Address by Richard Bruton, TD, Minister for Jobs, Enterprise and Innovation at the opening of the High Level Conference on the Resolution of Individual Employment Rights Disputes at the School of Law, University College Dublin, 1st July 2011

Mr Justice Mc Mullen, Professor Jackson, ladies and gentlemen,

I am delighted to have been invited by Tony Kerr to open this conference on the **Resolution of Individual Employment Rights Disputes**. I commend Tony and the UCD School of Law on the organisation of this event, which has become an important calendar date each year in employment law circles. It provides a very timely forum in which the members of the employment rights adjudication bodies, Social Partners, legal practitioners, and legislators such as myself - along with also experts and practitioners from other jurisdictions - can look at our current practice and how we can meet the challenges of ensuring access to justice, fair and efficient adjudication and delivering a modern, user-friendly public service.

Most workers and trade unions do not want to have to rely on employment law to support their employment relationship. A grievance or problem solved in the workplace is far better than having to resort to an inspection or adjudication hearing. Equally most employers want a contented and productive workforce with the minimum of disruption. It is important therefore that the State's employment rights and industrial relations mechanisms support the development and management of harmonious relationships in the workplace. This can be achieved by empowering employees and their representatives and employers to resolve matters at workplace level to the greatest extent possible. Clear, up-to-date and accessible information and advice is essential to this aim. We must also maximise the use of interventions including active case management and alternative dispute resolution mechanisms and only intervene by way of inspection and adjudication hearings when absolutely necessary.

The overall objective should be to encourage early resolution of disputes, the vindication of employees' rights and minimisation of the costs involved for all parties - employers, employees and Government - in terms of money, time and workplace productivity.

Any system of employment dispute or grievance resolution designed to serve all parties with an interest in its efficient, fair and effective operation must address four key issues:

- Both workers and employees understand their respective obligations within the system;
- Prevention and compliance should represent best practice;
- There must be a credible enforcement and an effective, risk based inspection regime and, finally;
- There has to be accessible and timely adjudication.

Development of existing system

The State currently has a complex system for the resolution of employment disputes and grievances and the enforcement of employment law, which has built up over the years. If we had a blank page, I doubt anyone would draft the system that we have today. This complex system comprises legislation, the provision of information, dialogue between employers and workers, inspection, adjudication, redress, appeal and enforcement. The current system has

evolved over a long period of time. It has evolved in a piecemeal fashion in response to European Union developments, as well as the evolution of national-level social dialogue and legislative programmes and the changing nature of employment.

The individual institutions evolved incrementally over time and undoubtedly did the job that they were established to do very well. They have made a hugely valuable contribution to employment rights and industrial relations down through the decades. Moreover, the dedicated members and the staff who have served, and are currently serving in all of these bodies, are very committed and able public servants. However, now more than ever, against the backdrop of severe resource constraints, we need to take stock of the institutional and procedural arrangements that have built up over time and have solidified in legislation. This Government is committed to reform of the public service across the board including reducing the number of agencies and offices and this extends to the employment rights and industrial relations bodies.

Operational complexity

Users of the State's employment enforcement/redress machinery face a bewildering array of options when seeking to initiate a claim:

- Around 30 different pieces of employment law and many more Statutory Instruments.
- Five redress/enforcement bodies
- At least six websites, including my own Department's
- Upwards of 35 different forms
- A range of different time limits within which to pursue their claim
- A waiting time of anything up to 80 weeks, depending on which route is taken.

The system is now so complex that even many practitioners are unsure about available avenues for adjudication. For many employers and employees the system is too complex and onerous, takes too long to navigate and costs too much.

A system that was intended to be informal has become extremely complex and individuals increasingly believe they cannot navigate it without professional help. Individual issues of complaint too quickly turn to adversarial hearings without first trying to find other solutions. Abuses go undetected, yet compliant businesses can still be embroiled in very costly hearings. Workers who deserve protection face unacceptably long delays for redress.

However, now more than ever, against the backdrop of severe resource constraints, we need to take stock of the institutional and procedural arrangements that have built up over time and have solidified in legislation. This Government is committed to reform of the public service across the board so as to protect standards of service as resources diminish by improving efficiencies and by rationalizing the structures of delivery to achieve this.

We need to see workers' rights vindicated. Compliant businesses must be able to meet their obligations. The best way to achieve this is to have a simpler, more effective system. Reform presents an opportunity to achieve these goals, and at a significantly lower cost than the €20 million now being spent in this area.

We know the problems:

- A confusing array of channels through which cases may be processed,
- A set of circumstances can give rise to a number of claims, which must be processed through different fora to obtain redress using a multiplicity of forms
- Duplication and overlap of functions between the bodies resulting in "forum shopping"
- Claims are often referred to the wrong forum or under the wrong statute: they sometimes become statute barred before the error is discovered.
- A wide range of different practices, procedures and often inconsistent time limits apply.
- There are different appeal avenues for elements of the same case involving the same employee and employer
- There is an absence in many instances of any intervention - whether mediation, arbitration or simple case progression – which could resolve or clarify issues early on and obviate the need for expensive and time consuming hearings or inspections in at least some cases;
- The systems have become overly legalistic with many employers and employees incurring legal costs
- Delays are excessive
- No consistent procedure for enforcement of decisions of the various employment rights for a claimant.

Some valuable lessons have been learnt in recent months through a through the recent in-depth examination of the operations of the EAT and Rights Commissioner Service. While both services have very different operational models it became clear that the work processes were very similar and the backlogs occurred in much the same areas and for the same reasons.

Problems common to both institutions were traceable, for instance, to:

- The variety, design and use of over twenty forms in the case of the Rights Commissioner service and the quality of information provided by respondents;
- Communication delays;
- Scheduling processes;
- Excessive reliance on paper driven processes and manual management reporting;
- The high percentage of costs associated with conduct of hearings;
- A form of work organization that had not been adapted to current service demands.

Proposal

While we know the problems, the solution has eluded us thus far.

There has been an emerging consensus in recent times that we should have a simpler structure and simplified and streamlined procedures. We must not discard the strengths that have served us so well in the past, but we must not cling to institutional arrangements that stand in the way of a better service.

I believe that the simplest arrangement that most people would map out would be a single body dealing with workplace grievances and disputes in the first instance and another body dealing with appeals.

I would like to use this as the starting point for reform.

There should be a single point of entry for all users of employment rights machinery. It would make sense that the Equality Tribunal, 90% of whose cases are workplace related, would come within this new single point of entry. That single point of entry would take over the first instance functions currently performed by the Labour Relations Commission, Rights Commissioners, NERA, the Equality Tribunal and the Employment Appeals Tribunal. The precise range of functions will have to be worked out in detail in the coming months. This will be particularly important with regard to the role of the two Tribunals.

That single point of entry would have a number of features, including:

- A process that would find solutions without need for formal proceedings.
- Provision of clear up-to-date information and advice to facilitate grievances and disputes being resolved at workplace level to the greatest extent possible. A single website would be a pre-requisite.
- The use of a common format to submit claims, ideally a single form, but certainly a small fraction of the number of forms currently used.
- Active case management and progression, including early checking of the facts, identification of mis-routed claims and early intervention in the form of telephone contact, and/or informal hearings and/or more formal mediation/ arbitration.
- Resources freed up for timely, risk based inspection and credible enforcement.

A single portal as a starting point

As I've said, I envisage workers and employers will be able to address or respond to employment relations issues through a single portal. Cases should be logged in a uniform, standardised way with basic information relating to the facts of the case provided from the start. Preferably this would be provided mainly through on-line facilities using a standard template. The outcome could be an early intervention offering information, mediation, conciliation or some attempt to resolve the issue - or, ultimately, an inspection or hearing along the lines of a Rights Commissioner hearing at present. Some claims are subject to excessive delays or may fail to progress because the applicants have not provided adequate supporting documentary evidence to support their complaints and sustain their case with the most basic information such as their:

- Terms of employment
- Contract details
- Pay slip
- Letter of appointment
- Official notice of employment end date

It is clear that practical improvements can be made at the initial stage of gathering claimants' information and in providing guidance to the parties in making claims and responses. There is scope to introduce better means of validating the information provided – through, for instance, cross-checking data and verifying employer details. We need also to explore ways of avoiding vexatious claims and seeking evidential materials to expedite decisions in straightforward cases.

There is merit, I believe, in exploring whether a "preliminary hearing" option might be introduced as a fast track mechanisms that could be conducted on the basis of written submissions and direct telephone contact.

This is already the subject of a new provision that has been proposed in the recently introduced Civil Law (Miscellaneous Provisions) Bill, 2011 to enable the Equality Tribunal, where appropriate, to deal with cases on the basis of written submissions only rather than have to proceed to a full hearing. The guiding principle to my mind should be to minimise the need to proceed to formal hearings and inspections – as these are costly, time consuming and often have a long lead in time – by resolving the basic issue to the satisfaction of all parties at an earlier stage.

However, let me emphasise that the right of any employee or employer to have their case assessed, investigated or heard will not be denied. Rather, I am suggesting that in many cases, it may well suit both parties to have the matter resolved relatively quickly. In this vein, I suggest that it is nobody's interest to have grievances fester or to have long waiting periods before the files are reviewed in any substantial way.

Active case management, early intervention and alternative methods of resolving disputes should be a new feature and a distinct staging point in the progression of cases. This would involve early review of the facts and an intervention of some kind in order to seek early resolution as an alternative to a formal hearing. This could include a simple administrative check to ensure that claims are valid, complete and appropriate under the relevant legislation. It could also extend to a relatively straightforward investigative action to establish whether a written statement had been provided to an employee. Alternatively it might take the form of an offer of informal mediation intervention in an attempt to resolve an issue, particularly if it is relatively straightforward matter where the law is clear in relation matters such as minimum rates of pay or leave entitlements and in particular where the facts of the case are not in dispute

With the exception of the mediation option that has become a feature of the practice of the Equality Tribunal, there is not really a comparable option available under employment rights legislation. Recourse to expertise in conciliation/mediation could be made available more widely within a new integrated structure for the type of claims, which currently tend to lead to longer hearings, such as those concerning workplace discrimination. Other claims might be disposed of more expeditiously, such as those for unauthorised deductions from wages, failure to provide a written statement of terms and conditions of employment, breach of contract or disputes over the amount of redundancy or holiday pay. While the major reform feature in this phase will involve the consolidation of a single "first instance" body, I envisage the structure and remit of the collective conciliation, advisory and research functions of the Labour Relations Commission remaining broadly as they are, although organisational improvements can be achieved within a more streamlined structure.

Appeals Body

With regard to the appeals body, I envisage the Labour Court, however styled, continuing to play a substantial and central role and providing the basis on which the appeals structure will be founded. It may be necessary to consider the streaming of cases coming before the Appeals Body so that different "chambers" would specialise in issues relating to collective rights, individual rights and matters relating to equality legislation. The appeals body would,

however, share many common features and facilities with the first instance body, including a common case management system with shared case numbering and identification elements. This will help address the issue of "forum shopping" which, if misused, can result in multiple claims arising from the same set of facts being processed in different institutions.

Action needed

There are three main reasons why we must take action now:
First, we need to improve an essential public service. The principles of good customer service and natural justice demand that we must improve the quality of our service to those who use the State's employment redress/enforcement machinery. Poor quality information, backlogged processes, long waiting periods, festering of issues in the workplace - these are not acceptable public service standards.

Second, we need greater value for money. We are currently spending over €20 million every year on our employment rights enforcement/redress bodies. In the current fiscal climate, we must ensure that we deliver a better service with reducing resources. I envisage that there will be substantial savings in both staff costs and overheads arising from these proposals and as we develop our proposals further, I want to be in a position to set target savings.

Third, we need a better compliance model. A fragmented and poorly performing model is not in anyone's interests – employers, employees or indeed our economy. We need to encourage and facilitate early resolution of disputes through better information and intervention. We need to ensure inspectorate resources and our capacity for formal hearings is maximised for those cases that require those interventions.

While I appreciate that there will be difficulties and complexities involved in moving to this arrangement, I believe that the time and conditions are now right. I have been saying for some time that our mission is to promote well run enterprises, developing innovative products and services, employing more people working to high standards within sustainable markets. The reforms I am proposing can play an important part in achieving this objective. Removing red tape, unnecessary costs and burdens on employers and protecting workers from abuses of their rights is an integral element of this mission. The Croke Park Agreement provides an opportunity to avail of the flexibilities and willingness that public servants are showing towards improving and reforming work practices and service delivery. In this regard I am encouraged by the flexibility and commitment shown by many of the staff working in the employment rights bodies in dealing with the current workloads. Notwithstanding this the backlog of cases facing many of our institutions provides a customer service imperative to the reform agenda. The Government's determination to reform the public service and to streamline agencies provides an opportunity that we must extend to the hugely important area of employer–employee relations.

Next steps

I appreciate that there is a large degree of consensus about the need for reform. I realise also that there will be useful insights to be had from stakeholders and users of the system. For that reason, I am open to hearing the views of interested parties in the coming weeks. In particular, it is important to state that the employment rights of employees will be enhanced by the reform process and won't disadvantage one party over another. I envisage that, following a short period of reflection and dialogue with relevant stakeholders, including the

institutions themselves, detailed proposals will be drawn up to commence this re-structuring programme after the summer. My intention is to front-end practical, tangible systems and procedural changes so that we can begin to see the benefits of a single point of entry and a single channel for workplace grievances by the end of this year.

My strong preference is to maximise the extent to which changes can take place on an administrative or interim basis without the need to await legislative change. In this regard some preparatory work has already been done in my Department including examination of the feasibility of greatly reducing the number of forms used to initiate cases. This will be continued and my ambition would be to ultimately achieve a single format for all cases being submitted. There will be issues relating to the pooling of human resources, systems and information flows to be considered. Physical location of various bodies is another aspect to be considered but, to my mind, it is less of an issue in the information age than it may have been in previous decades.

I am establishing an implementation group with representatives of each of the bodies to drive the project. I will also consider establishing a "users' group" and to invite representatives of the social partners and others to offer their valuable insights on the reform programme. In parallel, the legislative changes that will be necessary to underpin the new institutional structure will be prepared. However, I do not underestimate the scale of this task as the suite of employment law extends to some thirty different Acts and around 150 statutory instruments will have to be reviewed and amended as necessary to reflect the new structure and to address any anomalies and procedural differences which may require to be harmonised in light of the new arrangements envisaged.

I would also like to thank you for your attention and to commend the UCD Commercial Law Centre and the Employment Law Association of Ireland for supporting this conference. I must apologise to your honoured guest, Mr Justice Jeremy Mc Mullen, of the High Court in the United Kingdom and of the Employment Appeal Tribunal for having to leave before his address tonight. I wish you all well in your deliberations throughout the course of the conference tomorrow.

ENDS