

Address by Mr Richard Bruton, TD, Minister for Jobs, Enterprise and Innovation@ IRN Conference, UCD, 8th March 2012

Priority issue

When I came into office last year I identified the need to reform the State's Employment Rights and Industrial Relations structures and procedures as a key priority.

I announced significant changes last July and since then substantial progress has been made, including a full consultation with stakeholders, including many of you here today. I was heartened by the extent to which there was consensus around the need for reform.

I will talk a little more about progress made and next steps but before doing so, let me briefly recall the need for reform.

Need for Reform

The problems with the existing system had been well documented and the issues had been extensively reviewed in eight reports in as many years.

The system was so complex that even practitioners had difficulty understanding and accessing it.

There were, and in some cases still are, long delays scheduling hearings and further delays in issuing decisions. From a public service delivery viewpoint alone, this is not an acceptable level of service. In 2012, we will spend around €20m of taxpayer's money on the five existing employment dispute resolution bodies. We need to ensure that we are getting the best possible value for money.

Over 100 possible first instance complaints involving 30 different complaint forms which could be lodged to five separate bodies.

In one third of these cases the complainant could choose between two of the bodies when making their complaint.

In some cases people were required to submit complaints to more than one body.

While there are excellent and committed people working in the various bodies, often with challenging workloads, clearly the system itself was not performing and had to be changed. We can have and should have a world-class workplace relations service.

My aim is to provide a simple, independent, effective, impartial, cost effective and workable means of redress and enforcement, within a reasonable period of time.

Progress to Date

I set out targets for the reform process last July and these targets have been met.

- A new single contact portal called “Workplace Relations Customer Services” provides a single point of entry into the system for employment rights and industrial relations information.
- It receives and logs all first instance complaints and has dealt with over 2,250 complaints in January and February of this year. Complaints are now acknowledged and the employer is also notified within 48 hours 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.
- 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 I am happy to report that there is now no backlog for Rights Commissioner hearings.
- A single complaint form that deals with over 100 first instance complaints was launched on the 4th of January this year. It has replaced the 30 forms previously in use.
- 70% of all complainants in February used the new form.
- An enhanced and improved version of the form will be available before the end of this month – this will incorporate feedback received.
- Work has also commenced on the development of a version of the Single Complaint Form which can be submitted online. I anticipate that this will be available later this year.
- The new workplace relations website went live on 4th January this year.
- This Website brings together in one place information on all aspects of employment rights and industrial relations. Work has commenced on delivery of an enhanced and more interactive Website to fully replace the current five websites of the existing bodies later this year.

Early Resolution

The model that we are building begins with good quality, clear, up to date information. It will also have procedures and administrative processes that are prompt and as simple as possible to use. We will maximise the opportunities for early resolution of disputes, as close as possible to their point of origin. We will move from the default position that every individual complaint, no matter how large or small, must always result in a time-consuming and expensive formal hearing.

For this reason, an early resolution service is being piloted in the coming weeks.

- The service will assist parties to a dispute to resolve the issue themselves with the assistance of a Case Resolution Officer.
- Participation in the service will be voluntary for both the complainant and the respondent. Where agreement is reached this will be binding on the parties.
- Parties availing of the Early Resolution Service will not be disadvantaged if they do not reach agreement. They will not lose their "place in the queue" nor the right to have their issues dealt with by means of adjudication, if appropriate.
- A number of Officials of my Department have commenced training as Case Resolution Officers to pilot this service next month.
- The pilot will be evaluated and the outcome of the evaluation will inform the design of the mainstream service to be provided by the Workplace Relations Commission in the future.

It is important to note that the Early Resolution Service will be available in the case of individual disputes. The mediation and conciliation processes that deal with collective disputes have developed over many years and enjoy the confidence and trust of employers and trade unions. For this reason it is not proposed that these reforms will alter how collective dispute resolution services are delivered.

New institutions

My intention is to proceed now to establish a two-tier Employment Rights and Industrial Relations structure.

This means there will be two statutorily independent bodies i.e. a single body of first instance to be called the Workplace Relations Commission and a separate appeals body, which will effectively be an expanded Labour Court.

Work has commenced on drafting of a Workplace Relations Bill to give effect to this new structure. I intend to have this legislation enacted by this Autumn. It will provide the necessary legislative basis for the new structures and processes.

The legislation will provide for the services of the Equality Tribunal, NERA, the LRC and the first instance functions of the EAT to come together under the remit of the Workplace Relations Commission. The appellate functions of the EAT will be amalgamated into a reconfigured Labour Court.

All first instance or initial complaints will be made to the Workplace Relations Commission. Three options for resolving complaints will be available – early resolution, inspection and adjudication. The Workplace Relations Commission will have a greater capacity to determine which of these interventions by the State is the most appropriate and most cost effective in any given case. Naturally, appropriate safeguards will be built in to ensure that the rights of all parties are protected.

Highest Standards will apply

I am determined to protect and strengthen standards in the new arrangements. The highest possible standards of impartiality, transparency and fairness will be built in.

This is essential to maintain and build on the confidence of employers, employees and all who use the system.

Adjudication will be provided by independent, professional and impartial decision-makers. Robust criteria and an open and transparent appointments process will ensure that those appointed are of the highest calibre and have the necessary competencies and experience. Initial and on-going training will be provided.

Service level targets for the 2 new bodies will be put in place to measure and demonstrate quality, consistency and timeliness of determinations. These targets will be subject to annual audit, review and publication.

While it is intended that adjudications at first instance will be heard by a single person tribunal, consideration will be given to providing for situations where it may be appropriate in limited and clearly defined circumstances to provide for three person tribunals.

All hearings will comply with the principles of natural and constitutional justice. To ensure this I will make regulations in relation to the conduct of hearings.

A searchable database of decisions - together with the underlying reasoning - will be maintained and made available to adjudicators and the general public through the Website. Adjudicators will not be allowed to mediate or conciliate in cases which they will have a role in adjudicating.

Parties will be free to represent themselves or choose their own representation.

Hearings of the Workplace Relations Commission will be held in private but parties will have the right to request that the case be heard in public.

The Adjudicator's decision, together with the reason for the decision, will be communicated to both parties in writing, not later than 28 days from the date of the hearing.

Compliance and Enforcement aspects

In order to promote compliance and deter employers from risking non-compliance a proactive risk based programme of inspection will be delivered.

I propose to change the Labour Inspectors' title to Compliance Officer to reflect more accurately their importance to achieving a culture of compliance through a range of interventions, including information provision.

The aim and policy of the Compliance and Enforcement Service will be to seek voluntary compliance where breaches of employment law are detected.

As an aid to compliance and in order to reduce the need for costly and time consuming enforcement proceedings, I am examining the possibility of introducing a scheme of administrative or "on-the-spot-fines" and making more effective use of Labour Court Orders for certain contraventions.

I am also examining if a simpler, less expensive but more effective method of enforcing awards can be put in place.

Appeals

All appeals will be heard by a single appeals body formed by integrating the appellate functions of the EAT into the Labour Court.

The Court will continue to have responsibility for all its existing functions in addition to the appellate functions currently exercised by the Employment Appeals Tribunal.

Appeals will be "De Novo hearings", heard by a three-person tribunal, held in public, with the decisions published on the Website.

The only further appeal will be to the High Court on a point of law.

The statutory mediation and conciliation remit of the Labour Court will not be altered by the new arrangements.

Using the machinery

Indeed, I would also like to record my concern that proper procedures would continue to be observed in the conduct of industrial relations. We appreciate that there are significant pressures on enterprises. We have already seen workers responding to these pressures in many companies by accommodating themselves to the uncomfortable choice of agreeing to wage cuts or less favourable terms and conditions rather than risk lay-offs. To ensure that workers are informed and consulted about restructuring decisions there must be proper adherence not only to the obligatory notice periods in legislation but also a spirit of openness and a willingness to seek solutions with the workforce locally.

If ever a joint approach in Irish workplaces was needed, and one that extends beyond rhetoric, now is the time. I would encourage employers to actively work with employees to devise creative solutions to problems where at all possible. If there is a chance that jobs can be saved in a crisis situation, it is incumbent on everyone to explore all the possibilities and options that may exist to restructure to face the challenges. The Labour Relations Commission has a strong track record in facilitating discussions in this type of scenario.

Inevitably, disputes will arise. Ireland's system of industrial relations is, essentially, voluntary in nature and responsibility for the resolution of industrial disputes between employers and workers, whether in redundancy or other collective disputes, rests with the employer, the workers and their representatives. The State provides the industrial relations dispute settlement to support parties in their efforts to resolve their differences.

In my view, the experience and expertise of the Labour Court offers the most appropriate and effective avenue for resolving such issues. It is a matter of regret that some companies in dispute have not engaged fully with the services of the State's industrial relations machinery. Even what often appears to be the most intractable of disputes is capable of resolution where both sides engage constructively and in good faith in this voluntary process. The principle of good faith implies that both sides in a dispute make every effort to reach an agreement and endeavor, through genuine and constructive negotiations, to resolve their differences.

I should also mention that just as the new architecture proposed for the Employment Rights and Industrial Relations area is intended to respond to the changed domestic and European legislative environment and the changed labour market conditions, I am also intending to publish new legislation in the area of economic migration by the Summer. The existing Employment Permits Acts of 2003 and 2006 will be consolidated and revised in to a single Act, to reflect our experience of operating the current system and enable us to simplify procedures; to reflect the very changed labour market needs since those pieces of legislation were enacted; and to provide for Croatian Accession in 2013 and for Accession of further Candidate countries. Taken together with the wider programme of changes I have already outlined, I believe we will ensure that we have "fit for purpose" employment and economic migration frameworks that contribute to the efficient and effective functioning of the labour market and to our national competitiveness.

A Blueprint

What I have outlined today is effectively a blueprint for the State's new employment rights and industrial relations institutions.

To help stakeholders, I will publish this Blueprint by the end of the month (March 2012) in a short document which fleshes out many of the issues I have touched on today. I will invite a

dialogue on the Blueprint with the Select Sub-Committee on Jobs, Enterprise and Innovation, which will help inform our finalisation of the Heads of the Workplace Relations Bill.

I will be open to constructive suggestions and advice from all interested parties.

I wish to thank all those who have contributed to the process so far, in particular those who have worked so hard to deliver the progress achieved, including Ger Deering and his team in the Project Office, my officials and the Chief Officers and staff members of the five employment bodies.

I look forward to your continued support and cooperation as we develop a world class Employment Rights and Industrial Relations system that we can be proud of and that will serve future generations well.

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