

1 January 2024

WRC PROCEDURES IN THE ADJUDICATION AND INVESTIGATION OF ALL EMPLOYMENT AND EQUALITY COMPLAINTS AND DISPUTES

Background:

These procedures set out, for parties to complaints/disputes¹ and their representatives, the normal working practice of the Workplace Relations Commission (the “WRC”) and the requirements with which the parties should comply. These procedures take into account *inter alia* the Workplace Relations (Miscellaneous Provisions) Act 2021 (the “WRA 2021”)² and the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (the “CLCLA 2020”).³ These procedures are not intended to be exhaustive, nor are they intended to provide a legal interpretation of the legislation which falls within the remit of the WRC. Further information on individual Acts is available from www.workplacerelations.ie. The WRC reserves the right to vary these procedures generally and, as appropriate, in the circumstances of the individual case where required in light of fair procedures. It is incumbent on all parties to adhere to these procedures to the best of their ability and failure to do so may have implications for the processing or defence of the complaint.

1. Making a Complaint or Referring a Dispute to the WRC:

¹ ‘Disputes’ refers to the ‘disputes’ addressed by section 41 of the Workplace Relations Act, for example disputes pursuant to the National Minimum Wage Act, the Carer’s Leave Act, the Maternity Protection Act and the Adoptive Leave Act. Separately, there are disputes referred under section 13 Industrial Relations Acts 1969. Such disputes continue to be heard in private and recommendations which issue are anonymised.

² Introduced as a result of the Supreme Court findings in *Zalewski v. Adjudication Officer & Ors* [2021] IESC 24, that certain WRC procedures were inconsistent with the Constitution, namely: the conduct of hearings in private; the absence of a provision for an Adjudication Officer to administer an oath or affirmation; and the absence of a possibility of punishment for giving false evidence.

³ Introduced to provide for a number of measures which respond to COVID-19 pandemic challenges including the power to hold remote hearings and procedures to facilitate same.

A person may make a complaint or refer a dispute to the WRC where they believe there is a breach of employment and/or equality legislation or they have an individual grievance under industrial relations

legislation. A complaint should be made using the Workplace Relations Complaint Form (the “**Complaint Form**”). The Complaint Form should be carefully filled out, correctly completing all relevant sections including the correct name and address of the employer/respondent. It is vital to ensure that the correct legal name of the employer/respondent is entered on the Complaint Form. Where a complaint is made to the WRC, a copy of the Complaint Form and any other materials received will be copied to the respondent (certain exceptions may apply to complaints involving an inspection). It is essential to also provide the respondent’s correct postal address, for example the registered address of a company. Please also provide any email address available for the respondent.

It is extremely important that the complainant keeps the WRC informed of their current email and physical address and contact details. If a party’s contact details change and they do not inform the WRC, they may miss important documentation being sent to them, for example the scheduled date of a hearing.

2. Pre-Complaint Steps:

Please be advised that several of the Acts dealt with by the WRC require prospective complainants to notify the respondent in advance of lodging the complaint form. For example, the Equal Status Act⁴ (the “**ESA**”) requires a complainant to notify the service provider in advance of making the complaint. Moreover, the National Minimum Wage Act requires the employee to request a statement of earnings from the employer prior to referring a dispute⁵. Complainants should complete these preliminary steps and submit the information as part of the complaint.

3. Time Limits for Referring a Case to the WRC:

The Workplace Relations Act 2015 (the “**WRA 2015**”) provides that a complaint or dispute must be referred within six months of the alleged contravention of the legislation. There are equivalent time limits under the Unfair Dismissals Act, the Employment Equality Act (the “**EEA**”) and the ESA. A longer period applies regarding Redundancy Payment Act complaints.

⁴ [Section 21 Equal Status Act 2000](#)

⁵ [Section 24 National Minimum Wage Act 2000](#)

The date when a complaint or dispute is referred is the date when it is received by the WRC. If a complaint is not referred within the time limit, an extension may be granted by an Adjudication Officer up to a maximum time limit of 12 months where, in the opinion of the Adjudication Officer, the

complainant has demonstrated '*reasonable cause*' for the delay. An Adjudication Officer has no power to extend the time limit beyond 12 months after the last alleged contravention (24 months in a Redundancy Payments complaint).

The decision to extend time is solely a matter for the Adjudication Officer. If a complainant is seeking an extension of time, they will need to provide detailed reasoning and any supporting documents in support of the application. A complainant must set out relevant details if they are relying on misrepresentation to determine a date of contravention, for example under the EEA.

4. Consent to Service by Electronic Means:

The WRC encourages parties to consent to the service of documents by electronic means as this allows the WRC work more efficiently. A party can consent to the service of documents by emailing pru@workplacerelements.ie quoting the CA and/or ADJ reference assigned to their case and giving their consent: 'I consent to the service of documents by electronic means in respect of CA... and ADJ...'

5. When a Case is Referred to the WRC:

The WRC is impartial as between the complainant and respondent and in general all material received from one party will be copied to the other, so that both parties are fully aware of all the material received. Complaints and disputes are initially processed by the WRC offices in Carlow. They will be sent forward to adjudication, mediation or inspection, as appropriate. Where they are sent forward to adjudication, they are formally delegated by the Director General to an independent Adjudication Officer for hearing.

It should be noted that where both parties consent a case may be decided on the basis of written submissions only without a hearing being required⁶. Whilst this does not happen frequently, if parties are interested in this route, they should raise it by emailing pru@workplacerelements.ie

6. Mediation:

⁶ [Section 47 WRA 2015](#) and related provisions cover the written submission procedure.

In certain cases, the complaint may be sent to the Mediation Service with a view to encouraging and facilitating both parties in resolving issues by way of mediation - a free and confidential alternative to

a formal hearing in public, and one which may result in a legally binding mediation settlement⁷. Parties are encouraged to engage with this alternative dispute resolution option. If one or both parties are unwilling to engage in early resolution or mediation or if attempts at resolving the issues are unsuccessful, the complaint will be referred to an Adjudication Officer for hearing. The mediation may be provided through telephone, video and/or face-to-face mediation as the WRC Mediation Service determines suitable. There is no legal authority to select disputes under the IR Act 1969 for mediation.

7. Documentation to be Submitted 15 Working Days in Advance of a Hearing:

<p><u>It is very important that both sides submit all the documentation upon which they wish to rely as early as possible and no later than 15 working days before the scheduled date of the hearing. This new rule applies to all cases equally, and applies to both remote and face-face hearings.⁸ Parties must also copy their documentation to the other parties in the case.</u></p>
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This allows time for the Adjudication Officer to prepare for the hearing, and in accordance with fair procedures, allows the parties sufficient opportunity to consider documentation and arguments submitted in advance of the hearing. Parties are asked to copy their documentation to the other side. In addition, please note that all documentation submitted, including correspondence addressed to the WRC, will be circulated to all parties to the dispute. You have the same right to see the other side's documentation as they have to see your documentation.

Please also note that an Adjudication Officer may decide not to allow a party to introduce documents on the day of the hearing or within 15 working days of the scheduled date of the hearing. This is to ensure fair procedures for all parties. It is entirely a matter for the Adjudication Officer whether to allow any evidence to be submitted within 15 working days of the date of the hearing.

Documentary Evidence:

⁷ [Section 39 WRA](#) covers mediation for those Acts listed in Schedule 5 WRA. See also [Section 24 ESA](#) and [Section 78 EEA](#) in relation to equality complaint mediation provisions.

⁸ Whilst in the past, in light of differing burdens of proof under different Acts, the WRC trialled different time periods for submissions, in order to streamline submission of documents and ensure Adjudication Officers and parties have adequate time to prepare for their hearings, a single 15 working day rule now applies. It is hoped that this will be easier and fairer for parties, and lead to fewer adjournments due to last minute submissions.

It is especially important that parties submit the documentary evidence as soon as possible and no later than 15 working days before the scheduled date of the hearing. Evidence is anything that is used to prove or disprove disputed facts in the case. Documentary evidence can include letters, emails,

minutes of meetings, contracts of employment or employee handbooks. It also includes sound recordings and CCTV footage.

Written Statement of Case:

It is helpful if both parties can provide a written statement of their case. This might include a chronology of events and a concise written account of what happened. Parties might refer to relevant case law or the relevant piece of law on which they rely if they have this information. In a case of penalisation or discrimination, you might wish to address the link between the protected act or discriminatory ground and the alleged penalisation or discrimination. The case statement ensures that the adjudication hearing focuses on the issues which are relevant to the complaint or dispute at hand.

These procedures require that parties submit the written statement at least 15 working days prior to the scheduled date of the hearing. It should also be copied to the other party so they are on notice.

Witness List:

These procedures require that parties supply to the WRC the names of any witnesses that will accompany them to the hearing, and an outline of the evidence each witness will address. The list will allow the weblink to be sent to participants (where a remote hearing is listed) and will help the Adjudication Officer schedule time for evidence at the hearing.

8. The Hearing:

It is a matter for the Adjudication Officer to run the hearing / investigation as appropriate for the circumstances of the case and in accordance with fair procedures and the interests of justice.

a. Preparing for a Hearing:

Remote Hearings:

All WRC cases are considered amenable to remote hearing, unless a party can demonstrate that holding a remote hearing would not be in the interests of justice or would breach fair procedures, or

the WRC reaches this conclusion of its own motion. The WRC can make any ancillary or consequential directions which it considers appropriate for the remote hearing.⁹

The WRC will contact the parties with a time and date for the adjudication hearing and reasonable notice will be given (generally at least four weeks). If a party wishes to raise an objection to their case

being heard by way of a remote hearing, they must apply under the WRC's policy within 5 working days of the hearing notification letter on consent to the other party. Late objections must be raised before the Adjudication Officer on the day of the hearing: [Objections to Remote Hearings – Workplace Relations Commission](#) *Special Requirements*:

If the parties, the representatives or the witnesses have any special requirements (including the requirement for an interpreter), they should give as much notice as possible in order to be facilitated.

Witness List:

As above, these procedures require that parties supply to the WRC the names of any witnesses that will accompany them to the hearing. Parties should state what relevant issue the evidence of each witness will address.

Postponements Procedure:

WRC procedures for postponements were updated on 1 January 2024. The current procedures entail two distinct processes – Process 1 and Process 2. Process 1 concerns requests on consent made early, which meet certain criteria and which are granted as matter of course. Process 2 concerns requests where there are “exceptional circumstances and substantial reasons”. All requests must be made by email as early as possible to the WRC, and on notice to the other parties. The requesting party must give details of the reasons along with all relevant documentation.

The WRC's postponement guidelines are published on its website and can be accessed at the link below. Parties are requested to consult these guidelines before making an application for postponement and use the short form provided in the link:

www.workplacerelations.ie/en/complaints_disputes/adjudication/postponement-policy/wrcpostponement-guidelines.pdf

The Adjudication Officer may grant an adjournment on the day of the hearing but only in exceptional circumstances and for substantial reasons.

⁹ See CLCLA 2020, s.31 and SI 359/2020.

If a complainant does not attend a hearing, the Adjudication Officer may find that the complaint is not well-founded etc. If the respondent does not attend, the Adjudication Officer may proceed and make a decision based on the information and evidence available.

b. WRC Hearings in Public and Parties Named in Decisions:

Pursuant to the WRA 2021, all WRC hearings involving the administration of justice (that is all WRC cases save for those for disputes under Section 13 Industrial Relations Act 1969), will be conducted in public unless the relevant Adjudication Officer decides, of their own motion, or following an application from a party to the proceedings, that due to the existence of '*special circumstances*', the proceedings should be conducted in private. By way of example, '*special circumstances*' may include circumstances where a party has a disability or medical condition, which they do not wish to be revealed; cases involving issues of a sensitive nature such as sexual harassment; cases involving a protected disclosure; or cases which could result in a risk of harm to a party if the hearing is held in public, or if the parties are named in the decision. It should be noted that the fact that the parties both consider that there are '*special circumstances*' or that an individual's reputation might be impacted by having an employment or equality complaint ventilated in public does not automatically constitute a reason for the hearing to be heard in private. Ultimately, it is a matter for the Adjudication Officer to decide based on the facts of the case in accordance with the law and fair procedure.

Such decisions will generally be made by the Adjudication Officer at the hearing though parties may indicate their views in advance of the hearing. Once it has been decided that a case is to proceed in public, then members of the public may be admitted into the hearing. WRC case lists continue to be published weekly with case reference details only, to facilitate applications by the parties at the hearing. If the Adjudication Officer decides that the hearing should be held in private, members of the public will not be admitted.

No recording of the hearing is permitted. Refusal to adhere to this rule may result in the hearing being terminated.

c. Evidence and Witnesses:

It is the responsibility of the parties and their representatives to ensure that all relevant information has been sent to the WRC prior to the hearing and all witnesses are available on the day of the hearing.

The Adjudication Officer can ask questions of each party and of any witnesses attending. They will give each party the opportunity to give evidence, to call witnesses, to question the other party and any witnesses, to respond and to address legal points. Witnesses will usually be allowed to attend for the

case but this depends on the circumstances and physical/virtual room capacity. The Adjudication Officer will decide what is appropriate, taking into account fair procedures, arrangements which will best support the effective and accurate giving of evidence, the orderly conduct of the hearing and the capacity of the hearing room/virtual platform.

The Adjudication Officer may take evidence on oath or affirmation. The Adjudication Officer will explain to the witness (and interpreter, where appropriate) that by swearing an oath or making an affirmation, the witness (and interpreter, where appropriate) is promising to tell the truth, and that giving false evidence after doing so is a criminal offence punishable by way of imprisonment and/or fine.

In light of public health guidelines, although WRC offices do hold a number of copies of holy books on site, parties and witnesses should be prepared to refer to their own physical or electronic version of their holy book if they wish to swear an oath. If they require assistance from the WRC to facilitate this, they should email pru@workplacelrelations.ie 10 days in advance of the hearing. This step is not necessary if a witness chooses to make an affirmation.

Please see the WRC's 2021 Witness Guidelines translated into over ten languages on the WRC website and here: [WRC Witness Guidelines](#).

d. Conduct at the Hearing:

Parties should treat each other and the Adjudication Officer and WRC staff members with respect. If a party's behaviour impacts on the conduct of the case it may be necessary for the Adjudication Officer to terminate proceedings: see case [ADJ-00020017](#) by way of example. If a party is unhappy with a decision, they have a right of appeal. However, harassment or defamation of Adjudication Officers or staff will not be tolerated. See also the WRC's policy on unreasonable conduct by service users¹⁰.

9. When Inferences can be Made:

Parties should note that Adjudication Officers are permitted by statute to draw adverse inferences in certain circumstances. The EEA allows for inferences to be drawn where information is sought from a party and not provided. This also applies to ESA complaints.

10. Decision:

¹⁰ [wrc-policy-regarding-unreasonable-conduct-v2020.pdf](#)

Following the hearing, the Adjudication Officer will prepare a written decision on the case. This will encompass a decision or recommendation in respect of each complaint or dispute. This will be issued to the parties. The decision will also be uploaded to the WRC website. An anonymised version of the

decision may be uploaded where the Adjudication Officer decides at the hearing, of their own motion, or following an application from a party to the proceedings, that due to the existence of '*special circumstances*', the decision should be anonymised.

11. Appeals and Enforcement:

Either party may appeal the decision in writing to the Labour Court within 42 days of the date of the decision (decisions under the ESA must be appealed to the Circuit Court within 42 days of the date of the decision). If no appeal is lodged after this period, the decision is legally binding and may be enforced through the District Court.

12. Dismissal of a Complaint or Dispute:

An Adjudication Officer or the Director General/ Director may dismiss a complaint or dispute at any time if, in their opinion, it is frivolous, misconceived or vexatious.¹¹ Where a complaint is dismissed under the relevant provisions of the WRA 2015 and/or the EEA 1998, the complainant may appeal to the Labour Court. Such an appeal must be submitted within 42 days of the date of the decision of the Adjudication Officer.

If a complaint is dismissed under section 22 of the ESA 2000, the appeal lies to the Circuit Court.

13. Striking out of cases that are not pursued:

Where a complaint is presented to the WRC, the Director General may strike out the complaint where satisfied that the complainant has not pursued the complaint within the period of one year immediately preceding its being struck out. The Director General shall, as soon as may be after he or she strikes out a complaint in accordance with these provisions¹², notify the complainant and respondent to the complaint in writing of the striking out of the complaint. Where a complaint or appeal is struck out under this section, the complainant or appellant shall not be entitled to prosecute the proceedings any further.

14. Further Information:

¹¹ See [Section 42 WRA 2015](#), [Section 77A EEA 1998](#), [Section 22 ESA 2000](#)

¹² See [Section 48 WRA 2015](#), [Section 102 EEA](#) and [Section 38 ESA 2000](#), [Section 8C Unfair Dismissals Act](#)

More information in relation to employment, equality and industrial relations legislation can be found on www.workplacerelations.ie or by telephoning the WRC information line on **0818 80 80 90**. WRC decisions published on the WRC website also constitute a good source of information for parties.
