

# **National Employment Rights Authority**

## **Code of Practice**

2<sup>nd</sup> February, 2010

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# 1. Introduction

## 1.1 Mission

1.1.1 NERA was established on an interim basis in February, 2007 in line with the commitment in ***Towards 2016<sup>i</sup>*** to securing enhanced compliance with legal requirements, underpinned by adequate enforcement and to greatly enhance public confidence in the system of compliance.

1.1.2 NERA's overriding objectives are in line with those of the Civil Service generally which are the achievement of an excellent service for Government and the other institutions of State as well as for the public as citizens and users of public services, based on the principles of integrity, impartiality, effectiveness, equity and accountability.

## 1.2 Purpose of Code

1.2.1 The purpose of the Code is to:

- a) assist NERA in the provision of a professional and effective service to our clients/stakeholders
- b) establish an agreed framework of good practice, conduct and ethics in achieving NERA's objectives
- c) promote and maintain confidence and trust in NERA and its activities and operations
- d) prevent the development or acceptance of unethical practices

1.2.2 This Code sets out the general principles that guide and inform the work of NERA personnel and which will be of interest to NERA customers. The detailed procedures governing operational matters and activities are set out elsewhere.

1.2.3 This Code was drawn up and developed in consultation with the NERA Advisory Board and with the staff of the Authority and was submitted to and approved by the Minister for Labour Affairs.

## 1.3 Application

1.3.1 This Code applies to all employees of NERA (referred to as ***NERA personnel*** throughout this Code) including personnel employed by NERA under a contract or employment whether permanent, part-time or fixed term. The Code also applies in any situation where personnel are representing or are directly associated with NERA (e.g. meetings, conferences, inspections, court proceedings, etc.).

- 1.3.2 The term 'customers' is used throughout this Code to denote, as appropriate, employees, employers, members of the public, organisations and other stakeholders with which NERA has dealings or contact.

## **1.4 Disclaimer**

- 1.4.1 This Code may be revised from time to time as the principles that inform and guide the work of NERA personnel are developed and refined, in order to reflect changes in legislation and to reflect Memoranda of Understanding<sup>ii</sup> and other cooperative arrangements entered into by NERA. An up to date Code will always be available on the NERA website ([www.employmentrights.ie](http://www.employmentrights.ie)). Please note that this Code sets out general principles and guidance only and should not be regarded as a complete and authoritative statement of the law or of practice and procedures.

## **1.5 Monitoring and Audit**

- 1.5.1 It is the responsibility of all NERA personnel to ensure that their conduct, behaviour and performance are consistent with the standards and principles set out in this Code. References in this regard will be included in role profiles. Compliance with the provisions of this Code will be monitored on an on-going basis and in the context of both interim and annual performance reviews by NERA line and other management and internal audit arrangements. An annual report on compliance will be prepared for, and submitted to, the Director.

## 2. Conduct and Behaviour

### 2.1 Introduction

- 2.1.1 NERA personnel, as Civil Servants, are required to adhere to the **Code of Standards and Behaviour for the Irish Civil Service.** <sup>iii</sup>

### 2.2 Impartiality

- 2.2.1 NERA personnel in the performance of their official duties:
- (a) will conscientiously serve the duly elected Government of the day, the other institutions of State and the public;
  - (b) will advise on, and implement, policy impartially and, in particular, be conscious of the need to maintain the independence necessary to give any future Minister or Government confidence in their integrity; and
  - (c) will not display partiality whether as a result of personal or family ties or otherwise.

### 2.3 Politics

- 2.3.1 All NERA personnel above clerical level are prohibited from engaging in any form of political activity and may not engage in public debate (e.g. letter writing to newspapers, contributions to television or radio programmes etc.) on politics, except if required to do so as part of their official duties.
- 2.3.2 NERA personnel are in general not permitted to seek a nomination or to stand for election to either House of the Oireachtas or to the European Parliament. This restriction applies to all categories of staff. Personnel above clerical level cannot stand for local election.
- 2.3.3 Members of the clerical grades and non-industrial personnel in grades with salary maxima equal to or below the Clerical Officer maximum may apply to the Director of NERA for permission to engage in politics.

### 2.4 Respect for the Law

- 2.4.1 The work of NERA is carried out within a framework of law. NERA personnel respect these legal constraints and , in particular:

- will never act in a manner which they know, or suspect, is illegal, improper, or unethical or for which they have no legal authority; and
- will exercise any discretion conferred by law in a bona fide manner in accordance with the intentions of the statute.

2.4.2 NERA personnel who have doubts about the legality of a particular action which they are required to take in the course of their official duties will refer the matter to their superiors whose responsibility it is to issue a direction on the matter, following legal advice where necessary.

## **2.5 Performance**

2.5.1 NERA personnel are required at all times, to act in a manner consistent with the proper performance of the functions of their position and with the maintenance of public confidence in such performance, including refraining from conduct which might impair performance;<sup>1</sup>

## **2.6 Relations with Colleagues**

2.6.1 NERA personnel are required to show due respect for their colleagues at work, including their values and beliefs and to ensure that their behaviour towards other colleagues is appropriate in the workplace. NERA personnel are aware of their legal duty not to discriminate against colleagues on the basis of their gender, race, sexual orientation, membership of the traveller community, disability, age, marital status, family status and religious belief. NERA personnel also support a positive working environment by observing and supporting the Civil Service policy on harassment, sexual harassment and bullying<sup>iv</sup>.

## **2.7 Improper Influence**

2.7.1 NERA personnel may not use their official positions to benefit themselves or others or seek to influence decisions on matters pertaining to their official positions except through the established procedures (for example, negotiating or grievance procedures) or in such other manner as the NERA Director may approve.

2.7.2 In particular, NERA personnel may not use political influence to affect decisions concerning their official positions. The normal Conciliation and Arbitration and other industrial relations issues apart, NERA personnel may not solicit, directly or indirectly, for personal concessions in their

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<sup>1</sup>The Civil Service Employee Assistance Service is available to help staff manage personal difficulties, which if left unaddressed, might adversely affect their work performance and/or attendance and their quality of life.

favour. Any breach of these rules may render the officer liable to disciplinary action.

## **2.8 Conflicts of Interest**

- 2.8.1 NERA personnel may not at any time engage in, or be connected with, any outside business or activity which would in any way conflict with the interests of the Authority or the Department of Enterprise, Trade and Employment, or be inconsistent with their official positions, or tend to impair their ability to carry out their duties as civil servants
- 2.8.2 NERA personnel may never seek to use knowledge acquired in the performance, or as a result of, their official duties to benefit themselves, or others with whom they have personal, family or other ties.
- 2.8.3 NERA personnel who experience financial difficulties which may compromise, or be reasonably seen by others to compromise, them in the performance of their duties (e.g., through bankruptcy, or insolvency, or by incurring a significant liability to any person, financial institution or other body with whom they have official dealings) must report that fact to the NERA Director. Any such information is dealt with in the strictest confidence by the Authority and the officer concerned is offered such assistance as is available (for example through the Employee Assistance Service) to resolve his or her difficulties.
- 2.8.4 NERA personnel may not make representations on behalf of an outside association or organisation, either as individuals or as members of a delegation, in relation to matters for which NERA or the Department of Enterprise, Trade and Employment has responsibility except with the specific prior consent of the NERA Director.
- 2.8.5 NERA personnel who occupy positions which are "designated positions" for the purposes of the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts) have certain statutory obligations in relation to disclosure of interests<sup>v</sup>.
- 2.8.6 NERA personnel may not engage in any inspection, enquiries or other activities or duties that may involve a family member or where a potential conflict of interest exists. Such cases, duties or activities are re-assigned to another officer.

## **2.9 Gifts**

- 2.9.1 NERA personnel may not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal

judgement or integrity. The overriding concern is that the actions of NERA personnel be above suspicion and not give rise to any actual or potential conflict of interest, and that their dealings with customers should bear the closest possible scrutiny.

## **2.10 Hospitality**

- 2.10.1 NERA personnel in carrying out their official duties are committed to ensuring that their actions are above suspicion and do not give rise to any actual or potential conflict of interest, and that their dealings with commercial and other interests should bear the closest possible scrutiny. It is accepted that NERA personnel should not be put in a position where they cannot accept what are regarded as normal courtesies in business relationships. However, in their contacts with customers, every care is taken by NERA personnel to ensure that their acceptance of hospitality does not influence them, and could not reasonably be seen to influence them, in discharging their official functions.
- 2.10.2 The acceptance from an employer or agent of hospitality, gifts or favours of any kind may be, or be seen to be, an inducement that leads to a perceived obligation (however slight) to an employer or agent. Therefore, NERA personnel are very careful not to do anything or accept anything which might have the effect of compromising his/her integrity or weakening his/her official position.

## 3. Operational Guidelines and Principles

### 3.1 Disclosure of Information

- 3.1.1 NERA personnel must ensure that they deal with queries from customers in an open and helpful way. Under the Freedom of Information Acts 1997 and 2003 (FOI Acts), persons enjoy a legal right of access to information held by Government departments/offices and other public bodies, subject to certain exemptions defined in the FOI Acts. Arising from the FOI Acts, certain officers are given explicit responsibility for the provision of information on foot of requests under the FOI Acts. NERA personnel take particular care to inform themselves about the FOI procedures applying in the Authority.
- 3.1.2 Particular care is taken to safeguard information concerning the private affairs of customers or concerning the commercial affairs of companies or organisations which has been submitted in connection with official business on condition, or on the reasonable assumption, that it would remain confidential. The FOI Acts recognise the importance of protecting such information in the normal course from third party access. Where exceptionally sensitive information of a personal, commercially sensitive or confidential nature is under consideration for release in the public interest, the FOI Acts impose a number of safeguards to ensure the rights of the person(s) concerned are fully respected.
- 3.1.3 It remains a requirement under the Official Secrets Act 1963 that all civil servants, including those who are retired or on a career break, avoid improper disclosure of information gained in the course of their official work. For example, disclosure of information would be likely to be improper where a person has not been given responsibility to provide information to the public under the FOI Acts, or is not otherwise authorised to do so.
- 3.1.4 The Social Welfare and Pensions Act 2007 provides for the exchange of certain information (employment information and RCT1 data) between the Revenue Commissioners, the Department of Social and Family Affairs, the Department of Enterprise, Trade and Employment and NERA. The information shared with NERA can only be used by NERA personnel in connection with the exercise of the Authority's employment rights functions.

## 3.2 Data Protection

- 3.2.1 The Data Protection Acts 1988 and 2003 regulate the collection, processing, keeping, use and disclosure of personal data. Personal data means data (whether on computer or in manual files) relating to a person who is or can be identified either from the data itself or in conjunction with other information that is in, or is likely to come into, the possession of NERA. NERA personnel have a particular responsibility, given the nature of their duties, to familiarise themselves with the provisions of these Acts<sup>vi</sup>.
- 3.2.2 NERA personnel are committed to adhering to the following Data Protection Principles in respect of personal data:-
1. To obtain and process the information fairly
  2. To keep it only for one or more specified, explicit and lawful purposes
  3. To process it only in ways compatible with the purposes for which it was given initially
  4. To keep it safe and secure
  5. To keep it accurate, complete and up-to-date
  6. To ensure that it is adequate, relevant and not excessive
  7. To retain it no longer than is necessary for the specified purpose or purposes
  8. To give a copy of his/her personal data to that individual, on request.
- 3.2.3 NERA holds data to administer its functions. NERA personnel are provided with, or given access to, certain data in order to do their jobs. Under no circumstances will NERA personnel access data without a direct business requirement or discuss with or disclose to any unauthorised third party, either internal or external, confidential customer information.
- 3.2.4 In accordance with the Data Protection Acts NERA personnel are required to take appropriate security measures against unauthorised access to, or unauthorised alteration, disclosure or destruction of, data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. NERA personnel may not seek the unencrypted transfer of sensitive or personal data (e.g. over standard unencrypted email or by means of transfer to an unencrypted memory device).
- 3.2.5 Insofar as the use of information and communications systems are concerned, NERA personnel are committed to ensuring, among other matters, that

- (1) personal data will only be accessed in connection with the purposes for which it has been provided, will only be used for official purposes and will be treated in confidence in accordance with the Data Protection Acts 1998 and 2003.
- (2) they adhere to their duty of care in relation to any data accessed and accord such data the utmost confidentiality and security.
- (4) they do not access or disclose personal data for any purpose other than in connection with NERA's functions.
- (5) they keep the personal data secure and will take such measures as may be necessary to ensure that no third party has access to it whether it is held in electronic or written format.
- (6) they also comply with all internal procedures and processes in relation to access to, and the use of, personal data.

3.2.6 A data security breach, whether potential or otherwise involving for example, the loss or theft or potential/suspected loss or theft of data or equipment/files on which data is stored is reported immediately to and investigated by, the NERA Data Protection Contact Person and/or the NERA Data Controller.

### **3.3 Records Management**

- 3.3.1 NERA personnel create and maintain complete and accurate records to enable NERA to carry out its business, to meet its statutory obligations and to protect its rights as well as those of its customers. NERA is committed, therefore, to ensuring that efficient record-keeping procedures are in place to ensure that information is easily retrieved and accessible.
- 3.3.2 NERA personnel adhere to the Records Management Guidelines<sup>vii</sup> which lay down a policy and consistent procedures for classifying, filing, and retrieving records and set standards for a systematic and consistent approach to creating, maintaining and disposing of our records.

### **3.4 Procurement**

- 3.4.1 NERA personnel are required to adhere to Public Procurement Procedures<sup>viii</sup> and associated rules and guidelines laid down by the Department of Finance, the Department of Enterprise, Trade and Employment and NERA.
- 3.4.2 NERA personnel who enter into any undertaking, or who hold any outside interest or participate in any outside business affecting, or likely to affect, a State contract or the purchase or sale of State

property must immediately disclose the nature and extent of his or her interest to the NERA Director. NERA personnel may not accept a directorship (except as a nominee of a Minister) in any company holding a Government contract or in a company which may reasonably be expected to hold such a contract in future.

### **3.5 Health and Safety**

- 3.5.1 NERA personnel are required to abide by safety and health regulations as specified in the Authority's Health and Safety Statement.
- 3.5.2 NERA personnel are required to wear and/or carry the appropriate health and safety equipment and protective clothing where such is required based on the nature of the place of employment or other location at which business is to be conducted.

### **3.6 Financial Management and Control**

- 3.6.1 NERA personnel are committed to ensuring that public monies are properly, effectively and efficiently used.
- 3.6.2 NERA personnel:
- take proper and reasonable care of public funds and property and not to use them, or permit their use, for unauthorised purposes<sup>2</sup>;
  - ensure that they incur no liability on the part of their employer without proper authorisation; and
  - ensure that expense are not unnecessarily incurred either by themselves or by staff reporting to them.
- 3.6.3 NERA personnel are required to ensure that the use of the public resources entrusted to them is marked not only by ensuring legality and propriety but also by economical, efficient and effective use of resources. Public Financial Procedures<sup>ix</sup> and NERA's Financial Procedures<sup>x</sup> set out detailed requirements for those personnel involved in the procurement, ordering, certification of, and payment for, goods and services and in budgeting and financial management and control processes.
- 3.6.4 NERA personnel are required to ensure that only essential travel and subsistence on official business is undertaken and, where at all possible,

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<sup>2</sup> "De minimis" use of resources, i.e. a use that results in no actual cost to the state, or the cost to the state is so small as to be insignificant or negligible, is permitted.

that advantage is taken of the most economical form of travel and of car pooling<sup>xi</sup>.

### **3.7 Information and Communications Technology (ICT)**

- 3.7.1 NERA avails of a range of ICT systems, applications and solutions in the discharge of its functions. NERA personnel are required to maximise the use of ICT in order to optimise efficiency and effectiveness and to provide the highest possible standard of service to our customers.
- 3.7.2 The Department of Finance publishes a range of pre-requisites, restrictions and wider guidelines, advice notes and policies from time to time on ICT issues. NERA personnel will comply fully with any directions in this regard which may be issued from time to time by the Department of Enterprise, Trade and Employment and NERA.

## 4. Customer Service Standards

### 4.1 Introduction

4.1.1 NERA is committed to delivering the highest quality service to our customers and to ensuring continuous improvement in the standard of service that we provide. NERA personnel are required to embed the Principles of Quality Customer Service, adopted by Government in 2000, into their everyday work and activities. The general standards and targets in this regard are set out below. Specific standards which apply in certain areas are also included.

### 4.2 General Requirements

4.2.1 A statement that outlines the nature and quality of service which customers can expect is displayed at the point of service delivery in all NERA offices.

4.2.2 NERA personnel are committed to ensuring that:

- customers have their affairs dealt with sympathetically, efficiently and promptly;
- they always give their names to any customer with whom they are dealing, except where given a special exemption, for example, on security grounds; and
- customers are dealt with in a respectful manner.

4.2.3 NERA personnel will:

- ensure that their standard of dress is appropriate to their work environment; and
- show due consideration and respect for customers, their colleagues and the office they hold.

4.2.4 NERA personnel are not expected to endure any form of unacceptable behaviour directed towards them personally in the course of their work. Personnel who experience such unacceptable behaviour are required to immediately inform the customer that they no longer wish to continue their interaction and that they are referring the person to their manager. Where such a customer repeats such behaviour it is the policy of NERA to communicate with that person in writing only.

### 4.3 Equality/Diversity

4.3.1 NERA personnel are required to ensure the rights to equal treatment established by equality legislation, and accommodate diversity, so as to

contribute to equality for the groups covered by the equality legislation (under the grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller Community).

- 4.3.2 NERA personnel are also required to identify and work to eliminate barriers to access to services for people experiencing poverty and social exclusion, and for those facing geographic barriers to services.

#### **4.4 Timeliness and Courtesy**

- 4.4.1 NERA personnel are required to deliver quality services with courtesy, sensitivity and the minimum delay, fostering a climate of mutual respect between provider and customer. Contact names should be given in all communications to ensure ease of ongoing communications.

#### **4.5 Contacts with Customers**

- 4.5.1 NERA personnel are required to deal with customer queries as quickly as possible and to be helpful, polite and courteous in all such dealings.

##### **Telephone**

- 4.5.2 When dealing with telephone calls, NERA personnel are required to:
- Answer all telephone calls in a courteous manner;
  - Identify themselves on answering and give the name of their Service/section;
  - Respond promptly when voice mails are received
  - Make it easy for customers to contact NERA by advising of the Lo-call service.
  - Ensure that switchboard operators state the name of the Authority;
  - Offer to take the caller's number and call back if the query cannot be answered immediately;
  - Inform the caller if it is necessary to transfer the call, and give the contact details of the person to whom the call is being transferred;
  - Give Direct Dial-In (DDI) numbers wherever possible. This enables outside callers to contact NERA personnel directly without going through the switchboard;

## Voicemail

4.5.3 In operating the voicemail system NERA personnel will:

- Divert their calls to voice-mail or to another member of staff when they are absent from the office;
- Record up to date greetings and state when messages left will be accessed;
- Check voice mail messages on returning to the office, and regularly throughout the working day.

## Email and Whitemail

4.5.4 When dealing with email and whitemail enquiries, NERA personnel are required to:

- Provide a full reply within a reasonable period. If this is not possible an interim reply will issue informing the customer when a full reply can be expected
- Ensure centrally received mail is directed to the appropriate member of staff for reply;
- Ensure that all replies carry a contact name and direct dial telephone number. The relevant Lo-Call number should also be supplied;
- Use clear and simple language in our replies. If it proves necessary to use technical terms, these will be explained;
- Use the out-of-office facility on email to advise of official business and other absences.
- Comply with etiquette insofar as email communications are concerned<sup>xii</sup>.

## Personal Callers

4.5.5 When meeting customers in person NERA personnel should endeavour to:

- See the customer punctually at the scheduled time where appointments have been made
- Provide clean, accessible and welcoming offices that meet with health and safety standards

- Facilitate access for people with disabilities and others with specific needs.
- Arrange that when visitors arrive by prior appointment, they will be invited by reception staff to wait in the reception seating area and an appropriate staff member will attend to them punctually;
- Treat all visitors in a polite and courteous manner;
- Respect a visitor's privacy where there is a requirement for confidentiality;
- Ensure reception staff are notified in advance of the visitor's name, organisation and scheduled time of appointment.
- Provide to reception contact details of the NERA official with whom the appointment has been made.

## 4.6 Website

4.6.1 NERA's website at **[www.employmentrights.ie](http://www.employmentrights.ie)** provides information to employers, employees and others in a customer focused manner on employment law generally and on the activities of the Authority. NERA personnel who manage the website and its content and all NERA staff generally should strive to ensure that the website:

- is accessible to all, including people with disabilities
- provides up to date press releases and publications for download
- provides facilities for queries, comments and complaints
- provides useful contact details.

## 4.7 Official and Other Languages

4.7.1 NERA personnel will, insofar as this is practicable and reasonable, facilitate a request to be dealt with in Irish. Replies in Irish will be issued to correspondence received in Irish. NERA will also endeavour to respond to correspondence and enquiries in other languages should this be requested by the customer and subject to the required level of competency being available within NERA.

## **4.8 Employment Law Information Provision**

- 4.8.1 The provision of information is a key element in achieving our culture of compliance. While NERA has a dedicated Information Centre staffed by Information officers based in headquarters and the Regional Offices, all NERA personnel (including senior management, Inspection personnel, strategic affairs staff, etc.) have a role in the provision of information on employment rights and obligations.
- 4.8.2 NERA personnel are required to take a proactive approach in providing information that is clear, timely and accurate, is available at all NERA offices, and meets the requirements of people with specific needs and are committed to the simplification of forms, information leaflets and procedures.
- 4.8.3 NERA personnel are committed to the highest standards of customer service in relation to the provision of an employment law information service by telephone, by means of written correspondence, by e-mail and, in certain instances, by face-to-face contact.
- 4.8.4 NERA is also committed to providing an extensive range of explanatory leaflets on different entitlements under employment rights legislation as well as a comprehensive Guide to Labour Law. NERA personnel also attend Citizens Information Centres, exhibitions and other presentations, providing employment rights information to the various groupings.
- 4.8.5 NERA personnel are required to provide factual information on employment rights and obligations. The provision of advocacy services and the interpretation of legislation are not matters which come within the remit of NERA.

## **4.9 Employment Rights Inspections**

### **Powers and Duties of Inspectors/Authorised Officers**

- 4.9.1 NERA personnel who undertake inspections and associated enquiries (hereinafter referred to as Inspectors/Authorised Officers) to determine compliance with relevant employment legislation will be appropriately warranted and certificated as Inspectors/Authorised Officers by the Minister for Enterprise, Trade and Employment.
- 4.9.2 NERA Inspectors/Authorised Officers will operate within their powers as set out in primary and secondary legislation. In general such officers may:

- Enter at all reasonable times any premises where s/he has reasonable grounds for believing that any workers are employed,
- Require the production of records to demonstrate compliance with employment legislation
- Inspect, examine and copy such records.
- Interview any person that s/he has reasonable grounds to believe to be an employer/employee

4.9.3 Where offences under employment legislation are detected during an inspection, the offender may be prosecuted by the Minister for Enterprise, Trade and Employment. NERA's primary objective is to ensure that breaches and offences are rectified and that any associated unpaid wages are paid to the relevant employees. NERA will, insofar as this is possible and reasonable and having regard to, among other matters, the nature of the breach/offence, give offenders all reasonable opportunity to effect such rectification and make such payments without recourse to legal proceedings.

### Complaints

4.9.4 Inspections arising from complaints alleging breaches of and offences under employment legislation are in general accorded priority. As a matter of policy, NERA does not identify complainants or provide details as to why any particular inspection is taking place. This protects both workers who make a complaint and employers against whom unfounded complaints are made. It ensures that the fact that an inspection is being carried out in any particular case is not a reflection on that employer.

4.9.5 All reasonable requests for information pertaining to activity and inspections undertaken as a result of a complaint will be responded to within a reasonable period. Where a complainant or his/her official agent requests information pertaining to activity undertaken as a result of a complaint, the information provided will be limited to the complainant's own circumstances. General information pertaining to the inspection will not be divulged.

4.9.6 Where a representative, who does not have a client/professional service provider relationship, makes the complaint on behalf of the complainant, the latter is required to complete a Form of Authority confirming that NERA may disclose relevant information to the representative. In such cases, the information to be provided is that which the complainant would receive in his/her own right. NERA may not provide information relating to other employees or to matters not directly related to the complainant.

4.9.7 Where complaints are received of a general nature (i.e. non specific allegations in relation to an employer alleging non compliance) from representative bodies or other sources, NERA's policy is that no details of information obtained, or findings made will be provided.

- 4.9.8 In general employees, agents and representatives of a complainant will be given direct access to the relevant Inspector/Authorised Officer for the purposes of obtaining updates on the case. All correspondence will contain the Inspector's/Authorised Officer's contact details.

#### Conduct of Inspections

- 4.9.9 Inspectors/Authorised Officers are required prior to proceeding with inspections, enquiries or investigations to identify themselves, produce their Warrant of Authorisation, explain the nature and purpose of the visit/inspection and the legislative basis upon which they are acting.
- 4.9.10 Inspectors/Authorised Officers are required to make their contact details (including office landline telephone number and email address) available to customers in the context of personal contacts and correspondence.
- 4.9.11 Inspections and associated enquiries will be conducted in a professional manner and concluded without unnecessary delay and with the minimum possible disruption to NERA customers. All persons who are the subject of an inspection or who may be directly or indirectly affected by an inspection will be treated fairly, with respect and having regard to due process and all relevant legal requirements.
- 4.9.12 Inspectors/Authorised Officers are required to respect the presumption of innocence of those who are the subject of inspections, enquiries or investigations. Where breaches of the legislation are suspected, Inspectors/Authorised Officers have regard to due process.
- 4.9.13 It is the responsibility of the Inspector/Authorised Officer to form an independent opinion based on the inspection carried out, records examined, interviews conducted, statements taken and evidence examined in relation to the level of compliance with relevant employment law. Inspectors/Authorised Officers are required to act independently of the employer and employee and to avoid being swayed by any improper attempts to influence their judgement in relation to the performance of an inspection or the content of any report on the inspection.

#### Timing and notification of Inspections

- 4.9.14 While Inspectors/Authorised Officers may undertake inspections at all reasonable times the objective, insofar as this is practicable having regard to, among other matters, the particular circumstances of the case, is to undertake the majority of inspections during normal business hours following the provision of reasonable notice to the employer. Unannounced inspections and inspections outside normal business hours will always be necessary in order to ensure effective and efficient

enforcement. However, such activity will, insofar as possible, be the exception.

- 4.9.15 If an Inspector/Authorised Officer is unable to keep an appointment, the employer (or employee as the case may be) will be contacted as soon as possible with a view to arranging an alternative appointment.

#### Consistency of approach

- 4.9.16 NERA Inspectors/Authorised Officers are required to adopt a consistent approach and process to inspections, notwithstanding the origin or source of the requirement for an inspection. For example, notification of an inspection to an employer will include details of the inspection process and the records required for inspection and a letter advising employers of the breaches/offences, if any, detected, will issue in all cases.

#### Records

- 4.9.17 The primary role of the Inspector/Authorised Officer is to examine the records provided by employers in order to determine if the latter are in compliance with employment legislation.
- 4.9.18 It is the responsibility of the employer to cooperate with the inspection process, and provide information and records in an appropriate format to allow the Inspector/Authorised Officer make a determination regarding compliance. Should an employer claim that the records are not available, the Inspector/Authorised Officer will request in writing that the records should be made available within a specified timeframe. The Inspector/Authorised Officer is required, in circumstances in which the employer fails to provide the records within the specified timeframe to issue a letter indicating that the employer has committed an offence under the appropriate legislation.
- 4.9.19 NERA is committed to providing guidance on its website and by means of leaflets issued with appointment letters and otherwise in relation to the records to be retained by employers and to be made available for inspections.

#### Interviewing People

- 4.9.20 Inspectors/Authorised Officers are entitled under Employment Law to interview any person including the employer, employee or other relevant person. This would normally take place on site. Inspectors/Authorised Officers will, as a matter of practice and insofar as this is practicable having regard to the specific circumstances, seek the permission of the employer to interview employees on site.

Inspectors/Authorised Officers reserve the right to interview employees off-site.

- 4.9.21 Inspectors/Authorised Officers will issue a caution to an employer following the discovery of evidence which suggests or indicates that a breach or offence has occurred and where it is intended to question the employer about the suspected breaches.

#### Payment of Unpaid Wages

- 4.9.22 NERA policy is to inspect records and seek unpaid wages for all employees (both current and former employees) in cases where breaches/offences which have been detected under employment legislation have given rise to a failure to pay wages. Where an employer fails to pay the unpaid wages within an agreed timeframe NERA policy is to refer such cases for possible initiation of legal proceedings.

- 4.9.23 In the case of those employees who have left the employment and are due unpaid wages, the onus is on the employer to make contact with them, and to prove to the Inspector's/Authorised Officer's satisfaction that reasonable efforts have been made to do so. Where an employer, having made reasonable efforts, is unable to contact a former employee, it is NERA policy to write to the former employee and advise him/her to contact the former employer as they may be due unpaid wages in relation to the employment. NERA does not have the power to accept payment of wages on behalf of employees or former employees.

#### Requests for Information regarding an inspection

- 4.9.24 In the interests of good customer service, all complainants, their agents or representatives are advised by letter of the outcome of the inspection, insofar as this relates to the complainant, prior to closing a case.

- 4.9.25 All reasonable requests for information pertaining to activity and inspections undertaken will be responded to within a reasonable period. Inspectors/Authorised Officers are required to respond to requests from employers<sup>3</sup> who seek information regarding inspections pertaining to their business or an up date on their case. Inspectors/Authorised officers who are contacted by an employer are required to satisfy themselves that the caller is entitled to receive information in relation to the case

- 4.9.26 Inspectors/Authorised Officer are required to grant direct access to employers and their agents and representatives and to complainants for the purposes of obtaining updates on the case. In the interests of good

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<sup>3</sup> Including their official agents and duly authorised representatives.

customer service, all employers inspected and/or their agents or representatives are required to be advised by letter of on-going progress and relevant developments and of the conclusion of the inspection.

- 4.9.27 Where an employer requests information or copies of material from the file created in respect of an inspection of their business, including the Inspector's/Authorised Officer's Report after an inspection is complete, these records will be provided. Copies of records or details that would identify complainants or people who supplied information in connection with the case will not be provided. Employers will not be required to submit an application under the Freedom of Information Act in order to request information from the file relating to the inspection.

## **4.10 Other NERA Services**

- 4.10.1 NERA Personnel, in conjunction with the panel of solicitors engaged by NERA, process prosecution cases in situations where employers fail to comply with certain employment rights legislation and in situations where employers in the construction industry fail to comply with Orders of the Labour Court. NERA personnel are committed to the highest standards of integrity, professionalism, conduct and behaviour in dealing with such cases.
- 4.10.2 NERA Personnel, in conjunction, where required, with the panel of solicitors engaged by NERA, also process the enforcement of awards of both the Labour Court and the Employment Appeals Tribunal through the Courts. NERA personnel are committed to the highest standards of integrity, professionalism, conduct and behaviour in dealing with such cases.
- 4.10.3 Section 3(2) of the Protection of Young Persons (Employment) Act, 1996 allows the Minister for Enterprise, Trade and Employment to authorise, by licence, in individual cases, the employment of a child in cultural, artistic, sports or advertising activities which are not likely to be harmful to the safety, health or development of the child and which are not likely to interfere with the child's attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received. NERA Personnel act as agent of the Minister insofar as the processing and issue of these licences are concerned.
- 4.10.4 Subject to the provision by applicants of all the requisite information and particulars and the proposed employment being in compliance with Section 3(2) of the 1996 Act, NERA personnel are committed to ensuring that licences are issued within 21 days at the latest from the submission of the application in writing.

- 4.10.5 NERA is committed to the formulation and implementation of policies and strategies to ensure the delivery of NERA's mission and to inform the organisation's future direction. NERA also fully recognises its responsibilities in relation to corporate governance, parliamentary affairs and the provision of IT, financial, HR, training and staff development and other supports.
- 4.10.6 NERA personnel have particular responsibilities in relation to the provision of advice and support internally, engaging and consulting with the NERA Advisory Board, ensuring that cross-functional issues are considered and in supporting the Minister, Minister of State and the Department of Enterprise, Trade and Employment in the delivery of Government policy. NERA personnel have particular regard to parliamentary, Departmental and other deadlines for the submission of statutory and other reports and material (strategic, planning, financial, etc.) and familiarise themselves with, and adhere to, the provisions of any Memorandum of Understanding in place between NERA and the Department.

#### **4.11 Complaints in relation to NERA Services**

- 4.11.1 NERA personnel are committed to the effective and efficient handling of complaints about the conduct, behaviour or actions of NERA personnel, including how NERA personnel have employed their powers or about the reasonableness of their actions and the quality and standard of services procedure. NERA maintains a transparent and easy to use system for dealing with formal complaints which provides for the submission of complaints to a senior official, the early acknowledgement of complaints and the issue of a written response within a reasonable period. Provision is also made for a complainant to request that the matter be reviewed by the NERA Director.
- 4.11.2 NERA personnel will not cause or suffer any action prejudicial to a person by reason of that person having exercised his/her right to make a complaint in relation to NERA services.

## References

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- <sup>i</sup> Towards 2016, Ten-Year Framework Social Partnership Agreement 2000-2015
- <sup>ii</sup> Draft Memorandum of Understanding Between the National Employment Rights Authority and the Irish Congress of Trade Unions 19<sup>th</sup> November, 2008
- <sup>iii</sup> The Civil Service Code of Standards and Behaviour (September, 2004)
- <sup>iv</sup> *A Positive Working Environment*: an anti Harassment, Sexual Harassment and Bullying Policy for the Civil Service, Department of Finance Circular 23/2005 (July 2005)
- <sup>v</sup> a) Standards in Public Office Act 2001: Department of Finance Circular 4/2002 b) Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts, 1995 and 2001 (January, 2003) c) Department of Enterprise, Trade and Employment Office Notice No. 12/2006: Updating of Ethics in Public Office Regulations
- <sup>vi</sup> a) Policies, Systems and Procedures to Protect the Department's Information, Department of Enterprise, Trade and Employment FOI/Data Protection Unit (April, 2008); b) Protecting the Confidentiality of Personal Data-Guidance Note, CMOD, Department of Finance (December, 2008)
- <sup>vii</sup> Records Management Policy Guidelines, Department of Enterprise, Trade and Employment (March, 2008)
- <sup>viii</sup> Public Procurement Procedures include a) Public Procurement Guidelines (2004) b) Public Sector Procurement Regulations, S.I. No. 329 of 2006 c) Guidelines for the Engagement of Consultants and other External Support by the Civil Service, Department of Finance (2006) d) Department of Finance Letter relating to Quigley Recommendations (27 September, 2005) e) Ethics in Public Procurement, National Public Procurement Policy Unit / Government Contracts Committee (June 2005) f) Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts
- <sup>ix</sup> Public Financial Procedures, Department of Finance (1996)

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× NERA's Financial Procedures (latest version January, 2009)

<sup>xi</sup> Travel and Subsistence Regulations: Department of Finance Circular 11 of 1982.

<sup>xii</sup> Communication on Email Etiquette: Department of Enterprise, Trade and Employment Office Notice No. 15 of 2002 (18 July, 2002)