Summary and Analysis of Responses To the Consultation on the Reform of the State's Employment Rights and Industrial Relations Structures and Procedures

October 2011

An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

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Foreword

Initial response to Public Consultation
on streamlining ERIR dispute resolution institutions
- Richard Bruton, TD, Minister for Jobs, Enterprise and Innovation

Background to consultation

On 1st July last, I announced a major reform of our employment rights / workplace relations institutions. I followed this up with a public consultation process that concluded on 16 September. I am now making available this synthesis of submissions received and as many of the 67 submissions as possible are being made available separately on www.djei.ie.

My proposition is that the five institutions, while they have many strengths and a strong tradition of public service, must be streamlined in keeping with Government policy on public service reform, current severe resource constraints and customer/ user expectations. In short, we must build workplace relations dispute resolution system that is simpler, faster and cheaper.

Issues arising in consultation

I am greatly encouraged by the number of submissions received that support this goal. In particular, the consultation process has highlighted for me the importance of:

- Assisting employers and employees to avoid disputes arising in the first place, through better information provision;
- Early intervention where disputes arise;
- Clear lines of demarcation between the services delivered within the new framework, whether information provision, mediation, adjudication or inspection and, naturally, between matters of first instance and appeal.

Clearly there are a number of issues that require further deliberation. These are clearly outlined in the submissions and the attached synthesis but include the following issues on which we must now reflect and, through the implementation process, ensure that we adequately address.

For example,

- While there was broad consensus on the need for minimizing the number of processing channels for resolving disputes, a number of submissions draw a distinction between *disputes of right*, where a claimant seeks to vindicate a fundamental right, and *disputes of interest*, which may fall more within the industrial relations sphere. Further reflection is needed around the different skillsets and different procedures required for the resolution of these distinctive types of dispute;

- It will be important to decide the stage at which the adjudicative dispute resolution machinery of the State becomes involved, whether it is only after workplace dispute resolution procedures have been exhausted or sooner, and whether the single application form seek details of any attempts that have been made to resolve the dispute

- While there was broad agreement on the desirability of *early resolution process*, there were differing opinions as to how this would work, and issues such as whether the mediation process should be time-bound, have outside experts playing a role and whether a mediated agreement should be binding on the parties all need more thought;

- Critical among the decisions to be made will be that addressing who the decision-makers/adjudicators in employment rights disputes should be, what level of qualifications should they have, how they are appointed, and whether they must be qualified lawyers as opposed to other skilled personnel.

These are just some of the headline issues that require further consideration as we progress this reform project. I will reach my conclusions on these issues in the near future as we begin to write the detailed specification for the new arrangements and in consultation as necessary with key stakeholders.

Next steps

I am conscious that the reform programme I have set out involves an ambitious and challenging programme of change. I am determined that it will be delivered on time and within budget. To ensure this, I have established a dedicated Project Office led by Ger Deering who is supported by a team of officials from my Department. I believe the establishment of such a dedicated Office is a critical success factor in relation to this reform project. The members of this team have been chosen because of their professional, technical and specialist skills. They have been released from their general roles within the Department to concentrate on delivery of the reform project. In this role, working with my officials, the various employment rights bodies and other stakeholders, this team will carry out the detailed design and direct and guide the implementation of the project.

While there may be different views on various aspects, on the precise shape of the new structure and/or the locus of responsibility for particular procedures, there is a significant consensus around the need for reform. Strengthened by this consensus, I am more determined than ever to proceed to a two tier structure i.e. a single Workplace Relations Commission of first instance and a separate appeals body. This will mean effecting changes to bring about the ultimate merger of the existing five institutions into two.

Moreover, I wish to see this happening on the ground, starting right away. We do not have to wait for legislation to amend the 30 plus pieces of employment law in which the current institutional structure is embedded.

We can make significant progress on an administrative basis through practical, meaningful changes to processes and procedures. Some minor legislative change may be necessary, for example, a transfer of functions order will be made to assign responsibility for the Equality Tribunal to me as Minister for Jobs, Enterprise and Innovation. However, I believe that through the leadership and commitment of the current heads of the institutions (and their Boards, where such exist) we will harness the goodwill necessary to effect meaningful improvements for employers and employees alike on the ground.

Project phases and timescales

With this in mind, the project will proceed in three phases:

Phase 1: to end December 2011

- introduction of a single point of entry for all workplace disputes
- introduction of a single authoritative, up to date, information resource for all workplace dispute queries
- reducing the number of claim forms from over 40 to one

Phase 2: to end June 2012

- Early Resolution Service
- Online interactive single claim form
- Integrated website

Phase 3: to end December 2013

- Legislation completed to establish new arrangements
- New Business Processes fully embedded
- Single Case Management System fully operational

In parallel with the pragmatic administrative changes to be made, my Department will be developing the legislative proposals necessary to establish the new structure on a statutory footing. This is likely to involve amendment of over 30 pieces of employment and equality law. The question arises as to whether the opportunity should be grasped to overhaul and consolidate the entire suite of employment law. This would be a massive undertaking but given that we are presented with a real opportunity for reform, this is an issue that I will be actively considering and on which I will be consulting with colleagues in Government, including the Office of the Attorney General. The challenge will be to effect a major consolidation in keeping with the timescale within which we wish to see the institutional reforms in place.

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Richard Bruton, TD,
Minister for Jobs Enterprise and Innovation

13 October 2011

Background

On the 15th of August Minister Richard Bruton launched a consultation process with the objective of establishing a world-class workplace relations service and employment rights framework. This is 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
- rationalise institutions in light of the Government's public service reform agenda

The proposal is to streamline the existing mechanisms and establish a simpler structure while ensuring that the best practice of the existing employment dispute resolution mechanisms is maintained and mainstreamed within the new integrated structures, systems and processes.

The purpose of the consultation was to seek the views of all stakeholders on how this change can be achieved. The consultation paper is available at: http://www.djei.ie/publications/employment/2011/ReformConsultationPaper.pdf

Response

The Consultation Paper invited responses on how the Minister's objectives can be achieved in a manner that best serves the users of the State's employment rights and industrial relations services. To assist those putting forward views, the objectives and the key issues relating to achieving them were set out in detail with relevant questions. Respondents were invited to be as innovative as possible in putting forward solutions and ideas.

Responses were received both in the format of direct answers to the questions posed in the consultation document and submissions which did not expressly respond to the questions. Others responded to sections or specific proposals within the document.

Overall the reform proposals were very well received with the key proposals receiving widespread support. Many useful observations and suggestions were put forward which will greatly inform the design and implementation of the structures and services to be delivered.

The range and diversity of the responses makes it difficult to summarise in one document, however, this document brings together the main themes and points that emerged and reflects where there was general consensus and where further deliberations may be needed.

Respondents

A total of 67 consultation responses were received from a broad range of organisations and individuals.

Respondents included representatives of employers, employees, the legal profession, public bodies, non-governmental organisations including those promoting equality and disability, academics and individuals. Collectively they represent a very broad spectrum of the people affected by employment and equality issues. Many of those who are regular users or have a particular involvement with the State's employment rights, industrial relations and equality dispute resolutions mechanisms put forward their views.

A list of respondents is included at Appendix 1, and copies of the responses are available online on the Department of Jobs, Enterprise and Innovation website: www.djei.ie

Summary of the Analysis of Responses

Based on an analysis of the submissions the proposals put forward in the Consultation Document can be loosely divided into two categories:

- Areas of broad consensus and,
- Areas requiring further deliberations

There are a considerable number of areas where there is broad consensus in principle among respondents. However even within the areas of consensus some differences may exist with regard to emphasis or delivery. These issues will need to be considered in the design of any new processes or institutions.

Areas of Broad Consensus in Relation to Resolution of Grievances and Disputes as Near to the Dispute as Possible

There was a strong support in the responses for the need to empower employers and employees to resolve grievances and disputes in the workplace themselves. Many respondents suggested that more needs to be done to develop workplace mechanisms and protocols to assist employers and employees to avoid or resolve disputes. In particular it was suggested that:

Employers and employees should be encouraged and assisted to resolve disputes at workplace level and S.I. No. 146 of 2000, *The Code of Practice: Grievance and Disciplinary Procedures* should be reviewed and implemented (Ref 1.1)

A non-directive information service providing information to both employers and employees is an essential element in facilitating early resolution of grievances and stemming the flow of claims and access to accurate employment rights information can eliminate or reduce issues in dispute (Ref 1.2)

Areas Requiring Further Deliberation in Relation to Resolution of Grievances and Disputes as Near to the Dispute as Possible

A number of suggestions were put forward by respondents that could not be described as enjoying any great level of consensus. These together with the significant number of suggestions put forward to reduce and resolve disputes in the workplace would merit consideration in the design of any new processes. These include:

Consideration should be given to not accepting complaints into the State's dispute resolution bodies until the dispute resolution procedures in the workplace have been exhausted (Ref 1.1)

The detailed list of measures put forward in response to question 1.4 should be considered in the design of any new institutions, structures or processes (Ref 1.4)

Should there be a charge for making a complaint to the Body of First Instance or a charge/bond/deposit required to appeal a case (2.2)

Consideration should be given to where claims under the Equal Status Acts should be dealt with at first instance and on appeal (2.3)

Broad Consensus in Relation to Integrated structure

There was broad support for a single point of entry and two-tier structure with all complaints being heard by a body of first instance and a single route to appeal. There was also considerable support for early intervention and some form of mediation or conciliation to resolve matters prior to hearing or inspection. The general consensus in this area included that:

Intervention should take place as soon as possible after a complaint is lodged and prior to the case being referred for an adjudication hearing. Participation should be voluntary (Ref 1.3)

The integrated two-tier model should be adopted as guiding principle but those who carry out an adjudicative function should be separate from and independent of those undertaking other functions such as mediation or conciliation (Ref 2.1)

Differentiation of processing channels should be minimised and while the need for some specialisation e.g. provision of information, mediation, adjudication and inspection is recognised, proper division of roles, responsibilities and processes and clear lines of demarcation should be sufficient to ensure fair procedures (Ref 2.2 and 2.5)

All claims in respect of employment related complaints or claims should be submitted and dealt with by one body of first instance (Ref 2.3)

All decisions of the body of first instance should be capable of being appealed to the Appellate Body and the right of either side to object to the Body of First Instance hearing a case should be removed (Ref 2.4)

The conciliation/mediation of collective disputes should remain unaffected and separate within the new structures (Ref 2.5)

Many routine statutory redundancy appeals could be handled on an administrative basis by the Dept of Social Protection but there should be a right of appeal to the employment rights bodies (Ref 2.6)

Clear criteria must be established as regards knowledge, experience, qualifications and suitability for adjudicators or decision-makers, appropriate training should be provided and the organisation and the appointees ought to be subject to explicit performance targets with effective oversight and monitoring of decisions issued (Ref.2.7)

There should be one website covering all employment rights and industrial relations matters (Ref 2.8)

A wide variety of methods should be used to provide non-directive, impartial and up to date information (rather than advice) to both employers and employees by the new Body of First Instance (Ref 2.9 -2.11)

The best way to provide a single point of entry is through a single application form, amalgamating existing bodies and enactment of primary legislation (Ref 2.12)

There should be a single application form for all individual complaints referred to the Body of First Instance that provides sufficient detail of the complaint which should not be processed until correctly completed. A separate form could be used for disputes of interest and appeals (Ref 2.13)

The most important tool for improving information gathering from complainants /applicants at application stage is a well – designed application form (Ref 2.14)

There should be a consistent time limit for initiating all complaints/claims of six months and a uniform period of six weeks allowed for submitting an appeal of a decision given at first instance (Ref 2.15 and 3.15)

The current system that allows claimants to nominate representatives should continue and parties should be required to notify the adjudicating body and the other party in advance of their representative's name (Ref 2.16)

The power to refer a claim ought to be limited to the person or persons affected or, where such a person is unable, by reason of intellectual or psychological disability, to pursue it effectively, his or her parent, guardian or other person acting with power of attorney (Ref 2.17)

A consistent method of enforcing awards of employment rights bodies should be established (Ref 2.18)

Issues Requiring Further Consideration in Relation to Integrated Structure

There were a number of issues raised in relation to the proposed integrated structure that did not enjoy broad consensus that would merit further consideration in the design of any new processes or structures

While differentiation of processing channels should be minimised there is a need to address the concerns in relation to the different skills and procedures that may be required for employment rights by comparison with those required for dealing with industrial relations complaints. Measures should be put in place for dealing with employment rights as against industrial relations cases. (Ref 2.2)

While many routine statutory redundancy appeals could be handled on an administrative basis by the Dept of Social Protection, there may be a need for an adjudicating body to determine certain cases and consideration should be given to the possibility of a right of appeal to the Appellate Body (Labour Court) (Ref 2.6)

While the general consensus is that first instance tribunals should comprise one member, consideration should be given to whether it may be necessary to have certain cases heard by a three person tribunal (Ref 2.1)

There is a need to examine the appointment system used for selecting persons, to decision making/adjudicating posts to ensure the highest standards and maximum transparency (Ref 2.7)

Consideration should be given to whether penalties should be available for any person who gives, or dishonestly causes to be given, information which is known to be false or misleading in any material respect (Ref 2.13)

There is a need to the design and implement an efficient, effective and consistent mechanism for enforcing the awards of employment right bodies (Ref 2.18)

Broad Consensus in Relation to Conciliation/Mediation and Conduct of Hearings

There was very broad consensus in relation to the need for early intervention in order to resolve disputes prior to hearings. There was considerable support for the use of mediation and in particular conciliation at the earliest possible stage in almost all disputes. It was generally felt that participation in mediation and conciliation should be voluntary and remain confidential. Consensus in this area included that:

Early intervention in order to resolve disputes is desirable. The most effective intervention is likely to be some form of conciliation or mediation (Ref 3.1).

While all cases are suitable for early intervention, the best method of identifying the most suitable cases for intervening and for the intervention itself is to have sufficient information provided in respect of each individual claim on the initial claim form (Ref 3.2-3.3).

Both parties should be required to set their case out in detail and in writing in advance of the hearing (Ref 3.6)

All complaints/claims should be examined for potential interventions including mediation and conciliation to be offered on a voluntary basis (Ref 3.7 – 3.8)

Preliminary hearings would have little, if any, value (Ref 3.9)

Some form of uniform procedures to ensure all hearings comply with the principles of natural and constitutional justice should be put in place. These should be broad, simple but flexible to maintain good order and aid the effective conduct of the hearings (Ref 3.12)

All decisions of employment rights bodies should be given in writing summarising the issues and stating the reasons for the decision (Ref 3.14)

Mediation and conciliation are confidential and should remain confidential, accordingly details should not be disclosed at any subsequent adjudication (Ref 3.11)

Issues Requiring Further Consideration in Relation to Conciliation/Mediation and Conduct of Meetings

There were a number of issues raised in response to questions under this heading that either did not enjoy broad consensus or that respondents felt would need greater clarification and merit further consideration in the design of any new processes or structures. These included:

How the expertise and capacity of personnel within the existing bodies could be utilised to decide on straightforward issues where purely factual matters are in dispute should be explored (ref 3.4)

The role which outside experts could play to assist in resolving conflicts in the workplace should be examined (Ref 3.5)

The time period in which conciliation or mediation should be offered to the parties, the amount of time which should be allowed for acceptance and the overall time limit that should be allowed to complete the process should be considered (Ref 3.7)

Consideration should be given to whether or not certain cases could be dealt with on the basis of written submissions. Particular regard would need to be given to whether this would constitute fair procedures (Ref 3.10

Consideration should be given to what if any report should be provided to the adjudicator outlining whether mediation or conciliation was attempted (Ref 3.11)

Whether to alow first instance jurisdictions to dismiss what are adjudged to be frivolous, vexatious or misconceived claims without holding a formal hearing would need to be considered in the context of a person's right to a fair hearing (Ref 3.13).

Whether hearings should be heard in private or public requires further consideration (3.14)

Analysis of Responses to Key Issues

1. Resolution of grievances and disputes as close to the workplace as possible and as early as possible after they arise.

1.1 Resolving Disputes at Workplace Level
How do you think employers and employees can best be supported in resolving disputes at workplace level?

There was major agreement in the responses with the principle of, as far as possible, resolving all disputes at workplace level. While it was acknowledged that this objective is currently reflected in the Labour Relations Commission codes, it was suggested that it is not enforced or insisted upon in practice. It was pointed out that in other jurisdictions external resolution bodies will not accept any matter of conflict which has not exhausted internal company procedures. The responses made it clear that more needs to be done to develop workplace mechanisms and protocols to achieve this by assisting employers and employees to avoid or resolve disputes within the workplace.

The provision of complete, clear and unambiguous employment information is identified as an important support for employers and employees. The need to make employers and employees more aware of the supports available to them in terms of information or advice was identified. As was the need to educate them in understanding the various issues that may arise within the workplace and be clear on how to pursue these matters after exhausting the informal process. It was suggested that a key element in achieving this would be to direct both parties to a clearly developed website which is totally accessible, user friendly and comprehensive in providing steps of redress directing users to the appropriate links.

It was suggested that assistance should extend to providing information on rights and responsibilities, such as model contracts and policies and procedures. It was further suggested the availability of private mediators should be facilitated and online training on how to use mediation/conciliation in an employment context should be provided.

The existence of S.I. No. 146 of 2000, *The Code of Practice: Grievance and Disciplinary Procedures* (under the Industrial Relations Act 1990) was acknowledged but the view was expressed that its benefits should be recognised and strengthened.
It was further suggested that while the broad principles of this Code of Practice are "*fine*" it does not take into consideration the small owner-managed business.

Many respondents suggested that all employers should be obliged to supply all employees with clear grievance and disciplinary procedures and a simple and very clear code of practice for dealing with disputes as they arise. It was further suggested these should be available to download free of charge for employers on the website of the Body of First Instance in the form of a generic set of policies and procedures capable of customisation by employers.

Having such policies would oblige employers and employees to resolve issues informally through a variety of clearly defined steps before proceeding to a more formal process. In fact many respondents expressed the view that disputes should not be accepted into the formal resolution process if the procedures have not been engaged with by the employee, and a default in favour of the employee if the employer has failed to comply. It was also suggested that the employee should have to inform the employer in writing of their intention to make a complaint. To ensure that a complainant has not been disadvantaged for trying to exhaust local remedies, it was suggested that the time limit on submitting a claim ought to commence from the time when local remedies have been exhausted.

The view was expressed that such a set of employment policies would not only enhance the general public's awareness of employees and employers rights and obligations, they would also serve to expedite the hearing of cases before the dispute resolution bodies and could ultimately result in more settlements being achieved through the predictability of outcomes based upon a database of precedent decisions dealing with similar (if not identical) policies.

Many submissions outlined the benefits of mediation including independent mediation provided by private parties in resolving disputes.

The provision of training in dispute resolution for employers and HR specialists was also identified as having an important role to play in avoiding and resolving disputes. In this regard it was suggested that *The Code of Practice: Grievance and Disciplinary Procedures S.I. No. 146 of 2000* referred to above should be reviewed and strengthened to include a requirement for workplace mediation as part of the Code.

It was suggested that the current system where employers are often unaware of an employee's dispute until they receive documentation from the relevant employment rights body, often many months later, is unacceptable. In this regard it was suggested there should be an obligation on employees to provide employers with notification of their intention to make a complaint to an employment rights body before the complaint is lodged.

It was also suggested by a number of respondents that the codification of employment law into a single act or small number of acts would greatly help employers.

1.1 The General Consensus is that:

Employers and employees should be encouraged and assisted to resolve disputes at workplace level

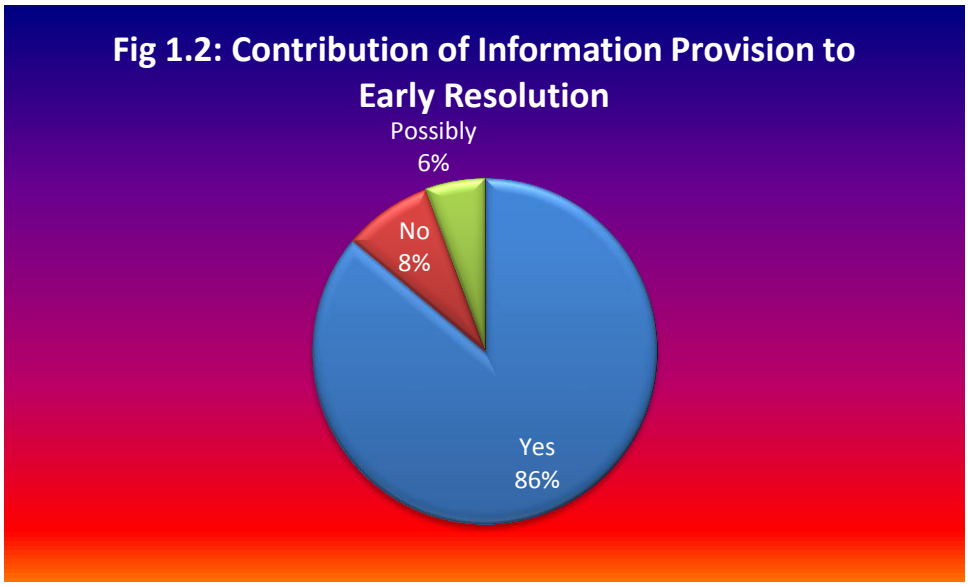
S.I. No. 146 of 2000, *The Code of Practice: Grievance and Disciplinary Procedures* should be reviewed and implemented

Consideration should be given to:

Not accepting complaints into the State's dispute resolution bodies until the dispute resolution procedures in the workplace have been exhausted

1.2 Information Provision

Can the provision of timely, up-to-date factual information help to facilitate early resolution of grievances/ claims and stem the flow of formal cases being submitted?



A total of 36 respondents expressly answered this question and 86% of those expressed strong support for the need to provide good quality timely and impartial information.

It was pointed out that people frequently get things wrong and dispute resolution processes work in large part because people realise during the process that they were misinformed or worked on wrong assumptions because of a lack of correct information. It was also pointed out that lack of information leads to confusion and speculation In this regard it was suggested that clear and easily accessed explanations of rights and obligations are a vital component in resolving disputes.

The general consensus is that a specialised non-directive information service providing information to both employers and employees is an essential element in facilitating early resolution of grievances and stemming the flow of claims. However respondents were strong in the view that while an agency which adjudicates on claims can give non-directive information, it cannot provide advocacy or advice in individual cases. This would be in breach of the legal principle that no one should be a judge in their own cause and could give an appearance of bias.

Two people expressed the view that the provision of information would not necessarily help in resolving disputes. In this regard it was suggested by one person that informing one side that they have a legal right to something may only serve to provoke a claim.

1.2 The General Consensus is that:

A non-directive information service providing information to both employers and employees is an essential element in facilitating early resolution of grievances and stemming the flow of claims

Access to accurate employment rights information can eliminate or reduce issues in dispute

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

The almost unanimous response to this question was that early intervention works, is cost-effective from everyone's point of view and should happen as early as possible. In fact some respondents suggested that intervention should take place as soon as a person would seek information. However others expressed the view that this could be counter productive and could generate complaints.

A number of respondents suggested that intervention should take place after the resolution processes set out in the code of practice suggested at 1.1 above have been exhausted. In this regard attention was drawn to the fact *The Code of Practice: Grievance and Disciplinary Procedures S.I. No.146 of 2000* referred to above states "*Recourse to the proposed employment tribunal, and subsequent appeal to an employment appeals tribunal, should only be available to an employee following proof that he has exhausted the relevant internal disciplinary or grievance policy, as appropriate".*

By far the majority view is that intervention should take place as soon as possible after a formal complaint is lodged with an employment rights body and prior to the case being referred for an adjudication hearing.

The general consensus is that any intervention should be offered very early and should be voluntary. As one respondent put it "*What is required is the opportunity and the desirability to reach agreement but not the injunction to do so*." It was suggested that this is best delivered by a structured requirement to engage in conciliation as a preliminary step.

1.3 The General Consensus is that:

Intervention should take place as soon as possible after a complaint is lodged and prior to the case being referred for an adjudication hearing

Participation in any form of early intervention should be voluntary

1.4 How to Ensure a Just, Fair and Efficient Adjudication Process

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

A broad range of suggestions were put forward in response to how access by employers and employees to a just, fair and efficient adjudication process can be ensured. The suggestions included:

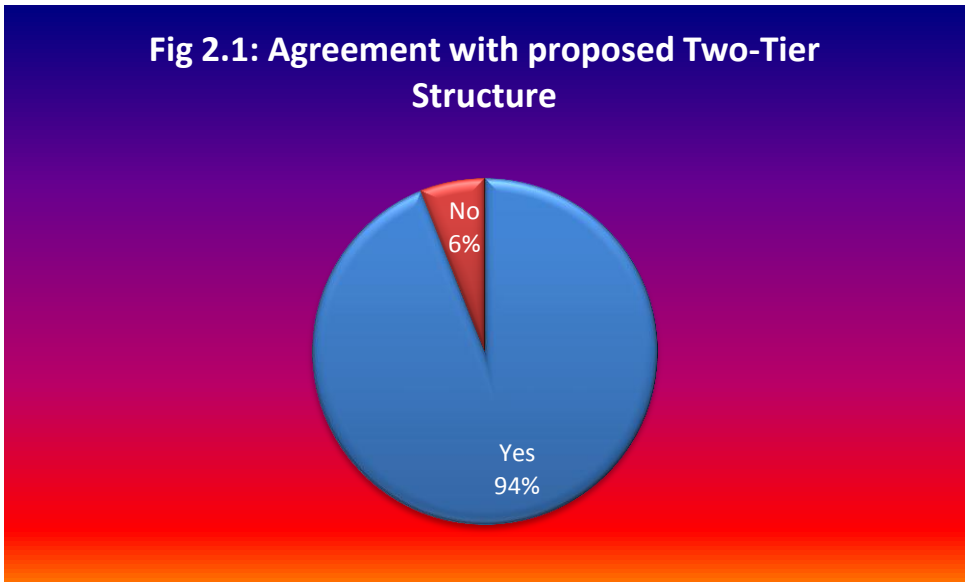
- Proactive promotion of employment rights
- A rapid response time from State agencies
- Minimise the cost
- Provide information and neutral evaluation
- Uniformity (consolidation) of legislation
- Consistency in decision making
- Simplification and integration of mechanisms and pathways to redress
- Robust and proactive case management
- The tribunal chairman's role could be broadened to include overseeing and to sit alone in certain cases for case management/identification and narrowing of issues in dispute
- A system that is non-legalistic and encourages compromise and agreement
- Appointment of appropriately qualified and experienced personnel
- A system that requires parties to participate in some form of conciliation prior to proceeding to adjudication
- Access to an adjudication body that is informal with appropriate assistance on the presentation of the facts of the case for individuals but state institutions should not be advocates
- Simple forms (preferably one only)
- Costs awarded against vexatious parties or those who fail to turn up without good reason (both complainants and respondents)
- Penalisation of those who fail to follow reasonable procedures or engage in alternative dispute resolution without good reason
- Code of practice for guidance of adjudicators in relation to consistent approach to claims and awards
- Full-time sitting of adjudicators/decision makers
- Document and publish decisions
- Legislate so that all workers regardless of their legal status have access to redress
- Provide an interpretation service and requests for same should be able to be made in writing
- Cases should operate within a time limit
- Suitably qualified adjudicators, formal training and continuing education
- Stop the fragmentation (adjourning) of hearings and cases taking months

Many respondents suggested that a just, fair and efficient adjudication process can best be achieved by ensuring that the adjudication process is provided by independent, professional and impartial decision-makers, full-time or part-time, selected on merit through an open and transparent method. It was further suggested that reasonable service level targets should be put in place for example in relation to time limit on the closure of claims from the date of lodgement. Such targets, it was suggested, should be subject to an annual compliance audit.

1.4 Consideration should be given to:
The detailed list of measures put forward above as part of the design of any new structures and processes.

2. Integrated structure

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



A total of 50 respondents expressly indicated a preference in relation to the structure and of those who expressed a preference 70% supported the development of a two-tier model with the complaints heard at first instance by what most respondents described as a "Rights Commissioner" type hearing. While a small number of respondents suggested that the first-instance tribunal should comprise three people and others proposed that people appointed as adjudicators should be legally qualified the majority of those who responded proposed that hearings at first instance should be conducted by a single member tribunal and suggested that while the persons appointed must be suitably qualified they need not necessarily hold a legal qualification.

Notwithstanding that the majority favour a single person tribunal it was suggested that some disputes may be of such complexity as to require a three person tribunal at first instance.

There was strong support for the idea that all individual referrals, whether of right or of interest should go to the Body of First Instance. Many of the submissions argued that those carrying out an adjudication function should be completely separate from and independent of those who undertake any attempts at mediation or conciliation.

While some respondents expressed the view that the EAT should continue to hear appeals from the Body of First Instance, a significant majority proposed that appeals should be made to the Labour Court with an enhanced jurisdiction to encompass disputes of right and interest.

A number of respondents also suggested that the Circuit Court should remain as the appeal body with a small number of respondents suggesting that appeals to the Circuit Court should be extended across the range of employment legislation.

Some expressed the view that expert sections should be established in both the Body of First Instance and the Labour Court. However the Majority of those who expressed a view felt that separate streams would not be necessary as one respondent put it "*while an eye must be kept to structural issues it cannot be at the expense of the substantive mandate of dispute resolution in the interest of all the parties.*"

2.1 The General Consensus is that:

The integrated two-tier model should be adopted as a guiding principle

Cases should be heard at first instance by a single person tribunal

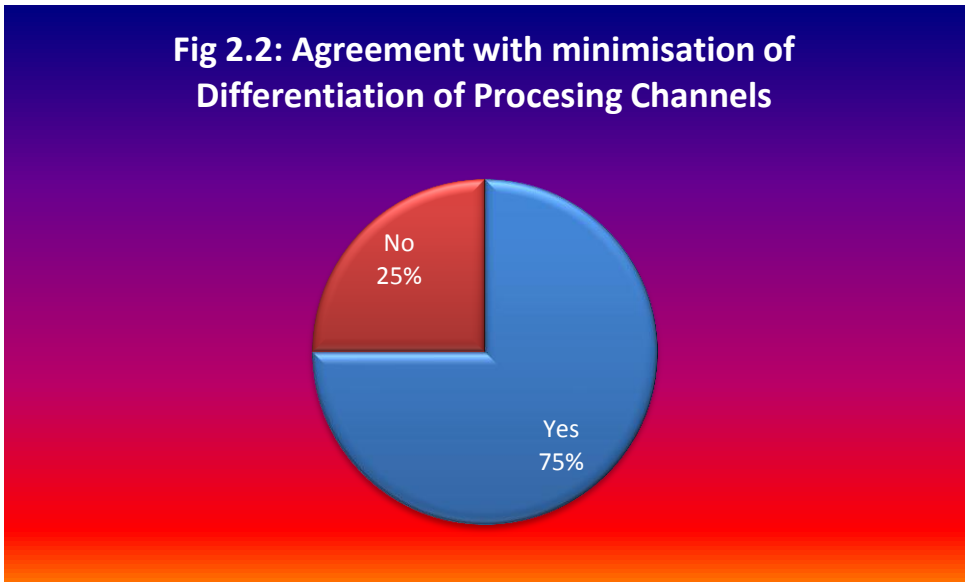
Those who carry out an adjudicative function should be separate from and independent of those undertaking other functions such mediation/conciliation

Consideration should be given to:

Whether certain cases should be heard by a three person tribunal at first instance

2.2. Differentiation of Processing channels

Do you agree that "differentiation" of processing channels should be minimised to optimise the benefits of the proposed reform and to avoid re-introduction of institutional and procedural rigidities?



A total of 40 respondents expressly answered this question. While 25% of those who answered favoured strong differentiation three times as many 75% proposed that differentiation should be kept to a minimum and the process should be kept simple with one contributor suggesting *"the system will return to unbearable complexity by over differentiating*." While the need for some specialisation was recognised it was proposed that appropriate division of roles, responsibility and processes should suffice. It was also suggested that over differentiation would be complicated for the service users and inefficient for service providers. It was pointed out that this was essentially an issue of how the new organisations allocate tasks internally. It was also suggested that early intervention and screening should reduce the need for differentiation. The key issue, it was suggested are competence, capacity and resources.

The main concern among those who sought differentiation relates to the different approaches they deem necessary for complaints of right and complaints of interest. It should be noted that even among those who favour minimum differentiation there is a view that disputes of interest should not be dealt with in the same manner, and some would even suggest they should not even be dealt with by the same people, as disputes of right. It is suggested that different skills and different procedures are required for the two functions. Adjudication requires the proper application of the rules of evidence and fair procedure while IR is primarily about facilitating the collective industrial relations process to find its own IR solutions.

Concern was expressed at what was described as "rights appeals" being heard by a body that is described as being imbued within a collective industrial relations ethos. A view was expressed that IR and employment rights issues are fundamentally different and require a different set of skills. Concern was expressed that IR skills may be utilised to try to resolve employment rights issues and that this could be inappropriate.

One respondent suggested that the Labour Court is constitutionally designed to deal with representative disputes and is not an effective body for dealing with single issues and individual grievances. On the other hand a considerable number of respondents expressed the view that each division of the Labour Court, in its appellant role, should be capable of dealing with all categories of appeal, rights based, equality based and interest based claims. It was suggested that a continuance of the investigative style hearing, which is a feature of the Labour Court, would be preferable. In particular it is suggested that in the case of employment rights based appeals, an inquisitorial approach should be adopted rather than an overly legalistic, adversarial approach.

The view was also expressed that the Labour Court deals more than adequately with a significant body of employment rights referrals and has established a track record of expertise and user credibility. Further it was suggested that the creation of specialist divisions would lead to blockages and delays in processing appeals.

A suggestion was made that inspections should only be carried out on foot of complaints but there is a strong consensus that inspections should continue to be carried out as heretofore but should be entirely separate from any mediation, adjudication or appeal functions. It was further suggested that any new structures cannot merely deal with complaints but must also have a proactive inspection role.

2.2 The General Consensus is that:

Differentiation of processing channels should be minimised

While the need for some specialisation e.g. provision of information, mediation, adjudication and inspection is recognised, sufficient division of roles responsibilities and processes should prove sufficient to ensure fair procedures

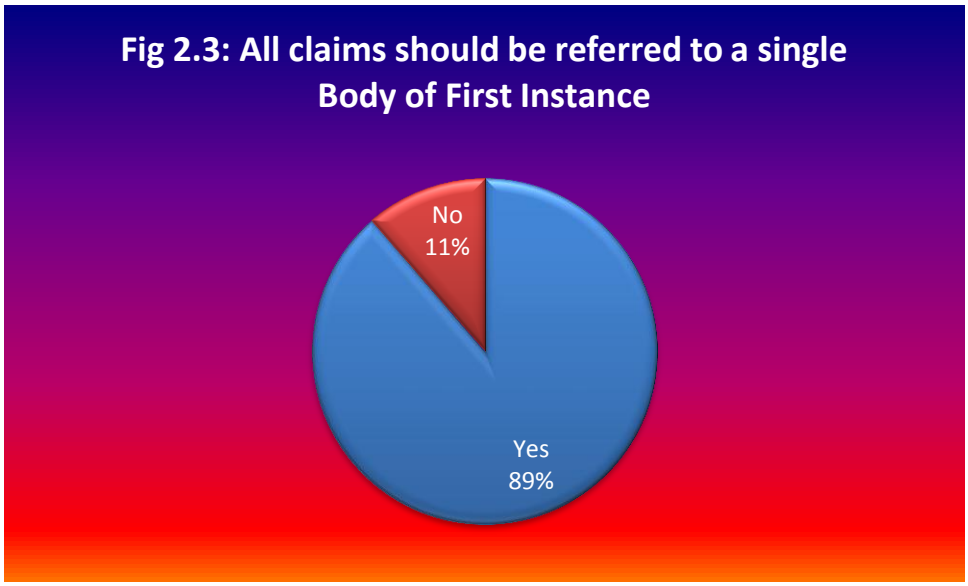
Consideration should be given to:

The concerns expressed in relation to the different skills and different procedures that are required for ER and IR complaints.

The measures that should be put in place to ensure that appropriate methods of operation are engaged in relation to adjudication on employment rights complaints and facilitating the resolution of industrial relations disputes.

2.3 Dealing with Claims of First Instance

Should all claims in respect of employment related complaints/claims (including employment related equality matters) be submitted and dealt with by one body of first instance?



A total of 53 respondents expressly answered this question and 89% of those favoured all claims in respect of employment related complaints/claims (including employment related equality matters) being submitted and dealt with by one body of first instance.

In addition it was suggested that claims under the Equal Status Acts ought to be dealt with also by the first instance body with appeals to the second instance body (instead of to the circuit court).

It is suggested that one decision maker ought to hear all the issues in dispute between an employee and employer. It is further suggested that cases ought to be assigned to decision makers on the basis of their experience, training and competence.

An alternative suggestion is that there would be separate streams within the Body of First Instance and Appellate Body to deal with specialist areas. One submission suggests up to six streams.

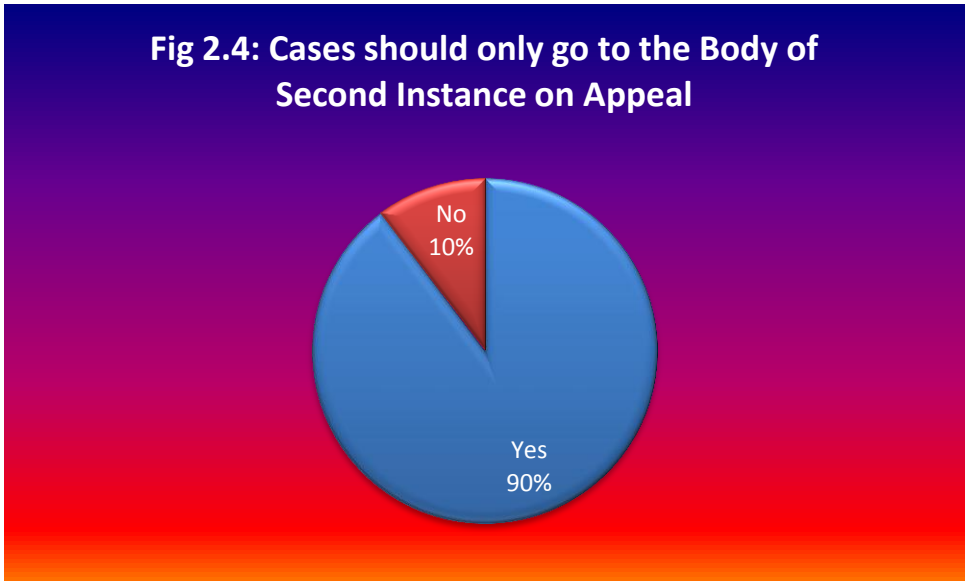
One respondent urged caution to ensure that the human rights aspect of the role of the Equality Tribunal is not lost in an integrated employment rights redress system.

There was a suggestion that a fee should be introduced for processing claims.

2.3 The General Consensus is that:

All claims in respect of employment related complaints/claims should be submitted and dealt with by one body of first instance

2.4 Should the Objection to Body of First Instance Hearing be Removed
Should employment rights cases only go to the body of second instance on appeal (i.e. should the right of either side to object to the body of first instance hearing a case be removed)?



A total of 39 respondents expressly answered this question and 90% of those agreed that employment rights cases should only go to the body of second instance on appeal. It was therefore suggested that the right of either side to object to the body of first instance hearing a case should therefore be removed.

A suggestion was made that the right of appeal should be qualified by the requirement that the appellant enter into a form of recognisance bond and lodge a sum of money (based upon the financial information supplied in the initial complaint or answer form) with the secretariat to avoid the bringing of unmeritorious appeals simply to delay judgment.

2.4 The General Consensus is that:

The right of either side to object to the body of first instance hearing a case should be removed

2.5 Achieving Satisfactory Segregation

If minimal differentiation within a two-tier structure is to be pursued, what would the optimum streams/chambers be within both the first instance and the appeals entity? How might a satisfactory segregation of these distinctive functions be best achieved?

While some respondents expressed a concern about the need for differentiation the general consensus is that clear lines of demarcation can be put in place and maintained between the range of potential functions performed by each of the bodies.

There is also general consensus that the organisation must avoid objective bias in the system by insulating the decision maker adjudicating a case from any prior dealings with the parties to the case or knowledge of any prior contact by the organisation with any of the parties. This would mean that the adjudicator or decision maker cannot act or have acted as mediator in the same case, must not be aware of what was said at conciliation or mediation or be aware of the outcomes of compliance inspections. Essentially the decision maker must only have in front of him/her when deciding a case the submissions and evidence presented by the parties and the outcome of his/her own investigations.

It was suggested that as long as these principles are kept in mind, there is nothing to prevent staff moving between the various functional areas. For example, it is argued that there is no difficulty in a decision maker in adjudication also being a mediator/conciliator so long as s/he does not carry out both roles in the same case.

It was generally felt that there is a need for clear and visible separation between the undertaking of different functions. This applies to:

- Providing information and assistance on employment rights and legislation
- Undertaking mediation and conciliation
- Hearing and adjudicating on complaints
- Hearing and adjudicating on appeals
- Undertaking inspection and enforcement activity (including prosecutions)

While there is a general consensus that the functions of each would require some organisational distance, it is felt that there is clearly a role for integrated information and support systems and collaborative work between the functions. It is the general view that this could be achieved by effective case management through an integrated structure. It is further felt that there should not be a conflict between staff retaining separate functions within one organisational structure.

There is unanimous agreement that the conciliation/mediation of collective disputes should remain unaffected and separate within the new structures.

2.5 The General Consensus is that:

Clear lines of demarcation must be put in place and maintained between the range of potential functions performed and provided by each of the bodies

The conciliation/mediation of collective disputes should remain unaffected and separate within the new structures.

2.6 Dealing with Statutory Redundancy Through an Administrative Process
What would be the advantages and disadvantages of having statutory redundancy appeals handled on an administrative basis, perhaps through the established social welfare appeals structure; given that statutory redundancy payments are now administered by the Department of Social Protection?

Given that statutory redundancy payments are now administered by the Department of Social Protection, many respondents expressed the view that it would be logical that statutory redundancy appeals should also be dealt with through that Department's established appeals mechanisms. One respondent pointed out that this was the original intention behind the Redundancy Payments Bill 1967.

Further it was suggested that the use of detailed complaint and response forms, could result in legally straightforward cases, where the material facts are not in dispute, being dealt with on an administrative basis and complex cases being assigned for some form of hearing. It was suggested that this would also discourage employees who have resigned or been dismissed for reasons other than redundancy from taking speculative redundancy claims.

The main disadvantage, it was suggested, is that redundancy disputes are frequently bound up with, discriminatory dismissal claims, Transfer of Undertaking, unfair dismissal or unfair selection for redundancy which may be too complex to be dealt with in the social welfare appeals structure.

It was the view of a number of respondents that although many routine statutory redundancy appeals could be handled on an administrative basis by the Department of Social Protection, there would still be a need for an adjudicating body to determine that there has been a redundancy in certain cases.

It was pointed out that there is a crucial difference between the administration of appeals and the administration of payments and that this distinction should be maintained. In addition the importance of an appeals structure recognising the complexity of redundancy processes was pointed out. It was suggested that if this function is carried out administratively the outcome would need to be easily enforceable in law.

A summary of the advantages and disadvantages put forward in the consultation responses is set out in the table below.

Advantages	Disadvantages
The alleviation of the lengthy delays that are currently being experienced through the EAT especially for cases where there is no issue as to the legitimacy of the claim but where the employer is refusing to engage in the redundancy process	The Department of Social Protection may not be sufficiently resourced to accommodate the new claims
Channelling these claims through the Social Welfare Appeals would be cost effective if only to avoid the current bureaucratic systems of holding EAT hearings to endorse the legitimacy of a claim	The Staff of the Department of Social Protection would not have experience of dealing with redundancy claims and would require training on Redundancy Procedures
The EAT is an increasingly legalistic and intimidating setting for employees and therefore an administrative process such as the SW appeals process would be a more suitable setting	Any location of the appeals process in the Department of Social Protection would focus appeals on redundancy payments rather than on the broader issues of redundancy processes which include a great many rights and entitlements for both the employer and the employee
Redundancy payments could be prioritised as the delays in receiving this entitlement can have a huge impact on an individual's circumstances particularly where there are already financial demands	The payment is just one element and its payment shouldn't be fundamental to whether a redundancy was handled properly or not
Most of the information required on the RP50 and associated documentation is already with the Department of Social Protection	If a case involved issues other than redundancy the benefits of the one stop shop would be lost

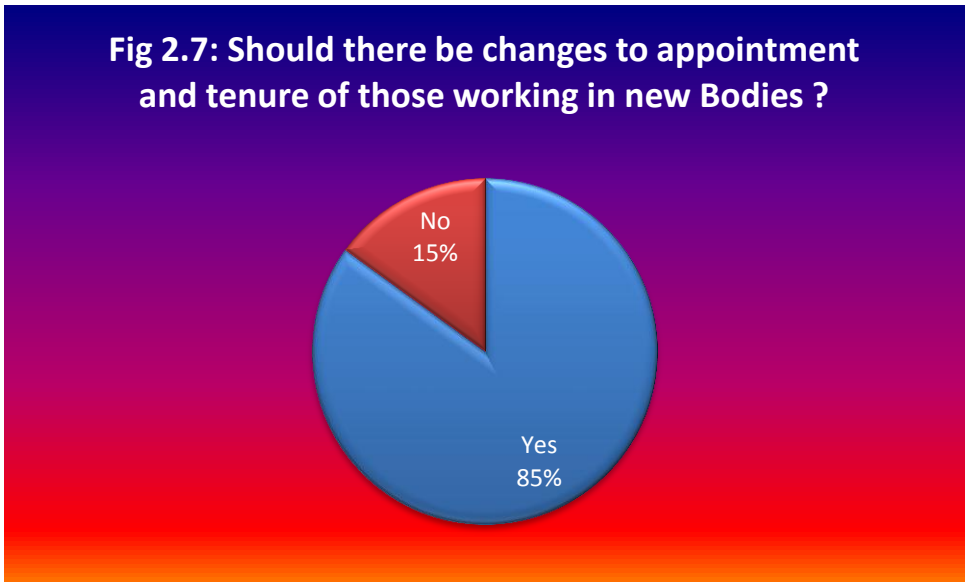
2.6 There is General Consensus that:

Many routine statutory redundancy appeals could be handled on an administrative basis by the Department of Social Protection

Even if appeals are handled on an administrative basis by Social Protection there should be a right of appeal to the employment rights bodies

Consideration should be given to:
The possible need for an adjudicating body to determine that there has been a redundancy in certain circumstances including where an employer opposes the claim.

2.7 Guiding Principles for Appointments and Tenure
Should the arrangements for the appointment and tenure of those working in/ appointed to the new streamlined employment rights bodies be changed, and if so, what should be the guiding principles?



A total of 40 respondents expressly answered this question and 85% of those expressed a view that there should be changes to the appointment and tenure of those working in the new bodies. Many suggested that the guiding principles should be openness, transparency and merit. It was suggested that the aim should be to recruit from a wide variety of backgrounds.

There was also strong consensus that clear criteria must be established as regards knowledge, experience, qualifications and suitability for adjudicators/decision-makers. It is suggested that all appointees should be direct employees and properly managed and directed. The recruitment process should be open and must allow for candidates to be drawn from across both the private and public sectors and from both employer representative bodies and the trade union movement.

It was suggested that appointments (other than Senior Executives) should be on permanent contracts to build up expertise. In addition it was suggested that a panel of private arbitrators and mediators should be formed to supplement the system.

All appointments, it was suggested, should be compatible with the requirements of Article 6 of the European Convention on Human Rights to ensure their impartiality and independence. While some suggested that people appointed should be qualified and experienced lawyers others argued that recruitment should be open to a wide variety of backgrounds and not restricted to lawyers and HR professionals only.

One respondent suggested that a lawyer has the training and experience to conduct a case properly. They hear evidence, make rulings on the admissibility of that evidence, consider and interpret the law and apply it in the context of conducting a fair and impartial hearing. They do so in the context of oftentimes complicated set of facts. They argued that the ability to do this well depends on the quality of the lawyer and the experience that they have but it is a juggling of a number of skills that a non-lawyer is not trained or experienced to do.

However an alternative view was put forward to the effect that the most important quality in a good decision maker is common sense. It was suggested that structured, intensive, specialised induction training ought to be given, and regular refresher training provided, to ensure that all decision makers are capable of handling the variety and complexity of cases before them. The organisation and the appointees ought to be subject to explicit performance targets. There should be effective oversight and monitoring of decisions issued.

Some respondents expressed the view that the current system of nominating people for appointment should be retained. They argue the value of the worker and employer balance and the IR skills mix and that this ensures that the system enjoys the confidence of all sides. They state that it is important that those who will be making decisions that may have significant impact for employers and workers and their representative organisation enjoy the confidence of the stakeholders. They recommend that appointments should follow the existing arrangements but that appointees should be confirmed by their nominating bodies as having a satisfactory knowledge of and experience of industrial relations and employment law.

It was suggested that those appointed to adjudicative roles should be prohibited by statute from undertaking private consultancy work on employment law matters.

2.7 The General Consensus is that:

An open and transparent system should be used for selecting persons to be appointed

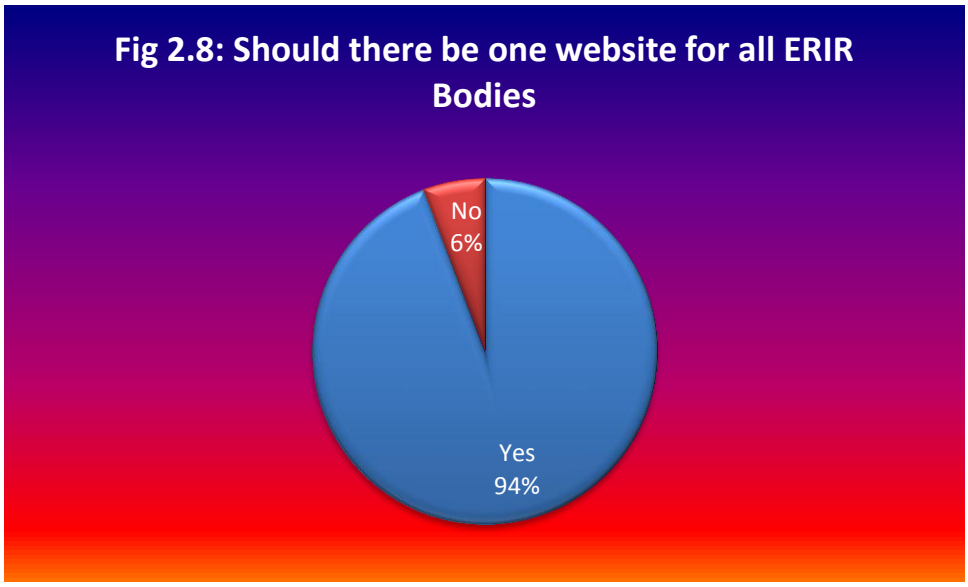
Clear criteria must be established as regards knowledge, experience, qualifications and suitability for adjudicators/ decision-making.

Structured, intensive, specialised induction training ought to be given, and regular refresher training provided, to ensure that all decision makers are capable of handling the variety and complexity of cases before them.

The organisation and the appointees ought to be subject to explicit performance targets. There should be effective oversight and monitoring of decisions issued.

2.8 Website

Should there be one website covering all employment rights and industrial relations matters?



A total of 35 respondents expressly replied to this question and of those 94% felt there should be one website covering all employment rights and industrial relations matters. It was suggested it should cover all employment legislation, case law, current trends and related matters. It is suggested that in addition to providing access to the necessary complaint forms it should provide extensive search facilities allowing parties to easily obtain information on awards and decisions taken.

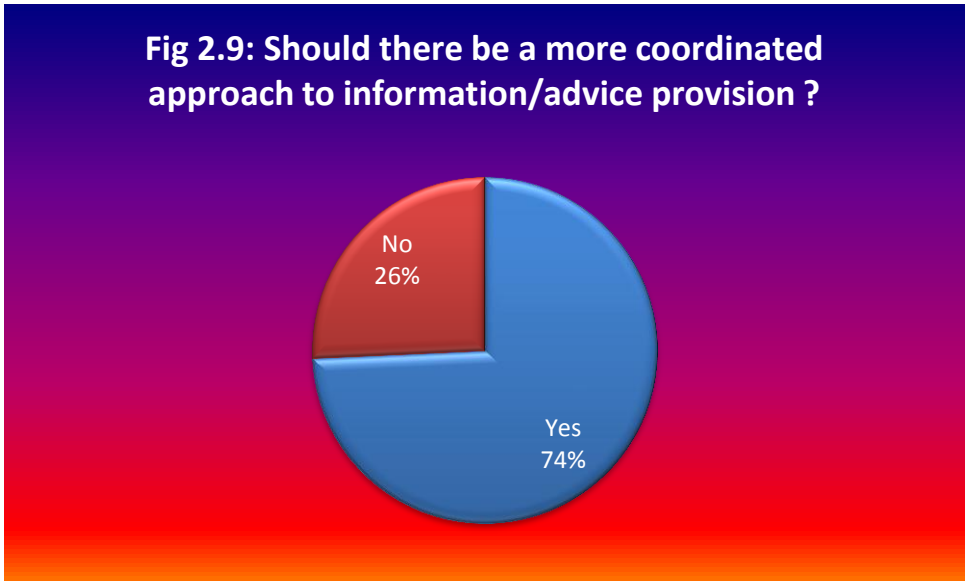
One respondent suggested this should be an interactive portal so that employers and employees can input specific questions for neutral evaluation. A further suggestion is that it should have one section dealing with employment rights and a separate one dealing with industrial relations. The importance of accessibility was also raised.

2.8 The General Consensus is:

There should be one website covering all employment rights and industrial relations matters.

2.9 Information Provision by the New Body of First Instance

Do you agree that a more coherent and co-ordinated approach to the provision of advice and information on industrial relations and employment rights issues should form part of the services of the new first instance body?



A total of 35 respondents expressly answered this question with 74% of those who answered supporting the proposition that a more coherent and co-ordinated approach to the provision of information on industrial relations and employment rights issues should form part of the services of the new first instance body. Many respondents drew a clear differentiation between advice and information. The nine people who did not support the approach did so mainly on the basis that they did not support the provision of advice. In addition many of those who supported the giving of information did not support the provision of advice. The following definition, put forward by one respondent, is useful in this regard:

Information is telling the parties what their legal rights are. Assistance is enabling them to vindicate those rights, possibly by informing them of the fora to which they can go and providing assistance in completing forms. Advice consists of advising them as to whether, in their particular circumstances, their rights have or have not been infringed.

While there is general consensus on the value of information provision many respondents expressed the view that it would be inappropriate for the adjudicative body such as the proposed Body of First Instance and/or its secretariat to provide advice on the issues under adjudication.

Therefore it is suggested that any role of the First Instance Body (or Appellate Body) must be limited to the provision of information and assistance only. It is suggested that advice must only be given by independent third parties.

It was suggested that under no circumstances can the person(s) who will ultimately be charged with the task of adjudicating upon disputes or any person associated with him/her, be party to the provision of advice to either claimants or respondents regarding the merits of their cases.

Two people held the view that new Body of First Instance should not even provide information, that it should merely provide an adjudicative function.

2.9 The General Consensus is:

Non-directive information (rather than advice) should be made available to both employers and employees by the new Body of First Instance.

2.10 Best Way of Providing Information and Advice

What is the best method of providing information and advice?

Here again the consensus is that the Body should not provide advice. The majority view is that the provision of information should, at all times be non-directive. Suggestions regarding the best way of providing information include:

- Website, Internet, Apps and social media
- Extensive FAQs (Frequently Asked Questions)
- Telephone enquiry line
- Conferences/workshops and targeted mail
- An online employment law handbook which is updated on a regular basis to take account of changes to the law
- Education of Trade Union officials
- Education of Employers
- Regional information meetings on a regular basis
- Provision of training for staff of Citizens' information and certain voluntary bodies
- Publication of sample cases and decisions
- Mailshot to all PRSI registered people
- Access to a single database of all decisions

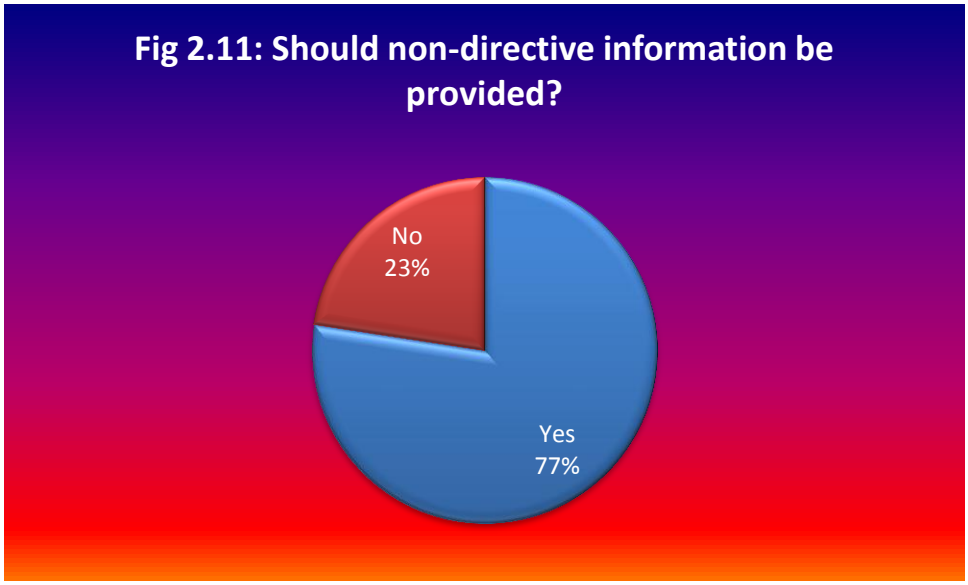
One respondent suggested that telephone helpline runs the risk of being wrong because full facts are not disclosed, personal interpretations can differ or simple human error. Another respondent suggested that where bodies give advice they should be accountable for such advice. A suggestion was made that advice should be provided for a nominal charge.

2.10 The General Consensus is that:

A range of methods should be used to provide non-directive information (rather than advice) to both employers and employees by the new Body of First Instance

2.11 Non-Directive Advice

Should non-directive advice be provided to employees and employers on what options may be available to them on the basis of the facts provided and where to go for help if required?



A total of 31 respondents expressly answered this question and while the question related to non-directive advice and respondents were generally not in agreement with the provision of advice by the Body of First Instance they did express support for the provision information. Of those who responded 77% supported the idea that the provision of non-directive information can be useful but that this should not extend to giving advice. In particular it was suggested that good quality information can prevent issues escalating too early and helps parties to avoid adopting entrenched positions. It helps people to make informed choices.

The consensus view is that such information must be impartial, based on accurate and up-to-date information and that the service providing the information is separate from adjudication, and appeals channels. Such a service must not extend to anything akin to providing legal advice.

A contrasting view was expressed that this is the function of the employer's or employee's trade union/lawyers and should not concern the Department of Jobs, Enterprise and Innovation.

2.11 The General Consensus is:

Non-directive, impartial and up to date information should be made available to both employers and employees through a wide variety of methods but that this should not extend to advice.

2.12 Single Point of Entry

How can a single point of entry for all individual industrial relations and employment rights complaints/claims best be achieved?

The predominant suggestion as to how a single point of entry for all individual industrial relations and employment rights complaints/claims can best be achieved is the introduction of a single application form for all complaints.

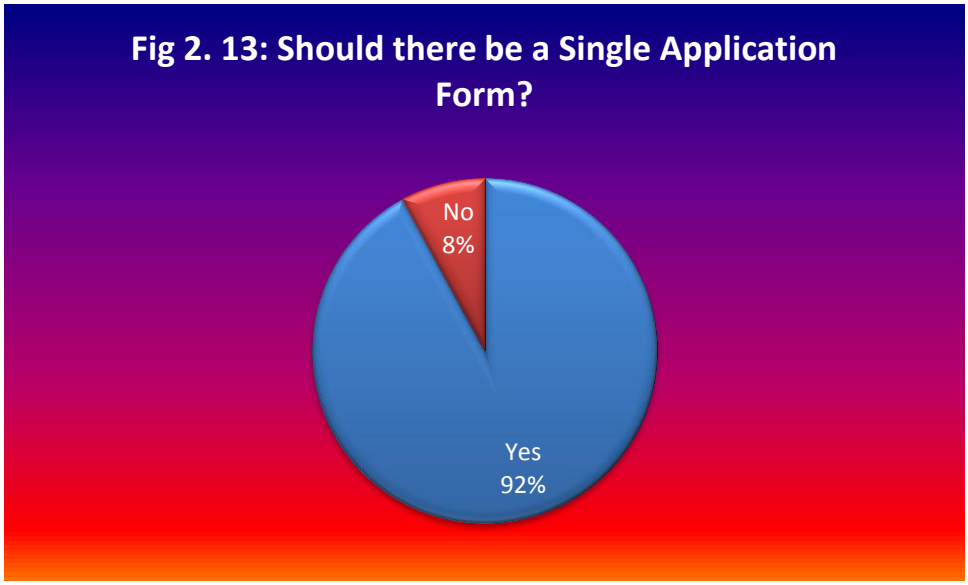
Other suggestions included amalgamating existing bodies and through the enactment of primary legislation.

2.12 The General Consensus is that:

The best way to facilitate a single point of entry is through, providing a single application form, amalgamating existing bodies and the enactment of primary legislation

2.13 Single Application Form

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



A total of 38 respondents expressly answered this question and of those who answered 92% supported the idea of one application form for all complaints to be dealt with by the Body of First Instance. Strong views were expressed that this form must not just be tick box format but must give full details of the complaint.

Many respondents suggested that what is required is a comprehensive complaint and answer form which would include all pertinent information in addition to requiring parties to effectively plead their claim. Such a comprehensive complaint form would also facilitate early intervention and assignation of complaints to adjudication or inspection.

The issue of claimants and respondents not completing forms properly or "not taking the forms seriously" and having to prepare for cases "with only the scantiest information about the claim" was raised by a number of respondents. In this regard it was suggested that complaints should not be processed until a complaint form is correctly completed.

It was suggested that a separate form could be used for disputes of interest and appeals.

Another suggestion is that appropriate penalties should be available for any person who gives, or dishonestly causes to be given, information which is false or misleading in any material respect, and is known to be false or misleading,

There is very strong support for an online application form and system. However, at least two employer representative bodies suggested that the form should continue to be printed off and signed so as not to make it "too easy" and risk encouraging complaints.

It was also suggested that the form should have a question on what attempts have been made to resolve the dispute. Further it is suggested that an outline summary of the complaint should be included in the claim. It is argued that it is only if this requirement is established in the claim forms that there is any prospect of ensuring a streamlined and efficient processing of the claim with early intervention.

2.13 The General Consensus is:

There should be a single application form for all individual complaints referred to the Body of First Instance

The application form should provide for an outline summary of the Complainant's complaint under each individual statutory provision under which a claim is made

The form must not just be tick box format but must give full details of the complaint.

Complaints should not be processed until a complaint form is correctly completed

A separate form could be used for disputes of interest and appeals.

Consideration should be given to:

Appropriate penalties for any person who gives, or dishonestly causes to be given, information which is false or misleading in any material respect known to be false or misleading,

Whether the form should have a question on what attempts have been made to resolve the dispute.

2.14 Improving Information Gathering from Complainants
What measures could be taken to improve information gathering from complainants /applicants at application stage?

There was a general view that the most important tool for improving information gathering from complainants/applicants at application stage is a well-designed application form. This should be a single detailed complaint form with a compulsory reply section. It was suggested that the online version should have mandatory sections which would not process any page until all necessary information on that page had been input. Also, ICT systems should be capable of walking a complainant through an application process in a user-friendly and informative way.

As one respondent put it, *"Simple, if the form is not completed to a reasonable standard that communicates the necessary information to the other side then it should not be processed. It is a basic requirement of fair procedure that a respondent, is in a position to defend a claim by knowing what gives rise to it*".

It was suggested that all applications should be made in writing and should be followed up if necessary (by phone or email) to clarify and extract as much detail as possible.
It was also suggested that the applicant should be obliged to answer a notice for particulars from the employer within a particular time frame and any failure to provide relevant information should allow the employer to apply to have the case dismissed or at least that failure to respond should be admissible at the formal adjudication stage.

Other suggestions to achieve this include:

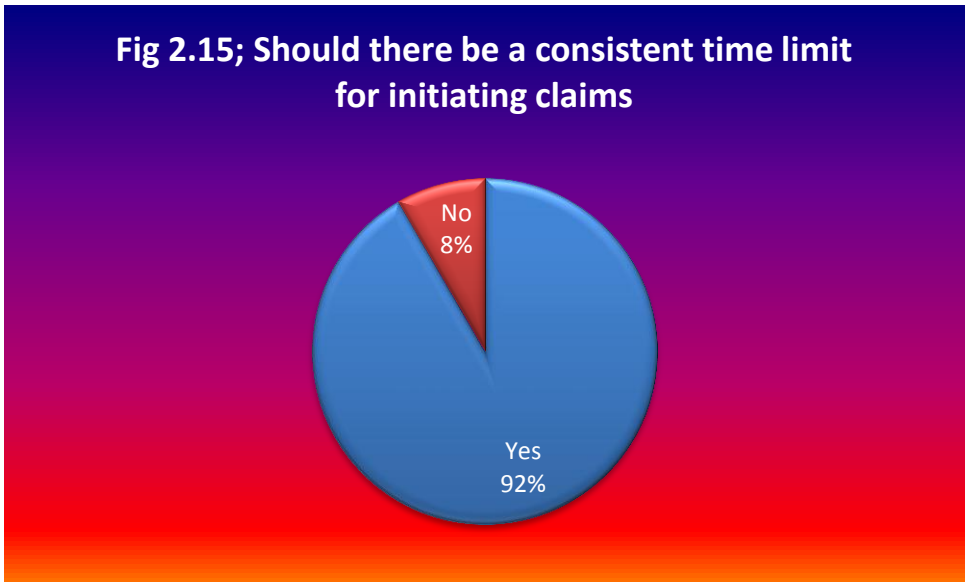
- Case management
- Penalties for not exchanging or providing information required or requested.
- Review of claims
- Initial interviews

It was also suggested that at mediation stage, a submission and set of agreed facts should be available and that power to demand a response if the other party wishes to participate should be afforded to the body of first instance.

2.14 The General Consensus is:

The most important tool for improving information gathering from complainants/applicants at application stage is a well-designed application form.

2.15 Time Limit for Initiating Complaints/Claims/Appeals
Should there be a consistent time limit for initiating all complaints/claims/appeals and if so what should it be?



A total of 36 respondents expressly answered this question and 92% of those who responded felt should be a consistent time limit for initiating all complaints, claims and appeals.

Suggestions as regards what that time limit should be varied from four weeks to twelve months in the case of first instance claims and 21 days to six weeks in the case of appeals.

The majority view is that the time limit for first instance claims should be six months with six weeks for appeal.

Other suggestions included:

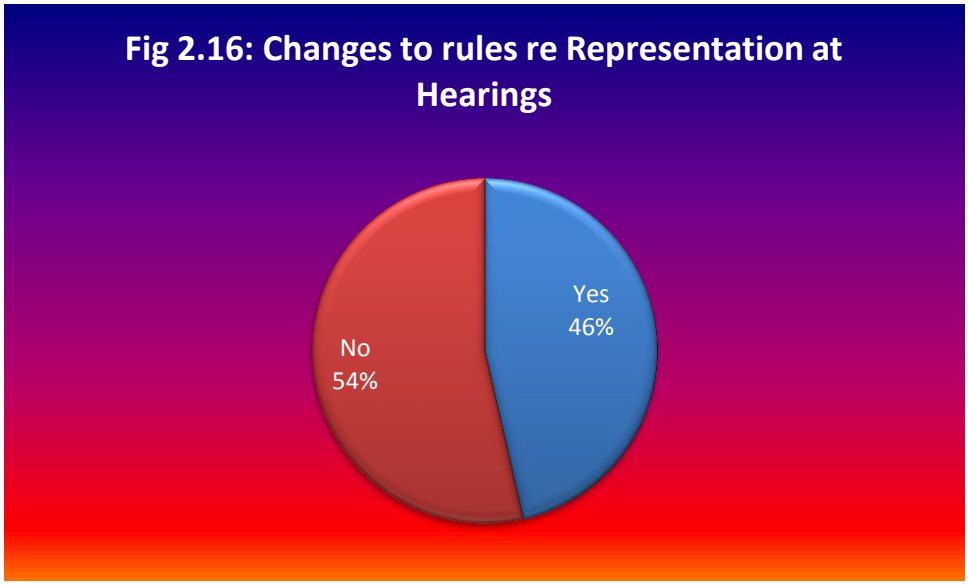
- Reference to mediation or conciliation should 'stop the clock' for duration of reasonable length of time
- Other than unfair dismissal claims and claims arising from unfair dismissal all claims should be made when the complainant is still in employment
- There should be authority to accept late applications based on existing case law
- Undertaking alternative dispute resolution in good faith should be an acceptable reason for extension of time.
- A statutory power to extend the first time limit should be available where the complainant can demonstrate he made an access request to the respondent within that period under the Data Protection Acts 1988 and 2003 and/or Freedom of Information Acts 1997 and 2003

- The current 'reasonable' test for extensions should be clarified and if possible, a single test adopted and the preventative test in the unfair dismissal legislation whilst more restrictive, is much clearer and easier to understand
- The time limit should only be extended where application is made in advance of hearing because of omission, delay or misconduct on the part of the employer

It was suggested that where an extension of time is to be considered the appropriate test should be "exceptional circumstances" and the test of "reasonable cause" should no longer apply.

2.15 The General Consensus is that:
There should be a consistent time limit for initiating all complaints/claims/appeals.

2.16 Representation at Hearings
Do you agree that more consistent arrangements are required for the representation of claimants so as to enable individuals to nominate a person to represent them at a hearing e.g. trades union official, solicitor, other representatives, etc?



Only 28 respondents expressly answered this question. Opinion was more or less evenly divided among those who responded on whether more consistent arrangements are required for the representation of claimants so as to enable individuals to nominate a person to represent them at a hearing, with 46% of those responding agreeing that more consistent arrangements are required and 54% disagreeing.

It was suggested that whilst there might well be merit in limiting representation to those who have typically fulfilled that function to date, and who it might be accepted have greatest awareness of the processes involved, in reality there is no good reason for restricting representation.

It was suggested that some employment rights bodies require barristers who are representing claimants to be attended by a solicitor and that this practice causes unnecessary costs for employers and employees.

There was consensus on the need for parties to inform the tribunal and the other party in advance if they intend to have representation and who they will be represented by. It is suggested this should be stated on all initial documentation who their representative is (if any), and any change to that representation.

Other views expressed in relation to representation included:

- Representation should not be needed at the preliminary stages and should only be allowed at appeal stage, unless the complainant is in some way unable to act for himself
- Representation is not necessary if free advice is available
- Representation is a matter for the tribunal chair
- A strengthened and enhanced S.I. 146 would be useful
- That consideration should be given to delimiting the extent of the decision of the Supreme Court in Burns and Hartigan v Governor of Castlerea Prison [2009] ELR 109

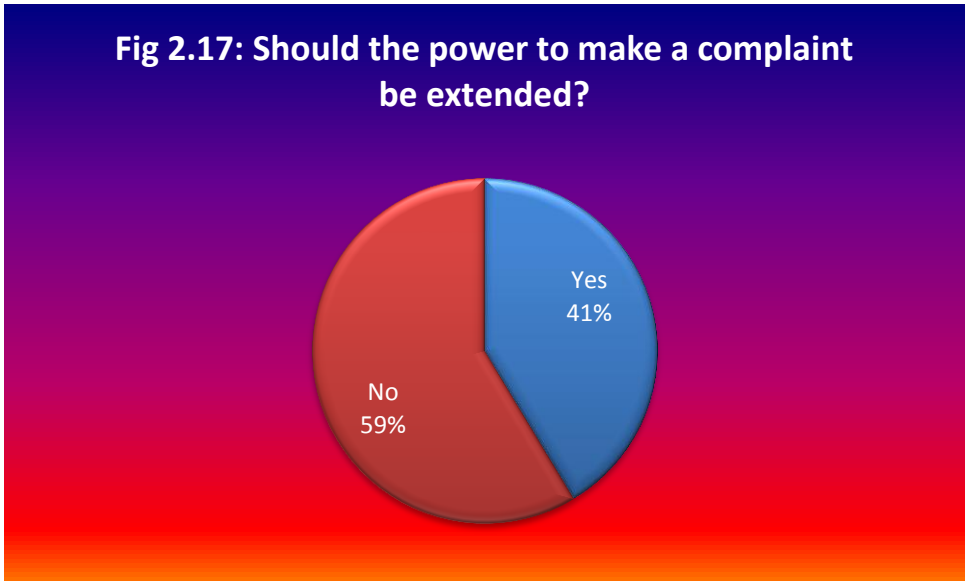
2.16 The General Consensus is:

The current system that allows claimants to nominate representatives should continue.

Parties should be required to notify the adjudicating body and the other party in advance of their representative

2.17 Power to Refer a Complaint

Where the power to present/refer a complaint is currently limited to the claimant, should it be extended to include the claimant's trade union and, where appropriate, the claimant's parent/guardian?



Similar to the previous question opinion was fairly evenly divided on whether more consistent arrangements are required for the representation. 29 respondents expressly answered this question with only 41% of those showing support for extending the power to present/refer a complaint. The general view is that the complainant should be the only person to refer a complaint (other than where a certified medical condition or disability prohibits this).

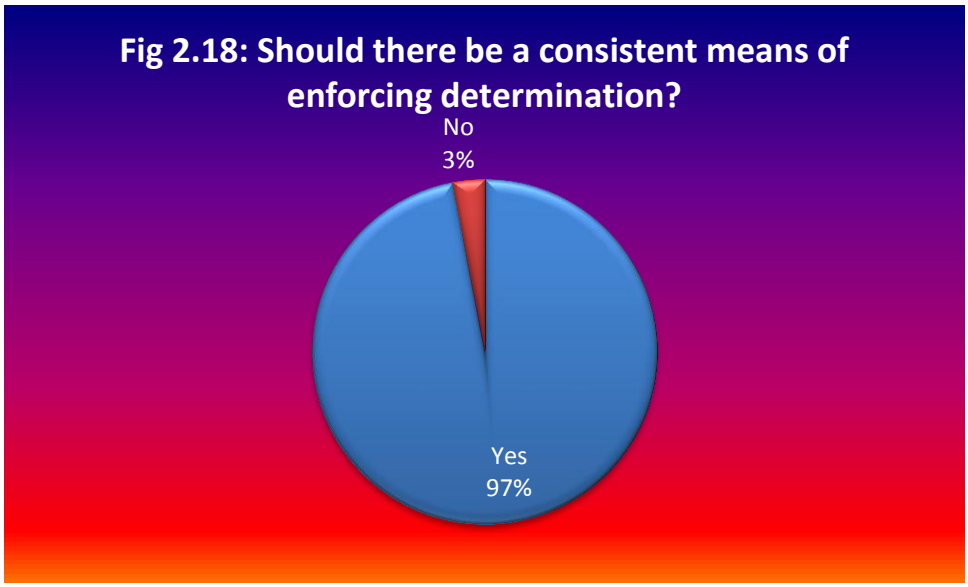
It is pointed out that a simple power of attorney under section 16 of the Powers of Attorney Act 1996 is already available to deal with appropriate cases, where for example the claimant may lack legal capacity

It is suggested that a trade union, however, should be entitled to take a class action on behalf of a group of employees with identical complaints. It was further suggested that a trade union and/or NGO should be able to make a claim in its own name and on behalf of its members. This would require a change in the law with provision for class and group actions.

It was suggested that there is a need for a system of advocates to represent the needs of people with intellectual disabilities. It was also suggested that the lodging of a claim on behalf of a person with an intellectual disability should not be confined to parents in the case of adults with intellectual or learning difficulties but should extend to recognised advocates.

2.17 The General Consensus is:
The power to refer a claim ought to be limited to the person or persons affected or, where such a person is unable, by reason of intellectual or psychological disability, to pursue it effectively, his or her parent, guardian or other person acting as power of attorney.

2.18 Enforcement of Awards
Should there be a consistent method of enforcing awards of employment rights bodies and if so what should that be?



A total of 34 respondents expressly answered this question with 97% of those who responded supporting the need for a consistent method of enforcing awards of employment rights bodies.

There was general agreement that enforcement is becoming increasingly difficult and ineffective with concern expressed that in many cases it was becoming "frankly impossible" for workers to enforce decisions of employment rights bodies, even with an enforcement order of the Circuit Court. It was identified that what is required is a faster, more robust, cheaper method of enforcement of determinations of employment rights bodies.

While a number of different enforcement mechanisms were proposed, there was general agreement that all awards should be enforced through one body only and all procedures should be identical regardless of the nature of the award or the legislation under which the claim was taken.

Suggestions as to how awards should be enforceable include:

- By application to the District Court
- By application to the Circuit Court
- The matter should be enforced as a debt collection
- Awards should be seen as enforceable at law after 6-8 weeks
- The second instance body should be given the enforcement powers currently in the Circuit Court
- Section 8 of the Enforcement of Court Orders Act 1940 should be extended to include an orders of the new Body of First Instance and Labour Court
- Awards should have the status of court orders and be instantly referable to the Sheriff or the courts for committal proceedings
- Where an award is against a company in certain circumstances it should be enforceable against the director where the latter tries to frustrate collection
- Formal decisions should replace recommendations in all cases
- The Court Registrar ought to be able to make such an application at the request of a party, if sufficient time has elapsed

It was also suggested that a section within the new system be given powers of enforcement to ensure that adjudications and decisions made by both first and second tiers are implemented and act as a commissioner of law enforcement.

It is further suggested a penalty system be developed for employers who refuse to pay out on decisions and awards that are made against them. The view was expressed that as there is no repercussion on an employer who does not pay an award, there is no incentive to pay an award. A penalty system could result in less need for an enforcement route in the first instance.

Enforcement will require guidelines for debt collection procedure (similar to the Sheriff's office) which has provision for payment plans to be implemented and/or an appeal on the basis of genuine hardship and inability to pay.

It was suggested that the "jurisdiction" of enforcement must also be extended to cover specific performance and not just the discrete amount awarded.

It was also suggested that there is a need for research to be undertaken on how effectively the awards of employment bodies are actually complied with or enforced in practice.

2.18 The General Consensus is that:
A consistent method of enforcing awards of employment rights bodies must be established.

Consideration should be given:

To the design and implementation of an efficient, effective and consistent mechanism for enforcing the awards of employment right bodies

3. Conciliation/Mediation

3.1 Interventions Prior to Hearing or Inspection
What interventions should be available prior to a formal hearing or inspection to resolve grievances or non-compliance e.g. telephone contact, informal hearings, more formal mediation, conciliation or arbitration?

There is a strong consensus that early intervention in order to resolve disputes is desirable. While some respondents expressed the view that most of the options (namely: telephone contact, mediation, conciliation or arbitration) all had a role to play in different circumstances, by far the most favoured interventions are some form of conciliation and mediation.

With regard to conciliation and mediation it was pointed out that there is a breadth of experience to draw on from within the existing systems, with regard to the conduct and security of such processes and issues such as confidentiality, registration of ensuing agreements and rules around disclosure. In the case of the Equality Tribunal Mediation there is experience around the security and enforcement of agreements reached at that level.

It was generally felt that all cases ought to be offered mediation at an early stage, with the caveat that the offer of mediation does not imply that the claim is legally valid. Most respondents were of the view that participation in mediation or conciliation must be voluntary. However a minority view was expressed that voluntary mediation will not work and that it would be necessary to make it compulsory, particularly for unfair dismissal and redundancy.

One respondent pointed to the experience in Northern Ireland in this regard where in 2004 there was an attempt to introduce regulations to try to *"force"* parties to resolve their difficulties themselves. This was done by way of a provision which stated that unless the parties used specific statutory resolution procedures (set out in the 2004 Statutory Dispute Resolution Procedures NI) a claim could not be presented before the Industrial Tribunal.

This, it was pointed out, did not work and the legislation was amended earlier in 2011 with a simple caveat namely that if, having heard the evidence, it was clear that the parties had failed to attempt to resolve their differences when they were given an opportunity to do so but failed to avail of that opportunity – the compensation award would reflect that.

There is strong consensus among respondents to this consultation that any intervention such as mediation or conciliation must be voluntary but should be provided on an opt-out basis. This would mean that the default position would be that all cases would be offered mediation/conciliation but would have the option to refuse. Views on whether the process should be binding are less clear.

It was strongly argued in many submissions that the role of a mediator or conciliator must be clearly separate from that of decision-maker. Any officer engaged in a conciliation or mediation process, cannot maintain the authority to revert into the role of decision-maker. Such a practice, it is argued, would undermine confidence in the service and be contrary to natural justice.

In terms of whether mediation or arbitration is most suitable, the suggestion was put forward that given the frequently emotional aspect of employment disputes (both for employee and employer), and notwithstanding the voluntary basis of their engagement, the parties possibly require a greater degree of assistance in reaching a mutually acceptable agreement. Accordingly, conciliation might be the more appropriate mechanism.

It was further suggested that it might be helpful to adopt the definition for "*conciliation*" as it is defined in the draft Mediation and Conciliation Bill prepared by the Law Reform Commission[1]. They describe conciliation as a facilitative and confidential structured process in which an independent third party actively assists the parties in their attempt to reach, on a voluntary basis, a mutually acceptable agreement to resolve their dispute.

A suggestion was put forward that the Terms of Employment Information Act could be amended to require employees' terms and conditions to include relevant provisions dealing with dispute/grievance resolution. It was also suggested that Government Bodies should embrace the concept of mediation and conciliation as a method for resolving disputes.

It was suggested that an external panel of approved mediators and conciliators should be established.

It was suggested that the mediation agreement can contain a clause clarifying that referral of the dispute to the Mediation does not affect Article 6 rights and if the dispute does not settle through the mediation, the parties' right to a hearing remains unaffected. It is argued that there is a strong view that in itself, a requirement on parties to mediate does not breach Article 6 of the European Convention on Human Rights.

[1] Alternative Dispute Resolution: Mediation and Conciliation" [Law Reform Commission 98–2010] of November 2010

There was little support for any form of "informal hearings." It was suggested that any hearing must be part of an adjudication process and therefore must be formal to that extent. It was also felt that the introduction of early intervention and mediation or conciliation would remove any such need.

3.1 The General Consensus is that:

Early intervention in order to resolve disputes is desirable

The most effective intervention is likely to be some form of conciliation or mediation

3.2 Identifying Cases for Early Intervention

What is the best method of identifying suitable cases for early intervention?

There was a general consensus that all cases are suitable for early intervention and that the best method of identifying the most suitable method of intervention is to have sufficient information provided in respect of each individual claim on the initial claim form.

The suggestion is that the first response to a complaint should be the allocation of a case worker to look at the situation and to identify options and protocols for intervention including conciliation.

Other suggestions include:

- Early interviews
- A review of initial claims
- A dedicated unit to examine and analyse each case as it comes in
- A comprehensive complaint and reply form.

3.2 The General Consensus is that:

The best method of identifying the most suitable method of intervention is to have sufficient information provided in respect of each individual claim on the initial claim form

3.3 Timing of Intervention

At what stage should the intervention take place, for example should it be available when the person first seeks information, prior to them lodging a complaint/claim or after a complaint/claim is lodged?

While some respondents expressed the view that intervention should take place as soon as contact or an enquiry is made, others suggested it should take place at various stages of a complaint, the general consensus is that intervention and conciliation should be available immediately after a complaint is made to an employment rights body and following enquiries with employer and employee regarding whether the internal processes have been exhausted.

In answer to this question many respondents reiterated the need for internal processes to be in place and used prior to making a complaint.

A minority view was expressed that alternative dispute resolution is inappropriate to the resolution of employment complaint and would add an unnecessary layer, cause delays and incur addition costs.

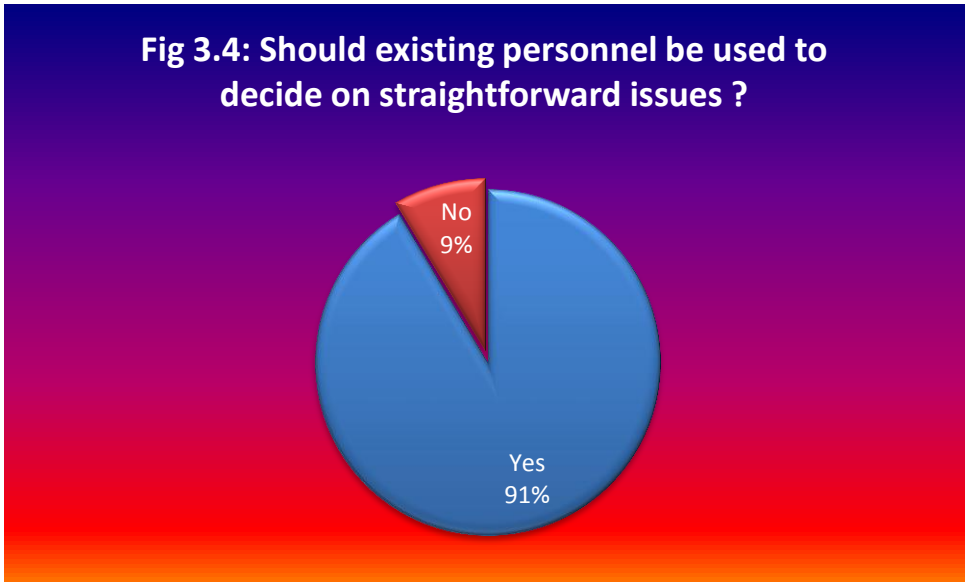
A note of caution was urged in relation to the possible effectiveness of interventions given the number of complaints that are lodged after the employment relationship has ended and positions have become entrenched.

3.3 The General Consensus is that:

All cases are suitable for early intervention

3.4 Harnessing Expertise and Capacity of Existing Personnel

Is there scope for harnessing the expertise and capacity of personnel within the existing bodies to decide on straightforward issues where purely factual matters are in dispute?



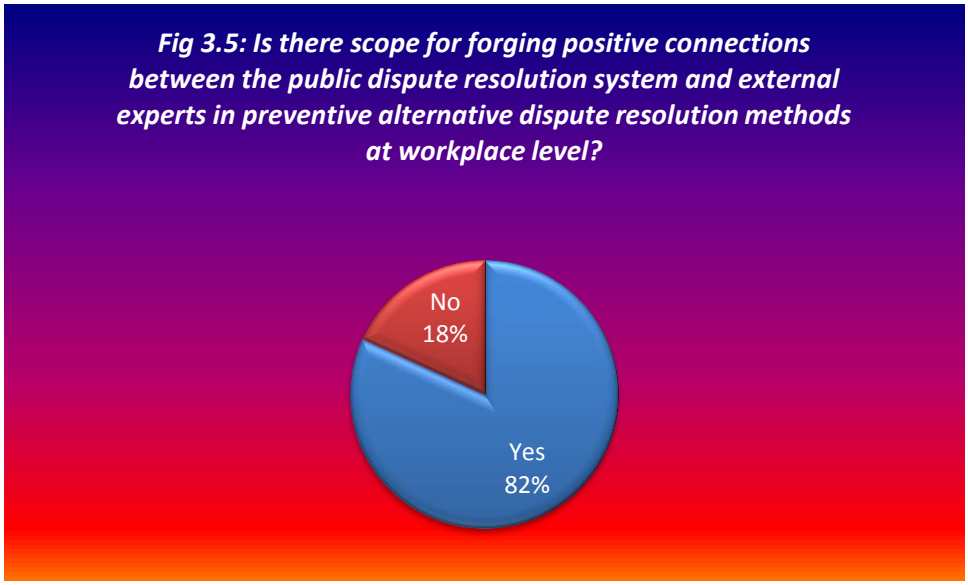
A total of 35 respondents expressly answered this question and 92% of those who responded indicated that there is scope for harnessing the expertise and capacity of personnel within the existing bodies to decide on straightforward issues where purely factual matters are in dispute. The view was expressed that there are many expert and well experienced staff who could make a contribution in this regard. It was suggested however that such an intervention must be without prejudice to proceed to first instance adjudication. Some respondents queried what constitutes "purely factual matters".

3.4 Consideration should be given to:

The expertise and capacity of personnel within the existing bodies could be utilised to decide on straightforward issues where purely factual matters are in dispute

3.5 Using External Experts

Is there scope for forging positive connections between the public dispute resolution system and external experts in preventive alternative dispute resolution methods at workplace level?



Only 22 respondents expressly answered this question with a number of respondents stating they would need to know more in relation to what is proposed or contemplated prior to commenting. That said, there was general support (82%) among those who responded for forging connections between the public dispute resolution system and external experts in preventive alternative dispute resolution methods at workplace level.

Some of the comments in this regard were:

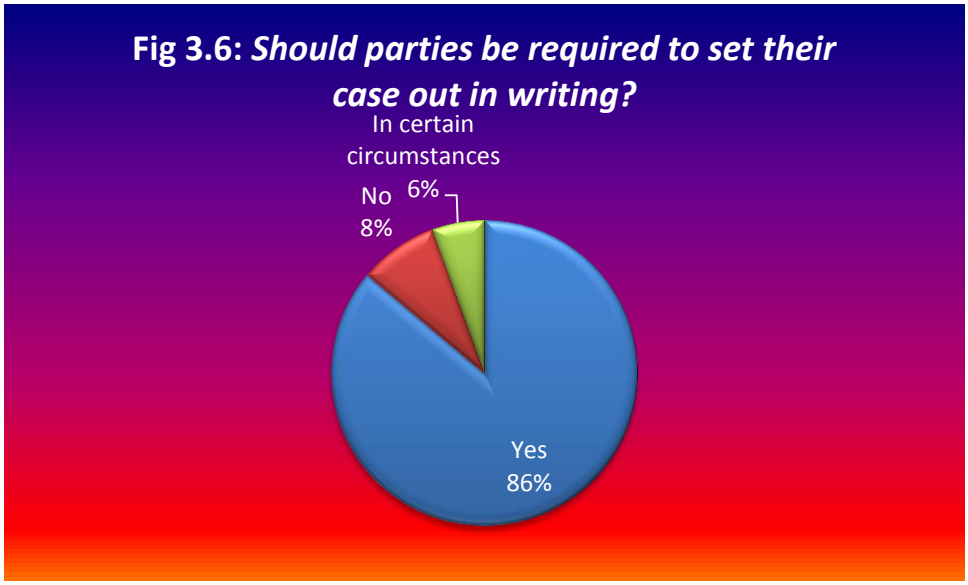
- There is scope but in-house provides better value for money
- There are many experts available and some parties prefer to '*go private'*, as it were
- If it resolves the dispute, and saves the State money in the process, then why not?
- A panel of suitably qualified external experts/mediators/conciliators should be established to provide early intervention or following referral to the new body.
- A list of approved mediators should be included on the website
- The whole process should be outsourced

It was suggested that the Arbitration Act 2010 should be amended to remove the exclusion of employment related disputes from its scope.

One respondent commented that there is a wealth of experience, knowledge and expertise within the current public dispute resolution system which has been built up over decades. In general it has proven to be effective in discharging its functions as well as giving value for money to the taxpayer. Whatever the merits, and they exist, of re-examining the structures from the standpoint of consistency and ease of process, there should be no question of diluting the essential element of impartiality and neutrality that a public system of dispute resolution brings with it.

3.5 Consideration should be given to:
Using outside experts to assist in resolving conflicts in the workplace, in doing so careful consideration should be afforded in the design of any such process to take into account the important considerations of consistency, neutrality, impartiality and value for money

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



A total of 36 respondents expressly answered this question. There is a strong consensus among those who answered that parties should be required to set their case out in writing with 86% stating they should and a further 6% stating they should be required to set their case out in writing in certain circumstances. The argument was made that currently, an employee or ex-employee can register a claim or a case without being asked to provide any detail as to the basis of their claim. The argument is made that it is fundamentally unfair for the employer to be expected to defend their position without a detailed claim in advance. In addition it is argued that written submissions allow each party to relay their case in detail and it reduces the chance of misinformation. It would also support the possibility of early intervention as all information would be available upon application.

It was further suggested that a responding submission should be allowed for the employer and that all submissions should be submitted in advance of any hearing.

A number of respondents argued that it should not be possible to raise something at a hearing that is not included in the written submission while a counter argument was put forward that claimants should not be restricted to what is on the form or in writing

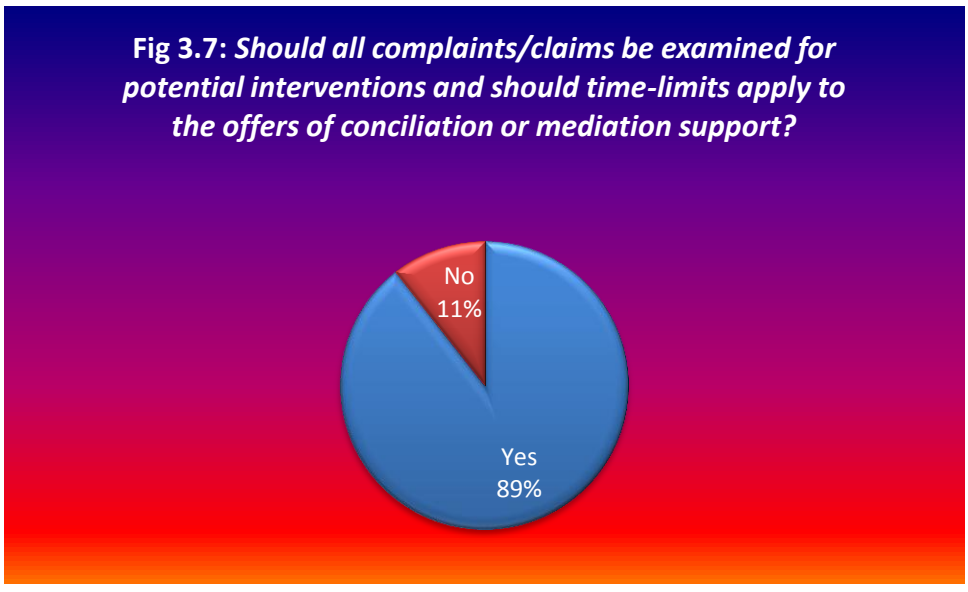
A minority view was put forward that written submissions should only be put forward where representatives are involved on the basis that it is not feasible for lay person and could prejudice them.

It is suggested that individuals who would require assistance due to literacy or other constraints should have access to a service that can assist and support them in completing such submissions.

3.6 The General Consensus is:

Each party should be required to set their case out in detail in writing

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



A total of 38 respondents expressly answered this question with 89% of those who did expressing the view that all complaints/claims be examined for potential interventions and that reasonable time-limits should apply to offers of conciliation or mediation support. Time-limits suggested ranged from 30 days to three months with a general consensus of between six to eight weeks.

While there is general consensus that intervention should be on an opt-out basis, an alternative view was offered that it is unrealistic to offer intervention in all cases and that it should be left to the parties to apply.

3.7 The General Consensus is:

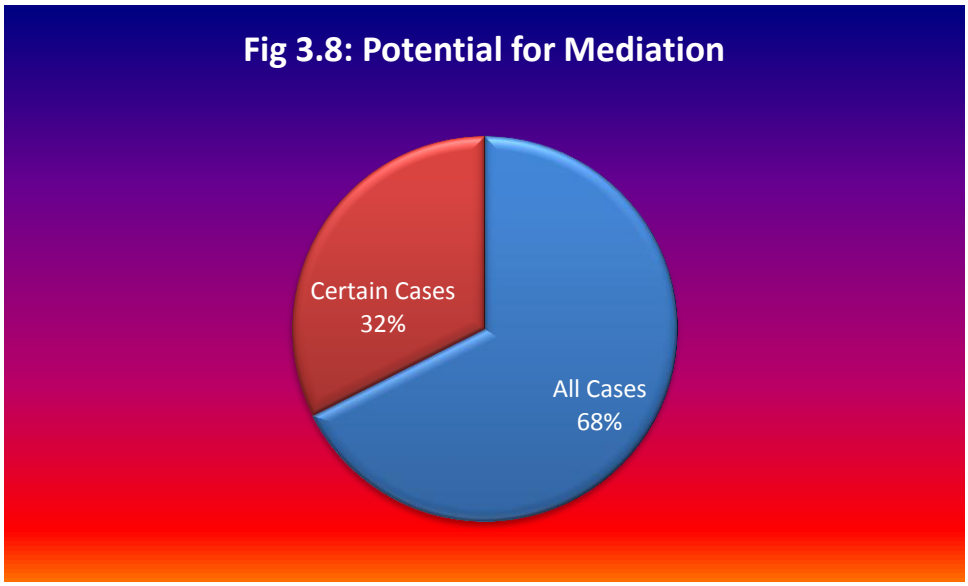
All complaints/claims should be examined for potential interventions

Consideration should be given to:

The timescales within which conciliation or mediation should be offered, what deadline for acceptance should be set and what overall time limit should be given to complete the process

3.8 Suitable Issues for Mediation/Conciliation

Are there particular kinds of issues, for instance, where mediation is likely to be especially helpful or, alternatively, where it is not likely to be helpful?



A total of 37 respondents expressly answered this question. 68% of those who did expressed the view that mediation and conciliation could be useful in all cases while the remainder suggested it could be useful in certain cases. There is consensus that it should be offered as early as possible in the process. A view was expressed that mediation works particularly well early on, where there is an on-going relationship between parties. On the other hand it is argued that it is less successful after positions have become too entrenched or where the parties would rather terminate the relationship.

It was also pointed out that mediation is likely to be helpful where both parties want it; it is especially helpful where the relationship between the parties is continuing. Mediation is less likely to be helpful where the respondent's discretion is limited by law or policy.

A particular view was expressed that conciliation can be useful in a variety of situations but if the question refers to mediation as taught on mediation studies courses it has very limited application to work place issue.

Suggestions where mediation and conciliation could be particularly helpful include:

- Where claimant is still in employment
- Sensitive-sexual harassment, sexual orientation or disability
- Grievances regarding terms and conditions
- Dignity in the workplace
- Cases where there have been technical breaches by the employer

An alternative suggestion is that mediation and conciliation could be useful in all cases except bullying or sexual harassment.

It is generally accepted that mediation and conciliation should be voluntary and it is also suggested that it be legally binding.

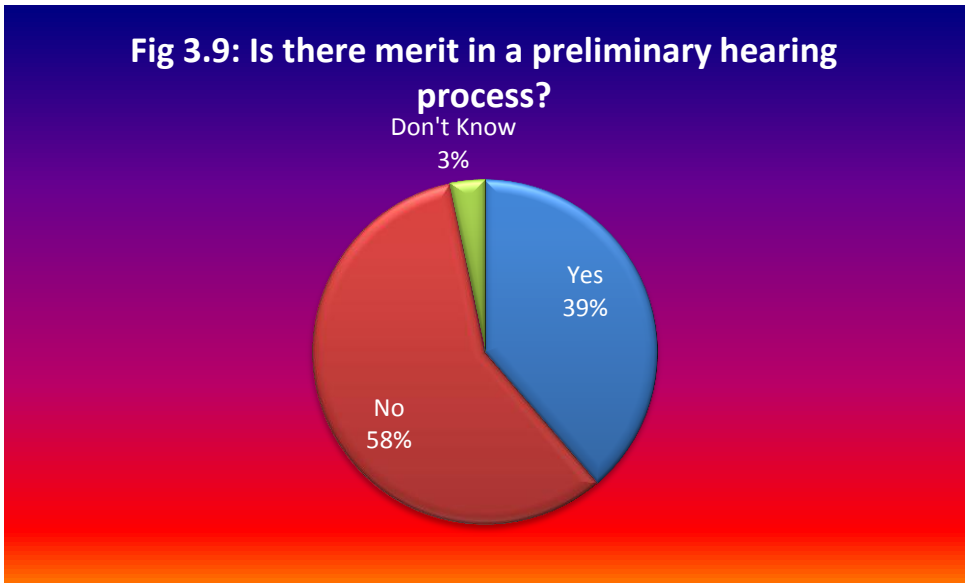
3.8 The General Consensus is that:

Mediation and conciliation could be helpful in most cases

Participation in mediation or conciliation should be voluntary

3.9 Preliminary Hearings

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



A total of 31 respondents expressly answered this question and opinion was divided. There was little support for preliminary hearings with only 39% of those who answered this question seeing value in preliminary hearings. They were described as an unnecessary extra layer. The case was made that mediation and conciliation is better and removes the need for any preliminary hearings. It was also suggested that preliminary hearings require preliminary decisions which would increase workload

An alternative view put forward is that there is merit in having a preliminary hearing process. It is suggested it should be open to either party to request such a preliminary hearing and to set out the reasons why such a hearing would be of assistance. It is further suggested that it would then be for the adjudicative body itself to determine whether or not to accede to the request for such a preliminary hearing.

There was also a suggestion that preliminary hearings could be useful for dealing with vexatious or weak cases or where either parties alleges inadequate information has been supplied. Another reason given in support of preliminary hearings is the lack of the availability of interlocutory injunctive relief coupled with the extraordinary delay in obtaining hearing dates.

Additional suggestions put forward include:

- A system of "call-over" of cases for the purposes of efficient case management.
- The use of case management conference for complex cases
- Preliminary scoping exercises to establish the issues in dispute
- Chairperson of Body of First Instance to be appointed as a Deciding Officer to carry out a range of "preliminary functions"

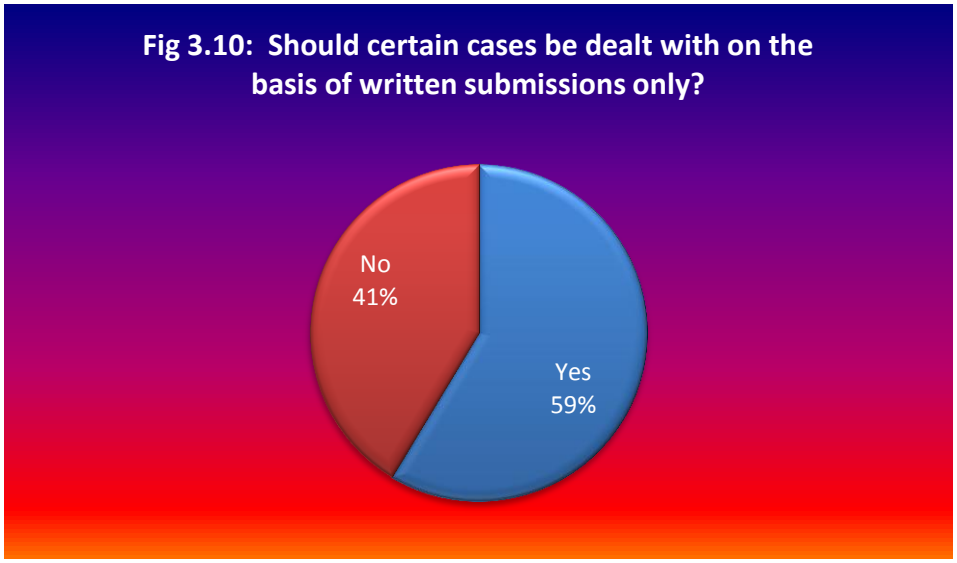
Examples of issues which might be decided through such processes include:

1. Has the complainant complied with statutory requirements such as time limits?
2. Was the complainant an employee?
3. Is the correct respondent named?
4. In relation to equal pay, is there a dispute about "like work"?

Even those who favour some form of preliminary hearing accept that it is a process that should be used sparingly.

3.9 The General Consensus is that:
Preliminary hearings would have very little, if any, value

3.10 Dealing with Cases on the Basis of Written Submissions
Should certain cases be dealt with on the basis of written submissions only?



Only 29 respondents expressly answered this question and while 59% of those who did answer the question supported the idea of certain cases being dealt with on the basis of written submissions 41% opposed the idea.

Suggestions of issues that could be decided in this manner include:

- This is a matter for those dealing with a particular case
- Only with the agreement of all sides
- Where staff member is still in employment
- Non contentious redundancy only
- Include the question on the complaint form – some people just want the matter decided quickly
- It might work for small claims, like holiday pay or bonus pay, redundancy payments, notice pay, outstanding wages, payslips, overtime, annual leave records
- Submissions should be sufficient to support proper screening
- Cases below a certain monetary threshold
- With the agreement of the parties and where no dispute as to facts exists

The alternative view is that it won't work in most cases, especially where the employment relationship is on-going. There is also a view that everyone should retain the right to be heard. It was also argued that there is a danger that parties will engage professional (legal) help and matters may become more complicated than they should.

It was further suggested that where there is a clear conflict of evidence as to the facts of the complaint the only appropriate means for determining such a conflict of evidence is through the medium of an oral hearing where parties have the right to call witnesses and cross-examine.

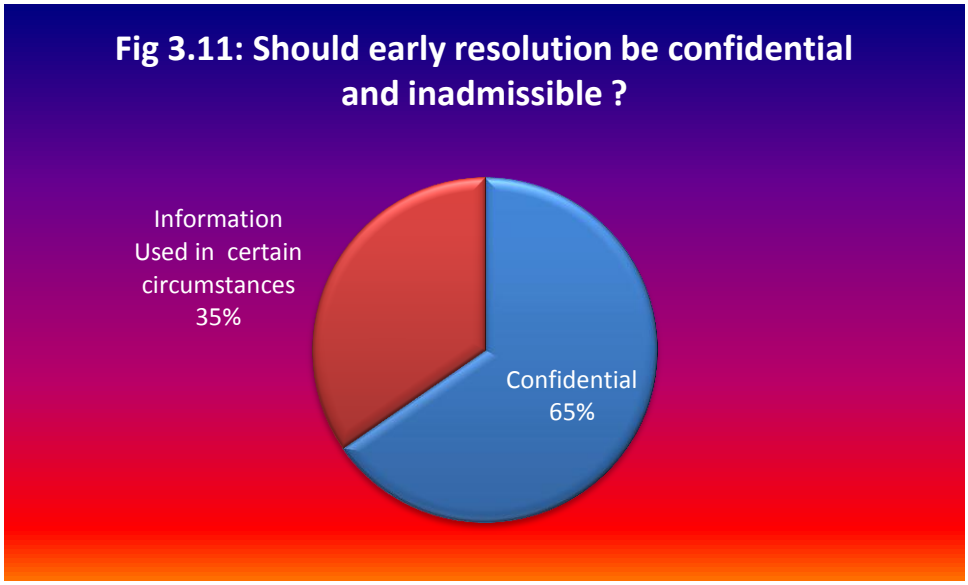
It should be noted that those who oppose this idea are very strong in their view that deciding on any matter without a hearing is a breach of fair procedures.

3.10 Consideration should be given to:

Whether or not certain cases could be dealt with on the basis of written submissions, particular regard would need to be given to whether this would constitute fair procedures

3.11Should Early Resolution Attempts Remain Confidential

Should attempts at resolution have any bearing on any subsequent hearing or should the process be confidential and not admissible in any hearing?



Only 26 respondents expressly answered this question. While the extent to which attempts at resolution should have any bearing on any subsequent hearing drew a diverse range of responses, the general view (65%) of those that did answer this question is that mediation and conciliation are confidential and should remain so. However there were a number of respondents (35%) who felt that in the case of wilful refusal to participate in mediation or conciliation or obstruction at mediation or conciliation or where certain matters that are agreed should be disclosed to an adjudicator.

It was pointed out that for mediation to be successful; the parties must be frank and, frequently, admit the justice of the other party's position. It was suggested that this won't happen if such admissions could be resurrected in subsequent proceedings. In addition it was suggested that an adjudicator who was aware of prejudicial matters might find it difficult to prove he or she was not influenced by such matters.

There was a suggestion that while those involved in resolution attempts should not be directly involved in a hearing, they should be in a position to submit a report on their efforts as background information.

It is also suggested that attempts made to resolve the dispute should be acknowledged at formal hearings. Further it was suggested that there needs to be some incentive in place to ensure that mediation is used as the first option for resolution. It was also suggested that cases where one party is happy to mediate and the other is not should be recorded and acknowledged. Also, parties could be asked at hearings why they have not availed of mediation.

Other contributions included:

- The idea of mediation is grounded in confidentiality and being without prejudice
- No details should be discussed by either party except to say that the process failed
- The opinion of the mediator should not come through unless it is to criticise a representative for not entering the process in the right spirit
- In general, they should not be admitted, but failure to engage or failure to co-operate with attempts at resolution should be revealed to the tribunal, which can assign it whatever weight it feels appropriate
- In accordance with best practice, all mediation processes should be conducted in a confidential manner with parties agreeing beforehand that information obtained at mediation cannot be used to their benefit at a subsequent hearing.
- Where a party refuses to engage in mediation without reasonable explanation, the case file should be noted to allow the adjudicator to take it into account when hearing the case
- An independent report by the mediator could be done up but only on agreed facts of where the disputes lay
- The formal hearing should record that attempts were made to resolve the dispute

3.11 There is general consensus that:

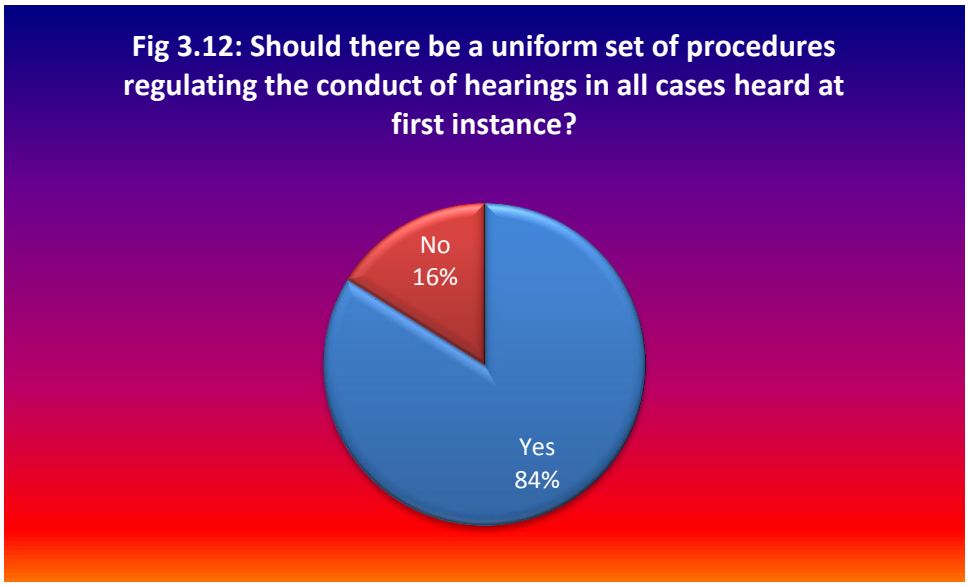
Mediation and conciliation are confidential and should remain so, accordingly details should not be disclosed at any subsequent adjudication

Consideration should be given to:

What if any report should be provided to the adjudicator outlining whether mediation or conciliation was attempted

3.12 Conduct of Proceedings

Should there be a uniform set of procedures regulating the conduct of hearings in all cases heard at first instance?



A total of 31 respondents expressly answered this question. Responses ranged from the "less rigidity the better" to the full application of the rules of court/evidence.

Of those who did answer the question 84% support some uniform procedures to ensure all hearings comply with the principles of natural and constitutional justice. It was suggested that they should be broad, simple but flexible guidelines to maintain good order and aid the effective conduct of the hearings

There was a strong view that hearings should be relatively informal and investigative, unlike the adversarial processes of ordinary courts. In this regard it was suggested that strict, detailed procedures ought not to be set down, particularly since the organisation will be dealing with a wide range of cases from the very straightforward to the very complex.

While there was general acceptance that the revamped bodies should not come to approximate courts of law, with strict rules of procedure there was a view that there is a lack of consistency in decision-making which needs to be addressed. In this respect, it was suggested that a database of decisions should be maintained and made available. Periodic reviews of decided cases should be undertaken, categorised and made publicly available. This should also be utilised by those providing information to employers and employees.

An alternative view was expressed that there should be more adherences to rules of evidence and court rules should apply.

It was suggested that there should be different procedures for employment rights cases compared to industrial relation cases.

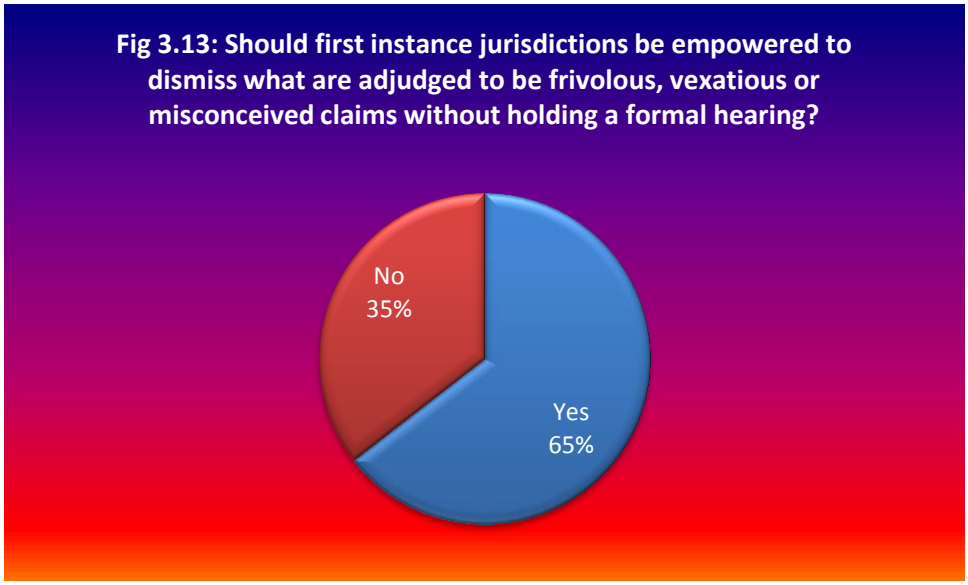
It is also suggested that information should be provided to parties so that they can know what to expect at a hearing.

3.12 The General Consensus is:
Some form of uniform procedures to ensure all hearings comply with the principles of natural and constitutional justice.

Procedures/guidelines for hearings should be broad, simple but flexible to maintain good order and aid the effective conduct of the hearings should be put in place

3.13Frivolous, Vexatious or Misconceived Claims

Should first instance jurisdictions be empowered to dismiss what are adjudged to be frivolous, vexatious or misconceived claims without holding a formal hearing?



A total of 31 respondents expressly answered this question with strong views expressed on both sides. 65% of those who answered the question favoured the idea that the first instance jurisdictions be empowered to dismiss what are adjudged to be frivolous, vexatious or misconceived claims without holding a formal hearing. Those in favour suggested that too many people on both sides fail to engage properly in the process. They also suggested that if this were implemented that it would need to be subject to appeal.

Arguments against the idea included that such a move could breach the complainant's constitutional rights and Conflict with entitlements under the European Convention on Human Rights and the Charter of Fundamental Rights in relation to a right to a fair hearing and particularly where rights derived from EU Law are being adjudicated.

It was suggested as an alternative that, if, having completed the hearing, or perhaps following a preliminary hearing on this point, the adjudicator decides that either party has behaved in a manner that is frivolous or vexatious or has brought a claim that is misconceived, the adjudicator should be empowered to exercise discretion to dismiss the claim.

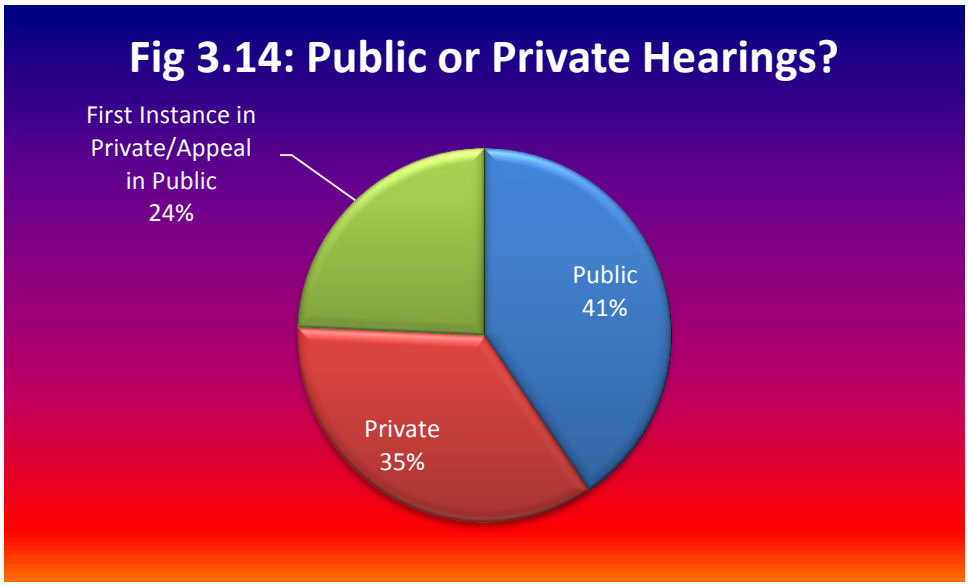
It was suggested that an efficient case management system could deal with such matters at a call over or preliminary hearing

Several suggestions were put forward that those who lodge frivolous or vexatious complaints should incur a costs penalty. It is also suggested that a charge or deposit might assist in reducing such cases.

3.13 Consideration should be given to:

Any proposal to allowing first instance jurisdictions to dismiss what are adjudged to be frivolous, vexatious or misconceived claims without holding a formal hearing. This would need to be considered in the context of a person's right to a fair hearing.

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



A total of 37 respondents expressly answered this question and diverse views were expressed. 41% of those who answered the question supported hearings being held in public while 35% supported private hearings and a further 24% felt that hearings of the First Instance Body should be in private with appeals in public. There was consensus that any mediation or conciliation should be private. There is also broad consensus that all outcomes should be published and consequently be the subject of disclosure and analysis.

Some of the arguments for holding hearings in public include that justice must be seen to be done and that public hearings incentivise the parties to use conciliation or mediation and that public opinion would encourage best practice.

Counter arguments put forward include that an individual's work and working life is of greatest importance and that it is hard to see the public interest in such issues.

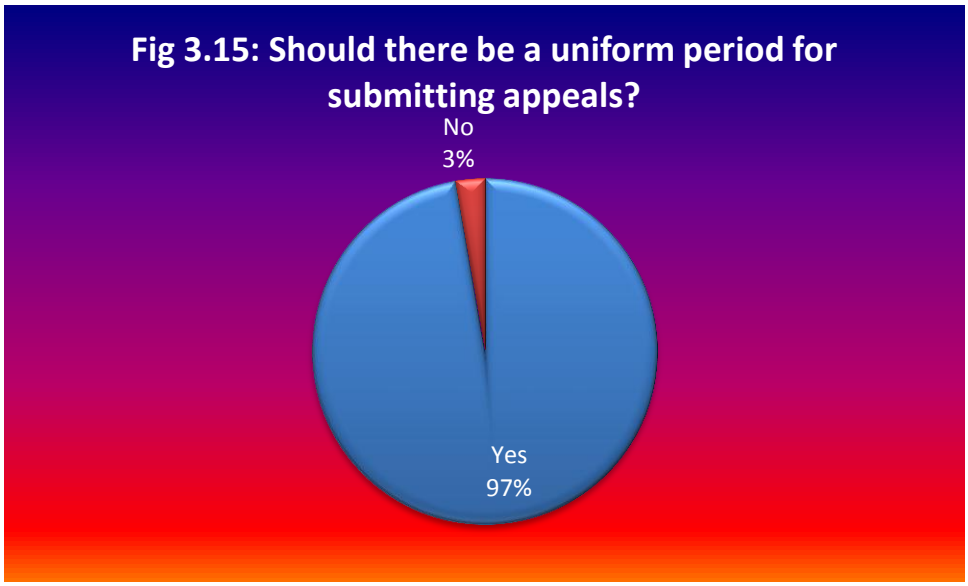
Other suggestions include that hearings should be in public other than where commercially sensitive issues are being dealt with. It is also suggested that tribunal hearings should be in public but the tribunal should be empowered to issue restricted reporting. It is further suggested that, at the request of the parties, the names of the parties may be redacted by the adjudicator in any decision handed down.

It is also suggested that hearings are required to be in public to meet the requirement of Article 6 of the European Convention on Human Rights.

3.14 The Consensus is that:

All decisions should be given in writing summarising the issues and stating the reasons for the decision.

Consideration should be given to:
Whether first instance and/or appeal hearings should be held in private



A total of 37 respondents expressly answered this question and there is strong consensus that there should be a uniform period for submitting appeals. Suggestions as regards how long that should be ranged from 21 days to eight weeks with the general consensus at six weeks. A suggestion was made that this could be extended where the parties have engaged in alternative dispute resolution efforts since the hearing.

3.15 The General Consensus is

There should be a uniform period of six weeks for lodging appeals

Appendix 1 List of Respondents

Anthony Kerr, UCD
Arthur Cox
Association of Higher Civil and Public Servants
Barry Sheehan, solicitor
Brendan Magee
Brian O'Byrne
Cathy Maguire BL
Chambers Ireland
Charles Corcoran, Vice Chair EAT
Chartered Institute of Arbitrators
CIPD Ireland
Citizen's Information Board
Con Lucey
Conor Stokes
Construction Industry Federation
Construction Industry Monitoring Agency
Department of Public Expenditure & Reform
Elizabeth Noonan
Emile Daly B.L.
Employment Bar Association
Employment Law Association of Ireland
Equality and Rights Alliance
Equality Tribunal
Fiona O'Carroll
Frank Barry, Member of EAT
Frank Nyhan
George McLoughlin
HSE
IBEC
Immigration Control Platform
IMPACT
Independent Workers Union
Irish Congress of Trade Unions
Irish Council for Civil Liberties
Irish Hotels Federation
ISME
Jeremiah Sheehy, Vice Chairman EAT
John C Kennedy
John Horgan
Julienne Paye, Solicitor
Kate T O'Mahony, Chair, EAT
Law Society
Legal Island
Licensed Vintners Association
Local Government Management Services Board
Longford Citizens Information Centre
Mandate
Mason Hayes & Curran
Michael Doherty, DCU
Michael O'Sullivan, ARRA HRD
MRCI
Nicholas Russell, Solicitor
Oisin Quinn S.C.
Pat Brady, Workplace Solutions
Patrick Byrne
Patrick Pierce, member EAT
Paul Kenny, Pensions Ombudsman
Peninsula
PSEU
Rehab Group
RGDATA
Richard Grogan & Associates
Sinn Féin Party
Small Firms Association
SIPTU
Sophie Crosbie
TASC