solicitor or legal advisor, this was followed by 28% who would not have approached anyone for advice while waiting for the outcome of a hearing with the relevant body. The least favoured option was approaching friends for advice (5%).

Figure 7.10: Alternative dispute resolution service used by Employer/Employee had the ERS NOT been available N = 60 (Skipped = 4)

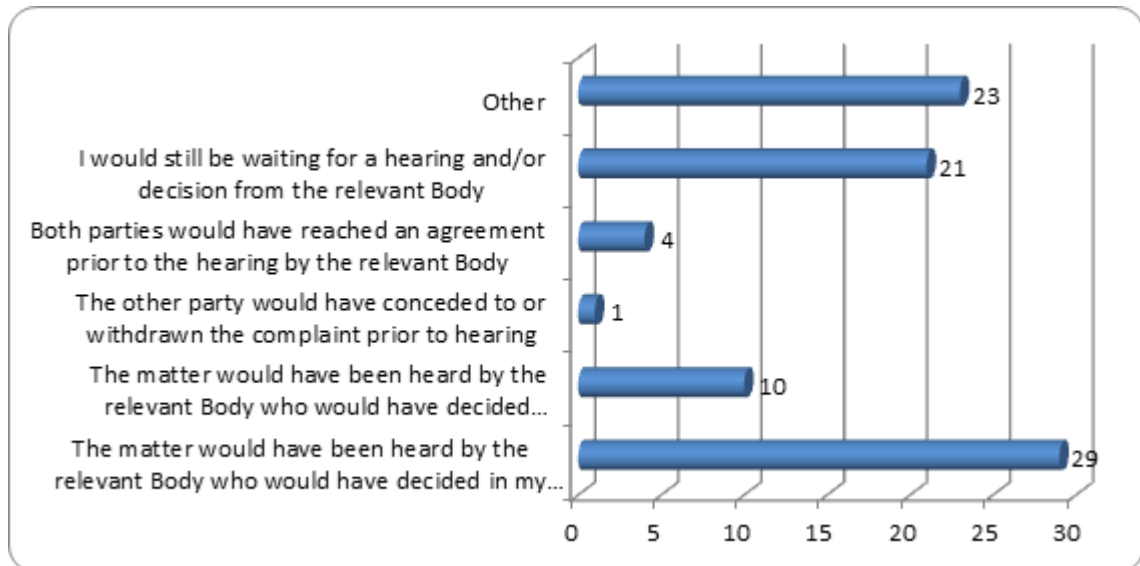


NOTE: Respondents could pick more than one answer.

It is clear that in the absence of the ERS a legal advisor would be the most common choice of both employers and employees.

Respondents were asked what the most likely outcome would have been if the Pilot Early Resolution Service had not existed.

Figure 7.11: Most likely outcome of dispute if there was no engagement with the Early Resolution Service N = 88



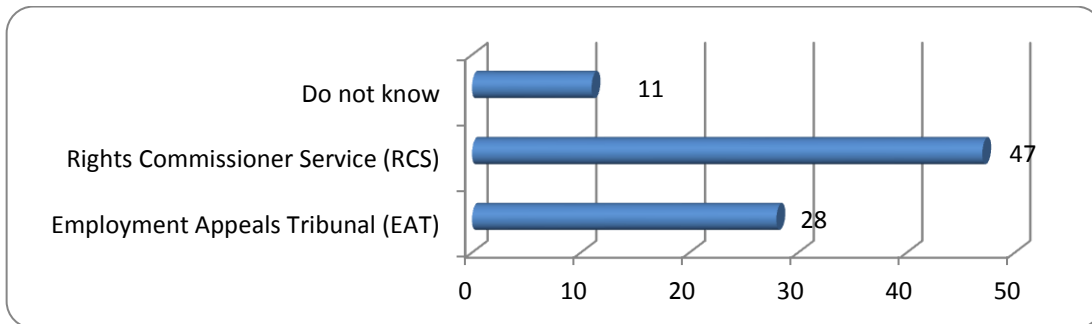
Note: This takes into account the 10 respondents who put their responses under 'other' but who noted they would have gone to a hearing or court.

79% of respondents felt that the complaint would have gone to adjudication or inspection with only 5% believing it would be settled prior.

A majority of 33% felt that without the Early Resolution Service, the relevant body would have decided on the matter in their favour. A further 24% felt they would still be awaiting a decision/hearing from the relevant body. Those who chose the category 'other' are detailed below.

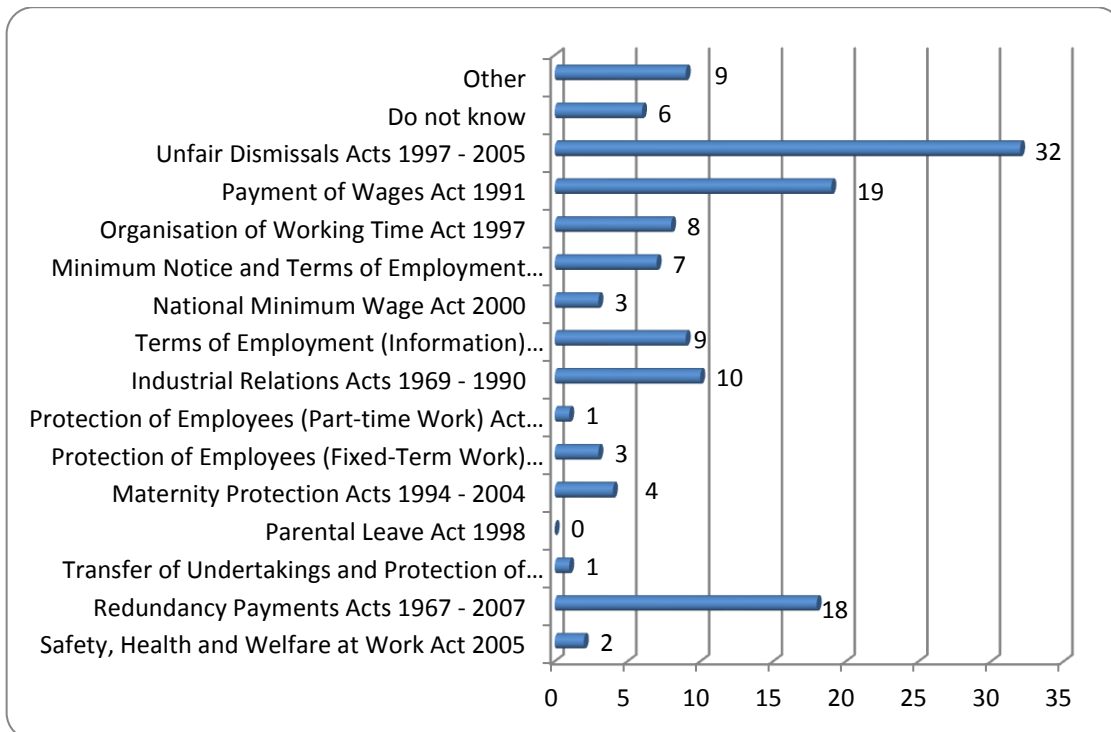
Table 7.6: Respondents which selected the category 'other' N=23 (Skipped = 0)

Figure 14: 'Other' Category responses	
10 respondents	felt unsure of what the outcome may have been
10 respondents	felt their dispute would have been processed by the relevant body for hearing
3	felt the question did not apply to them

Figure 7.12: Body the complaint was originally referred to N = 86


55% of those who responded to this question stated that the Rights Commissioner Service was the first point of contact for their complaint. This was followed by 33% who stated it was the Employment Appeal Tribunal. 12% of respondents did not know which body the complaint had been referred to.

Respondents were asked what legislation their complaint had been referred under.

Figure 7.13: Legislation the referral was made under N = 89


NOTE: Respondents could pick more than one answer.

The legislation which complaints were most frequently referred under:

- ‘Unfair Dismissals Acts 1997 – 2005’ (36%);
- ‘Payment of Wages Act 1991’ (21%); and
- ‘Redundancy Payments Acts 1967 – 2007’ (20%)

Legislation complaints were least frequently made under included:

- ‘Parental Leave Act 1998’ (0%);
- ‘Protection of Employees (Part-time Work) Act 2001’ (1%); and
- ‘Transfer of Undertakings and Protection of Employees Act, 2003 EC (Safeguarding of Employees Rights on Transfer of Undertakings) (Amendment) Regulations 2003’ (1%).

Table 7:7: Respondents which selected the category ‘other’ N= 6 (Skipped = 3)

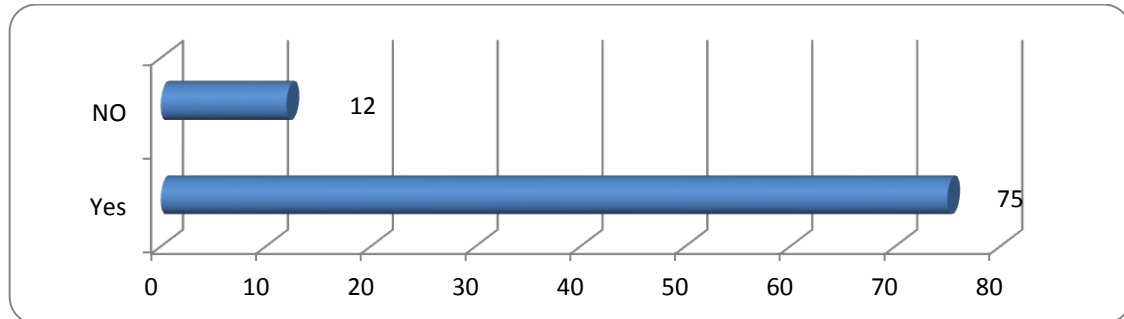
‘Other’ Legislation responses
2 respondents - The Agency Workers Regulations (Northern Ireland) 2011 (Agency Workers)
1 respondent - The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No.2) Regulations (Northern Ireland) 2007 (For Carers)
1 respondent - The Employment Rights (Increase in Limits) Order (Northern Ireland) 2011 (Redundancy)
1 respondent - The Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2009 (Age discrimination)
1 respondent - The Working Time (Amendment) Regulations (Northern Ireland) 2007 (Working over Bank Holidays)

The remaining responses were comments made which did not refer to a specific legislation and have not been included.

7.2.6 Improvements/Benefits to ERS

Respondents were asked should the Pilot Early Resolution Service be continued.

Figure 7.14: Continuation of ERS assessed by respondents N = 87



86% of respondents felt that the Early Resolution Service should continue to be offered. Replies from those who felt it should not continue are detailed in Table 7.8.

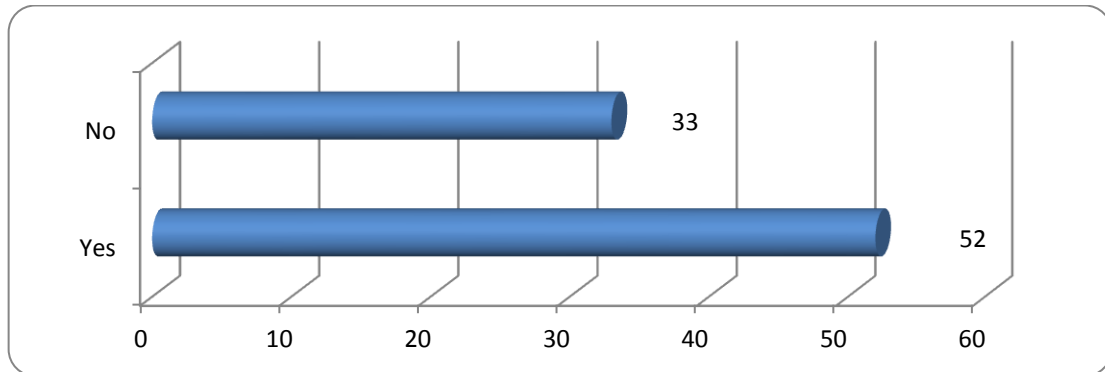
Table 7.8: Feedback from respondents who do NOT believe the ERS should continue to be offered Please detail: N = 11 (Skipped =1)

Employer	Employee	Employer Representative	Employee Representative
1 x Felt that face to face engagement was necessary and that conciliation officers as opposed to ERS Case Officers are best placed to provide advice with a comprehensive knowledge of all stakeholders and bodies available.			2 x No point without the face to face engagement.
2 x I believe it adds an unnecessary layer of complexity to resolving the dispute.	1 x I didn't feel there was any benefit in my complaint. The employee wanted money and the ERS didn't go back to them to try to look for alternatives.		
1 x Insufficient explanation of the pros and cons of winning or losing the complaint if it were taken further to allow both parties to make a rational decision on their options.	1 x Solicitors or unions are more equipped to deal with legislation		

Three respondents felt that the lack of face to face contact inhibited the process, while others felt that the complexity of employment legislation would be more appropriately dealt with by solicitors or unions.

Respondents were asked if they felt improvements could be made to the service.

Figure 7.15: Respondents who felt improvements could be made to the ERS N=85



61% felt that there were improvements that could be made, 39% disagreed. Suggestions on improvements are detailed in Table 7.9.

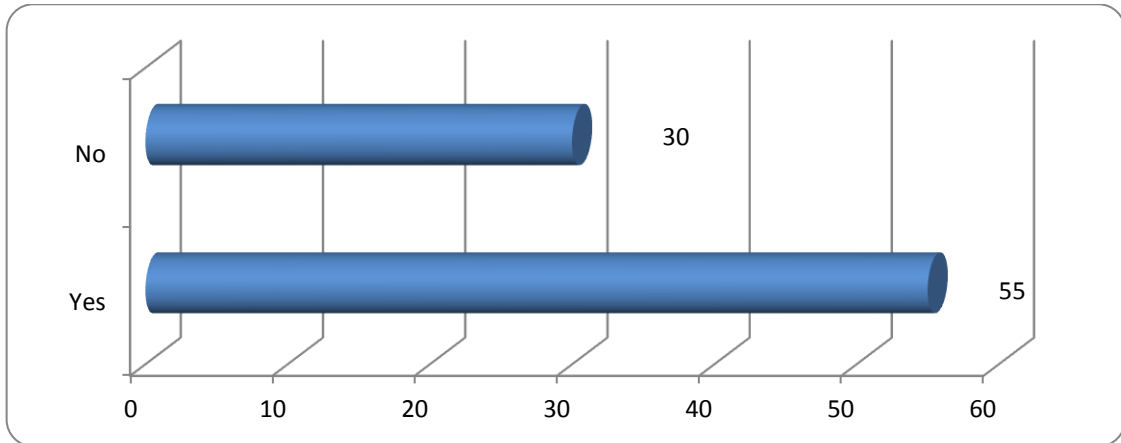
Table 7.9: Suggested improvements to the ERS N = 52

Employer	Employee	Employer Representative	Employee Representative
1 x Case officer needs more knowledge of the complaint Face to face meetings are necessary	1 x In my case that even when the accused agreed to settle with the ERS, they were given too much time to forward on the check that was agreed.	1 x Quicker response time.	5 x Face to face meetings are necessary.
1 x More effort to understand the issue at hand - very quickly referred us to a rights commissioner. Rights Commissioner threw the complaint out as we had not breached any legislation more time taken to understand the issue	3 x Better communication from ERS	1 x If case officers were regionally based - following the initial phone call - the conciliator could arrange to meet both parties separately to ascertaining if further intervention at that level would be useful. 1 x Therefore leading to shorter waiting lists at both RC and EAT.	4 x Both parties should be obliged to engage.
2 x speed up process to a week	2 x Both parties should be obliged to engage.	1 x More complex issues are inappropriate for ERS	1 x The ERS form could be broader to include further types of complaints.
1 x The ERS could be used as an initial fact finding service to help prepare the conciliation officer in advance of a hearing.	1 x No written information to read up on the process.	-	1 x Assurance that there would be no time delay in getting case heard if mediation was unsuccessful.
2 x Face to face meetings are necessary	1 x Clearer explanation of ERS/explain procedures in layman terms.	-	1 x There should possibly be a cost implication on the parties to settle.

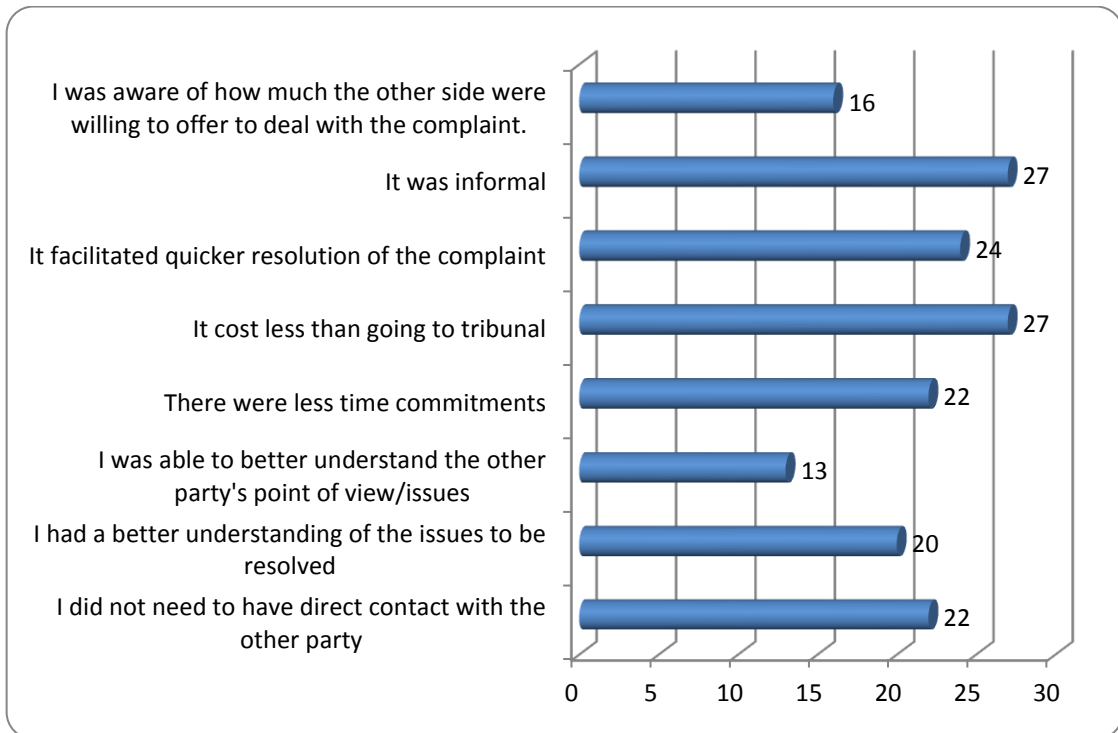
Employer	Employee	Employer Representative	Employee Representative
4 x Better communication from the ERS	1 x Someone you could contact over the phone before entering the service.	-	-
1 x Clearer explanation of ERS/explain procedures in layman terms	1 x More facts, so they can determine whether an employer would need to pay out etc.	-	-
1 x Active engagement in trying to resolve matters instead of going through the motions'.	1 x Advice on law; more advice on what to do; give their opinion.	-	-
1 x Better advertisement of the ERS; Kept better up to date; Provide a time line or end date.ie. how long does this other party have to further their complaint.	1 x The service should offer people the initial meeting in private and then the final meeting together.	-	-
An additional 10 respondents provided comments not applicable to the survey			

When asked to comment on improvements to the ERS, better communication from Case Officers to keep users informed, an obligation from both sides to participate in negotiations and face to face meetings were the three most frequently cited suggestions.

Figure 7.16: Respondent who believed there were benefits to the ERS regardless of outcomes N = 85



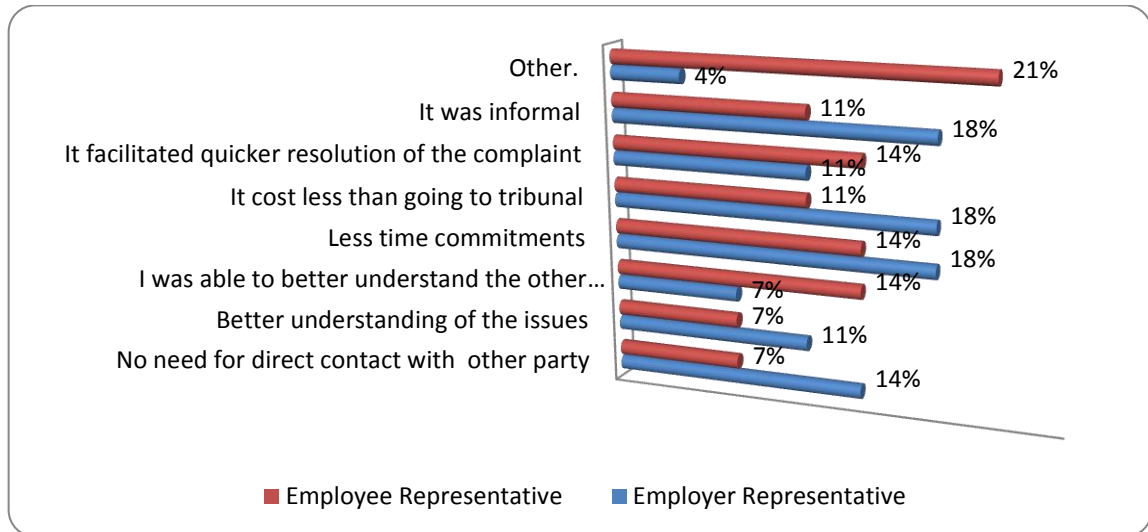
The majority agreed that there were benefits to participating in the ERS. The two predominant factors included; it was cheaper than proceeding to adjudication or inspection and it was informal. However many also felt that it was a faster method of dealing with the complaint, it took up less time and it allowed complainants to avoid having to meet the accused in person.

Figure 7.17: Benefits to using the ERS, regardless of the outcome achieved N=56


NOTE: Respondents could pick more than one answer.

When the combined response was compared with the benefits stated by representatives employer representatives also appreciated the minimal time constraints, lower costs of ERS compared with adjudication and the informality of the process. Similar benefits were attributed by employee representatives with emphasis also placed on, better understanding of the other party's point of view.

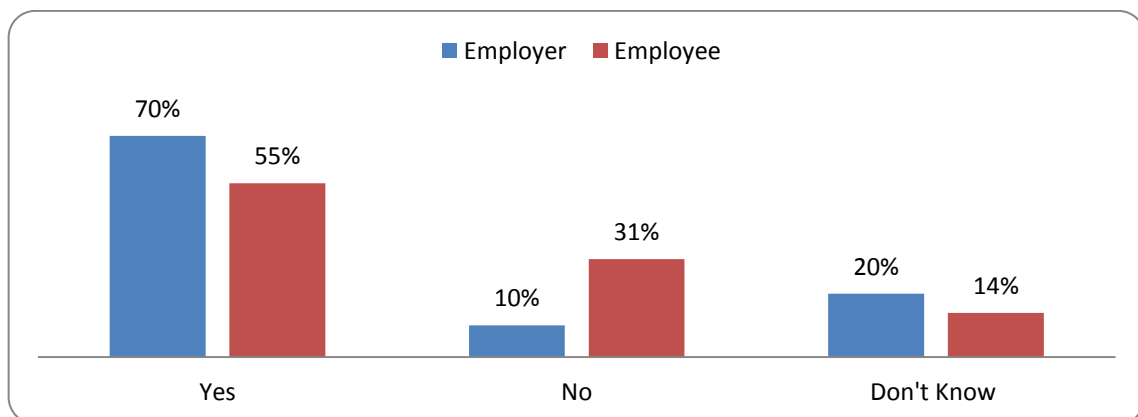
Figure 7.18: Feedback from representatives on benefits to using the ERS, regardless of the outcome achieved N = 16



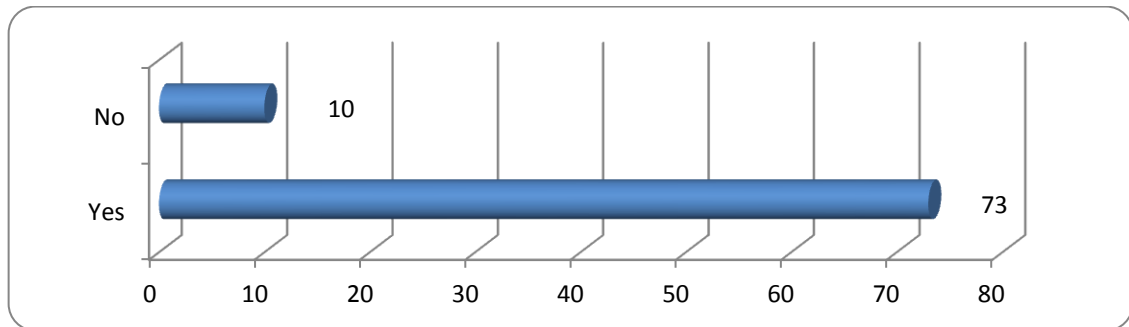
NOTE: Respondents could pick more than one answer.

Employers and employees were also very positive about the process. The majority (55%) of employees felt they would have used the ERS even if they had received a date for a hearing from the relevant body at the same time. A greater percentage of employers (70%) felt they also would have used the ERS.

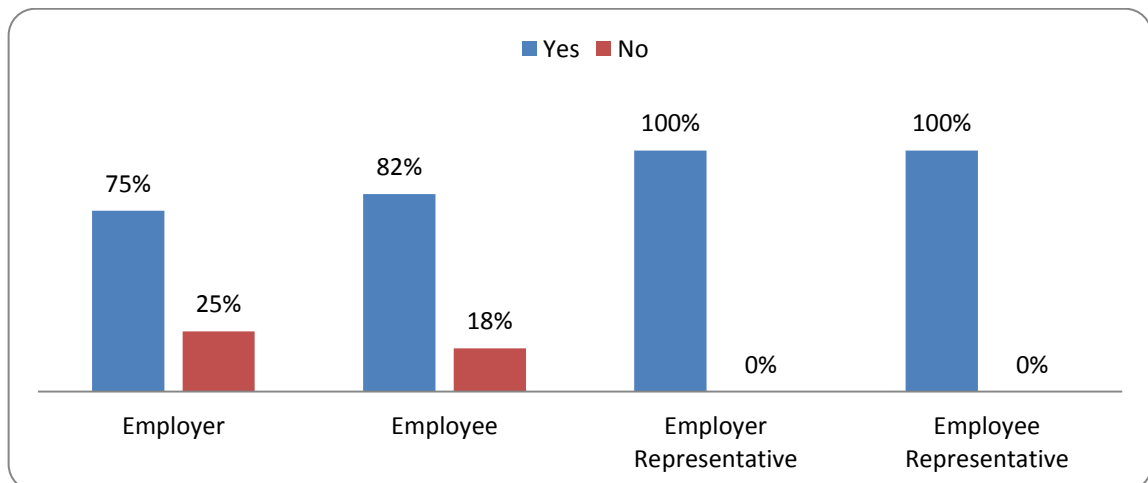
Figure 7.19: Number of Employers/Employees that would have used the ERS in preference to a hearing N = 57



Similarly 88% agreed that they would use the ERS again if the need arose.

Figure 7.20: Number that would use the ERS again N = 83


Representatives were in 100% agreement that they would use the ERS again, while employers and employees were marginally less positive.

Figure 7.21: Percentage that would use the ERS again compared by respondent N = 83


32 respondents provided additional comments which are detailed in the following table:

Table 7.10: Additional comments N = 32

Employer Representatives
It is really just a restating of previous comments. Using this system the parties' don't feel either a sense of the urgency with which they themselves view the problem and are unlikely to arrive at any better position through phone calls than they could have attained by direct contact with the other party.
ERS is very welcome. Employment law can be hugely confusing and contradictory to employee and employer alike. Employers are very concerned at the complexity, time and costs involved in engaging with the State IR and often perceive a bias towards the employee, particularly with the R.C. Service. Unless there is a compelling reason not to do so, the ERS should insist on employees availing of internal resolution processes where such are available.

Employer Representatives
Employee Representative
The ERS is good service to assist and facilitate compromise and in obtaining an early resolution
Out of around 15-20 times I have been involved in cases referred to ERS, I didn't have a lot of success through the ERS and that is down to the lack of face-to-face engagement
I feel it is a very worthwhile service.
It does have the potential to help develop the complaint and prepare it for the LRC even if it is not successful
I was given no updated information about the case or how the other party felt. Anything I got was in solicitor's letters. The ERS did not seem to want to hear my side or offer any suggestions as to what I should do. After my offer was sent I never heard another word.
I have now used the ERS in 3 separate situations. The same ERS officer with all 3 cases. He was incredibly professional in his approach as an independent intermediary. I would not hesitate to use the ERS in the future. As far as I am concerned the ERS overachieves and why it was setup in the first place.
If the ERS is used correctly it has potential to an early resolution and more cost effective without having to incur expensive legal fees. However the success of the ERS is mainly geared towards straight forward cases.
We only have only had one experience but the role of the ERS officer was critical in bringing both sides together.
Employees
When you are not familiar with the process, being guided by a professional takes a great weight off your shoulders.
The representative I was dealing with was very understanding and explained everything and all my options to me. I found the service very helpful and would recommend it to anyone in a similar position as I was in myself.
ERS is quicker as it's just over the phone.
I felt that this matter was dropped too quickly without adequate investigation.
It's a good idea which would save time and money but apart from an initial phone call over 12 months ago I have heard nothing.
ERS did the best they could but it can only be as good as the other party's willingness to settle.
The ERS has no power and can only request things from each party.
The Pilot Early Resolution Service could give more advice in the form of outcomes from other cases etc.
This service is second to none, the person who dealt with my case was most helpful, I cannot

Employer Representatives
stress the how much this service is needed.
Grateful for the support, live in a different country but the service was very accommodating.
I found the ERS Officer to be helpful and friendly and it was brilliant to be able to talk to someone. The weakness of the ERS process is that it has no power. My employer while telling the ERS officer that he would follow through simply ignored the recommendations.
12 respondents provided comments not applicable to this question

7.2.7 Conclusions

Of those that had reached an agreement through the ERS, the majority stated that it took an average of 5-6 weeks to do so. In contrast the average time taken to reach agreement stated by those who had not used the ERS was 17 weeks. The majority of those with a complaint which was still on-going (regardless of the medium used to reach an agreement i.e. trade union/solicitor or ERS etc.) felt most confident that the complaint would be heard in the next six months (24 weeks) and least confident that it would be heard within the next three months (12 weeks).

The ERS Case Resolution Officers received the highest ratings for impartiality between both parties, the explanation of the ERS process and the speed that complaints were dealt with. Conversely the primary negative ratings were based on explanations of the strengths and weaknesses of the complaint and the overall customer service provided.

In relation to the ERS process, most respondents felt that if the ERS had not been involved the complaint would not only have been heard by now, but that the decision would have been in their favour. However this question may have been skewed by those who have already reached an agreement, who are now aware that the dispute has been agreed in their favour. Despite this, 86% felt that the ERS should continue to be offered and the majority of employers and employees stated that they would have used the ERS in preference to a formal hearing even if they were offered a hearing at the same time.

Of those respondents that felt the ERS should not continue and respondents who provided suggested improvements, face to face contact of between parties was most commonly cited. All respondents were in agreement that the greatest benefits of the ERS were the informality of the process and the reduced time and cost involved, particularly when compared to adjudication or inspection.

Additional improvements suggested included better communication from ERS Officers to ensure complainants were kept informed during the process, and the obligation of both parties to participate in the process.

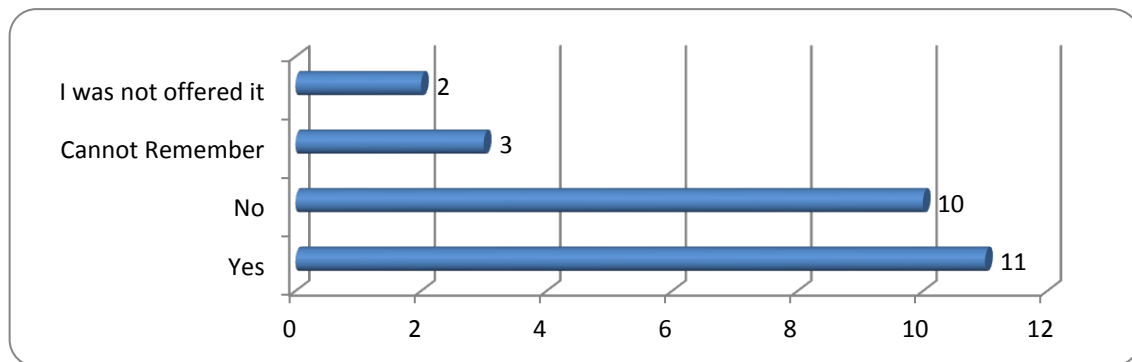
7.3 Those who declined to use the Pilot Early Resolution Service

7.3.1 Background

This section provides the profile of the 25 survey respondents which did ***NOT*** use the Pilot Early Resolution Service (Pilot ERS).

The figure below indicates that 42% (N= 11) of those surveyed had declined to use the Pilot Early Resolution Service (Pilot ERS). However 38% (N =10) did not decline to use it; 8% (N =2) stated they were not offered the Pilot ERS and 12% (N =3) could not remember if they declined or it was not offered to them.

Figure 7.22: Number of respondents that declined to use the ERS N = 26 (Skipped = 0)



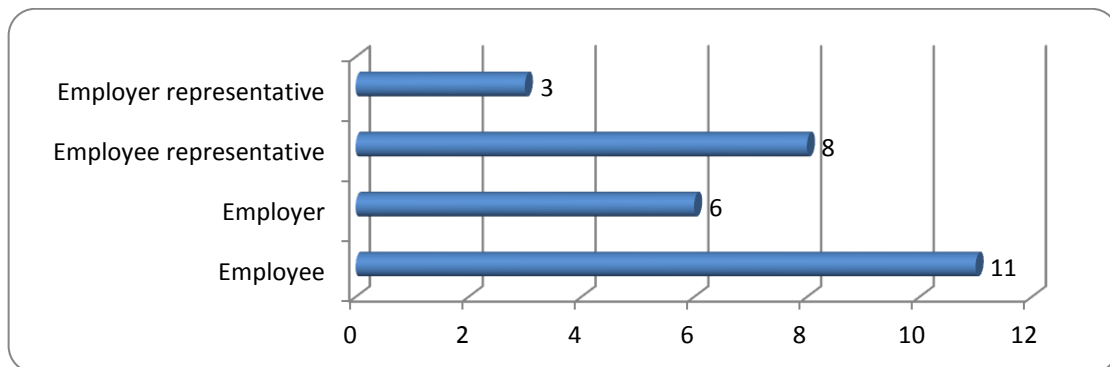
Eighteen respondents provided reasons as to why they did not use the Pilot Early Resolution Service as show in the following table:

Table 7:11: Why respondent did not use Pilot ERS N=16 (Skipped = 0)

Figure 26; 'Other' Category responses
8 x the other party rejected it
1 x Issues were much too complex
3 x The matter was settled before the ERS was needed
2 x It was agreed by all parties to go to a hearing
2 x Replies were not applicable to this question

The following figure shows that the majority of respondents (42%, N =11)) were employees, followed by 31% (N =8) which were employee representatives. Employer representatives (12%, N = 6)) provided the least responses.

Figure 7.23: Number of respondents which were represented compared with those not represented N = 26 (Skipped = 0)



7.3.2 Outcome or Expected Outcome of dispute

The greatest percentage of those who replied (28%, N =5) were awaiting a hearing by the relevant body. This was followed by 22% (N =4) who had been heard by a relevant body and a decision had been made. An equal percentage (17%, N=3) had resolved the dispute prior to a hearing ('other' category) or had already been heard by a relevant body and were awaiting a decision.

Figure 7.24: Status of respondents' complaint N = 18 (Skipped = 8)

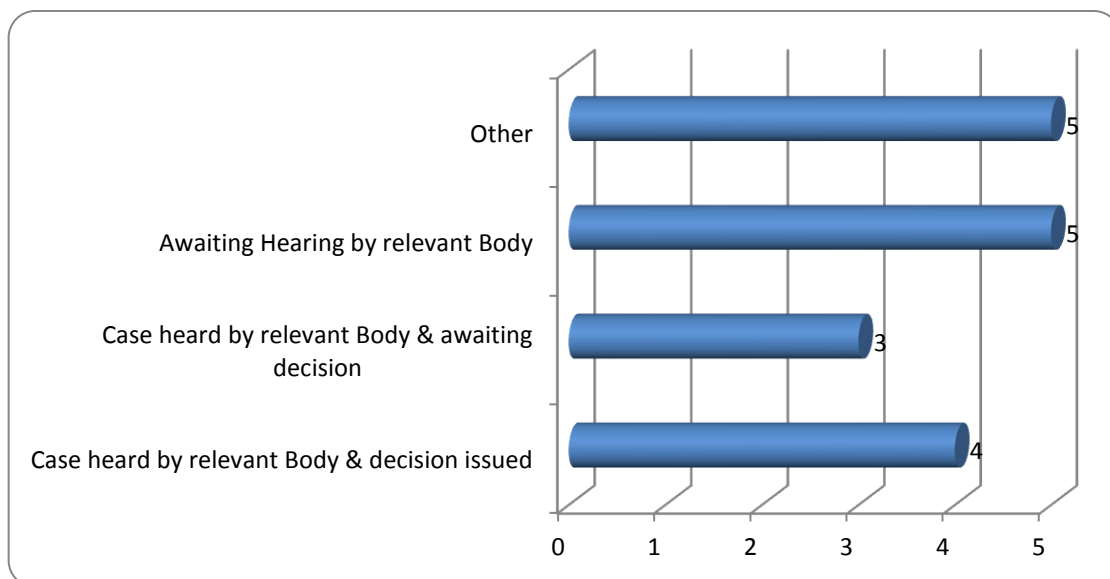
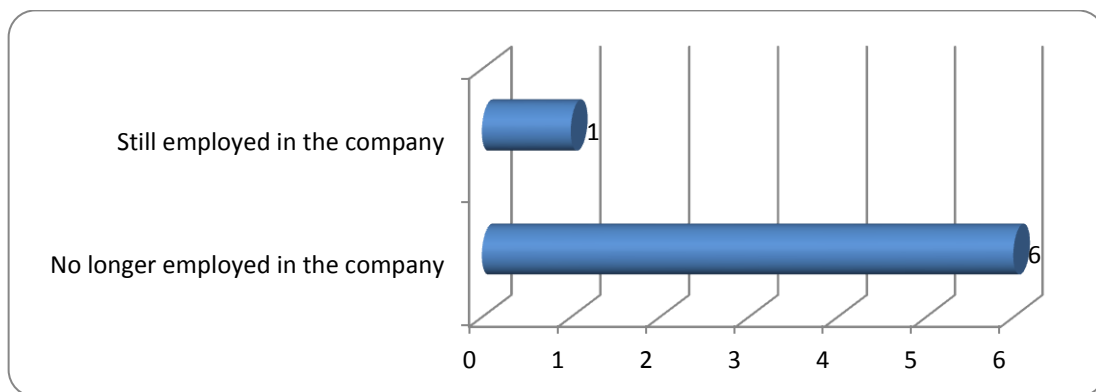
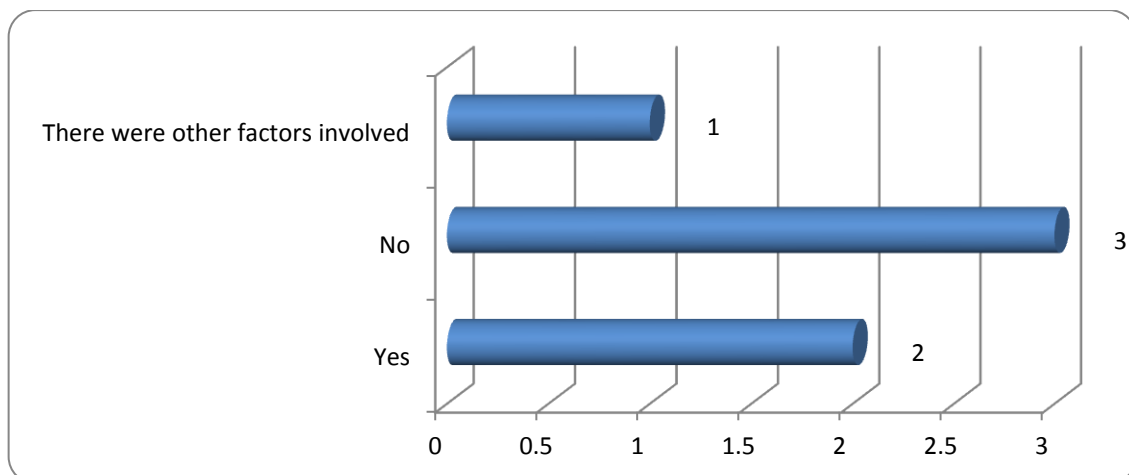


Table 7.12: Other responses (n=5)

Figure 32; 'Other' Category responses
3 x Resolved prior to hearing
1 x The complaint was withdrawn by the employee.
1 x Rights Commissioner decision has been appealed

Figure 7.25: Employment status following/pending the outcomes of the dispute N = 7 (Skipped = 19)


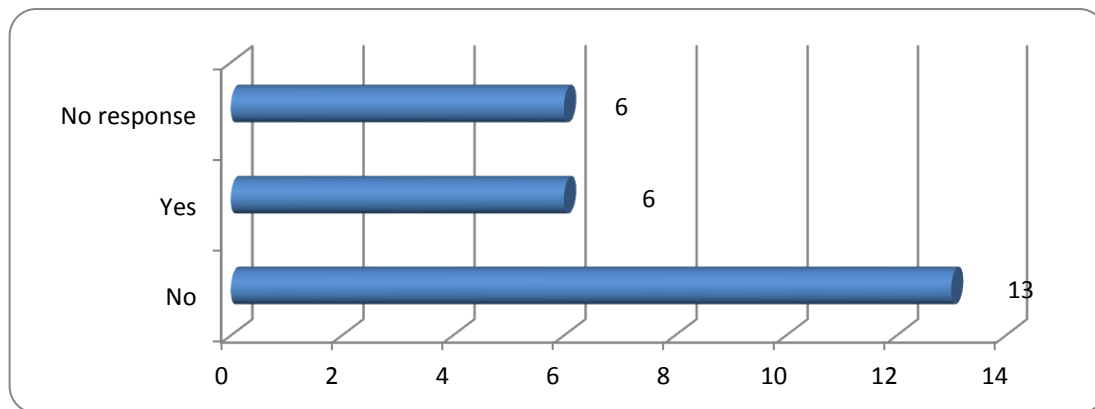
The above figure shows that only 14% (N =1) of employees involved in a workplace relations dispute are still employed with the same company, this is in contrast to 86% (N =6) who have left the company the dispute originated in. However only 33% (N =2) have indicated in the figure below that the decision to leave the company was directly related to the dispute.

Figure 7.26: Influence of dispute on complainant's employment N = 6 (Skipped 20)


7.3.3 Other Services Used

Only 32% (N= 6) respondents had also used additional resolution services to the one previously mentioned.

Figure 7.27: Other service used by respondents N=19 (Skipped = 7)

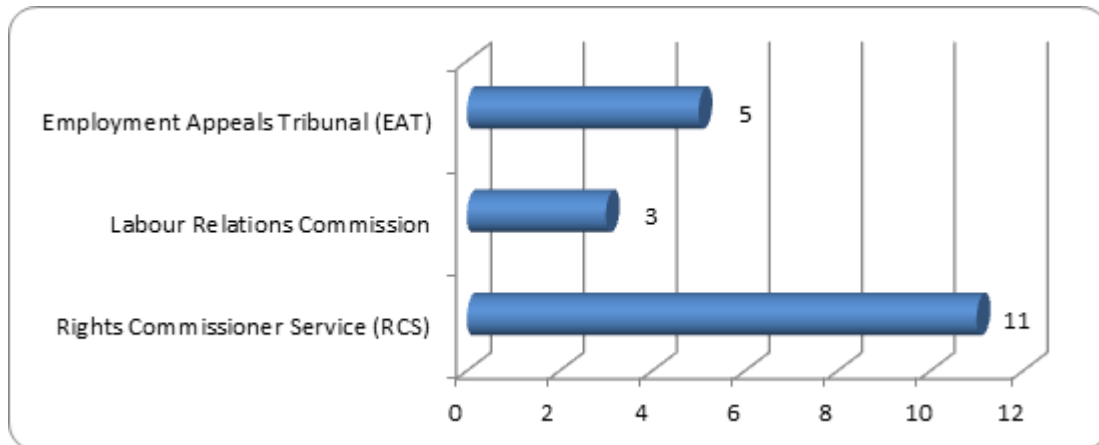


The effectiveness of the alternative services was reviewed, however the responses were small and no one service appeared to have been more successful than another.

Table 7.13: Effectiveness of alternative dispute resolution service? N=5 (Skipped = 21)

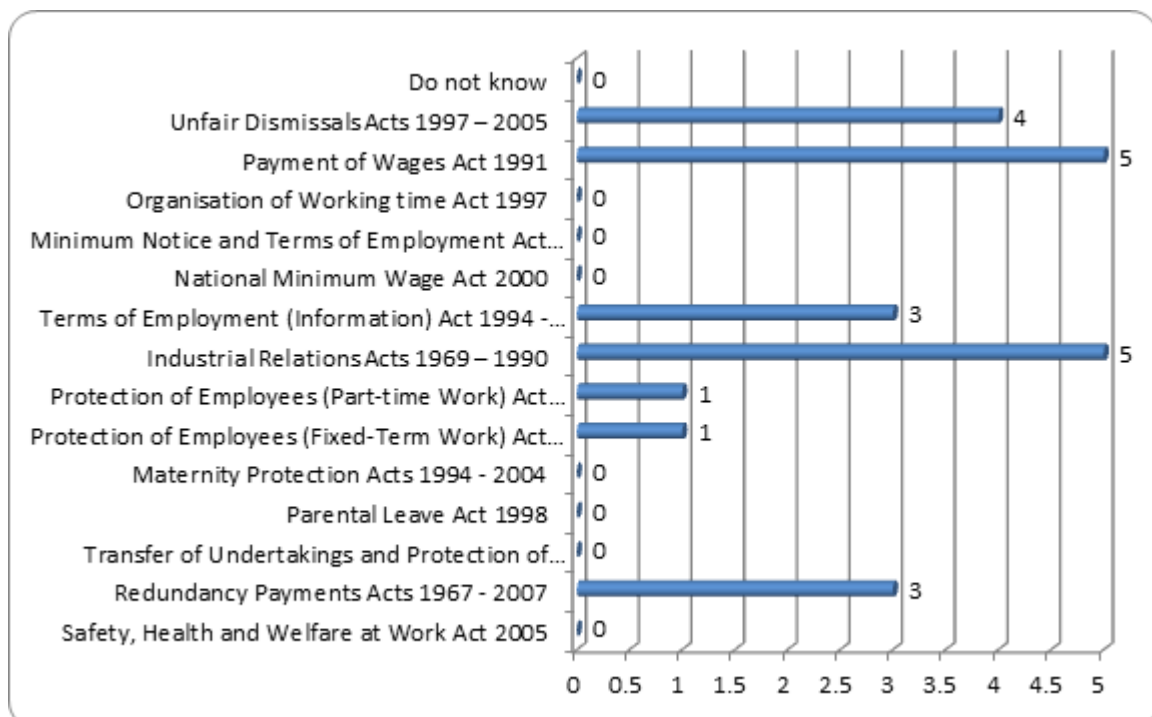
	Very Effective	Helped but not fully Effective	Not at all effective
Solicitor	1	-	1
Citizen Information Centre	1	-	-
In-house HR Manager	1	1	-
HR Consultant	-	1	-
Trade Union Representative	-	1	1
Employer Representative Body	-	-	-
Social Protection	1	-	-
Total	4	3	2

NOTE: Respondents could pick more than one answer.

Figure 7.28: Body the complaint was originally referred to N = 19 (Skipped =7)


55% (N = 11) of those who responded to this question stated that the Rights Commissioner Service was the first point of contact for their complaint. This was followed by 33% (N =5) who stated that the Employment Appeal Tribunal the first referral point.

The figure below provides a breakdown of the legislation under which complaints were cited.

Figure 7.29: Legislation the referral was made under N = 19 (Skipped = 7)


NOTE: Respondents could pick more than one answer.

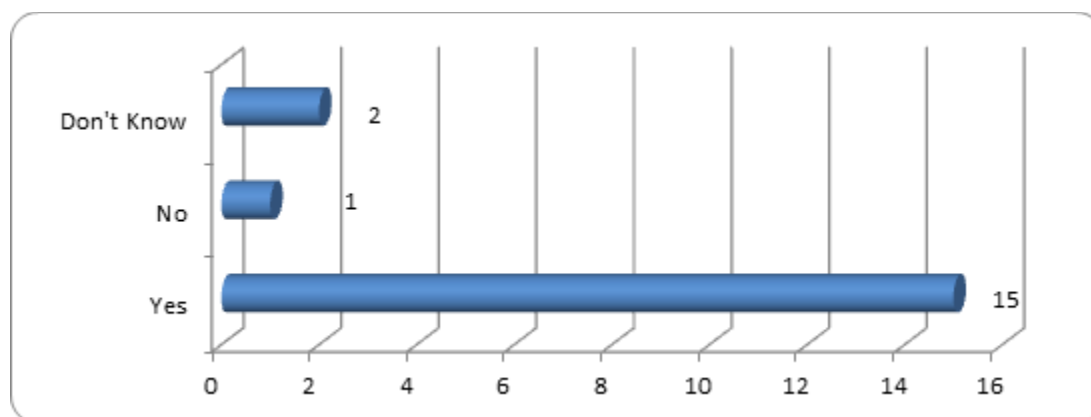
The legislation which complaints were most frequently referred under were:

- ‘Payment of Wages Act 1991’ (26%);
- ‘Industrial relations Act 1969 -1990’ (26%); and
- ‘Unfair Dismissals Acts 1997-2005’ (21%)

Those areas of fewest complaints included:

- ‘Parental Leave Act 1998’ (0%);
- ‘Transfer of Undertakings and Protection of Employees Act, 2003 EC (Safeguarding of Employees Rights on Transfer of Undertakings) (Amendment) Regulations 2003’ (0%)
- ‘Organisation of Working Time Act 1997’ (0%);
- ‘Minimum Notice and Terms of Employment 1973’ (0%);
- ‘National Minimum Wage Act 2000’ (0%);
- ‘Maternity Protection Acts 1994-2004’ (0%); and
- ‘Safety, Health and Welfare at Work Act 2005’ (0%).

Figure 7.37: Respondents willing to consider using the ERS in the case of any future complaints N=18 (Skipped = 8)



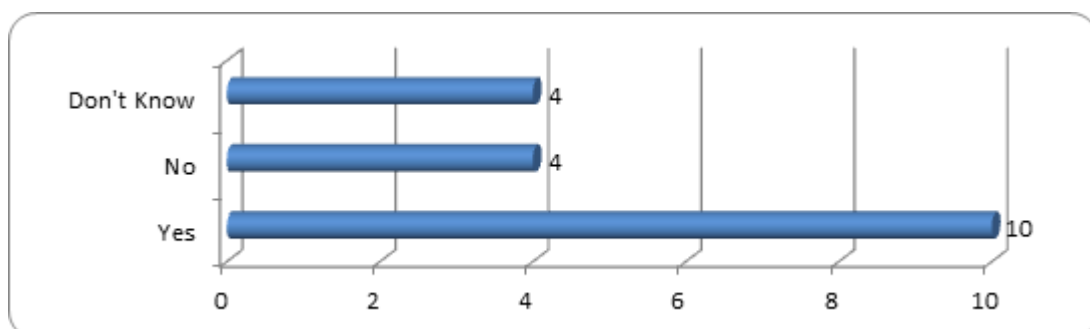
The majority (83%, N =15) of respondents were willing to consider the use of the Early Resolution Service if the need arose in the future. Only (6%, N =1) refused to consider it.

Table 7:14: Feedback from respondents willing to consider using the service in the future N= 13 (Skipped 13)

<u>Would use the ERS in the future</u>
Depends on the case
Can be helpful in resolving certain disputes, would be open to using the service again
The union would always avail of whatever services are available to resolve a dispute for either an individual or the collective.
I was at all times willing to avail of the ERS as I believe that many issues can be resolved with the help of a mediator thus avoiding long drawn out process to the detriment of both parties
Positive prior to court
Better through a third party
Early resolution to situations involving current employees is always helpful
I would use ERS system without redress to legal costs and in the best interest of the employee and employer.
It is a good service for resolving disputes but the company had resolved the dispute so there was no further action required.
I would be prepared to use this service as often matters can reach an advance stage of resolution, understanding or acceptance.
Provided it is efficiently run and there is a speedy turnaround time.

69% of respondents were very positive about using the service in the future and stated that it would have been used in this case if the other party were also open to it. It is clear from the figure below show that 56% of respondents felt that the ERS would have been preferred in place of a hearing if a help was offered via the ERS at the same time.

Figure 7.38: Number of respondents that would have used the ERS If presented with a date for a hearing at the same time as being offered the help of the ERS N=18 (Skipped = 6)



56% of respondents would use the Pilot Early Resolution Service even if the date for the hearing was at the same time.

7.3.4 Conclusions

It is important to reiterate that care should be taken when interpreting the results due to the small sample sizes of those who responded to some questions.

44% of respondents stated that it was the other party which declined to participate. 17% had settled the complaint before there was a need for the ERS and 17% agreed that the issue needed to be heard by the relevant body.

More than half of the sample stated that their complaint was originally referred to the Rights Commissioner. However of those who had also used alternative resolution methods, solicitor, HR manager and trade union Representatives were the most commonly utilised.

A significant majority (83%) were willing to consider the use of the ERS if the need for a resolution service arose again. Additionally of those who responded to the question, 56% stated a preference for resolution via the ERS even if they were given the option of a hearing by the relevant body.

7.4 Summary

Users of the ERS were primarily employees (35%) or employers (35%) directly involved in an employment dispute, followed by employee representatives (20%). Employer representatives only made up 10%. Employee representatives were comprised mainly of trade unions (53%) and solicitors (32%) while employer representatives were from unspecified organisations or bodies.

At the time of the survey 46% respondents stated that their complaint was unresolved. Most users who did not achieve a resolution through the ERS stated the reason for this was that they believed the dispute merited a full hearing; the issues were too complex or neither party could agree to compromise.

Ratings provided by users were lowest in relation to the explanation provided by the ERS officers on the strengths and weaknesses of the complaint and helping the complainant to understand the pros and cons of their complaint to allow them to resolve the dispute. Respondents who provided additional comments on improvements to the service felt that there was a need for face to face contact, in particular where the issues involved were complex, Respondents also felt there was a need for the ERS to provide more regular updates on the status of their complaint. An issue highlighted primarily by representatives was the extent to which complainants should be obliged to participate in the ERS process. Nevertheless 70% of employers and 55% of employees said they would use the Early Resolution Service again.

Non-users consisted of 42% employees; 12% employers; 31% employee representatives and 8% employer representatives. However although 42% stated that they did decline the service, 8% stated that they were not offered the Early Resolution Service, 38% stated they did not refuse to use the service while 10% could not remember.

At the time of the survey 61% of respondents stated that their complaints were not resolved, yet 83% of all respondents stated that they would consider using the Early Resolution Service if the need arose in the future.

8 CONSULTATION FINDINGS

8.1 Introduction

To determine the key issues around workplace disputes and the impact of early resolution procedures, a number of consultations were undertaken with representatives of the business community, trade unions and other representative organisations. In addition, consultations with strategic partners (i.e. representatives of the existing statutory bodies) were also undertaken.

All of the consultations were conducted by phone and primarily focussed on the cost of workplace disputes progressing to adjudication or inspection and the potential benefit of ERS. A list of contacts was provided by the Department of Jobs, Enterprise and Innovation, all of whom were contacted by email and the followed up by phone. The following lists the key stakeholders engaged:

External Stakeholders

- Peninsula Business Services;
- IBEC;
- Mandate Trade Union;
- O’Connell & Associates (Solicitors);
- Chambers Ireland;
- Construction Industry Federation;
- Element 6 (MNC);
- Migrants Rights Centre Ireland.

Strategic Stakeholders

- National Employment Rights Authority;
- Labour Court;
- Labour Relations Commission/Rights Commissioner Service;
- Employment Appeals Tribunal;
- Equality Tribunal.

8.2 External Stakeholder

8.2.1 Business Community

Awareness of ERS

Our discussions with representatives from the business community (representing all sectors) revealed a positive reception to ERS from all consultees. All but one was aware of the pilot ERS, with some contacts having been engaged directly with ERS, in one or more complaints.

Perceived Objectives

For representatives of the business community and independent companies, the core objective of ERS was to reduce the number of complaints progressing to the Labour Court. It was noted by some respondents that the objective of mediation/conciliation in general should be to affect an understanding between disputing parties, and from there find a resolution. One respondent felt that ERS did not affect such understanding and was committed only to proposing settlements.

Alternatives to ERS

When asked about what alternatives to ERS were currently being utilised, business representatives (IBEC) demonstrated existing internal mediation/conciliation procedures, usually tripartite meetings with disputing parties. Naturally, these services would only be provided to IBEC members. While the business (HR) consultee (Element 6) noted being in favour of early resolution and trying to settle complaints ‘in-house’, it was felt the economic climate was not conducive to long drawn out complaints and in such circumstances would prefer to terminate the employment contract of the employee where possible.

Cost of Adjudication

There was unanimous agreement among business consultees that formal adjudication of workplace disputes were too long and too costly. Representative of Chambers Ireland noted a complaint that had taken over two years despite the company in question preparing to offer a settlement. In this instance, the complainant was left thousands of Euros out of pocket due to legal fees. When asked how much time had been invested in complaints referred to ERS (where applicable) compared to complaints going to the Labour Court, all respondents indicated that preparation for mediation/conciliation would take no more than a few hours, whereas preparing complaints for a hearing could take a day or more (depending on the complaint). Peninsula Business Services (who had been involved in 9 successfully mediated ERS complaints) quantified the time invested in court complaints as being “*at least double or triple the number of hours put in by us*”.

Opinion of ERS

With regards to the ERS process, all respondents were positive about the amount of time taken for the ERS officer to make contact with the relevant parties, claiming “*the earlier, the better*” for mediation/conciliation procedures to be implemented. One issue that was flagged by all representatives of business was the need to offer tripartite meetings as part of ERS. While it was felt that attempting to resolve an issue over the phone was certainly the most efficient measure of first instance, and for some complaints the most effective way to resolve a dispute, many complaints (particularly complex complaints, such as unfair dismissal) required face-to-face interaction. The representative from Element 6 suggested that all methods of mediation (by phone and face-to-face) should be an integral part of the early resolution mechanism and should be a requirement before a complaint proceeds to a hearing. All other respondents were of the opinion that ERS should remain non-mandatory.

Areas for Development

It was felt by some respondents (Element 6, Chambers Ireland) that, while the ERS was a good concept, the objective of mediation is to be fully engaged in each complaint; the mediator should be given discretion to provide a non-bias opinion and should try to affect a resolution. IBEC noted that should ERS be rolled out, it will need to be fully promoted, with all people educated on what is involved and how it works, whether they were involved in a dispute or not. It was also felt by IBEC, that the service needs to demonstrate uniformity in its delivery and content, and that this should be done through consultation with the existing mediation/conciliation services, so as to ensure a full and complete early resolution, mediation/conciliation service is offered.

8.2.2 Trade Unions

Trade union representative Mandate, were aware of ERS and how it operated. The representative from Mandate had been involved in one ERS complaint which was not resolved through ERS as the other party refused mediation.

Perceived Objectives

Alternatives to ERS

As with business representatives (e.g. IBEC), Mandate and CIF provide representation to paid members as part of their service, this could involve either mediation/conciliation mechanisms or legal representation (either internally or through external solicitors) for adjudication. In terms of internal dispute resolution mechanisms, CIF have the ‘Construction Industry Disputes Tribunal’ (CIDT), a body established by employers and industry unions through CIF to act as a “*half way house*” between disputes and adjudication. While this is less formal alternative to court proceedings, it is more formal than ERS as a complaint is heard by a union representative and decisions are issued

prior to a complaint going to the Labour Court, although these decisions are not binding. Prior to CIDT, industry unions also encourage in-house mediation by union members, wherever possible.

Cost of Adjudication

In terms of hours spent on complaints solved through mediation and complaints referred from a formal hearing, Mandate noted that less complex complaints would require a day or two of preparation time for court hearings. Despite the ERS complaint involving the Mandate contact not being resolved, only two hours was spent preparing the relevant information prior to contact with the ERS case officer.

Opinion of ERS

Both trade union representatives were in favour of ERS observing any form of mediation is preferable to formal hearings. The representative from Mandate noted one complaint that had been unresolved for two years, and that the “winner v loser” outcome of a court hearing would not compensate the investment of time and money for both parties involved, regardless of who the ‘winner’ or ‘loser’ would be. It was noted by CIF that, should ERS be fully rolled out as part of Workplace Relations Reform, all complaints referred to the Workplace Relations Commission should at least be offered ERS, and encouraged to resolve disputes out of court.

Areas for Development

As was suggested by business consultees, both trade union representatives felt a phone only service was limiting in terms of the amount of complaints that could be resolved through ERS. The representatives from CIF stated: *“There are some complaints (small complaints such as wage disputes or holiday entitlements) that can be dealt with over the phone, but larger complaints require a mediated face-to-face meeting (e.g. unfair dismissals). Such complaints usually don’t get resolved by one party accepting a settlement over the phone”*.

8.2.3 Other Representative Organisations

Awareness of ERS

In addition to business representatives and trade union representative, our consultations include representatives from other organisations, namely: Construction Industry Federation (CIF), O’Connell & Associates Solicitors and the Migrants Rights Centre Ireland (MRCI). Both were aware of ERS, with O’Connell solicitors having been involved in ‘three or four’ ERS complaints, of which one was mediated successfully. The representative from the Construction Industry Federation (CIF) was aware of how ERS was delivered (i.e. by phone) but did not know to what extent an ERS case officer could advise on the potential outcome of a complaint.

Perceived Objectives

It was felt that ERS should contribute to resolving disputes before they progressed to a hearing. This was particularly prevalent for MRCI, who noted the increased vulnerability of migrant workers, and the fear of losing work permits as a result of a dispute with an employer. The representative from CIF felt the core objectives of ERS was to reduce the number of complaints progressing to the Labour Court and, where possible, to improve workplace relations before termination of employment.

Alternatives to ERS

As one representative in this category was a solicitor, they were primarily engaged with workplace disputes that were to be formally adjudicated. MRCI used to represent migrants in the Labour Court but due to a lack of funding, could no longer offer this service. The MRCI stated they would be willing to engage in any mediation process involving migrants but was more concerned about educating migrants on workers' rights.

Cost of Adjudication

The MRCI noted the damaging impact court proceedings had on migrant workers, but felt in some complaints they were necessary as in some complaints, migrant workers are exploited. The representative said: "*c. Cost of going to court is too high to ignore initiatives like ERS – we spent c. £500,000 on 30 cases over the past 3-4 years and recouped £50,000 – Court hearings cost more than what you get back.*"

Opinion of ERS

Respondents felt the ERS was a good concept and, provided it was delivered correctly, could potentially reduce the number of complaints reaching the Labour Court. The MRCI representative stated the following points related to migrant workers:

- The ERS is a good concept – but it needs to be aware of issues relevant to migrants (if it's done over the phone that may be a problem – do you have translators?).
- ERS needs to be promoted widely if it is rolled out – some migrants are hard to reach, e.g. live in employer's homes.

Both respondents were supportive of ERS remaining non-mandatory, citing the need for disputes to be resolved early as voluntary for both parties.

Areas for Development

The issue regarding language and culture barriers was raised by the MRCI representative. ERS should include procedures for complaints involving non-English speaking workers. Furthermore, it was felt that in such complaints, attempting to

resolve an issue by phone would not be effective, and suggested including tripartite sessions (with interpreters) as part of the ERS offering.

8.2.3.1 Law Society

The Law Society is supportive of the ERS. They took soundings with their membership, but very few members have been involved in complaints going through the ERS. Those that had been involved found that it worked very well. There was mention of some potential teething problems in getting complaints into the ERS rather than going to Rights Commissioners, in that it appeared to take longer than expected to get the complaint released from the Rights Commissioners to go to ERS, however this was only one example and may not be representative of others.

8.2.3.2 CIPD

The CIPD are supportive of the ERS. The CIPD noted that their members feel that 75% of workplace disputes could be resolved through an ERS type service. They also felt that the telephone ERS is important, but only relevant for some straightforward disputes based on information gaps. There are other disputes which require face to face meetings in order to get resolved. They felt that there is more need for the ERS in the indigenous industries and less with the FDI. FDI tend to have more formal and better developed in house HR processes in place so that disputes can be resolved in the work place. The Indigenous companies tend not to have the HR processes as well developed. CIPD also noted the importance of ensuring that those involved in mediation are appropriately qualified and experienced.

8.3 Strategic Stakeholders

Understanding of ERS

The unanimous understanding among consultees was that the primary purpose of the ERS was to enable an early resolution of complaints in order to prevent them reaching a hearing or Court. Consultees were also unanimous in their view that the ultimate success of the service should be assessed by the number as a percentage of referred complaints that end up being withdrawn from the system following intervention or through a reduction in the number of complaints that go to adjudication or inspection.

Awareness of other Stakeholders

There was a degree of uncertainty among consultees concerning the level of awareness among other stakeholders of the service. Consultees stated they were unaware of the level of awareness among potential stakeholders, employees, employers, trade unions etc., of the ERS service. It was suggested that as the

complaints were selected by the ERS team it was likely that awareness of the service outside of those selected would be low.

Impacts of the ERS

There was also a low level of awareness among consultees of the level of impact the ERS had on their organisation. Consultees generally felt that it was unclear at this point whether any positive impact has resulted from the service. Consultees stated a lot of this lack of awareness stemmed from the lack of relevant statistics from the ERS on resolved complaints and a lack of adequate access to the CREST database utilised by the ERS.

It was felt that any impact from the service would be most pronounced in the case of first instance adjudication. Other consultees felt complaints arising from their work were generally not complaints appropriate for the ERS and so any impact felt would be limited. It was felt by stakeholders that the CRO's had become more proficient in dealing with complex complaints such as unfair dismissals as the pilot progressed.

Advantages of the Telephone Aspect

Most consultees stated that the telephone aspect of the ERS was appropriate and that it has the potential to save cost. Some consultees were of the opinion that currently the ERS did not comprise a mediation/conciliation service in the true sense given the type of complaints dealt with i.e. the complaints are frail and the outcome is fairly predictable.

It was felt that if it were to develop into a mediation/conciliation service dealing with issues of a more complex nature then a service solely by telephone would not work. Such complaints would include complex complaints of termination of contract or unfair dismissal where it was the consultees understanding that there had been difficulties resolving complaints via the current phone based intervention.

The Rights Commission representatives felt there was a role for a telephone based early resolution service, but that it was limited. They felt that the ERS would not provide Value for Money, when the cost per resolved complaint through the Pilot ERS was compared to the cost and results achieved through the Rights Commissioner Service. They felt that there was a need for a face to face service to be offered and delivered by experienced mediators. The Rights Commission representatives also noted that complainants received their settlements tax-free if they came through the Rights Commissioner Service, whereas any award would be taxed as income through the ERS.

Future Support and Suggestions

Consultees felt that the ERS should be looking at interventions in more complex complaints and diversify their methods of intervention as appropriate.

Consultees also felt there was a requirement for the WRC to raise awareness of the service to stakeholders and potential service users. It was suggested that the service could be marketed in this respect or there could be a greater encouragement for people to utilise the service, for example, detailing the service on the dispute form in order to try and facilitate a quick and easy registration of interest for the service.

8.4 Summary

The following highlights the key points raised during the consultations:

- It was felt by all stakeholders that there was a need for an Early Resolution Service;
- Most stakeholders were supportive of the present telephone service;
- Concerns were highlighted by the Rights Commissioner Service regarding the Value for Money of the Pilot ERS;
- External and strategic stakeholders described a need for face-to-face interviews in more complex disputes such as unfair dismissal; and
- The need for marketing and PR was described as important if the service was to be fully implemented.

9 BENCHMARKING - WORKPLACE DISPUTE SERVICES

9.1 Introduction

One of the objectives of this report is to identify the efficiency with which objectives have been achieved having regard in particular to alternatives and appropriate benchmarks including those of similar services. This section benchmarks the Pilot ERS against a number of similar services, namely the Equality Tribunal Mediation Service, the LRA conciliation service and the Acas conciliation service. This section provides background information on each service and then details the results achieved.

9.2 Equality Tribunal – Mediation Service (Ireland)

The Equality Tribunal was set up under the Employment Equality Act of 1998 and provides a statutory framework in which the Equality Tribunal mediate and/or investigate complaints of unlawful discrimination in accordance with the provisions of the Act. Under the following legislation¹³⁷:

- Employment Equality Acts 1998 – 2011;
- Equal Status Acts 2000 -2011;
- Pensions Acts 1990-2009.

The Mediation Service offered by the Equality Tribunal was launched in 2000. It is a voluntary alternative dispute resolution process for complaints regarding equal pay in employment, complaints of discrimination, harassment, sexual harassment and victimisation.

A mediator acts as a neutral third party in an effort to reach a mutually acceptable settlement between both parties. It is a face to face mediation service. In approximately 90% of complaints the mediation process was completed after one mediation session – with either agreement being reached or the complaint being deemed not resolvable.

The process is confidential and no information relating to the dispute or agreement is published. Parties may decide to make the agreement legally binding through the courts; however the mediator has no power to impose a resolution.

Parties will normally agree to joint mediation sessions, although in some complaints the assigned mediator may consider it helpful to discuss an issue alone with either party before or during a mediation session. The parties are also given the option of a “cooling-off” period before being asked to sign an agreement to ensure that both sides can give informed consent on signing. If mediation does not result in agreement, the

¹³⁷ <http://www.equalitytribunal.ie/About-Us/>

mediator will issue a formal non-resolution notice at which point the complainant may apply to have the complaint returned for investigation and decision of the culpable party by an Equality Officer. However, requests for investigation must be submitted within 28 days of a non-resolution notice being issued otherwise the complaint file is closed.

A review of the Mediation Service is published as part of the Equality Tribunal's Annual Report, the aim of which is to ascertain the level of satisfaction from clients and to identify areas for improvement. Of the 233 complaints dealt with by mediators in 2010, 99 mediation agreements (67 Employment Equality complaints and 32 Equal Status complaints) were achieved against 93 non-resolved complaints; 41 complaints were withdrawn or closed after the mediation stage. Overall, 69% (161) of the 2010 complaints handled by the Mediation Service did not require subsequent investigation representing a 2% increase over 2009.

In general, mediation agreements in 2010 were achieved in less than a third the time a complaint would take to be investigated by an Equality Officer.

Table 9:1: Equality Tribunal Mediation Service Summary information

Statutory basis for the service	Employment Equality Act of 1998 and provides a statutory framework in which the Equality Tribunal mediate and/or investigate complaints of unlawful discrimination in accordance with the provisions of the Act. ¹³⁸
Mediation service legally binding	Mediation agreements can be made legally binding through the courts. ¹³⁹
Maximum time allowed before proceeding to employment tribunal	This letter must be received by the Tribunal within 28 days or 42 days (for complaints under the Employment Equality Act) of the date of the mediator's non-resolution letter. ¹³⁹

¹³⁸ <http://www.equalitytribunal.ie/About-Us/>

¹³⁹ <http://www.equalitytribunal.ie/Mediation/Guide-to-Procedures/>

9.3 Acas Conciliation Service

9.3.1 Introduction to Acas Conciliation Services

Acas (Advisory, Conciliation and Arbitration Service) is a statutory organisation based in Great Britain (i.e. England, Scotland and Wales) which offers dispute resolution services such as mediation, conciliation and arbitration. ACAS was created in September 1974 and was given statutory powers under the Employment Protection Act 1975. The current statutory provisions covering the Service are included in the 1992 Trade Union and Labour Relations Act as amended by the Trade Union Reform and Employment Rights Act 1993.

‘The 1992 Act requires Acas to designate members of its staff to perform the functions of conciliation officers under enactment in respect of matters which are or could be the subject of proceedings before an industrial tribunal. Currently there are over 20 jurisdictions under which Acas has a duty to provide conciliation’.

Currently, Acas can get involved in a dispute as soon as someone has made a complaint regarding their employment rights. Once a complaint is made to an employment tribunal, the tribunal copies the papers to Acas, so that they can contact both sides to offer conciliation. The parties involved can also ask for assistance by contacting the Acas helpline which is a free advisory service provided by the agency to both employees and employers.

The conciliation service is independent of the Employment Tribunal Service and therefore has no impact on the hearing or outcome of the complaint if it is brought before a Tribunal at a later stage. The service is free of charge and any of the information provided during the dispute will remain confidential and cannot be used in any later company procedures or court action. The process allows both parties to develop a clearer idea about the strengths and weaknesses of their case and ways of resolving it as well as reducing the time, expense, risk and stress of having to attend a hearing.

From early 2014, Acas will offer a new service and anyone thinking about making an employment tribunal complaint will need to contact Acas before they can make a complaint. They will be offered ‘Early Conciliation’ to try and resolve the dispute quickly and cost effectively. This service is being brought in so as to further develop the range of services provided by Acas in order to help resolve employment disputes before they get into the Court/ Tribunal system.

Acas therefore currently provides:

- Pre Claim Conciliation which involves parties in dispute before they have made an official dispute through the Court/ Tribunal system.
- Individual Conciliation which refers to the conciliation services provided once parties have made an official complaint.
- The Individual Conciliation service is the similar to the Pilot ERS as they are both concerned with a conciliation service which is provided once the dispute has been made through the tribunal /court system.

9.3.2 Individual Conciliation Evaluation 2012¹⁴⁰

This 2012 survey was the fifth in a series of evaluations which date back to 2004, analysing the effectiveness of the Acas Individual Conciliation (IC) Service. The overall aim of the survey was to evaluate whether Acas Individual Service met customers' needs and expectations, with the broader objectives including:

- Provide a reliable picture of the views of customers of all party types who participated in Acas conciliation; claimants, claimant representatives, employers and employer representatives.
- Provide performance indicators on satisfaction with the Acas IC service.
- Enable a comparison of differences in case outcomes and satisfaction between cases in different period categories (case tracks) and by party type.
- Provide a comparison between this and the 2010 survey in key areas including satisfaction with outcome, satisfaction with the Acas IC service and differences between period categories.
- Serve as baseline against which to make future comparisons, once Early Conciliation has begun and the nature of Individual Conciliation has changed.

2,625 customers out of an initial sample of 6250 took part in the survey (543 taking part online and 2,082 by post) which included responses from claimants, claimant representatives, employers and employer representatives. This represented an overall response rate of 42 per cent.

¹⁴⁰ Acas Individual Conciliation Survey 2012 <http://www.acas.org.uk/media/pdf/2/9/Acas-Individual-Conciliation-Survey-2012.pdf>

Key findings that emerged from the evaluation in 2012 are presented below:

- Nearly three quarters of respondents (72%) were satisfied with the outcome of their case in 2012;
- A similar proportion (74%) accepted the offer of assistance from the Acas conciliator, which indicated an increase from 2007 (67%). These findings suggest that Acas position the IC service effectively to its potential customers making it clear that there are benefits to working with them;
- Only 16% of the surveyed cases ended with a full Employment Tribunal hearing. Around one in ten (12%) indicated that the initial complaint had been withdrawn with no settlement, whereas settlements had been agreed in 53% of the cases through Acas and 15% having agreed a settlement without the input of Acas;
- The survey findings show that most service users still regard the quality of conciliators to be high both in terms of their personal skills (including being seen as trustworthy and good at listening) and their ability to understand the case and how the parties feel about it;
- Around half (47%) of all service users indicated that the Acas conciliator initiated contact while a quarter (26%) indicated that they had made the first contact;
- Only one per cent of respondents indicated that they had any face-to-face contact during the case which is comparable with the levels observed in 2010 and 2007 (two per cent in both of these years, indicating there had been no significant change between survey periods);
- However of this one per-cent, 69% stated that they would not have liked the opportunity for face-to-face contact. This suggests that more service users were happy with the service and current modes on contact.

The recorded outcomes from the IC survey in 2012 were as follows:

- The complaint was withdrawn with no settlement (12%);
- A settlement was agreed through Acas (i.e. using an Acas settlement form) (53%);
- A settlement was agreed with no input from Acas (15%);
- The claimant won at the tribunal hearing (6%);
- The employer won at the tribunal hearing (10%);
- Don't know / not answered (5%).

The proportion of respondents who either said they didn't know the final outcome of the case or left this question blank may go some way to describe the discrepancies between respondents' perceptions of and Acas' records of case outcomes. It is also possible that, in cases where a private settlement was reached, Acas was simply not

aware of this fact because the party had officially ‘withdrawn’ the ET complaint, perhaps suggesting an overestimate by Acas of withdrawals and/or an underestimate of (private) settlements.

Table 9.2: Acas Conciliation Service Summary information

Statutory basis for the service	1992 Trade Union and Labour Relations Act require Acas to undertake conciliation in matters which are or could be the subject of proceedings before an industrial tribunal. ¹⁴¹
Conciliation Service Legally binding	All settlements are legally binding. ¹⁴²
Maximum time allowed before proceeding to employment tribunal	Complaints must be made within a specified time of the events they concern. In most cases this is three months. In limited circumstances tribunals can accept late complaints; but taking part in conciliation or any of the other activities described above does not provide grounds for this. It is the employee’s responsibility to find out what time limits apply and ensure they do not lose the right to make a complaint if the matter cannot be resolved before then. ¹⁴³

9.4 LRA Conciliation Service

9.4.1 Introduction to the LRA Conciliation Service

The Labour Relations Agency is an independent, publicly funded organisation that promotes good employment relations in Northern Ireland. The Agency resolves disputes through individual or collective conciliation, mediation or arbitration services.

The number of individual employment rights of employees and workers has increased significantly over the past number of years. If an individual believes there has been an infringement of their employment rights, they may refer the matter on to the Office of the Industrial Tribunals and the Fair Employment Tribunal. The Agency will receive a copy of all the complaints to the tribunal offices and has a statutory duty to try to promote a settlement of these complaints without the need for a tribunal hearing¹⁴⁴. The service provided is called the Individual Conciliation Service (IC). It is this service which is most similar to the Pilot ERS.

¹⁴¹ <http://www.publications.parliament.uk/pa/cm199798/cmselect/cmtrdind/980/8072132.htm>

¹⁴² House of Commons Publications and Records Pre Claim Conciliation Explained

<http://www.acas.org.uk/media/pdf/0/6/Pre-claim-conciliation-explained.pdf>

¹⁴³ Pre Claim Conciliation Explained <http://www.acas.org.uk/media/pdf/0/6/Pre-claim-conciliation-explained.pdf>

¹⁴⁴ Labour Relations Agency Annual Report and Accounts 2010-2011

http://www.lra.org.uk/lra_annual_report_2011-12_pdf_2.pdf

Complaints may also be made directly to the LRA in instances where a complaint has yet to be made to a tribunal. Clients utilising this service are initially contacted by a Conciliation Officer who will explain the process and help both parties understand the other side views the case. The service provided in this case is called the Pre Claim Conciliation Service (PCC)

The Agency may only become involved in the process of resolving collective disputes if both parties are in agreement. The time taken for the resolution for this type of dispute can vary and is essentially dependent on the nature and complexity of the dispute itself. In some cases, the dispute can be resolved in a single meeting whilst others may require a series of meetings over a number of weeks. If, following conciliation, no agreement has been made, the parties may decide to refer the matter to a mediator or an arbitrator for settlement.

9.4.2 LRA Individual Conciliation (IC) Service

The Labour Relations Agency Individual Conciliation (IC) service is applicable in the following areas of dispute: unfair dismissal; discrimination; redundancy; wage deduction; breach of contract and equal pay. The service does not conciliate on cases regarding company insolvency.

Clients utilising this service are initially contacted by a Conciliation Officer, who will offer help and guidance throughout the process, while discussing the various options available to reach a resolution. Cases are dealt with primarily by phone, but face to face interviews are used if it is felt they could help resolve the case. The LRA have advised us that they don't keep a record of the number of interviews completed face to face, but it was estimated that less than 20% of the time spent by Conciliation Officers would be spent on face to face interviews. Interviews will be used if the issues are felt to be complex; one of the parties is felt not to be grasping the issues and/or their first language is not English and using an interpreter over the phone would not work in the situation. The LRA noted that the focus is on what is needed to achieve the outcome required which is that the complaint does not move through to adjudication or inspection.

If an agreement is reached through the LRA, it is legally binding; therefore complainants cannot subsequently submit a complaint to an Employment Tribunal¹⁴⁵.

Similarly to the Acas Conciliation service, the service offered by the LRA is completely independent from the tribunal process and the use of or decision not to use conciliation will not affect the tribunal process at any point and the service can be accessed by both employees and employers through self-referral and through being offered the service through the relevant representatives or trade union.

¹⁴⁵ http://www.lra.org.uk/pre-claim_conciliation.pdf

Table 9:3: LRA Conciliation Summary information

Statutory basis for the service	<p>The Labour Relations Agency was established in 1976 under the provisions of the Industrial Relations (Northern Ireland) Order, and its role and functions were confirmed by the Industrial Relations (Northern Ireland) Order 1992.</p> <p>The Agency's primary aim is its statutory duty to promote the improvement of industrial relations. This includes but is not limited to, the following;</p> <ul style="list-style-type: none"> • Where the Agency anticipates that a dispute may occur it may take all steps which it considers appropriate for its mitigation. • Complaints to the Industrial Tribunal or Fair Employment Tribunal – it is the duty of the Agency to endeavour to promote a settlement of a tribunal application without its being determined by a tribunal.¹⁴⁶
Conciliation Service Legally binding	Agreements reached through the Conciliation service are legally binding. ¹⁴⁷
Maximum time allowed before proceeding to employment tribunal	Cases coming into the PCC- have a maximum of 18 weeks before they go to adjudication. ¹⁴⁸
Sharing of information	LRA can share information on the success rates of preceding similar cases in order to inform users of their likelihood of success.

Performance

The 2011/12 Business Plan¹⁴⁹ for the Labour Relations Agency set a target for individual conciliation in which no more than 20% of all complaints should progress to adjudication. This objective was achieved. Approximately 12% of all complaints went on to adjudication.

The same target was set for 2012/13. In 2012/ 13 the Labour Relations Agency had 7,713 complaints - 4,333 (56% were settled by conciliation); 1,892 (24.5% were withdrawn during conciliation) and 1,488 (19.29% referred to a tribunal).

¹⁴⁶The Labour Relations Publication Scheme 2009 http://www.lra.org.uk/microsoft_word_-_labour_relations_agency_publication_scheme2.pdf

¹⁴⁷ http://www.lra.org.uk/pre-claim_conciliation.pdf

¹⁴⁸ LRA Representative

¹⁴⁹ LRA Business Plan 2011/12

Table 9:4: Individual Conciliation Complaints Received and Dealt With Other than Fair Employment¹⁵⁰

Jurisdiction	Complaints received		Complaints dealt with	
	2012-13	2011/12	2012-13	2011/12
Unfair Dismissal	2,973	2,237	2,909	2,269
Wages Order	591	934	636	624
Breach of Contract	1,084	1,026	1,002	1,029
Other Employment Rights	1,693	1,557	1,387	1,978
Equal Pay	453	196	494	1,281
Age Discrimination	199	189	158	119
Sex Discrimination	734	452	736	1,527
Disability Discrimination	219	212	219	204
Race Discrimination	113	122	127	138
Sexual Orientation Discrimination	27	27	33	26
Flexible Working	16	9	12	7
Total	8,102	6,961	7,713	9,202

¹⁵⁰ Labour Relations Agency Annual Report and Accounts 2012-2013. Note: Figures for previous year have been amended in line with practice following revision by ICMS

Table 9:5: Individual Conciliation Complaints Dealt with and their Outcome other than Fair Employment¹⁵¹

Jurisdiction	Settled by Conciliation		Withdrawn during Conciliation		Referred to a Tribunal		Total Complaints dealt with	
	2012-13	2011-12	2012-13	2011-12	2012-13	2011-12	2012-13	2011-12
Unfair Dismissal	2,349	1,726	363	334	197	209	2,909	2,269
Wages Order	221	216	242	242	173	166	636	624
Breach of Contract	362	432	249	291	391	306	1,002	1,029
Other Employment Rights	315	1,173	523	393	549	412	1,387	1,978
Equal Pay	387	83	73	976	34	222	494	1,281
Age Discrimination	48	51	95	50	15	18	158	119
Sex Discrimination	493	199	185	1,078	58	250	736	1,527
Disability Discrimination	81	74	94	102	44	28	219	204
Race Discrimination	57	59	48	51	22	28	127	138

¹⁵¹ Labour Relations Agency Annual Report and Accounts 2012-2013. Note: Figures for previous year have been amended in line with practice following revision by ICMS

Jurisdiction	Settled by Conciliation		Withdrawn during Conciliation		Referred to a Tribunal		Total Complaints dealt with	
Sexual Orientation Discrimination	15	10	14	13	4	3	33	26
Flexible Working	5	4	6	2	1	1	12	7
TOTAL	4,333	4,027	1,892	3,532	1,488	1,643	7,713	9,202

9.5 Comparison of organisations

This section details a comparison of the Pilot ERS with similar services, in terms of delivery methods, staff, training and performance.

Table 9.6: Type of dispute resolution service and method of delivery

LRA Conciliation (NI)	Acas Conciliation Service (GB)	Equality Tribunal Mediation Service (ROI)
Primarily telephone; but also use face-to-face if required to achieve target.	Primarily telephone; but also use at least one face-to-face meeting with an appointed conciliator if necessary ¹⁵² .	Primarily face-to-face; but also use telephone.

The Equality Tribunal Mediation Service has been in operation since 2000. The Acas and LRA Conciliation Services have been operating for over 20 years. All three services have therefore been in operation for some time.

¹⁵² Interview with Acas

9.5.1 Staff and Resources

Table 9:7: Number and level of Full Time Equivalent and outline roles

LRA (NI) (2013)	Acas (GB) (2011- 2012)	Equality Tribunal Mediation Service (2011)	Pilot ERS (2012) ^[8]
<p>13 x Staff Officers (FTE) 4 x Senior Managers^[2] 5.5 x Clerical Officers</p> <p>95% of time was described as being spent on conciliation cases by all officers.</p> <p>Note Director Grade 7- not involved in directly delivering the IC service.</p>	<p>Note this resource delivers PCC, IC and Helpline. The resource cannot easily be separated into the different areas.</p> <ul style="list-style-type: none"> • 6 x Directors of Deliver (FTE) Grade 6. • 20 x Assistance Director of delivery (FTE) Grade 7. • 284 x Conciliator/ trainer/ helpline managers (FTE) Grade 9. • 61 x Individual Conciliator/ senior Advisor^[3] (FTE) Grade 8^[4]. • 207 x Helpline advisors (FTE). • 48 x Administrator (FTE) Grade 11. 	<p>13 Equality Officers^[6].</p> <p>According to the most up to date annual report there are 13 members of staff within the Equality Tribunal who operate as mediators (however mediation is not their primary role within the ET) their primary roles are as follows^[53]:</p> <ul style="list-style-type: none"> • 8 are equality officers within the Employment Equality branch; • 3 are equality officers within the Equal Status branch; and • 2 are equality officers within the Legal Management branch. 	<ul style="list-style-type: none"> • 1 x Senior Conciliation Officer spending 20% of time on the project (Level: Assistant Principal). • 6 x Executive Officer. • 1 x Administrative Officer spending 60% of time on the project. • 1 x Clerical Officer spending 80% of time on the project.

^[8] Information provided by ERS Management , Workplace Relations Reform Programme

^[2] LRA Representative

^[3] Acas Transparency Data <http://www.acas.org.uk/index.aspx?articleid=3177> 2011-2012

^[4] http://www.acas.org.uk/media/csv/k/6/Acas_-_07Nov2012-Junior-data.csv

^[6] The Equality Tribunal Annual Report 2011 <http://www.equalitytribunal.ie/Publications/Annual-Reports/Annual-Report-2011.pdf>

^[53] <http://www.equalitytribunal.ie/Publications/Annual-Reports/Annual-Report-2011.pdf>

LRA (NI) (2013)	Acas (GB) (2011- 2012)	Equality Tribunal Mediation Service (2011)	Pilot ERS (2012) ^[8]
9,196 conciliation cases were dealt with in 2011/12 ^[9]	<ul style="list-style-type: none"> • 23,777^[10] cases referred during the reporting year of 2011-2012. • 17,781 cases referred during the reporting year of 2010-2011 ^[11]. • 8,712 cases referred during the reporting year of 2009-2010^[12]. 	<ul style="list-style-type: none"> • 815 cases referred to mediators from Jan-Dec 2010 ^[13]. • 665 cases referred to mediators from Jan-Dec 2011 ^[14]. • 251 cases referred to mediators from Jan-Dec 2009 ^[15]. 	<ul style="list-style-type: none"> • 1,205 ^[16] cases referred to mediators from May2012- Nov 2012.

^[9] Labour Relations Agency Annual Report 2011-12

^[10] <http://www.acas.org.uk/media/pdf/g/f/Acas-annual-report-and-accounts-2011-2012-colour-version.pdf>

^[11] http://www.acas.org.uk/media/pdf/p/0/Acas_Annual_Report_Accounts_2010-11_colour.pdf

^[12] http://www.acas.org.uk/media/pdf/1/c/annual_Report_2009-10_colour-accessible-version-may-2012.pdf.pdf

^[13] <http://www.equalitytribunal.ie/Publications/Annual-Reports/Annual-Report-2010.pdf>

^[14] <http://www.equalitytribunal.ie/Publications/Annual-Reports/Annual-Report-2011.pdf>

^[15] <http://www.equalitytribunal.ie/Publications/Annual-Reports/Annual-ReportFinal2009.pdf>

^[16] Lotus Database 2012

Whilst the number and levels of staff can be seen in Table 9.8, drawing a direct comparison is difficult, given the differences in the services and the other work they are involved in.

Comparing the LRA service with the Pilot ERS, it can be seen that LRA employed 13 officer-level staff, 4 manager-level staff, 5.5 clerical and administrative staff, and 1 director (p/t management role). For the Pilot ERS, 6 officer-level staff were supported by 2 administrative and clerical staff who spent between 60% and 80% of their time on the project. Additionally, the Pilot ERS made use of 1 senior officer for 20% of his or her time.

Table 9:8: Training provided to staff delivering the service

LRA PCC (NI)	ACAS PCC (GB) ¹⁵⁴	Equality Tribunal Mediation Service
Officers are expected to spend 85% of their time on IC. The 15% balance is on training and administration. 5% of this relates to personal development Staff have access to the relevant employment information sources e.g. Legal Island.	Acas PCC staff are trained internally and offered roughly 950 courses. Operational staff can also gain accreditation via the Open University following internal training in courses they choose to undertake. Acas have developed their own in house training programme for staff.	Mediators are recruited from the ranks of Equality Officers and are trained by the Mediators Institute of Ireland for professional accreditation. ¹⁵⁵

Staff training is a recurring requirement for all the benchmark organisations. Five days per annum is the norm across the organisations.

Management Information Systems

The LRA Individual Complaints Management System holds all relevant data on complaints and provides a notes function to allow officers new to a complaint to access all pertinent information to the complaint if and when required.

Acas began the roll out of a major new electronic complaint management system in 2011 which was implemented across 9 of 12 offices by 2012.

¹⁵⁴ Denvir, A. O'Regan, S. Williams, M. , Cox, A. Pearmain, D. and Hooker, H. (2009) The Acas helpline is a free service provided by the agency providing support and advice to both employers and employees on a wide range of employment matters. Pre-Claim Conciliation pilot – Evaluation summary report (The Institute for Employment Studies)

¹⁵⁵ The Equality Tribunal Mediation Review 2010.

Acas identified that many of those in harder to reach groups often use mobile devices, rather than traditional fixed computers. As such ACAS have developed a new mobile application which is due to be implemented in 2013 to address this issue of access.

In 2008 the Equality Tribunal transferred the IT System to Citrix Environment. This is an integrated enterprise system whereby all the Tribunal's IT functions and applications are centralised. This enabled the delivery of network services to decentralised offices. It also facilitates staff members who require e-working facilities or need to access Tribunal data during Hearings around the country.

Table 9:9: Performance recorded over a reporting year

	LRA IC (NI)	Acas IC (GB)	Equality Tribunal Mediation Service
No. of referrals per annum	2011/12 9,196 complaints were dealt with in 2012 ¹⁵⁷	67825 ¹⁵⁶	Between Jan – Dec 2011 665 were referred to the Mediation Service
Number of complaints settled or withdrawn	7,553 ¹⁵⁷ April 2011 –March 2012. (82%)	45,390 ¹⁵⁶ (67%)	412 mediation agreements were achieved (62%)
Number of complaints that go to Court/ Tribunal	1,643 complaints ¹⁵⁷ April 2011 –March 2012.	13,677 ¹⁵⁶	78 complaints were not resolved at mediation and were returned to investigation.
Number of days invested on average on each complaint	Takes 4.5 hours per complaint ¹⁵⁸	Varies	A mediation session will generally be completed in 2/3 hours. 90% of complaints the mediation process was completed after one session.

¹⁵⁶ Acas Annual Report 2012-13

¹⁵⁷ Labour relations agency Annual Report 2011/12

¹⁵⁸ LRA Representative

The LRA and Acas primarily conduct their conciliation services via telephone, and contact is made within 2 days. Both organisations use face to face interviews if it is felt this approach will help resolve the complaint. Both the LRA and Acas representatives felt it was essential that they are able to conduct interviews face to face if the Conciliation Officer assessed it to be appropriate, although this approach was only utilised in a small percentage of cases. The ET mediation service is primarily face to face, and there is on average a period of 2 months before initial contact. Therefore the conciliation service reduces initial contact time by 26 days on average.

According to the Acas 2009-2010 Annual Report and Accounts report, complaints are segmented into fast, standard and open 'track'. These serve as a proxy for the differing levels of complexity typically found in complaints of each category (fast track being on average the least complex; open track the most), and is also indicative of differences between the average duration (and therefore cost) of tribunal hearings for complaints in the categories concerned which are not resolved in conciliation.¹⁵⁹

9.6 Use of KPIs

The LRA and Acas KPIs cover:

- Customer Satisfaction: survey of users and satisfaction with the service.
- Outcomes: The percentage of complaints kept out of the tribunal/ court system.

The focus in both organisations is very firmly on reducing the number of complaints going to adjudication or inspection.

9.7 Summary

The benchmarking analysis demonstrates that the Pilot ERS success rate is much lower than the other services reviewed. However there are a number of reasons for this:

- LRA/Acas conciliators have access to previous case outcomes and this is shared with complainants in order to provide a reality check on the likelihood of success and the potential value of the complaint. Staff delivering the pilot ERS are unable to provide details on the outcomes of RCS complaints as this information is not published.
- The time taken to get a court date or a hearing date in Northern Ireland is much shorter than in Ireland. Complainants therefore will have this date when using the LRA service which often focuses them to want to resolve if possible. The linking of the ERS intervention with the adjudication/hearing date, will be key to driving complainants motivation to using the service and to making best use of the ERS resources.

¹⁵⁹ http://www.acas.org.uk/media/pdf/c/f/annual_report_2009-10-accessible-version-apr-2012.pdf

- Acas has a system which differentiates complaints by complexity, which allows for a fast clearance rate of complaints with minor complexities but also ensures more efficient caseload management and therefore reducing the cost to the service.¹⁶⁰
- Agreements reached through Acas/LRA are legally binding at the conclusion of the process.
- Acas and LRA use face to face interviews (on the more complicated complaints) as well as telephone support in order to increase their chances of early resolution. The focus is on achieving the outcome rather than the process.

Any future Pilot ERS needs to consider introducing:

- A fast track process for straightforward complaints;
- The need to focus on complaints only as they come up to their adjudication/hearing date;
- Providing access to previous complaint information/ cases and the outcomes from these;
- A statutory basis for the service; and
- Ensuring that any agreements received are legally binding.

¹⁶⁰ http://www.acas.org.uk/media/pdf/c/f/annual_report_2009-10-accessible-version-apr-2012.pdf

10 CONCLUSIONS AND RECOMMENDATIONS

10.1 Introduction

The Pilot Early Resolution Service (Pilot ERS) was established over a short time-frame, and operated for 6 months from May 2012. The evaluation of the Pilot ERS highlights the progress made and the results achieved, but it also highlights the extent that the service warrants further allocation of public funding and makes recommendations concerning the future direction of the service.

10.2 Programme Objectives and Fit with Strategy

The Programme for Government (PfG)¹⁶¹ states that there is a need for mediation to reduce the wasted cost of court proceedings and reduce the time taken to resolve disputes. The Department of Jobs, Enterprise and Innovation Strategy¹⁶² sets out the need to implement fast and effective resolution of workplace relations issues in the interests of reducing costs to users and minimising impact on the productivity of enterprises. The Workplace Relations Reform Programme is seeking, among other matters, to reduce the bureaucracy and cost involved in resolving workplace relations complaints/disputes.

This report concludes that the Pilot ERS is needed in order to provide a cost effective alternative to going to adjudication or inspection. The service should also increase the opportunity to support positive workplace relations.

10.3 Need for Objectives That Fit With Strategy

The overall objective of the Pilot ERS was to resolve the maximum number of complaints / disputes through early intervention over the course of the pilot, however there was no target specified for this. Given that the service was in a pilot stage, the absence of specific measurable performance indicators for the overall objectives is to be expected.

An administrative target was set for the Pilot ERS was to progress with at least 1,199 referrals to the service, and to complete these within 6 weeks. However this target is insufficient for measuring or demonstrating a contribution to either PfG, the Workplace Relations Reform Programme or the Department strategy. The objectives set should in future include efficiency and effectiveness measures. The efficiency measure should track costs against outcomes achieved in order to ensure that the cost of delivering a resolved complaint through the ERS is considerably less than going to adjudication for the same issue.

The effectiveness measures should track the extent to which the ERS keeps complaints from going to adjudication or inspection.

¹⁶¹ Department of the Taoiseach Programme for Government 2011

¹⁶² Department of Jobs, Enterprise and Innovation's Statement of Strategy 2011-2014

10.4 Programme Outputs and Effectiveness of the Service

This section reviews the performance delivered through the Pilot ERS against the costs involved in delivering it.

10.4.1 Performance against Objectives and Outputs

Complaints referred initially to the Equality Tribunal were considered beyond the scope of the Pilot ERS and were excluded from the selection process. Complaints to the Labour Court and the National Employment Rights Authority (NERA) were considered to be within the scope of the Pilot ERS however no complaints to the Labour Court and only two complaints to NERA were selected for the Pilot ERS. As such, the performance of the Pilot ERS regarding these complaints cannot be concluded upon.

The Pilot ERS exceeded the administrative target for the number of complaints referred to the service (1,199) by six. A target of six weeks was set for the length of time to be taken to take progress each complaint to conclusion, however, on average the time taken was 8.3 weeks.

A total of 1,205 complaints were selected for ERS intervention during the pilot, and 64%¹⁶³ of these engaged with the service. Half of those who participated in the survey and who did not engage with the service stated that this was because the other party declined to participate. Other reasons included that the issue was thought to be too complex for the ERS, or that the issue was resolved before engagement with ERS.

As of March 2013, 96%¹⁶⁴ of the cases had been concluded. In total, 33% of the 746 concluded cases were resolved or withdrawn due to the ERS. This equates to 246 resolved or withdrawn cases in the pilot following intervention.

Of the cases referred to the Pilot ERS, 431 (36%) were Employment Appeals Tribunal (EAT) referrals, and 731 (64%) were Rights Commissioner Service (RCS) referrals. In total, 265 (61%) of EAT referrals and 512 (66%) of RCS referrals engaged with the service.

Successful interventions for the service were considered on the basis of successful resolution of the complaint following intervention, or withdrawal of the complaint following intervention. Success of the service was not attributed to the complaints which had been withdrawn prior to intervention by the service. Success rates for the service were considered on the basis of the number of successful interventions as a percentage of the number of complaints accepting engagement with the service.

¹⁶³ 776 cases

¹⁶⁴ 746 cases

If all of the referrals to EAT and RCS in 2011 were offered the service¹⁶⁵, a total of 3,731¹⁶⁶ complaints could have been expected to be resolved¹⁶⁷ prior to adjudication or inspection. As the emphasis for the Pilot ERS was complaints to the RCS and the EAT, it is not possible to conclude on the number of complaints referred in the first instance to NERA and the Labour Court which could be expected to be resolved if the service were to be offered to all complainants.

10.4.2 Cost

The total cost of the service during the pilot period based on staff and associated costs were €184,890. This represents a cost of €153.44¹⁶⁸ per case referred to the Pilot ERS and €751¹⁶⁹ per case resolved or withdrawn after engagement with the service.

Table 10.1 shows that the cost of the Pilot ERS per decision (cost per cases resolved or withdrawn) is higher than the cost per decision (cost per recommendation) for the RCS but lower than the cost per decision (cost per referrals allowed or dismissed) for the EAT. However, it should be noted that the costs included in Table 10.1 are estimates based on the most recent data available as detailed programme level budgeting and costing is not currently employed within the ERS, EAT and RCS.

Table 10:1: The cost of the Pilot ERS per decision compared to the cost per decision of adjudication or inspection

	Cost per Decision ¹⁷⁰
Rights Commissioner Service¹⁷¹	€496.29
Employment Appeals Tribunal¹⁷²	€980
ERS¹⁷³	€751

In addition under the Workplace Commission, there will be new adjudication arrangements and the costs of adjudication are going to be significantly reduced.

¹⁶⁵ Data for 2012 is not currently available. In 2011 there were 8,458 referrals to EAT and 9,206 referrals to RCS. Source: Employment Appeals Tribunal Annual Report 2011, Labour Relations Commission Annual Report 2011

¹⁶⁶ Total referrals in 2011 to RCS + EAT (17,664) multiplied by the rate of engagement (0.64) and the success rate (0.33)

¹⁶⁷ The respective success rates were 26% for EAT complaints and 37% for RCS complaints. (65 EAT referrals were resolved during Pilot ERS or withdrawn after intervention, 181 RCS referrals were resolved during Pilot ERS or withdrawn after intervention)

¹⁶⁸ €184,890 / 1,205 complaints.

¹⁶⁹ €184,890 / 246 complaints withdrawn or resolved.

¹⁷⁰ See Section 5, table 5.1

¹⁷¹ Cost per recommendation

¹⁷² Cost per referrals allowed or dismissed

¹⁷³ Cost per cases resolved or withdrawn

Given that the cost of adjudication is going to be reduced, then the performance of the ERS needs to increase significantly if it is to deliver value for money. At present, it is better value for money to resolve cases through the Rights Commissioner Service than through the Pilot ERS, but the benchmarks show the changes that are required to turn this situation around (see section 10.5).

10.4.3 Benefits

The Pilot ERS demonstrated that it delivered a range of benefits to users as demonstrated through the survey responses. Survey participants were asked to state which benefits were offered by the Pilot ERS regardless of whether their complaint/dispute had been resolved.

The following benefits were stated¹⁷⁴:

- The process cost less than going to adjudication or inspection (48%). (“Costs” in this instance refers to the cost in terms of money and the time-value of money for the parties to the complaint/dispute rather than the cost to the taxpayer.);
- Pilot ERS was informal (48%);
- Pilot ERS facilitated quicker resolution of the complaint than other forms of dispute resolution such as EAT and RCS (43%);
- There were less time commitments involved than in adjudication or inspection (39%);
- Facilitated greater understanding of the issues to be resolved (36%);
- Pilot ERS did not require direct contact with the other party (32%); and
- Made the user aware of how much the other side was willing to offer to deal with the complaint (29%).

Survey respondents stated that if they had not had interaction with the Pilot ERS, only 6% (n=5/88) of the disputes were likely to have been settled before a hearing with the relevant body. Of the respondents who stated that their dispute would have progressed to a hearing, 24% felt that they would still be waiting for a hearing or a decision by the relevant body.

In the Pilot Early Resolution Service, the majority of employees who responded to the survey were no longer employed in the subject company (91%¹⁷⁵); 69% of these stated that they left the company as a result of the dispute.

The majority (86%) of respondents stated that the service should be offered in the future. It was iterated by both employees and employers that the informality of the service would encourage them to use the service in the future in preference to more formal methods of dispute resolution such as adjudication or inspection.

¹⁷⁴ Note: respondents were permitted to choose more than one answer.

¹⁷⁵ 29 of 32 respondents were no longer employed in the company

Of the survey respondents who had not used the service, the majority (83%) stated that they would consider using the service in the future if they had the need for dispute resolution. Furthermore, more than half of those who declined¹⁷⁶ the service stated that they would prefer to use the ERS rather than adjudication or inspection, even if a date had been set for the adjudication hearing.

10.4.3.1 Customer Satisfaction with the Service

Overall satisfaction with the service was fairly high, although there is still room for development. The following table, table 10.2 demonstrates how many respondents rated each aspect of the service as “excellent” or “very good”:

Table 10.2: Customer Satisfaction

Aspect	Excellent	Very Good	Good	Fair	Poor	N/A	Total
Timeliness of response from and interventions by the Case Resolution Officer	21 (28%)	29 (39%)	16 (21%)	4 (5%)	5 (7%)	75 (100%)	21 (28%)
Ease of contact with the Case Resolution Officer	23 (32%)	28 (39%)	10 (14%)	4 (6%)	7 (10%)	72 (100%)	23 (32%)
Explanation by the Case Resolution Officer of the ERS process	24 (33%)	24 (33%)	19 (26%)	3 (4%)	2 (3%)	72 (100%)	24 (33%)
Extent and quality of information provided on employment rights and legislation as relevant to your complaint	14 (25%)	20 (36%)	9 (16%)	6 (11%)	7 (13%)	56 (100%)	14 (25%)
Effectiveness in terms of relaying proposals and offers to and from parties	13 (23%)	16 (29%)	13 (23%)	4 (7%)	10 (18%)	56 (100%)	13 (23%)
Helping you to consider the pros and cons of resolving the problem with the ERS	15 (25%)	20 (34%)	9 (15%)	2 (3%)	13 (22%)	59 (100%)	15 (25%)

¹⁷⁶ These respondents were forced to decline, because the other party refused to use the service.

Aspect	Excellent	Very Good	Good	Fair	Poor	N/A	Total
Helping you to understand the strengths and weaknesses of the complaint	9 (17%)	16 (30%)	8 (15%)	8 (15%)	13 (24%)	54 (100%)	9 (17%)
The time and effort given by the Case Resolution Officer in finding solutions	15 (25%)	17 (28%)	9 (15%)	8 (13%)	11 (18%)	60 (100%)	15 (25%)
The impartiality of the Case Resolution Officer	28 (47%)	21 (36%)	6 (10%)	1 (2%)	3 (5%)	59 (100%)	28 (47%)
Quality and usefulness of draft agreements drawn up by the Case Resolution Officer	9 (32%)	10 (36%)	5 (18%)	-	4 (14%)	28 (100%)	9 (32%)
Helpfulness of the Case Resolution Officer	23 (34%)	19 (28%)	13 (19%)	9 (13%)	4 (6%)	68 (100%)	23 (34%)
Overall Customer Service	25 (37%)	18 (27%)	11 (16%)	7 (10%)	6 (9%)	67 (100%)	25 (37%)

The impartiality of the CRO's was described by 83% of respondents as "very good" or "excellent." Similarly, "very good" or "excellent" ratings were given for the ease of contact (71%) and the description of the ERS process (66%).

Areas for development include:

- Explanation of the strengths and weaknesses of the complaint (47%)
- Effectiveness in terms of relaying proposals (52%)
- Time and Effort involved (53%)

The elements of the service that were rated as "excellent" or "very good" are as follows¹⁷⁷:

- The ease of contact with the Case Resolution Officer (32%);
- The explanation by the Case Resolution Officer of the ERS process (33%); and
- The quality and usefulness of draft agreements that were drawn up (32%)

¹⁷⁷ Table 7.5 in main report

10.4.3.2 Areas for development

The survey and consultation responses demonstrate that users were very satisfied with the support they received. However, a number of areas were highlighted for development:

- Survey responses demonstrated that there were negative perceptions concerning the extent to which CRO's described the strengths and weaknesses of the case, and provided guidance based on these.
- The most frequently cited improvement to the service by survey respondents and other stakeholders was that face-to-face interaction should be available for complex cases such as unfair dismissal. When asked to suggest improvements to the service, in seven respondents (n=52) stated that communication could be improved between the users of the service and the CROs.
- Business community and Trade Union stakeholders felt that there needed to be much higher awareness of the benefits of using the service to non-users.
- Other representatives such as the Migrants Rights Centre of Ireland highlighted that the service would need to be promoted to raise awareness amongst hard-to-reach groups such as migrants, and that facilitating these groups with the availability of translators would help to alleviate the number of complex and costly court hearings involved in migrant worker disputes.

Staff highlighted that the training and processes had all been implemented very effectively. They highlighted a number of areas for development:

- Difficulties getting complainants to engage until they get a court or hearing date. The time of the CROs could be used more efficiently if they only offered the service to complainants once they were given a date for their hearing or court case.
- The telephone service works best with disputes focused on disputes such as wage disputes and holiday entitlement, which were less complex than issues such as unfair dismissal.
- The CROs found that it was easier to help complainants resolve cases if they trusted the information provided by them. It was felt that seen the service was still relatively new that there needed to be a campaign focused on making potential users aware of the benefits of using the service.

10.4.4 The factors that encouraged or discouraged parties from using the Pilot ERS

Responses from the survey and consultations detailed a number of factors that encouraged and discouraged parties from using the Pilot ERS. The respondents who felt encouraged to use the Pilot ERS did so due to the following stated reasons:

- The cost of adjudication was too high;
- Using the telephone approach was felt to be time effective; and
- The availability of draft agreements was felt to be useful.

Reasons as to why survey respondents or those consulted either didn't use the service or wouldn't use it again in the future, included:

- Low level of awareness of the service;
- Narrow scope: no face to face meetings/tripartite discussion; and
- Lack of explanation of strengths and weaknesses of complaint.

Mention was also made that if an agreement is reached through the RCS, then there are tax advantages regarding the award made that are not available through the Pilot ERS.

10.4.5 The factors that made the ERS intervention successful or prevented ERS intervention from being successful in resolving the complaint

The factors that made the Early Resolution Service successful were given as follows by survey respondents:

- Usefulness and quality of draft agreements;
- Ease of contact with CROs;
- Impartiality of CROs; and
- Timeliness of response.

Reasons given by survey respondents as to why the service had not been successful in resolving the complaint included:

- Either party felt complaint merited a full hearing; and
- Issues were too complex for a telephone based discussion with both parties.

10.4.6 The impact of representation by various parties such as individual, legal, employer body and trade union on the process

The research shows that the Pilot ERS was used by individuals, trade union representatives and legal representatives. Representatives (including solicitors and trade unions) unanimously stated that they would use the service again. CRO's highlighted that solicitors and trade unions use the ERS and do so effectively.

10.4.7 The level of preparation and where possible cost undertaken by parties using the ERS by comparison with those going to adjudication hearings.

The survey and consultations asked parties about the preparation time and costs involved in using the Pilot ERS. All felt that the service was easy to use and whilst respondents were unable to provide costs, they all felt that the time and effort was appropriate. Business community representatives were unanimous in stating that the level of preparation for cases going to mediation in the ERS was significantly less than that required for adjudication. Trade Union representatives stated that very little time was required in preparation for ERS complaints.

10.5 Benchmarking

The evaluation compared the Pilot ERS with other similar services provided by the LRA and Acas. However the benchmarks used whilst similar are not directly comparable for the following reasons:

- The Pilot ERS has only been in operation for less than a year, whereas the benchmark services have been in operation for over 10 years;
- Agreements reached through the LRA and Acas are legally binding, whereas this is not the case with the Pilot ERS agreements and this has implications for their enforceability and tax status;
- LRA and Acas Conciliation Officers are able to access the outcomes from previous cases and use this information to provide reality checks to the parties involved in disputes. At present determinations of the Labour Court, Equality Tribunal and EAT are published however Inspectors' reports and RCS determinations are not available to CRO's as they are not published. Under the Reform Programme it is intended to publish all determinations of Workplace Relation Commission Adjudicators through a single source in the future; and
- The Pilot ERS did not enjoy the advantage of dealing with complaints in respect of which hearing dates had already been set. The experience of the CRO's has been that parties become more focused on resolving the case if it is possible to do so, once they are given a hearing date. To focus on cases once they have been given a hearing date will allow for a more efficient use of the ERS resource.

Comparison of the results achieved shows that the Pilot ERS is not delivering the success rates of its comparators. The key differences have already been mentioned with regard to the different contexts within which the schemes are operating. The other key differences are:

- The LRA/ Acas services are mainly telephone based, but both services will provide face to face meetings if the Conciliator feels that this approach will help get the complaint resolved.
- The LRA/ Acas staff involved in providing the service are all trained on the job, similar to the Pilot ERS staff were. The one difference is that the LRA/Acas staff all joined the service with a background in HR or other relevant discipline, whereas the Pilot ERS staff had more administration backgrounds.

The processes used within the Pilot ERS are very similar to the LRA/ Acas processes, and therefore did not account for the differences in the success rates.

The resolution rate for the Pilot ERS was 33% compared to 62%-82% for the comparators. The key reasons for these differences are: being able to make legally binding agreements; being able to use previous case information to provide reality checks to complainants and having to deal with complaints in respect of which dates had not been set. The only other issue stressed by Acas and LRA was that they felt it was important to be able to use face to face meetings if required and they didn't wish to rely solely on a telephone based service.

Table 10:3: Benchmarking Summary

	Pilot Early Resolution Service (ROI)	LRA PCC (NI)	Acas PCC (GB)	Equality Tribunal Mediation Service (ROI)
Type of Service	Telephone	Primarily telephone; but also use face-to-face if required to achieve target.	Primarily telephone; but also use at least one face-to-face meeting with an appointed conciliator if necessary ¹⁷⁸ .	Primarily face-to-face; but also use telephone.
Referrals (per year unless otherwise stated)	1,205 during 6 month pilot	2011/12 9,196 complaints were dealt with in 2012 ¹⁵⁷ .	67825 ¹⁷⁹ .	Between Jan – Dec 2011 665 were referred to the Mediation Service.
Cases Settled or Withdrawn	194 withdrawn, 52 settled (33% success rate ¹⁸⁰)	7,553 ¹⁵⁷ April 2011 –March 2012. (82%).	45,390 ¹⁵⁶ (67%).	412 mediation agreements were achieved (62%).

¹⁷⁸ Interview with Acas

¹⁷⁹ Acas Annual Report 2012-13

¹⁸⁰ Note: 33% of total ERS cases that were concluded (746)

10.6 Need for Public Funding

The Report concludes that there is a need for public funding of a cost effective Early Resolution Service as it supports the high level objective of resolving complaints/ disputes at an early stage prior to costly intervention. The Early Resolution Service however needs to deliver cost savings to the public purse. This can be measured through the number of complaints kept out of the adjudication and the associated cost savings.

Government funding is needed to provide an Early Resolution Service, as the culture of using the legal process is strongly engrained in the Irish culture and it will take time to change attitudes and behaviours. The survey results show that 63% of Pilot ERS users would have sought legal advice from solicitors, if the service had not existed. Research¹⁸¹ has shown that involving legal advisors is more costly than going through a mediated process. It is also needed in order to reduce the costs of adjudication. The benchmark services which have been operating for 10 years or more show that the service can be effective at keeping at least 80% of the disputes out of the Courts/ Hearings.

There are other benefits from using Early Resolution. For example, the Acas services evaluation¹⁸² demonstrated that the early resolution service had a positive impact on post-dispute unemployment, where it was found that employees involved in a dispute that reached a hearing at an Employment Tribunal were 3.5% more likely to be unemployed.

This report concludes that there needs to be a government funded ERS which delivers a cost effective service, which can demonstrate that it saves more public money by keeping complainants from going through adjudication or inspection, than it costs to deliver.

10.7 Recommendations

Recommendation 1:

We recommend that an Early Resolution Service is provided which is measured on the extent to which it provides a cost effective service for keeping workplace complaints from going to adjudication or inspection. Suggested performance indicators include:

¹⁸¹ It was found that early resolution as a result of judicial mediation saved £822 worth of time for employers and employees. Source: Evaluating the use of judicial mediation in Employment Tribunals, Ministry of Justice (2010).

¹⁸² A Review of the Economic Impact of Employment Relations Services Delivered by Acas, National Institute of Economic and Social Research (2007).

- Indicator 1: The number of complaints resolved through the ERS and kept out of adjudication or inspection. The Acas and LRA Early Resolution Services provide a benchmark to aim for of only 20% of disputes going to adjudication or inspection. The present level is that 70% of complaints are going to adjudication or inspection. This can only change significantly if the areas identified in recommendation 2 are implemented.
- Indicator 2: The cost per complaint resolved through the ERS. This cost needs to be less than the cost per complaint resolved through adjudication or inspection.

Other Performance Indicators include:

- Indicator 3: Staff complete 5 days CPD per annum to ensure they keep up to date with employment legislation and in the on-going development of their skills in resolving workplace disputes.
- Indicator 4: Extent to which the service has created greater awareness between the two parties of the others point of view.

Recommendation 2:

We recommend that the ERS is developed, as follows:

- CRO's are able to access and use published first instance decisions to help with reality checking of complainants, regarding their complaints;
- The ERS service is linked to adjudication hearing dates to ensure that all parties are focused on the complaint, and provide the best chance of the complaint being resolved; and
- The agreements reached through the ERS have legal status.

These developments are required to allow the ERS to operate effectively. At present, the service is being hindered by these elements not being in existence.

Recommendation 3:

We recommend that the launch of the Early Resolution Service is supported by a PR/ education and awareness programme which not only ensures that employers and employees are informed of the service but also the benefits it can bring if the workplace complaint is resolved before adjudication or inspection whilst still ensuring that everyone's access to justice is maintained. Potential users need to understand how easy the service is to use, that they can still go to adjudication or inspection if they wish, but that there are costs which could be saved if the complaint is resolved without going to court or a tribunal.

Recommendation 4:

The Service is developed so that cases are categorised and provided with the support they need in the most efficient way without reducing the chance of resolving the complaint. This would be similar to the approach taken by the Acas Early Resolution Service, in segmenting their service provision.

- Simple cases (i.e. cases that can easily be resolved by providing both parties with information). Both parties would be provided with the information needed to resolve the dispute by telephone to explain the information and employees rights. (These are likely to include issues regarding the right to wages, time in lieu, holidays etc. The target for resolution on these cases should be in line with GB/ NI benchmarks of approximately 70-80%¹⁸³).
- Other cases which are more complicated in areas such as unfair dismissal, will need to be dealt with through telephone and if required face to face contact. The face to face contact should only be used if absolutely necessary to helping resolve the dispute. This is in line with the Acas and LRA schemes. The target success rate for these cases should be between 60% and 80%¹⁸⁴.

Recommendation 5:

We recommend that CRO's role should be developed to allow them to set out the information on the strengths and weaknesses of each case, if this information is requested by one party. In this situation it should also be shared with the other party involved in the dispute.

Recommendation 6:

The management information systems should be developed in order to ensure that a cost effective service is being delivered in line with customer's needs:

- The time spent by each CRO on each complaint should be recorded. This should be analysed by complaint type to ensure that the time allocated to cases is appropriate to their complexity;
- An email survey should be completed with employers, employees and their representatives who use the service, in order to assess their satisfaction with the service provided; their willingness to use the service again and the extent to which the service provided and the outcome achieved has helped with workplace relations; and
- A complaints process should be developed and implemented. The learning's from reviewing complaints should be fed back into the ERS in order to continuously improve the service where appropriate.

¹⁸³ The Acas service success rate was 78%, LRA was 82%.

¹⁸⁴ Approximately 84% for LRA and 62% for Acas.

Recommendation 7:

This assessment of the ERS is focussed on cost savings involved in resolving complaints before adjudication and fails to include an assessment of the other benefits that can be derived which relate to both employers and employees involved in employment disputes. We recommend that information should be collected on a sample of projects going through the ERS in the future, in order to get a complete view of the benefits obtained by the tax payer, employers and employees.

APPENDIX 1: WORKPLACE RELATIONS QUESTIONNAIRE

Workplace Relations Questionnaire:

For those who used the Early Resolution Service

Background to the research will be detailed in the covering letter.

Q1. Please provide the following details:	
Name:	
Contact email:	
Contact phone:	
Please confirm you accessed the Pilot Early Resolution Service.	Yes I have used the pilot Early Resolution Service. Please continue with the rest of the survey.

Q2. Please choose which of the following options applies to you:	
Employer	<input type="checkbox"/> Go to question 4.
Employee	<input type="checkbox"/> Go to question 5.
Employer Representative	<input type="checkbox"/> Go to question 3.
Employee Representative	<input type="checkbox"/> Go to question 3.

Q3. Please provide the following information and go to question 7:	
Name of organisation you work for:	
Client Name (if you have had multiple clients, please provide details for your most recent case):	

Q4. Is your organisation in the private, public or voluntary/community sector? <i>Tick one and go to question 7.</i>	
Private	<input type="checkbox"/>
Public	<input type="checkbox"/>
Voluntary/community	<input type="checkbox"/>

Q5. As an employee are you:	
Still employed in the company	<input type="checkbox"/> Go to question 7.
No longer employed in the company	<input type="checkbox"/> Go to question 6.

Q6.	Was your reason for leaving directly linked to the complaint made by you?	
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	Other factors involved as well	<input type="checkbox"/>

Q7.	Please choose which of the following applies to your complaint:	
	An agreement was reached through engagement with the ERS, but has not been withdrawn yet	<input type="checkbox"/> Please go to question 8.
	An agreement was reached through engagement with the ERS and has been withdrawn	<input type="checkbox"/> Please go to question 8.
	An agreement was reached but not through engagement with the ERS	<input type="checkbox"/> Please go to question 8.
	The complaint is unresolved and ongoing and a date for a hearing by the relevant Body has been set	<input type="checkbox"/> Please go to question 9.
	The complaint is unresolved and ongoing and a date for a hearing by the relevant Body is pending	<input type="checkbox"/> Please go to question 9.
	The dispute has been withdrawn unresolved	<input type="checkbox"/> Please go to question 10.
	The complaint was resolved at a hearing of the relevant Body (i.e. either approaching or during a hearing by a Rights Commissioner or the Employment Appeals Tribunal)	<input type="checkbox"/> Please go to question 10.

Q8.	How long from the date of first contact by the ERS did it take to reach an agreement? <i>Please tick one and go to question 11.</i>	
	Less than 1 week	<input type="checkbox"/>
	1-2 weeks	<input type="checkbox"/>
	3-4 weeks	<input type="checkbox"/>
	5-6 weeks	<input type="checkbox"/>
	Longer than 6 weeks	<input type="checkbox"/> Please specify in weeks:
	Do not know	<input type="checkbox"/>

Q9.	How likely do you feel that your complaint will be heard within the following periods (please state a percentage if possible):	
	The next 3 months:	%
	The next 6 months:	%
	The next 12 months:	%
	Not sure	<input type="checkbox"/>
	Not applicable	<input type="checkbox"/>

Q10.	Why do you think the case was not resolved or an agreement not reached through the Early Resolution Service?	
	I (or my client) considered that the complaint merited a full hearing by the relevant Body	<input type="checkbox"/>
	The other party considered that the complaint merited a full hearing by the relevant Body	<input type="checkbox"/>
	Both parties were interested in reaching an agreement but their positions were too far apart to be bridged by way of compromise	<input type="checkbox"/>
	The ERS methodologies did not facilitate agreement	<input type="checkbox"/>
	The issues were too complex to be resolved by ERS	<input type="checkbox"/>
	The Respondent (company) ceased to trade/went into liquidation	<input type="checkbox"/>
	The parties reached an agreement between themselves	<input type="checkbox"/>
	Other	<input type="checkbox"/> Please detail:

Q11. To which Body was the complaint originally referred?	
Employment Appeals Tribunal (EAT)	<input type="checkbox"/>
Rights Commissioner Service (RCS)	<input type="checkbox"/>
Do not know	<input type="checkbox"/>

Q12. Under which legislation was the referral made?	
Safety, Health and Welfare at Work Act 2005	<input type="checkbox"/>
Redundancy Payments Acts 1967 - 2007	<input type="checkbox"/>
Transfer of Undertakings and Protection of Employees Act, 2003 EC (Safeguarding of Employees Rights on Transfer of Undertakings)(Amendment) Regulations 2003	<input type="checkbox"/>
Parental Leave Act 1998	<input type="checkbox"/>
Maternity Protection Acts 1994 - 2004	<input type="checkbox"/>
Protection of Employees (Fixed-Term Work) Act 2003	<input type="checkbox"/>
Protection of Employees (Part-time Work) Act 2001	<input type="checkbox"/>
Industrial Relations Acts 1969 – 1990	<input type="checkbox"/>
Terms of Employment (Information) Act 1994 - 2001	<input type="checkbox"/>
National Minimum Wage Act 2000	<input type="checkbox"/>
Minimum Notice and Terms of Employment Act 1973	<input type="checkbox"/>
Organisation of Working time Act 1997	<input type="checkbox"/>
Payment of Wages Act 1991	<input type="checkbox"/>
Unfair Dismissals Acts 1997 – 2005	<input type="checkbox"/>
Other	<input type="checkbox"/> Please specify:
Do not know	<input type="checkbox"/>

Q13. Please assess the service provided to you by the ERS Case Resolution Officer:

	Excellent	Very Good	Good	Fair	Poor	N/A
a) Timeliness of response from and interventions by the Case Resolution Officer						
b) Ease of contact with the Case Resolution Officer						
c) Explanation by the Case Resolution Officer of the ERS process						
d) Extent and quality of information provided on employment rights and legislation as relevant to your complaint						
e) Effectiveness in terms of relaying proposals and offers to and from parties						
f) Helping you to consider the pros and cons of resolving the problem with the ERS						
g) Helping you to understand the strengths and weaknesses of the complaint						
h) The time and effort given by the Case Resolution Officer in finding solutions						
i) The impartiality of the Case Resolution Officer						
j) Quality and usefulness of draft agreements drawn up by the Case Resolution Officer						
k) Helpfulness of the Case Resolution Officer						
l) Overall customer service						

Q14.	What supports or services, if any, would you have used had the ERS NOT been available?	
	Would have taken advice solicitor or legal advisor	<input type="checkbox"/>
	Would have taken advice from an Human Resources specialist	<input type="checkbox"/>
	Would have gone to an advisory or advocacy body	<input type="checkbox"/>
	Would have taken advice from friends	<input type="checkbox"/>
	None, I would have awaited the outcome of the hearing of the relevant Body	<input type="checkbox"/>
	Other	<input type="checkbox"/> Please specify:

Q15.	What do you think would have been the most likely outcome <i>if you had not had any engagement with the Early Resolution Service?</i>	
	The matter would have been heard by the relevant Body who would have decided in my favour	<input type="checkbox"/>
	The matter would have been heard by the relevant Body who would have decided against me	<input type="checkbox"/>
	The other party would have conceded to or withdrawn the complaint prior to hearing	<input type="checkbox"/>
	Both parties would have reached an agreement prior to the hearing by the relevant Body	<input type="checkbox"/>
	I would still be waiting for a hearing and/or decision of the relevant Body	<input type="checkbox"/>
	Other	<input type="checkbox"/> Please specify:

Q16.	Do you think the ERS should continue to be offered?	
	Yes	<input type="checkbox"/> Go to question 18.
	No	<input type="checkbox"/> Go to question 17.

Q17.	Why do you think the ERS <u>should not continue to be offered</u>? Please detail:

Q18.	Are there improvements that could be made to enhance the service?	
	Yes	<input type="checkbox"/> Go to question 19.
	No	<input type="checkbox"/> Go to question 20.

Q19.	What are these? Please detail:

Q20.	Were there any benefits to using the ERS, regardless of the outcome achieved?	
	Yes	<input type="checkbox"/> Go to question 21.
	No	<input type="checkbox"/> Go to question 22.

Q21. What were these?	
I did not need to have direct contact with the other party	<input type="checkbox"/>
I had a better understanding of the issues to be resolved	<input type="checkbox"/>
I was able to better understand the other party's point of view/issues	<input type="checkbox"/>
There were less time commitments	<input type="checkbox"/>
It cost less than going to tribunal	<input type="checkbox"/>
It facilitated quicker resolution of the complaint	<input type="checkbox"/>
It was informal	<input type="checkbox"/>
Other	<input type="checkbox"/> Please detail:

Q22. If you had been given a date for a hearing at the same time as being offered the help of the ERS, would you still have used the ERS?	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Do not know	<input type="checkbox"/>

Q23.	Would you use the ERS again?	
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>

Q24.	Would you recommend the ERS?	
	<u>Yes</u>	
	<u>No</u>	

Q24.	Do you have any additional comments?	
	Yes	<input type="checkbox"/> Go to question 25.
	No	<input type="checkbox"/> Thank you for completing this survey.

Q25.	Please detail any additional comments:

Thank you for taking the time to complete this survey.