



Labour Relations
A G E N C Y
Improving Employment Relations
Chairman and Chief Executive's Office

2-8 Gordon Street, BELFAST BT1 2LG
Tel: 028 9033 7401 Fax: 028 9043 8737 TDD: 028 9023 8411
Website: www.lra.org.uk

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The Department of Justice (DoJ)
Civil Justice Policy & Legislation Division
Laganside House
23-27 Oxford Street
BELFAST
BT1 3LA

Dear Sirs,

I refer to the paper issued by the Department 25 January 2013 entitled 'Future Administration and Structure of Tribunals in Northern Ireland – Consultative Document.'

The Board of the Labour Relations Agency (the Agency) considered the DoJ paper 28 February 2013 and submits the following:

Preface

The Agency, first and foremost, is committed to resolving employment disputes through alternative dispute resolution (ADR) processes. The Agency welcomes the emphasis put on ADR and will, as appropriate, support DoJ in promoting and expanding the use of ADR processes. Currently the Office of Industrial and Fair Employment Tribunals (OITFET) and the Agency work collaboratively in seeking to resolve disputes through the most effective means possible e.g. OITFET has provided the Agency with facilities at Killymeal House for the purpose of conciliation. As recognised by OITFET the submission of a claim to a Tribunal does not mean that ADR becomes irrelevant to the substance of a case or part thereof. The Agency looks forward to continuing what has been a very productive and effective working relationship for both the Agency and we believe for OITFET. This relationship has been further consolidated through the signing and implementation of a Memorandum of Understanding (MoU) between the Agency and OITFET. The MoU sets out the agreed mutual operational expectations of the Agency and OITFET.

General Comment

Having reviewed the DoJ proposals to rationalise the Tribunal structures and administration in Northern Ireland the Agency concludes that it has no comment in respect of the nine key questions set out in the consultation document on the basis that the Tribunals referred to adjudicate on disputes between the individual citizen and the state. The disputes adjudicated by OITFET are private disputes between an employer and employee and are not of the same order as the disputes dealt with by the Tribunals referred to.

The Agency notes that the proposed amalgamated structure will include tribunals which are currently sponsored by the DoJ (Page 15 Para 3.3). The proposed structure does not include OITFET however 'other jurisdictions may be merged into the new structure in the future

including... existing tribunal jurisdictions sponsored by other Departments and tribunal jurisdictions not yet devolved.’ (Page 16 Para 3.5)

On the basis that consideration may be given in the future to merging the OITFET into the new structure the Agency makes the following comments:

- 1 The Agency is of the view that there is considerable advantage in maintaining the structural independence of OITFET. This point of principle has been recognised in Great Britain (GB) where there is a single structure for tribunals however the Employment Tribunal and Employment Appeal Tribunal lies outside of the Upper Tribunal and First Tier Tribunal system. It is also understood that the Employment Tribunal Scotland and Employment Tribunal England and Wales are structurally independent of the Upper and First –Tier Tribunals, as is the Employment Appeals Tribunal which is directly presided over by the Court of Appeal.
- 2 The Agency is of the view that the disputes adjudicated by OITFET are significantly different in nature from, in the main, those heard by other NI tribunals. The disputes dealt with by OITFET relate to the employment relationship across the full economy. These disputes are not between an individual and the state. OITFET does not, in the main, adjudicate over decisions made by its sponsoring Department. The related structural benefits of independence argued for the new structure therefore do not accrue for OITFET.
- 3 The Agency is of the view that the current position of OITFET as sponsored by the Department for Employment and Learning (DEL) should remain. As previously indicated there are close and very positive working relationships established between OITFET and the Agency, which is also sponsored by DEL but which exercises its statutory duties independently of DEL. This close working relationship will become all the more significant should claims be routed, in the first instance to the Agency. This option is currently being considered by DEL.
- 4 It is the view of the Agency that OITFET, should there be any future restructuring of NICS Departments, remains along with the Agency, in the Department that is responsible for the economy.
- 5 The Agency views OITFET as specialist employment relations tribunals. This position should remain in order to maintain high levels of effectiveness, professionalism and fairness in the adjudication of employment relations cases. The Agency would have concern that, as proposed in the new structure and if subsequently OITFET was included, a common pool of judges, some of whom would not be expert in employment law, would dilute the quality of decision making currently delivered by OITFET.
- 6 The Agency is of the view that it is essential for Tribunal members dealing with employment matters to have experience in employment relations practice. The ideal balance for an OITFET panel would be a legally qualified Chair who was expert and experienced in the practice of employment law supported by a member who had employment relations experience from an employer perspective and one member who had employment relations experience from a trade union/employee perspective. The Agency believes that a legal member sitting alone would reduce the perceived fairness of due process and its outcome. It is the view of the Agency that the appointment to and management of OITFET legal chairs and lay members should be undertaken by DEL or the Department responsible for the economy.
- 7 The Agency welcomes the DoJ interest in and proposed development of alternative dispute resolution (ADR) processes. It should be noted that the resolution of employment relations disputes has had a long history of related ADR the Agency having, since 1976, the statutory duty for providing such services. The benefit of ADR argued for the new structures does not, therefore, accrue for OITFET.
- 8 The Agency is of the view that considerable strides have been made through OITFET its Users Group and Rules Committee to progress ease of access and understanding by claimants and respondents. Work on, for example, case management and the use of witness statements appear to have been well received and have resulted in improved

administrative effectiveness and efficiency. The Agency takes the view that OITFET is committed to delivering a simpler and faster system that is responsive to user needs. The continued work of OITFET in this area makes questionable whether the efficiency benefits argued for the new structures would accrue for OITFET given that OITFET appear to be well advanced in developing administrative improvements on a continuous basis.

- 9 As previously indicated the Agency would support the establishment of an Employment Appeal Tribunal which, in line with the above, would sit outside of the proposed new tribunal structures. The Agency would have concerns about an appeal to the High Court on a point of law as the High Court is not a specialist court in respect of employment law.

Yours faithfully,

Bill Patterson
Chief Executive
Labour Relations Agency