

**Consultation document on 'Developing Modern, Efficient and Effective Employment Tribunals'.**

**[Department for Employment and Learning]**

**Consultation Response from Fermanagh and Omagh District Council.**

Fermanagh and Omagh District Council (Council) welcomes the opportunity to respond to the Department for Employment and Learning's (DELNI) consultation on 'Developing Modern, Efficient and Effective Employment Tribunals'.

**Brief Background for Fermanagh and Omagh District Council**

The District Council area is home to 114,992 people (as of 30 June 2014). The District Council area is Northern Ireland's largest region in terms of land mass - approximately 3,000km<sup>2</sup>, or 20% of NI - and the smallest in terms of population. As a result, the population density of approximately 41 people per km<sup>2</sup> is the sparsest in NI. This is a feature of the region which also provides challenges to service delivery.

**Consultation Feedback**

Fermanagh and Omagh District Council (Council) welcomes this consultation, and in general the pursuit of the Department to 'Develop Modern, Efficient and Effective Employment Tribunals'.

**Feedback on rules being less complex and 'easier to understand'**

In general the Council welcomes the new rules and believes that these are indeed less complicated than they were previously, particularly for 'non-lawyers'. However, given that the new rules are still laid out quite formally it may still be off-putting to some members of the public.

At the heart of this consultation, the Department would like to simplify rules, procedures and arrangements which, for the area of Employment Tribunals, in-turn would lead to a greater understanding of the system and what it entails.

The fact that the two previous separate lengthy provisions (with regards to Industrial Tribunals and Fair Employment Tribunals) have now been condensed into a single, simpler set of regulations, duties and powers is to be commended and welcomed.

There should also be an attempt made to 'soften' the language contained within the provisions. Within Industrial Tribunals and Fair Employment Tribunals there will always be individuals who decide to represent themselves. The language contained within the provisions may act as a way of alienating some people from using the system.

## **Presidential Guidance**

In principle, the Council supports the issuing of the Presidential Guidance concept. It is important that there are guidelines drafted to set out any normal, or likely, practice with regards to the new rules, particularly for 'Early Case Management'. This Presidential Guidance should also be written in a way that is easily understood by 'non-lawyers'.

It is important that any guidance provides clear expectations on what users of the Tribunal System can expect in terms of how cases will be managed and also how consistency will be ensured both for case management and decision-making.

There should be some consideration put into the drafting of guidance documents to ensure that they are easily understood by all – judges, legal community and individual users of the Tribunal System, whether or they have prior knowledge/experience of Tribunal Procedures.

It is also important that any guidance offered should aim to ensure a consistent approach is taken to all cases, as far as is appropriate.

## **Case Management and Early Conciliation**

Within the new procedures, the Council believes that the foremost aim should be to resolve cases both fairly and as early as possible. This will ensure that users, legal teams and organisations have less stress imposed upon them as well as the potential workload of being involved in a lengthy Tribunal process being reduced significantly.

Judges, and the new rules, should actively seek to ensure, through effective Case Management, that 'weak' cases do not proceed to a 'full hearing' and are halted at the earliest possible opportunity to ensure the costs, waiting times, and so forth, are kept to a minimum.

It is vital that with the 'simplifying' of the rules surrounding Tribunals that new robust Case Management Powers are applied in a flexible and effective manner, as well as being applied consistently, where possible. The new rules should ensure that all cases are managed as effectively and efficiently as possible.

The Council's main concern with regards to Case Management revolves around the role of the judges and whether a consistent approach will be applied to all cases and individuals. It is imperative that Judges (where possible) apply the same rules, in the same manner, across cases in the Tribunal process.

The Council also believes that a Plaintiff should be allowed to have legal representation or support, other than that provided by a Trade Union Representative or work colleague at the Tribunal.

Further clarity is also required from the Department in relation to the exact commencement of the 90 day time limit.

### **Deposit Orders and 'Weak' Cases**

The Council believes that the effective Case Management within the Tribunals Service is vital, however, each individual who initiates a Tribunal believes that he/she has been wronged in some way. Although, some people may classify a particular case as 'weak', 'unmeritorious' or with little chance of winning, it is worth bearing in mind that usually that case is very important to the individual at the centre.

With regards to deposits, the Council believes that asking an individual to pay up to £500.00 to ensure that their case is advanced, seems quite expensive. The Council is totally opposed to any deposit having to be paid in order for a case to be advanced as this may rule out some members of the community for example, those who may find themselves out of work, those in receipt of benefits, etc.

Instead, information should be given to the individuals on why their case is considered 'weak' or 'unmeritorious' along with information on how the individual could proceed.

Every effort should also be taken to ensure that cases involving those who are classed as vulnerable (for example those who do not speak English as their first language or people with disabilities) are given as much of an opportunity to prove that their case is worthwhile. Some people may find it difficult to present information in a written/verbal format and they should not be penalised, with regards to their case, in such circumstances.

### **Conclusion**

To conclude, Fermanagh and Omagh District Council welcome the Department's consultation on 'Developing Modern, Efficient and Effective Employment Tribunals'. Overall, the simplifying of the rules/procedures along with the emergence of new Case Management practices will assist in making the Tribunals procedures more effective.

However, the Council feels the Department should pay some attention to ensuring consistency, both in approach to cases and within Case Management. Attention should also be given to ensure that no individual, or group of people, is unfairly treated.