

**Workplace Relations Commission**

**Progress Report and Commentary**

**1 October 2015 to 31 March 2016**



An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

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## **Introduction**

This six-month Commentary and Progress Report is designed to outline the work undertaken by the Commission to date, the progress made against our longer-term targets and to provide some early insight into trends emerging in dispute resolution, adjudication, labour inspection, and enforcement.

The Workplace Relations Commission (WRC) faced significant challenges on its establishment. However, the processes, consultations, and engagement of key personnel from the relevant agencies, the close interest of the Minister and the Department, and the co-operation of our customers, all were key components in ensuring the Commission enjoyed a relatively smooth transition and establishment.

## **Establishment of Workplace Relations Commission**

The Workplace Relations Commission was established just over seven months ago on 1 October 2015 and it represents perhaps the most far-reaching institutional legislative reform in the area of employment and industrial relations since the setting up of the Labour Court in 1946 and that of the Labour Relations Commission in 1991.

Over the past 70 years, the workplace relations system had evolved in a piecemeal fashion in response to EU and domestic legislation and the changing nature of employment.

A process that was intended to be informal, accessible and noticeable for its speed of outcome, had become extremely complex and lengthy. While there were excellent and committed people working in the then workplace relations bodies, often with challenging workloads, the system had begun to collapse under its own weight and needed to be changed. Some of the criticisms of the framework included:

- five organisations with overlapping, but completely separate, objectives and operations, created a system that was so complex even experienced practitioners found it difficult to comprehend,
- claims were often referred to the wrong forum or under the wrong statute: they sometimes became statute barred before the error was discovered,
- a lack of consistency existed between, and in some cases, within the bodies regarding the degree of formality of hearings, rules of evidence and the use of adversarial or inquisitorial procedures,

- it could be overly legalistic with many users feeling the need to incur legal expenses,
- it could happen that a set of circumstances arising in respect of a single employee and single employer could give rise to a number of claims, which then had to be processed individually through different fora to obtain redress,
- different routes of appeal could apply for issues arising out of the same set of circumstances in the same employment and varying timeframes attached,
- irrational and inequitable variations in how compensation was calculated occurred and in the remedies available also, in both Irish and European legislation,
- the duplication of functions between the bodies results in “forum shopping” with potentially contradictory outcomes,
- delays in getting a hearing and decision were unacceptable, and,
- the framework delivered poor value for money overall for both the clients and the State.

In such light, the bringing together of the functions formerly delivered separately by the Labour Relations Commission, the Rights Commissioners Service, the Equality Tribunal, the Employment Appeals Tribunal and the National Employment Rights Authority was long overdue.

## **Functions of the Commission**

The main functions of the WRC are to:

- Promote the improvement of workplace relations, and the maintenance of good workplace relations,
- Promote and encourage compliance with relevant employment legislation,
- Provide guidance in relation to compliance with Codes of Practice,
- Conduct reviews of, and monitor developments, in workplace relations generally,
- Conduct or commission relevant research and provide advice, information and the findings of research to Joint Labour Committees and Joint Industrial Councils,
- Advise the Minister for Jobs, Enterprise and Innovation in relation to the application of, and compliance with, relevant legislation, and to
- Provide information to the public in relation to employment legislation (other than the Employment Equality Act)<sup>1</sup>.

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<sup>1</sup>EEA information provided by the Irish Human Rights and Equality Commission

With a wide workforce of almost 200 staff with different specialisms and with offices in Dublin, Carlow, Shannon, Cork and Sligo, and operational bases for hearing meetings in many other counties, the WRC mission is to

- deliver a quality customer service throughout Ireland, which is
- speedy, user-friendly, independent, effective, impartial and cost-effective,
- provides variable means of dispute resolution, redress and effective enforcement, and
- improves workplace relations generally,

all free of charge.

## **WRC Board**

The Commission has an advisory board responsible for the WRC's strategy and annual work programme. The Board comprises a chairperson and 8 ordinary members appointed by the Minister for Jobs, Enterprise and Innovation. They are:

Dr Paul Duffy (Chair),  
Ms Deidre O'Brien,  
Ms Maeve Mc Elwee,  
Mr Liam Berney,  
Mr Shay Cody,  
Ms Geraldine Hynes,  
Ms Audrey Cahill,  
Mr Richard Devereux,  
Dr Michelle O'Sullivan.

The key functions of the Board are:

- Assisting the Commission in devising appropriate strategies through the regular production (i.e. every three years) of a Statement of Strategy to be approved by the Minister and laid before the Houses of the Oireachtas. In preparing such a statement the Board is required to seek and obtain the advice of the Director General.
- Preparing and submitting to the Minister a "Work Programme" of the work that the Commission intends to carry out over the course of the relevant year.

The Board has met on four occasions since the establishment of the Commission. The work of the Board undertaken to date is outlined below under Strategic and Operation Framework.

## **Director General**

The Director General, Kieran Mulvey, is responsible for the management, and control generally, of the administration and business of the WRC, and such quasi-judicial other functions as are conferred on him by the Workplace Relations Act 2015, and is accountable to the Minister for the efficient and effective management of the Commission in this regard.

## **Management Committee**

The Management Committee is the WRC's key leadership, planning, performance, governance and accountability forum. The Committee supports the Director General in the discharge of his functions and provides leadership, direction and guidance to the WRC as a whole. The overarching role of the Committee is to have in place a:

*Responsible, Supportive and Developmental Commission that Delivers Impartial, Fast, Efficient, Effective, High Quality Service to our Stakeholders*

The Committee's responsibilities include:

- strategic planning, policy and related performance target setting, performance risk management and resource allocation and budget management,
- performance management and reporting,
- providing effective and efficient service delivery,
- supporting staff learning and development, and
- reviewing, monitoring and directing the Commission's overall corporate governance effectiveness.

The membership of the Committee comprises:

Mr. Kieran Mulvey (Chair) – Director General

Mr. Liam Kelly - Chief Operations Officer

Ms. Anna Perry - Director of Conciliation, Facilitation and Mediation Services

Mr. David Small - Director of Adjudication Services

Ms. Fiona Kilcullen - Director of Advisory and Corporate Services

Mr. Pdraig Dooley – Director of Inspection, Enforcement and Information Services

Ms. Sile Larkin – Registrar and Director of Legal Services

## **Strategic and Operational Framework**

By end-December 2015 the Board of the Commission was in place, key appointments were made to our management team, the Work Programme for 2016 was approved by the Board and submitted to the Minister (who approved the Programme subsequently), and a comprehensive cross-Divisional *Business Plan 2016* was agreed by the Board and is now operational.

In March, this year, the Board prepared and submitted to the Minister a comprehensive Statement of Strategy *Workplace Relations Commission 2016-2018: Assisting the Recovery in a Changing and Challenging Environment*. The then Minister, Richard Bruton T.D., approved the Strategy and launched it formally on 22 April. The Board will regularly review progress against this Strategy. In addition, the Director General submitted to the Minister his Report on the activities of the WRC for the three months to end-December as required by the Workplace Relations Act 2015, i.e. from 1 October (Establishment Day) to end-year 2015.

Since 1 October 2015, the Commission staff have provided effective dispute resolution services, implemented the newly-established Adjudication Service, put in place the revised inspection and enforcement arrangements and significant progress on the drafting and implementation of corporate governance structures was achieved.

A comprehensive Stakeholder Framework is currently under consideration by the Board. Its objective is to ensure that our users, at all levels, be it individual or representative, are informed fully of the services of the WRC, have the appropriate channel to provide feedback and, in turn improve the quality and efficiency of our service delivery.

It is intended that such a Framework will be operational from Quarter 3 2016 and active engagement is already underway with key stakeholders.

## **Divisional Activity Report and Commentary**

### **Information and Customer Service**

Information on rights and entitlements under employment legislation is provided by the WRC Information and Customer Service Unit.

This information is supplied through:

- the provision of information relating to employment rights, equality and industrial relations matters by means of a telephone service manned by experienced Information Officers,

- the design and production of informational booklets, leaflets and other literature relating to employment rights, industrial relations and equality,
- management of the Workplace Relations website, and
- the provision of information to relevant parties regarding the status of complaint and dispute referrals.

### Activity Report

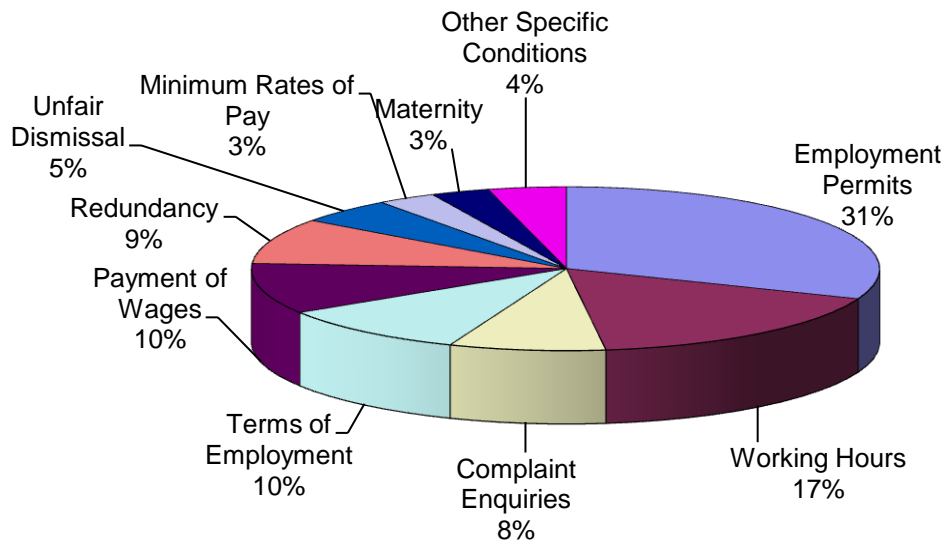
#### Information Services

Calls Dealt with	31,307
Web Visits	739,788
E-forms Received	2,891

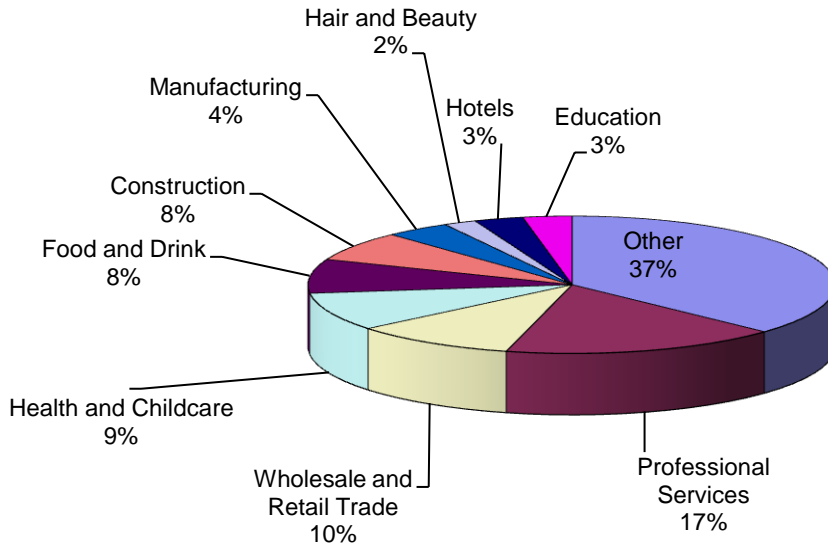
Table 1

The following three charts provide a breakdown of the type of calls received, the Sectors represented and the type of caller

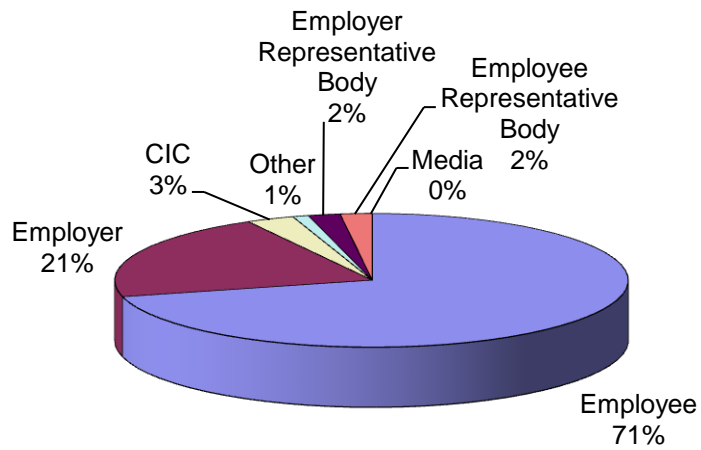
### CALL TOPIC



## INDUSTRY



## CALLER TYPE





## **Advisory Service**

The Advisory Service provides advice and assistance to employers, employees and trade unions in situations where there is no trade dispute. It helps employers and employees to develop positive working relationships and mechanisms to solve problems. One of its services is preventive mediation, advising on grievance procedures and structural change. It has also published Codes of Practice including Grievance and Disciplinary Procedures and Procedures for addressing Bullying in the Workplace.

The Advisory Service promotes good practice in the workplace by assisting and advising organisations in all aspects of industrial relations in the workplace. It engages with employers, employees and their representatives to help them to develop effective industrial relations practices, procedures and structures. Such assistance could include reviewing or developing effective workplace procedures in areas such as grievance, discipline, communications and consultation.

It facilitates joint management/staff forums and joint working parties to work through issues of mutual concern; for example workplace change or difficult industrial relations issues.

The Service provides good practice training workshops on a variety of aspects of the employment relationship including the operation of workplace procedures and, through a facilitative process, can assist organisations to implement them. In addition, the Advisory Service commissions and publishes research on current industrial relations themes in co-operation with our third-level institutions.

The Service also facilitates a procedure to help management and employee representatives to resolve disputes in situations where negotiating arrangements are not in place and where collective bargaining fails to take place.

Members of the Advisory Service team are independent, impartial and experienced in industrial relations practice and theory. In discussion with the parties concerned, a designated member of the Advisory team will tailor assistance to fit the requirements of individual organisations or firms, whether large or small. This assistance is confidential to the parties and is provided free of charge.

## Activity October 2015-March 2016

Project Type	Total
SI 76 (“Collective Bargaining”)	9
Facilitation/Joint Working Parties	17
Company-level industrial relations reviews	9
Training	12
Workplace Mediation	5

Table 2

As indicated in the *Statement of Strategy 2016-2018*, the Service has initiated work on the Adjudication Division Frequent User Initiative to identify if systemic issues underlie the referral of particular complaints to that Division. The operational aspect of this initiative will be rolled out later in 2016.

### **Training**

The WRC offers training on a variety of aspects of the employment relationship, including workplace procedures, communications, the negotiation process, dignity in the workplace and support in the management of workplace change. Such training is tailored to the needs of individual workplaces.

Programmes are delivered both, on a stand-alone basis, or as a module in an organisation’s own training programme.

Individual programmes are:

- Developed to suit the particular needs of every organisation and to accommodate the grievance/disciplinary/dispute arrangements in place.
- Designed to meet the needs of front-line managers whose role demands excellent people management skills and a good understanding of workplace conflict prevention and dispute resolution mechanisms.
- Designed to meet the needs of employees and employee representatives whose role demands a good understanding of workplace conflict prevention and dispute resolution mechanisms.

### **Conciliation Service**

The Conciliation Service helps employers and their employees to resolve disputes when they have failed to reach agreement during their own previous negotiations. The substantial majority of cases referred to conciliation are settled. If no agreement is reached then, if the parties wish, the dispute may be referred to the Labour Court.

The statutory terms under which the Service operates are those enshrined in the Industrial Relations Act 1990 and transposed into the Workplace Relations Act 2015.

The purpose and mission of the service is to provide an impartial, fast and effective conciliation service operating to a uniformly high standard in both the public and private sectors.

Conciliation is a voluntary process in which the parties to a dispute agree to avail of a neutral and impartial third party to assist them in resolving their industrial relations differences. The Workplace Relations Commission provides a conciliation service by making available Industrial Relations Officers of the Commission to chair 'conciliation conferences'. These officers are sometimes referred to as 'IROs' or as 'Conciliation Officers'. Conciliation conferences are basically an extension of the process of direct negotiations, with an independent chairperson present to provide advice, steer the discussions and explore possible avenues of settlement in a non-prejudicial fashion. Participation in the conciliation process is voluntary, and so too are the outcomes. Solutions are reached only by consensus, whether by negotiation and agreements facilitated between the parties themselves, or by the parties agreeing to settlement terms proposed by the Conciliation Officer.

The Industrial Relations Officer treats as confidential all information received during the course of conciliation.

The conciliation process is informal and non-legalistic in its practice. The parties are free to represent themselves or be represented by trade unions or by employer organisations. The Commission is of the view that the process does not require legal representation of either party at conciliation meetings.

#### Conciliation Activity October 2015 to March 2016

Activity levels during this period witnessed the service continuing to focus on the provision of the timely delivery of an efficient service to meet the needs of parties in dispute. During the inaugural six months of operation in the new organisation, the primary value and function of the service continued to be delivered and the division continued to assist parties at the appropriate moment in many dispute situations. The delivery of this high quality service was the test that was met throughout the latter part of 2015 and the first quarter of 2016 by all the Division's team of conciliators and support staff.

Conciliation activity throughout this period continued to mirror the trends already established during and throughout 2015, particularly in relation to 'Public Service Agreement' issues arising across a broad range of public sector employers. In particular the Conciliation Service assisted in a broad spectrum of Health Service Executive (HSE) industrial relations disputes (both regional and national). Many of these specific disputes involved a high degree of intense engagement over long and protracted period of hours and days.

During the first quarter of 2016 a large number of engagements took place involving the complete spectrum of companies encompassing the transport network e.g. aviation, bus, train and tram services.

The Conciliation Service's handling of industrial relations disputes was and continued to be very much in the spotlight over this period of time while evidence of the increasing trend of industrial action or threatened industrial action is continuing to be a feature in public, state and private sector employments.

In private sector organisations, the Conciliation Service continued to assist in resolving many issues, most critically around company restructuring against an increasingly competitive but suggested improving economy. In this regard, the Conciliation Service assisted in the resolution of disputes and/or facilitated the parties in discussions with a variety of employment organisations. High profile cases involved, Irish Life, Irish Rail, Tesco, Central Mental Hospital, Irish Water, Hoyer, AIB, Tesco, several hospitals throughout the country as well as a number of education and health related organisations/institutions.

The number of referrals to the Conciliation Service was 523 over this six month period. There was also an additional 147 facilitative processes Chaired and accommodated by the conciliation staff. A total of 79 disputes were referred to the Labour Court and in many of these referrals to the Court significant progress was made at conciliation in terms of narrowing the differences between the parties thereby refining and reducing issues requiring a definitive Labour Court Recommendation.

The increasing trend of the requirement for multiple conciliation sessions to deal with a number of disputes is reflective of the ever-increasing complexity of cases being referred to the Commission.

### **Employment Rights Mediation**

Employment rights mediation is provided where both parties have agreed to mediation and where the circumstances allow for the provision of the service. Cases are selected for mediation by the Commission and this service is provided by either face to face or via a phone based service. In certain instances, complainants may be offered the assistance of the Early Resolution Service which is predominately a phone based service by a Case Resolution Officer.

Officers of the Mediation Service offer efficient, neutral and impartial third-party assistance to help resolve cases through mediation without the need for a formal adjudication hearing. If a complainant or respondent does not wish to use the service, or if the issue is not resolved by the service, the complaint is returned without any delay to the Adjudication Service.

### **Workplace Mediation Service**

The Workplace Mediation Service provides a tailored response to particular types of issues and disputes emerging in workplaces. This service is particularly suited to resolving workplace individual or small group disputes around workplace conflict and difficulties of employees working together. The service is delivered by a team of mediators drawn from the Conciliation and Advisory Services and is managed by the Conciliation Service. Typical issues dealt with over the period included interpersonal workplace relationships, equality mediations, and grievance and disciplinary procedural matters generally. There were 16 requests for this service.

The WRC provides a Workplace Mediation Service, which aims to resolve workplace disputes and disagreements, particularly between individuals or small groups.

This confidential service gives employees and employers in dispute an opportunity to work with a mediator to find a mutually agreed solution to the problem. Workplace mediation is a voluntary process which requires the agreement of both sides to participate in the service and to work towards a solution to the problem.

The aim of the process is to allow each person involved in the dispute the opportunity to be heard and to work with the other party to reach a solution. It is a flexible process which may involve joint meetings or meetings with the mediator alone, depending on the particular situation.

Typically, the types of situations that are dealt with by the Mediation Service include:

- a working relationship that has broken down,

- issues having arisen from a grievance and disciplinary procedure,
- industrial relations issues exist that may better be dealt with outside the statutory dispute resolution processes.

If no agreed solution is reached the mediator assists the participants decide how best to proceed.

### **Adjudication Service**

The establishment of the WRC created a “one-stop-shop” streamlined structure for the submission of complaints. All first instance complaints are now submitted to the WRC, whereas before they could be submitted to the Rights Commissioner Service in the LRC, the Equality Tribunal and the Employment Appeals Tribunal. The previous bodies had different cultures, adjudicative practices, procedures and IT systems. The WRC now deals with all “Legacy” adjudication complaints previously submitted to the Rights Commissioner Service of the Labour Relations Commission, and the Equality Tribunal. It also deals with all “new” (i.e. post-1 October 2015) complaints that would have been submitted previously to these bodies and to the Employment Appeals Tribunal. The existing cohort of 12 Rights Commissioners and the former Equality Officers plus an external panel of 17 Adjudicators were appointed as WRC Adjudicators on 1 October 2015. Hearings before an Adjudication Officer are now held “otherwise than in public”.

The Adjudication Service investigates disputes, grievances and claims that individuals or small groups of workers make under the employment legislation listed in *Schedule 5* of the Workplace Relations Act 2015 and the equality legislation as provided in the Employment Equality Acts.

The period since establishment day has seen many challenges in terms of the Service; some are being successfully addressed while others are ongoing:

- The WRC Adjudication Service is well-established as the first-instance complaint body.
- Significant internal staff relocations have taken place without impacting on service delivery.
- Significant improvements have occurred in terms of waiting times, both for hearing (averaging three months) and issuing of decisions (averaging 40 days).
- The number of legacy employment rights cases on hands at 1 October 2015 has fallen substantially from 2,400 to just over 1,000.
- The back log of equality cases has been reduced by a third while the waiting time has been cut from 104 weeks to 53 weeks over the past 15 months.
- A standard decision template has been agreed and the quality of decisions has been to a high standard. To assist in this regard, a Quality Assurance Group reviews a cross section of

decisions with a view to achieving consistency and improvement, where required, while still maintaining the independence of the Adjudicators.

- Stakeholder feedback is encouraged and the WRC will presently meet with key stakeholders with a view to reviewing procedures and service.
- The Adjudication Service of the WRC looks for as much information in advance from the parties to ensure that all are aware of the case being made. Representatives of parties are now generally assisting their clients and the WRC by utilising the electronic claim form and sending in submissions in a timely manner. This facilitates scheduling hearings as quickly and efficiently as possible. This has not happened as regularly as would be preferred and discussions with the relevant parties have been scheduled to ascertain if there are particular issues in this regard.
- New *Procedures for the Investigation and Adjudication of Complaints* have been introduced and are “bedding in”. They are being monitored and will be updated in light of experience and stakeholder feedback. The placing of such procedures on a statutory basis is not currently envisaged but the issue will be kept under review.

#### Activity October 2015-March 2016

<b>Complaints Received Post-30 September 2015</b>	
Number of Complaint Applications Received	3470
Number of Specific Complaints Received	6655
Ave. Waiting Time for Hearing (days)	77
Ave. Waiting Time for Decision	39
Number of Decisions Issued	200

Table 3

<b>“Legacy” Cases</b>			
Awaiting Hearing:	1 October 2015	31 December 2015	31 March 2016
Rights Commissioners	2397	1996	1076
Equality Tribunal	1298	1177	883
Waiting Times:			
Rights Commissioners	8-12 weeks		
Equality Tribunal	53 weeks		

Table 4

#### Adjudication Officer Decisions of Note

The WRC is statutorily required to publish all its decisions insofar as they relate to complaints received after 1 October 2015. To date, almost 200 adjudication decisions have been posted on the website ([www.workplacerelations.ie](http://www.workplacerelations.ie)). The process is somewhat resource intensive as it is anticipated that close to 3,500 decisions will be issued in any given year. However, it is the intention of the Commission to have all “current” decisions up to date on the website by late-2016.

The decisions under the new system include cases where a number of complaints under employment and equality legislation lodged together have been heard as well as disputes under the Industrial Relations Acts. For example, in ADJ-00000399 the Adjudication Officer investigated complaints under the Terms of Employment (Information) Act 1994 and the Unfair Dismissals Act 1977. In ADJ-00000055 the Adjudication Officer investigated a complaint under section 13 of the Industrial Relations Act and section 7 of the Terms of Employment (Information) Act 1994 and in ADJ-00000772 the Adjudication Officer investigated a complaint under section 13 of the Industrial Relations Act and section 8 of the Unfair Dismissals Act 1977.

The Adjudication Officers dealt with a number of jurisdictional points in their decisions; in ADJ-00000786, a case taken under the Employment Equality Acts naming an agency and a “provider of agency work” as the respondents. Prior to the hearing of the complaint against the client company, it had submitted a response stating that the complainant was not an employee and did not attend the hearing. The Adjudication Officer relied on section 2(5) of the Employment Equality Acts and the definition of “a provider of agency work” and also section 8 (1) of the Act which states that “a provider of agency work shall not discriminate against an agency worker”. He found that the complainant was protected by the Employment Equality Acts and his termination was on the grounds of his disability. He also found that the respondent made no attempt to provide reasonable accommodation. He awarded €42,640 in compensation.

In ADJ-00000541 the Adjudication Officer investigated a complaint under section 8 of the Unfair Dismissals Act. The Adjudication Officer dealt with the preliminary issue of time limits as the respondents argued it was out of time. Relying on *Cementation Skanska v A Worker DWT0338* and reasonable cause as set out in that case the Adjudication Officer extended the time under section 8 of the Act.

In ADJ-00000026 the Adjudication Officer investigated complaints under section 77 of the Employment Equality Act. The complainant alleged she was discriminated on grounds of gender and family status during two periods of pregnancy and maternity leave. As a preliminary issue the respondent raised the issue of the status of the complainant in that she was not an employee but was on a contract for services. The Adjudication Officer, relying on *The Minister for Agriculture and Food v Barry* and *Castleisland Breeding Society Ltd v The Minister for Social Welfare*, found on the facts of the case that the complainant was engaged under a contract for services and was not an employee.



### Relevant Supreme Court Judgement

On December 8 2015 the Supreme Court gave an important Judgement on the powers of Equality Officers/Adjudication Officers in a hearing.

A dispute arose between Mr Adigun, a playwright, and the Abbey Theatre relating to a production of "The Playboy of the Western World". He lodged a complaint with the Equality Tribunal alleging discrimination under the Employment Equality Acts. The Equality Officer held a preliminary hearing on whether Mr Adigun was an employee. He subsequently issued a decision that the complainant was not an employee and, therefore, the Equality Officer lacked jurisdiction to hear the substantive complaint. The complainant judicially reviewed that decision and Mr Justice Sheehan dismissed his claims in the High Court. He then appealed to the Supreme Court.

Mr Adigun argued that it was contrary to fair procedure, guaranteed by the Constitution, and incompatible with Article 6 of the ECHR to hold preliminary hearing, in his circumstances, "when the substance of the case related to victimisation and discrimination". Mr Justice Charleton, who delivered the Judgment of the Supreme Court, stated

*"While it is correct to argue that a unitary trial is the normal and most satisfactory method of proceeding with a case in court, there are also many circumstances where the trial of a preliminary issue may resolve the substance of a legal dispute."*<sup>2</sup> .....Even apart from the subsection quoted above, **it is within the scope of fair procedures before any judicial or quasi-judicial body for an issue to be isolated and tried in advance of the main hearing provided that can be done fairly.** Hence, even apart from legislative provisions, it would make sense that once the issue was raised, it should be determined in advance of what was likely to be a substantial hearing. The resources of courts and tribunals are limited. It is a pointless exercise to engage in a trial of fact over several days when whether or not the resolution of such facts may yield any redress to the claimant looms is clearly the first hurdle that he or she must cross. "

This judgement is an important one for the Adjudication Officers of the Workplace Relations Commission in that it clearly allows them to have discretion in dealing with preliminary issues such as jurisdictional matters, i.e. the status of the complainant, time limits etc., once it is carried out fairly and impartially.

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<sup>2</sup> [2015] IESC 91.

## **Inspection and Enforcement Services**

### **Inspection**

The Inspection and Enforcement Services monitor employment conditions to ensure compliance with and, where necessary, the enforcement of employment rights legislation. This includes redress for the employees concerned and payment of any unpaid wages arising from breaches of employment rights.

The Inspection Services have the power to carry out employment rights compliance inspections in relation to the following legislation:

- Organisation of Working Time Act 1997
- Payment of Wages Act 1991
- Protection of Young Persons (Employment) Act 1996
- National Minimum Wage Act 2000
- Parental Leave Acts 1998 and 2006
- Redundancy Payments Acts 1967–2012
- Employment Agency Act 1971
- Protection of Employment Act 1977–2007
- Protection of Employees (Employers' Insolvency) Acts 1984–2003
- Carer's Leave Act 2001
- Employees (Provision of Information and Consultation) Act 2006
- Employment Permits Acts 2003–2014

Inspectors visit places of employment and carry out investigations on behalf of the Commission in order to ensure compliance with equality and employment-related legislation. In certain circumstances, the Labour Court may request that an inspector carry out investigations on its behalf. Such investigations involve, but are not confined to, examining books, records and documents related to the employment, and conducting interviews with current and former employees and employers.

Where breaches of legislation have been found, an Inspector may, depending on the section of legislation involved, issue either a Compliance Notice or a Fixed Payment Notice to an employer.

The Workplace Relations Act 2015 has extended the scope of the legislation in respect of which inspectors are authorised officers. For example, the provisions in Organisation of Working Time Act

1997 in relation to annual leave and public holidays, which are dealt with by Adjudication Officers, can also be dealt with by inspectors

Inspectors may enter premises at reasonable times, interview employers and employees, take statements, examine and take copies of records and initiate legal proceedings. If necessary, inspectors may be accompanied by other inspectors or the Gardaí. They may apply to the District Court for search warrants.

Inspectors are also empowered to work in Joint Investigation Units with the Department of Social Protection and the Revenue Commissioners, and to exchange information with these bodies.

There is a growing emphasis on collaborative work between government agencies. This approach enables a more comprehensive focus on employers and sectors most at risk of being non-compliant in the areas of employment rights, social protection and taxation. In the period under review a total of 420 such joint investigation visits were carried out by Inspectors from the WRC with their counterparts in the Revenue Commissioners and/or the Department of Social Protection. Inspectors were also accompanied by Gardaí during inspections where appropriate.

In addition to the statutory powers already available to exchange information with the Department of Social Protection and the Revenue Commissioners, the Workplace Relations Act 2015 makes provision for administrative cooperation between the WRC and other official bodies. In March 2016 a memorandum of understanding was agreed between Inspection and Enforcement Services and the Gangmasters Licensing Authority in the United Kingdom.

It is also important that the WRC maintain good working relations at an international level. The WRC continues its involvement in the training of inspectors from other EU countries and accept their input in the training of our own Inspectors. The WRC also co-operates closely with the International Labour Organisation in this regard.

The aim of the WRC is to achieve a culture of compliance with employment law, by informing employers and employees of their respective responsibilities and entitlements, and by working in close cooperation with them and their representatives. Working with individual employers through the inspection process is a key element of checking and ensuring compliance.

### *Compliance Notice*

A Compliance Notice:

- states the grounds on which the inspector is satisfied that a contravention of legislation has taken place
- requires the employer to do or refrain from doing such act(s) as/are specified in the notice, and by such date as is specified
- contains information regarding the bringing of an appeal against the notice, including the manner in which an appeal may be brought.

An appeal against the notice may be made by the employer to the Labour Court not later than 42 days after the service of the notice. At a Labour Court Hearing of the appeal, both the inspector and the employer concerned may be heard and may present evidence.

Subsequently, an employer may appeal to the Circuit Court against a decision of the Labour Court which either, affirmed the compliance notice, withdrew it or issued a direction relating to it. Such appeal to the Circuit Court must be made within 42 days of the decision or the giving of the direction concerned.

Where an inspector is satisfied that the employer has complied with the compliance notice, he/she will serve a notice to the employer to that effect.

### *Fixed Payment Notice*

Where a Workplace Relations Inspector has reasonable grounds for believing that a person has committed an offence under certain specified legislation (see below), he/she may give to that person a Fixed Payment Notice stating that -

- the person is alleged to have committed that offence,
- the person may, within 42 days from the date of the notice, make payment of the prescribed amount, which should be accompanied by the notice, to the Commission
- the person is not obliged to make the specified payment, and
- no prosecution in respect of the alleged offence(s) will be initiated if the payment is made during the 42 day period.

Offences under the following pieces of legislation may attract a fixed payment notice:

- Section 11 of the Protection of Employment Act 1977 (€2,000),

- Section 4(4) of the Payment of Wages Act 1991 (€1,500),
- Section 23 of the National Minimum Wage Act 2000 (€1,500).

A person who receives a Fixed Payment Notice may, within 42 days of the date of the Notice, make a payment to the Commission of the amount specified in the Notice. If the payment is made within that period, no prosecution will be instituted against such a person. However, failure to make payment against a Fixed Payment Notice will cause a prosecution to be instituted by the WRC in the Courts.

It is not possible, at this early stage, to measure any specific and reliable trends directly related to the new provisions. A number of Compliance Notices have been issued since vesting and are being worked through. It should be noted that the legislation provides for a six week period following the service of such notices in which the employer can lodge an appeal which is ultimately heard by the Labour Court. It will be towards the end of the year before the efficacy of the new system can be reliably reviewed.

Three Fixed Penalty notices were issued in the period, one of which has been paid.

#### Prosecutions & Enforcement

There are occasions where it is necessary and appropriate to invoke legal sanctions against non-compliant employers. This can arise in respect of offences that arise when an employer fails to comply with a Compliance or Fixed Penalty notice. There are also separate offences which may be prosecuted in their own right before the courts. These include, for example, a failure to pay the minimum hourly rate of pay under the National Minimum Wage Act.

Decisions regarding the prosecution of employers are based on a consistent, proportionate and fair assessment of the seriousness of the alleged offence. Mitigating factors such as the level of cooperation received, employers previous history of compliance, whether the employer has rectified the non-compliance, whether employees have received redress in the form of unpaid wages or other entitlements, are also taken into account in arriving at a decision.

The new provisions contained in the Workplace Relations Act 2015 came into effect on 1 October 2015 and relate to cases commenced on or after that date. Cases which were commenced before that date continue to be dealt with under the old provisions and are included in Appendix.

The provisions in the Act, as they relate to the enforcement of decisions of Adjudication Officers, and the Labour Court following an appeal from a decision of an Adjudication Officer, represent a significant change from that which applied previously. In the past, decisions which were legally capable of being enforced were processed through the civil courts. The new provisions have made the failure to comply with such decisions a criminal offence with significant fines, and the possibility of a prison term. Similar to the Compliance and Fixed Penalty notices, it is perhaps too short a period to discern any significant trends in this regard

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<b>Inspection Services</b>	
Cases Concluded	2465
Employers in Breach	1086
Complaints Received	513
Unpaid Wages Recovered	€665,208

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Table 5

### Summary Six Month (End-March) Activity Report for WRC

#### Adjudication Service

##### *New Cases*

Number of Complaint Applications Received:	3470
Number of Specific Complaints Received:	6655
Ave Waiting Time for Hearing (days):	77
Ave Waiting Time for Decision (days):	39
Number of Decisions Issued:	200

##### *Legacy Cases*

Awaiting Hearing	1 October 2015	31 December 2015	31 March 2016
Rights Commissioners	2397	1996	1076
Equality Tribunal	<u>1298</u>	<u>1177</u>	<u>883</u>
	3695	3173	1959

##### Waiting Times

Rights Commissioners:	8-12 weeks
Equality:	53 weeks (down from 120 in 2014)

#### Conciliation/Mediation Service

Industrial Relations Referrals:	522
Conciliation Conferences:	726
Other Meetings (Mediation/Facilitation, etc)	170

#### Advisory Service

New Referrals:	26
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#### Employment Rights/Equality Mediation

No of complaints selected and offered:	620
Number where both parties agreed to mediation:	344 (trend upwards in 2016 as service embedded)
Referrals closed during mediation process:	337*

#### Inspection Services

Cases Concluded:	2465
Employers in Breach:	1086
Complaints Received:	513
Unpaid Wages Recovered:	€665,208

\*This figure includes some cases already selected prior to activity period covered