

---

# Employment Bill

## Employment and Learning Committee – Briefing Paper

---

### Introduction

1. This briefing paper has been prepared to assist the members of the Employment and Learning Committee in their consideration of the Employment Bill.
2. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
3. The Bar Council welcomes the opportunity to provide members with our views on the Employment Bill. The information below is structured according to the clauses of relevance to our practitioners who specialise in employment law. It focuses on the underlying policy objectives of the Bill, along with the introduction of early conciliation and a neutral assessment service by the Labour Relations Agency.

### Background and Policy Objectives

4. The Bar welcomes the Department's work in the development of the Employment Bill which aims to protect the rights of individual employees whilst also identifying opportunities to reduce the administrative burdens on businesses. Work around the development of this Bill has also taken place in conjunction with the creation of revised rules and procedures for industrial tribunals and the Fair Employment Tribunal which the Department consulted on in 2015. These aimed to improve the effectiveness and efficiency of tribunal processes by promoting a simpler and more easily understandable process for members of the public. The Bar submitted a detailed response to the consultation in September 2015.
5. We believe that these two parallel areas of work represent an important opportunity to promote a clearer understanding of employment rights and responsibilities across Northern Ireland. However, we would also highlight the importance of recognising that this is a complex area of law as tribunals often adjudicate on multifaceted legal issues. The tribunal system exists to adjudicate upon extremely important workplace rights and responsibilities and any move to simplify the system must not dilute that framework.
6. The Bar welcomes the principle of conciliation contained in the Bill as barristers typically play a key role in the resolution of claims in providing client services. However, we are concerned that the provisions contained

# Employment Bill

## Employment and Learning Committee – Briefing Paper

within the Bill for early conciliation, along with the details in the tribunal rules consulted on in 2015, will result in a system being devised in statute that is too prescriptive for dealing with employment disputes and does not provide enough flexibility or discretion for different approaches based on the facts of each individual case. This will ultimately make the system more confusing and inaccessible for members of the public seeking to navigate it.

### Early Conciliation

7. Clauses 1 and 6 of the Bill provide that a prospective claimant, in most cases, must first have submitted the details of their claim to the Labour Relations Agency before they can lodge the claim at an industrial tribunal or the Fair Employment Tribunal.
8. The Bar Council takes the view that tribunals should be given the flexibility and discretion to encourage dispute resolution based on what is practical and appropriate in a particular case. Practitioners highlight that alternative means of resolving disputes may not be feasible in every case. We would emphasise the importance of employment rights to individuals in every sector of the labour market in Northern Ireland. Individuals must not be unduly pressured into resolution if there is no genuine desire to enter such a process. Consequently, we would call on the Department to outline certain prescribed cases in which the requirement to enter into early conciliation would not be necessary.
9. The Bar also has a number of concerns around how the early conciliation process will work in practice. We would query how potential claimants will become aware of the new process with this representing an additional hurdle for anyone navigating the tribunal process, particularly unrepresented litigants. It is also unclear as to how claimants will initially be expected to enter into the system and whether they will have to approach the LRA to begin the process. This new approach also creates the potential for time delays given the interface between early conciliation and the tribunal system with claimants likely to require further guidance around the amount of time which will be dedicated to satisfying the requirement for early conciliation.
10. We take the view that the early conciliation provisions as drafted in the Bill are unnecessarily complex, unduly procedurally difficult and presuppose a familiarity with the rules which is non-lawyer would not possess. Consequently, we believe that the introduction of this new requirement will do nothing to make the tribunal system more simple and understandable for unrepresented litigants and members of the public.

---

## Employment Bill

### Employment and Learning Committee – Briefing Paper

---

11. Whilst the Bar is supportive of efforts to encourage conciliation, we do not believe that the provision for early conciliation in the Bill does so with coherence and clarity for all users of the tribunal system. There is significant potential for ambiguity and misunderstanding which we believe the Department must address. We also believe that more work needs to be done to consider the level of extra resources required by the LRA to cope with the increased demand for services that will result from these provisions as drafted.

#### Neutral Assessment

12. The Bar notes that clauses 4 and 8 provides an enabling power for the Labour Relations Agency to offer a new neutral assessment service under which it *“can ask a member of a panel of persons appointed by the Agency for the purposes of this article to... (a) form a view on the likely outcome of any proceedings (including any arbitration) relating to that matter which might be or have been instituted and (b) inform the relevant parties and the Agency of that view”*. We would question whether this panel will consist of independent employment relations experts. The Department must provide further detail on how it envisages this panel would function and its makeup.
13. In addition, we believe that there is an important need for parties to be empowered to make informed and proportionate decisions around the most appropriate manner in which to deal with a dispute. However, we are concerned as to how neutral assessment will work in conjunction with early conciliation. Will it take place after the early conciliation process has been exhausted? Or when a conciliation officer is still actively trying to promote a settlement between the parties? Will it differ from case to case? We believe that there is the potential for parties to be confused by the employment of this additional mechanism by the LRA.

#### Conclusion

14. The Bar Council welcomes the Employment Bill. However, we believe that there is a need for the Department to provide further scope and clarity around the operation of early conciliation and neutral assessment. This is particularly acute in relation to the large number of unrepresented litigants currently in the system as there is a need to ensure that the process is understandable and easy to navigate. At present we do not believe that the Bill does enough to ensure that this is the case.

---

## Employment Bill

### Employment and Learning Committee – Briefing Paper

---

15. It is worth noting that members of the Bar already provide advice to both professional and lay clients on a 'pro bono' basis, including employment related disputes, for those who cannot afford the legal help which they need. These participants benefit significantly from obtaining legal advice from counsel. However, the provision of free advice or pro bono cannot replace or fill the gaps created by the lack of legal aid for claimants needing assistance in this area. In light of this consideration, the Department must do more to provide greater detail on the policy proposals contained within the Bill for the operation of the new systems in order to ensure that confusion and difficulty is not caused to the parties involved, the tribunals and their administration.