

# Workplace Relations Commission **ANNUAL REPORT 2016**



**WRC**

An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

# Workplace Relations Commission **ANNUAL REPORT 2016**

**Presented to the Minister of State  
for Employment and Small Business**

in accordance with section 32(1) and 23(3)  
of the Workplace Relations Act 2015

# Contents

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Director General's Report	1
Board of the Commission	2
Key Performance Metrics: 2016	3
Functions of the Commission	5
Resources 2016	6
Service Reports	7
Information and Customer Service	7
Advisory Service	9
Conciliation, Mediation and Early Resolution Service	11
Conciliation	11
Employment Rights Mediation	13
Workplace Dispute Mediation	13
Adjudication Service	14
Inspection and Enforcement Service	24
Corporate Service	27
Work Programme 2016: Our Performance	28
Appendices	
Appendix 1   Legislation by which Complaints may be Submitted to Adjudication Service	36
Appendix 2   Key Supreme and High Court Judgments and Adjudication Decisions	37
Appendix 3   Complaint Applications 2016: Legislative Basis	47
Appendix 4   Inspection Activities and Outcomes: 2016	48
Appendix 5   Prosecutions: 2016	49

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# Director General's Report

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Oonagh Buckley

I have the pleasure of submitting to the Minister the second Annual Report of the Workplace Relations Commission. While the Report focuses on the Commission activities during 2016, it also outlines progress made in terms of delivering on the objectives set out in the Statement of Strategy which was adopted by the Board of the Commission in 2016 and will guide the activities of the Commission over the first three years of its existence.

The Workplace Relations Commission plays an enormously important role in Irish society. Through its work the Commission helps to maintain a healthy competitive environment, with sustainable employment and fair treatment at its heart. It deals with employers and employees and their representatives across the public and private sectors, in small and large organisations, and in both union and non-unionised employments. It also helps members of the public who have been discriminated against by service providers.

It interacts with people and businesses in many ways: in all those ways, its goals are to bring resolution to disputes as early and as close to the workplace as possible.

2016 was a very challenging year for all involved with the Commission, as we operated the new procedures and systems introduced under the Workplace Relations Act 2015. As this Report shows, substantial work has been done and some signal achievements made.

The Commission is a work in progress. It will continue to learn, to adapt and to improve over the course of 2017 and 2018. The ongoing support of our many stakeholders over this time is very welcome.

I was appointed in July following the retirement of my predecessor, Mr. Kieran Mulvey. I want to take this opportunity to thank him for his many years of public service and wish him well in his retirement.

Since my appointment, I have been struck by the commitment to the success of this new body of all the staff who work for the Commission, and of the Adjudication Officers who handle the many thousands of complaints the Commission receives. Without their hard work, we would not have been able to achieve so much in 2016.

I commend them for it.

# Board of the Commission



Dr. Paul Duffy



Liam Berney



Maeve McElwee



Audrey Cahill



Geraldine Hynes



Shay Cody



Deirdre O'Brien



Dr. Michelle O'Sullivan



Richard Devereaux

The nine person Board is chaired by Dr. Paul Duffy (Pfizer Global Supply Vice President).

## **Fees/Ethics in Public Office**

All Board members, along with Adjudicators, Rights Commissioners and relevant Officers of the Commission, were advised of their obligations and/or

completed the appropriate returns under the Ethics in Public Office Acts, as required

The Chairman and members of the Board are not in receipt of any fee in connection with the performance of their duties as Board members.

## **Director General**

Ms. Oonagh Buckley was appointed by the Minister for Jobs, Enterprise and Innovation as the Director General of the Commission in July replacing the previous Director General, Mr. Kieran Mulvey, who retired in June.

# Key Performance Metrics: 2016

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**63,000**  
**Calls**  
to WRC Infoline (+2%)

**Website**  
**Visits**  
**440,000** (+23%)



**Inspection**  
**Complaints**  
**1018**  
(+17%)

Inspection  
Complaints  
Awaiting  
Registration  
**150**



(-60%)



Employees Covered  
By Inspections

**75,000**



**Unpaid Wages**  
**Recovered**

**€1.5M** (+2%)





## ! Employers In Breach

( 37% in 2016  
41% in 2015 ) 

**86%**  
of **Collective Disputes**  
Resolved at Conciliation

Almost Two-Thirds  
of Employment Rights Disputes  
**Resolved At Mediation**



**14,400** Complaints received in the first year



**75%** of adjudication hearings held within **22 weeks**  
of complaint receipt



**29 Weeks** from complaint receipt to issuing  
of adjudication decision



**90%** of adjudication decisions **accepted**



## Type of Complaint

Of the specific complaints received:

**28%** related to  
Pay issues

**11%** related to  
Discrimination/Equality

**15%** related to  
Unfair Dismissal

**9%** related to  
Trade Disputes/IR issues

**12%** related to  
Working Time

**9%** related to  
Terms & Conditions  
of Employment



**85%**  
Of Workplace Disputes  
**Resolved**

# Functions of the Commission



## 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<sup>2</sup>.

The Commission's core services reflect this framework and include the provision of early dispute resolution, mediation, conciliation, facilitation and advisory services, adjudication on complaints and disputes, promoting compliance with employment rights legislation and, where necessary, achieving this through enforcement, the provision of employment rights and industrial relations information generally, and the processing of employment agency and protection of young persons (employment) licences.

# Resources 2016

## Resources 2016

### Cost of Providing the Services

The WRC is an office of the Department of Jobs, Enterprise and Innovation and is funded from within the overall Departmental Vote.

Pay:	€10.081m
Non-Pay:	€2.489m
<b>Total:</b>	<b>€12.570m</b>

Table 1



### Staffing

At end-December, 2016, the Commission had a staff allocation of 164.1 permanent employees who are civil servants and part of the staffing establishment of the Department of Jobs, Enterprise and Innovation.

The staffing is supplemented by a further 29 Adjudication Officers who are contracted to assist the Adjudication Service on a case-by-case basis.

Director General	1
Chief Operations Officer	1
Registrar	1
Principal Officer	5
Solicitor	0.6
Assistant Principal	18.7
AO	1
Higher Executive Officer	18
Executive Officer	63.6
Clerical Officer	54.2
<b>Total</b>	<b>164.1</b>

Table 2

# Service Reports



## Information and Customer Service

Information on rights and entitlements under employment legislation is provided by the WRC Information and Customer Service Unit. This Unit also processes all WRC complaint forms and deals with all aspects of the licensing of employment agencies and of children to work in film, cultural, sport or advertising.

Information in relation to employment rights, equality, industrial relations and employment permits is supplied through:

- A dedicated telephone service manned by experienced Information Officers.
- The Workplace Relations Commission website. ([www.workplacerelations.ie](http://www.workplacerelations.ie))
- Information booklets, leaflets and other literature designed and produced by the WRC.
- Providing information to relevant parties regarding the status of complaints, dispute referrals and applications for employment permit cases.

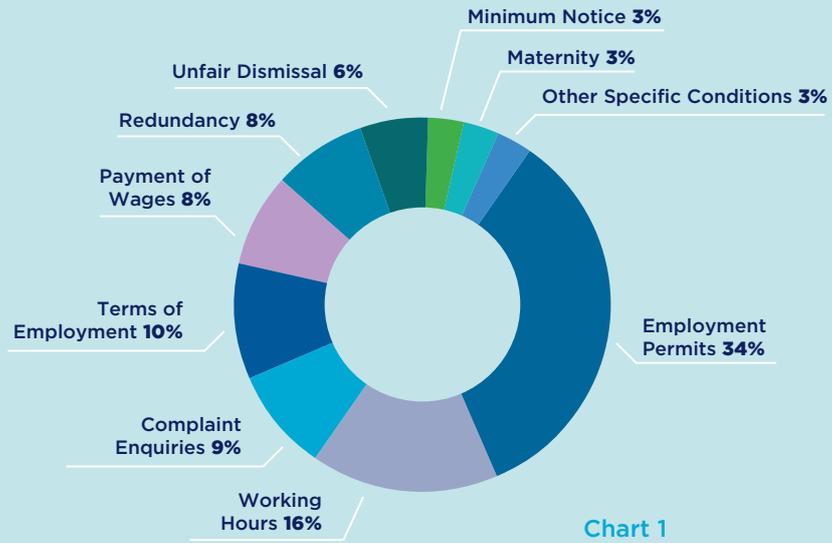
## Telephone Queries

The “Infoline” - 1890-80-80-90 logged over 63,385 calls during 2016, on topics ranging from queries relating to work permits (34%), working hours (16%), and terms of employment (10%), in addition to enquiries regarding the status of cases

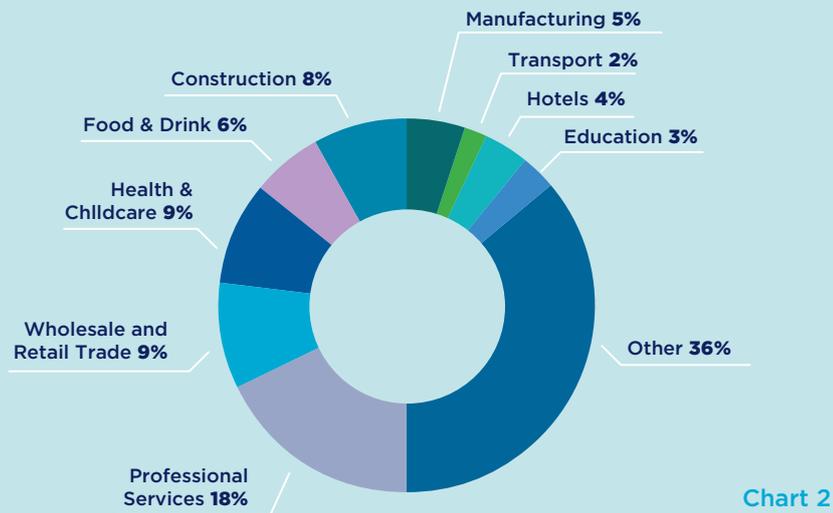
The queries presented may be of a sensitive nature and callers are sometimes trying to understand issues that are new to them. Calls may take some time to be dealt with, but our aim is always to give sufficient time to try to ensure the caller goes away with the information they were looking for.

The following charts provide a breakdown of the type of calls received, the sectors represented and the caller type.

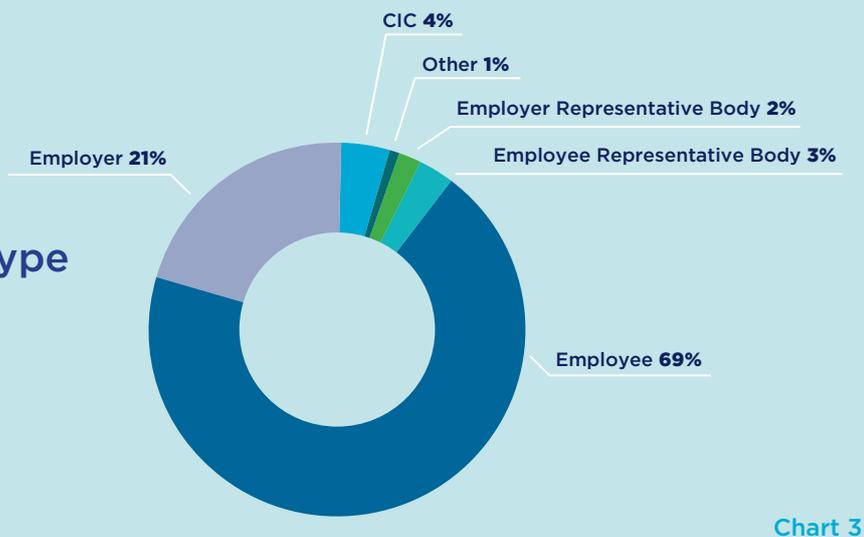
## Call Topic



## Industry



## Caller Type



### Website and Presentations

Website usage has increased year-on-year with some 2.2m. page views logged during 2016 (up 17% on 2015). The Commission is aware from feedback of the need to keep the website under review in terms of user-friendliness and efficacy generally. It is likely that the website will be redesigned during 2017.

Presentations and exhibitions, targeted at the broader public, are another way of raising awareness of employment rights legislation, the WRC generally, and of the different ways people can access our services. In 2016, 27 such presentations and exhibitions were undertaken.

### Activity Report in Brief

#### Information Services

Calls Received	63,385
Web Page Views	2,199,014
E-forms Received	5,547
Presentations/Exhibitions	27

Table 3

### Protection of Young Persons and Employment Agency Licencing

During 2016, the Division issued 532 licences covering a total of 1,322 children in relation to the Protection of Young Persons. It also issued 647 employment agency licences.

## Advisory Service

The Advisory Service promotes good practice in the workplace by assisting and advising organisations on all aspects of industrial relations in the workplace, and engages with employers, employees and their representatives to help them to develop effective industrial relations practices, procedures and structures.

The Service works with employers and employees and their representatives across the public and private sectors, in small and large organisations, and in both union and non-unionised employments. It customises its advice and intervention model to reflect and address the issues arising in the particular workplace. The Service's involvement post-Luas dispute is a recent example.

### Luas

The Luas dispute was typified by strong adversarial positions on pay. Following on from the work of the WRC Conciliation Service in shaping the issues in dispute between the parties, the dispute was settled by means of an extensive Labour Court Recommendation which dealt with the totality of these issues.

As part of its overall suite of recommendations, the Court recommended that the WRC Advisory Service carry out a review of workplace and industrial relations in the Company. This review has recently concluded. The Service will now work with both sides to introduce measures to improve industrial and workplace relationships and practices in the company.



A new feature of the work of the Service centres around helping management and employee representatives to resolve disputes in situations where negotiating arrangements are not in place and where collective bargaining fails to take place - the so called “collective bargaining” element of the Industrial Relations Act 2015.

In such situations, the Advisory Service works to facilitate engagement between the parties on issues other than collective bargaining, an example of which is terms and conditions of employment including pay. During 2016, a total of 10 such interventions took place, of which, three were referred to the Labour Court.

**WRC Training**

The Advisory Service oversees the delivery of training by the WRC on all aspects of the employment relationship and how we advise parties on how best to utilise our services. In this regard, the WRC also provides bespoke training focused on particular aspects of the workplace in receipt of the training. This training is delivered by staff from all Divisions of the WRC ensuring that our expertise and knowledge is utilised to its fullest extent.

Training is provided free and delivered on-site where requested.

**Information and Consultation**

The Service developed and delivered training to staff and management of non-union organisations on best practice and implementation of the 2008 Information and Consultation Directive.

**Dignity at Work**

The Advisory Service recently developed and delivered Dignity at Work training for an education body. The outline for this course included education on Bullying/Harassment/ Sexual Harassment, and the implementation of appropriate policies and procedures. The training also outlined the benefits of a mediated approach to conflict resolution, using the model developed by the Advisory Service.

**Conflict in the Workplace:**

The Service designed a three day training programme in relation to Conflict in the Workplace during the year and will roll out a tailored version to a large not-for-profit institution later this year.

As indicated in the Commission’s **Statement of Strategy 2016-2018**, the Service developed the Adjudication Service Frequent User Initiative during 2016 to identify systemic issues underlying the referral of particular complaints (and perhaps a pattern of referral from particular employments) to the Adjudication Service. The operational aspect of this initiative will be rolled out in 2017.

**Activity Report in Brief**

Project Type	Total
SI 76 (“Collective Bargaining”)	10
Facilitation/Joint Working Parties	19
Company-level industrial relations reviews	13
Training	9

Table 4

## Conciliation, Mediation, and Early Resolution Service

### Conciliation

The Conciliation Service helps employers and their employees to resolve disputes when they have failed to reach agreement during their own negotiations.

The Service is staffed by a cadre of Industrial Relations Officers who collectively have many years experience in the resolution of both public and private sector disputes. This is reflected in the overall settlement rate of 86% in disputes dealt with during 2016.

#### Conciliation Activity 2016

The industrial relations climate over 2016 saw pay discussions come to the fore again in the private and commercial State sectors where a trend in pay agreements reflected a move upwards in settlements, while at the same time a number of 'Public Service Agreement' issues arose across a broad spectrum of public sector employments.

There is also clear evidence that industrial action or threatened industrial action at an early stage in the dispute process is becoming more and more prevalent, particularly in public and State sector employments.

This increase in industrial relations activity takes place in the context of an improvement in the economic and enterprise environment, following a protracted period of austerity and cuts.

In this regard, the Conciliation Service assisted in resolving many issues, most critically around company restructuring against the background of an increasingly competitive and improving economy. Additionally, on an *ad hoc* basis, the Service provided assistance in disputes that would not formally fall within its remit. In terms of the private and commercial semi state sectors, the Conciliation Service assisted in the resolution of disputes and/or facilitated the parties in discussions with a variety of employment organisations. Prominent cases involved a broad spectrum of employments: Childminding Ireland, ERVIA, Irish Life, Irish Rail, Kerry Ingredients, Liebherr, Tesco, Central Mental Hospital, Irish Water, Hoyer, Allied Irish Banks, and a number of education and health related organisations/institutions.

**Dublin Bus and Group of Unions**  
Following a protracted dispute between management and trade unions at Dublin Bus, which resulted in a number of days of strike action, the parties accepted WRC proposals on pay and other measures in October 2016.

**Bausch & Lomb and SIPTU:**  
Industrial action by over 1,000 workers at the Bausch & Lomb plant in Waterford was averted in December 2016, following the intervention of the WRC. In this regard, a proposal tabled by the Commission, comprising a pay rise of 9.5% over a period of three years, together with a €500 lead-in payment was accepted.

**Element6 and SIPTU**  
Element Six manufactures synthetic diamond supermaterials and is a member of the De Beers multinational group. It has a manufacturing facility in Shannon Industrial Estate employing over 400 people.

Issues between management and the trade union involving a broad range of change proposals threatened to disrupt production on site. Conciliation talks chaired by the Commission resulted in both sides accepting a comprehensive set of proposals from the WRC.

In the public service sector, 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 periods. Over the year, a large number of engagements also took place involving companies within the transport sector e.g. aviation, bus, train and tram services.

#### **HSE Hospital Emergency Departments and INMO**

In the face of threatened industrial action in certain Hospital Emergency Departments, following the rejection of earlier WRC proposals, the Commission invited the parties to further talks.

Intensive engagement and negotiation with and between the parties took place and the WRC subsequently issued additional revised proposals in early-2017, building on the proposals issued in December 2016.

These proposals resolved the dispute.

The total number of referrals to the Conciliation Service was 1037 over the year. The Service recorded a resolution rate of 86 per cent during 2016.

There was also an additional 311 facilitative processes chaired and accommodated by the Divisional staff. This work involved chairing Oversight Groups within the Public Service Agreement Framework, chairing Joint Labour Committees (Contract Cleaning, Security, Hairdressing) as well as several Joint Industrial Councils (Construction, Electrical, State industrial). In addition, staff of the Service also act as Appeals Officers for Education and Training Boards (ETBs) in respect of their Grievance and Disciplinary Procedures and Bullying and Harassment Procedures (a total of 13 such appeal procedures were heard within the last year).

#### **Contract Cleaning**

##### **Joint Labour Committee**

The Contract Cleaning JLC agreed and submitted proposals to the Labour Court for a new Employment Regulation Order (ERO) which provided for a cumulative total of 10.75% in three separate pay increases, which cover the period up to December 2019.

This sector employs in the region of 30,000 workers.

A total of 145 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.



## Employment Rights Mediation

Employment rights mediation is provided where both parties have agreed to mediation and where the dispute is suitable in terms of the service. Successful mediations can allow participants to take ownership of solutions agreed within parameters of full confidentiality.

Cases are selected for mediation by the Commission and this service is provided by either face to face or via a phone based service. There were 69 pre-adjudications mediation cases identified and dealt with of which 63% were settled or withdrawn; the remainder proceeded to Adjudication.

In certain instances, complainants may be offered the assistance of the Early Resolution Service (ERS) which is predominately a telephone-based service.

Mediation through the ERS is offered only in cases where, in the judgment of the Service, there is a reasonable prospect of a settlement. This triaging is to ensure that resources are used effectively and efficiently. 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 forwarded, without delay, to the Adjudication Service.

In 2016, the ERS offered its services in 1122 instances, which were accepted by both parties in 662 cases. The number of cases resolved or withdrawn totalled 321, representing just under 50%

The Mediation Service is a key tool in resolving disputes and the WRC will promote and support it fully during 2017.

In the context of broader developments to encourage the use of mediation as an alternative to dispute adjudication, it is the Commission's intention to increase the number of mediation and ERS interventions in 2017, and to increase the availability of "face-to-face" ERS mediation in suitable cases.



## Workplace Dispute Mediation

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 37 requests for this service during 2016 of which 70 per cent were resolved, 14 per cent were withdrawn, and the remaining cases are still in process.

## Adjudication Service

The Adjudication Service investigates disputes, grievances and claims that individuals or small groups of workers make under the employment legislation listed in Appendix 1.

Hearings before an Adjudication Officer are held in private. Following the hearing the Adjudication Officer issues a decision in accordance with the relevant legislation and the decision is issued to the parties. These decisions are published on the WRC website in a manner that does not identify the parties.

All decisions may be appealed to the Labour Court

A compendium of key Adjudication decisions together with relevant Supreme and High Court judgments is set out at Appendix 2.

## Stakeholder Engagement

The Service was established to create a single entity to process complaints formerly dealt with by the Rights Commissioner Service, the Equality Tribunal and the Employment Appeals Tribunal. The first year of operations was challenging as amalgamated systems and new systems were adjusted in light of experience. In this regard, the Service engaged extensively with its many stakeholder bodies<sup>3</sup> and received direct feedback from practitioners, which has proved invaluable in ensuring the WRC prioritised the operational improvements needed.

### Some examples include:

- the parameters around the application and granting of adjournments and postponement of hearings could be tightened up,
- some parties are not complying with the requirement to submit statements within the time requested,
- hearing procedures should be clarified and applied consistently,
- in terms of clarity and simplification, better and more timely information on decisions,
- the searchability of decisions on the website needs to be improved,

- many indicated that the prescribed timelines for submission of statements and the dates of hearings may be too tight, particularly in relation to cases relating to Equality/ Unfair Dismissal as they tend to be the most complex,
- the regional venue base is too narrow – particularly in geographically remote areas of the country.

Some of these have already been addressed (e.g. hearing procedures), others are in train (e.g. hearing venues, website), and will be addressed over the course of 2017, while others (e.g. “on time” submissions) are in the control of the parties to the complaint. On the latter issue, the WRC has stressed and will continue to pursue a non-statutory approach in 2017 to encourage parties to deliver sufficiently detailed submissions on time.

The WRC is fully committed to the stakeholder engagement process and will meet with relevant stakeholders again in 2017.

<sup>3</sup> Law Society, Employment Law Association of Ireland, Employment Bar Association, Irish Human Rights and Equality Commission, Equality and Rights Alliance, Ibec, Irish Congress of Trade Unions, Citizens Information Board, etc.



**Complaints to Workplace Relations Commission in 2016**

Over the course of 2016 a total 6,863<sup>4</sup> “Complaint Applications” were received. These applications comprised 14,004 “Specific Complaints”, i.e., an average of two separate employment legislation issues within each application. Of these specific complaints, some 1,478 were referred for Inspection Division.

The referral rate of specific applications shows a slight decline between Quarter 1 and Quarter 4 (this is replicated in the monthly referrals albeit some months show higher referral rates than others). Given that this is the first full year of operation it is too early to say if referral levels are levelling off after an initial surge post-establishment. In this regard, it is worth noting however that the referral rates for Quarter 4 2015 stood at 1,690 and 3,212 for complaint applications and specific applications respectively.

**Complaint Applications by Quarter - 2016**



Chart 4

<sup>4</sup> 84% of these complaints were submitted “on-line”. Further promotion by the WRC and co-operation by complainants and/or their representatives should increase this through 2017.

### Type of Complaint

Of the specific complaints received:

**28%** related to  
**Pay issues**

**11%** related to  
**Discrimination/Equality**

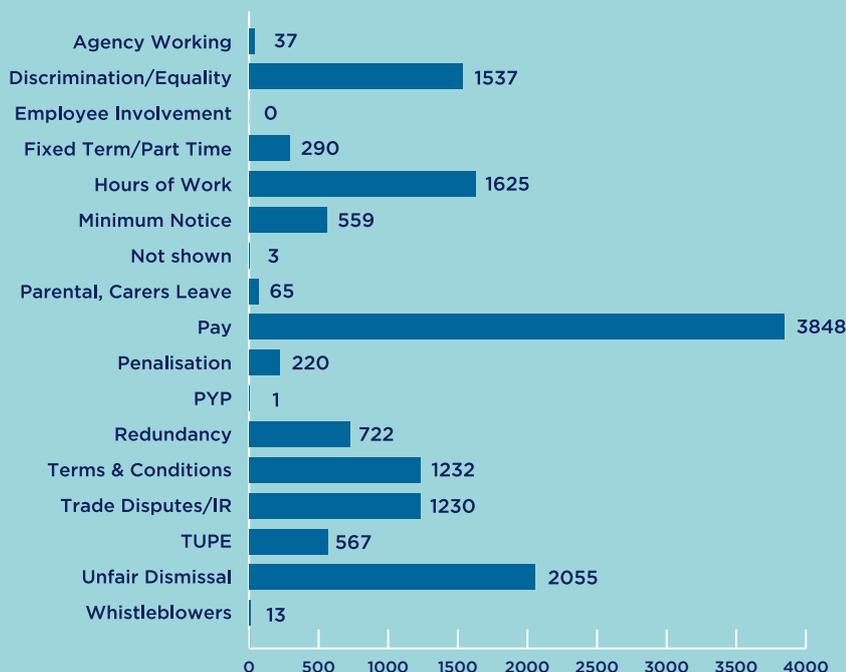
**15%** related to  
**Unfair Dismissal**

**9%** related to  
**Trade Disputes/IR issues**

**12%** related to  
**Working Time**

**9%** related to  
**Terms & Conditions  
of Employment**

### Specific Complaints by Complaint Type - 2016



The legislation under which these claims were referred is contained in Appendix 3.

Chart 5

### Equal Status Acts 2000-2015

In 2016 there were 131 Complaint Applications comprising 658 Specific Complaints made under the Equal Status Acts. When making a referral, complainants must indicate at least one of the discriminatory grounds but may indicate more than one.

#### Number of Times Each Ground Indicated

Ground	Number
Age	13
Civil Status	12
Disability	75
Family Status	15
Gender	20
Membership of the Traveller	
Community	416
Race	462
Religion	25
Sexual Orientation	7
Housing Assistance	43
<b>Total</b>	<b>1088</b>

Table 5

### Employment Equality Acts 1998-2011

In 2016 there were 340 Complaint Applications comprising 691 Specific Complaints made under the Employment Equality Acts. Complainants must indicate at least one of the discriminatory grounds and may indicate more than one. The table below shows how many times each ground was indicated in the 691 specific complaints.

#### Number of Times Each Ground Indicated

Ground	Number
Age	161
Civil Status	52
Disability	204
Family Status	114
Gender	353
Membership of the Traveller	
Community	7
Race	189
Religion	9
Sexual Orientation	24
<b>Total</b>	<b>1,113</b>

Table 6

### Pensions Act 1990

During 2016, there were two Complaint Applications comprising nine Specific Complaints under the Pensions Acts. (With effect from 5th April 2004, it is unlawful to discriminate directly or indirectly in relation to occupational pensions on any of the nine protected grounds). Complainants must indicate at least one of the discriminatory grounds and may indicate more than one. The table below shows how many times each ground was indicated in the nine specific complaints.

Ground	Number
Age	5
Civil Status	0
Disability	4
Family Status	1
Gender	3
Membership of the Traveller	
Community	1
Race	1
Religion	0
Sexual Orientation	3
<b>Total</b>	<b>18</b>

Table 7

### Acknowledgement Times

During 2016, over half (3,600) of all complaint applications were acknowledged within five working days. Almost 80 per cent (5,500) were acknowledged within the overall WRC target of less than ten days. Improving further on this performance will be a priority for 2017.

### Hearings By Region

The busiest location in terms of hearings were Dublin (45%), Cork (9%), and Sligo (8%) Meath and Wexford (7% each).

A metric of the success of the WRC is reasonable accessibility to our services across the country. As part of the stakeholder engagement exercise mentioned earlier it is apparent that users feel that a number of additional hearing venues are required.

- A separate region for Kerry with Tralee being the hearing venue in this region.
- A separate region in Donegal with Letterkenny as the hearing location,
- A new region for Mayo with Castlebar as its hub,
- A separate Cavan/Monaghan region with Monaghan as the hearing location, and
- A Kilkenny/Waterford region with Kilkenny City as the hub.

Following a review of our venues the following locations have been added to the WRC hearing roster:

## Hearings by Hearing Region - 2016

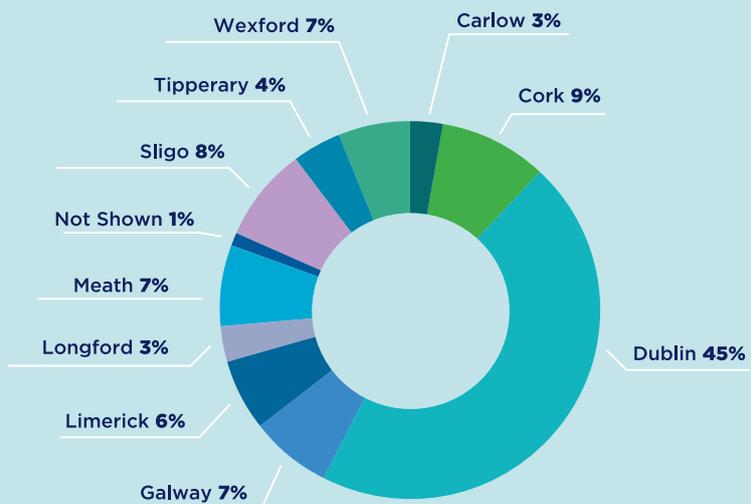


Chart 6

### Hearing Waiting Times

At present, over three-quarters of complaint applications are heard within five months of initial receipt of the complaint (25% are heard within three months and 55% within four months). This represents a significant improvement on the situation that pertained before the establishment of the WRC. However, a key challenge for the WRC during 2017 is to maintain this high level of performance.

### Hearings Held

In 2016, a total of 5,690 hearings were scheduled of which some 3,518 hearings took place.

## Average Waiting Time for Hearings - 2016

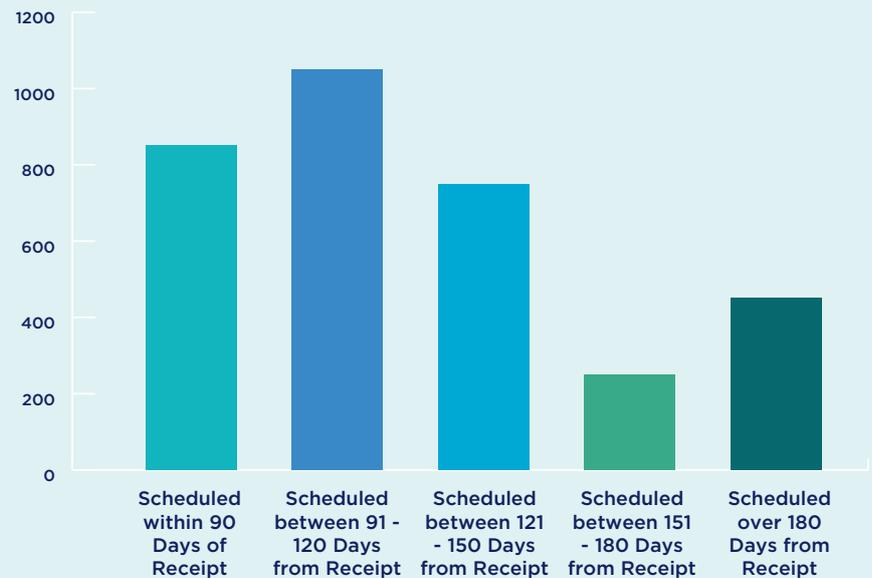


Chart 7

## Adjudication Hearings Scheduled/Cancelled/Heard 2016

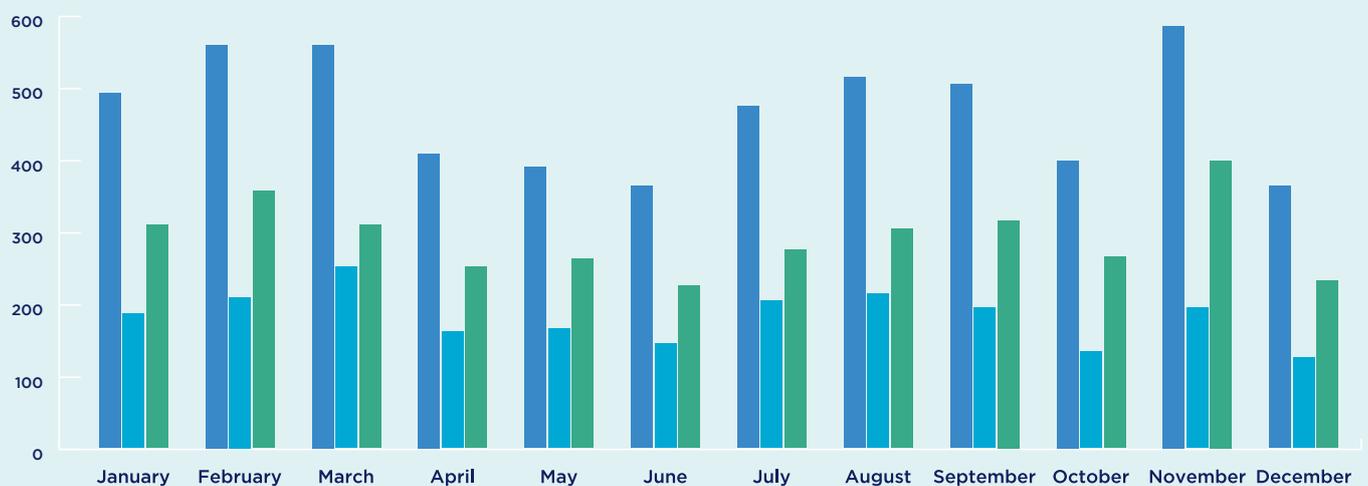


Chart 8

### Complaints received post 1 October 2015 - Hearings Held

A total of 3,071 adjudication hearings were held in respect of complaints received after the establishment of the WRC on 1 October, 2015. As would be expected, given the lead in time for these complaints to move through the system, and accounting for seasonal dips which reflect complainant, respondent and Adjudicator availability, the trend in terms of hearings of “new” complaints has been upwards over the year. As an additional stream of internal and external adjudicators becomes available towards the middle of 2017 this should improve further.



### Post 1 October 2015 Complaints - Hearing by Month



Chart 9

### Hearings Postponed/Deferred

A total of 2,172 hearings (38%) were deferred, mostly due to withdrawals or postponements requested by the parties.

These postponements impact on overall waiting times, especially where adjudicator hearing dates cannot be re-offered within a reasonable time-frame. While the WRC has recently introduced procedures to minimise the level of postponements, the need to ensure that both sides have a fair hearing means that it is not an area where an absolute prohibition of postponements is either feasible or desirable.

Other than occasions arising due to geographical logistics or unforeseen Adjudicator unavailability (which happens infrequently) the WRC is in a position to offer hearings within five months on all complaints. This waiting time is targeted to fall to somewhere in the region of four months over the course of the **WRC Strategic Plan 2016-2018**.

However, achieving this target is contingent on a significant reduction in the number of hearing dates lost to postponements.

### Decisions Issued

A total of 1,232 decisions issued during 2016 (see Chart 10). As would be expected, given that the initial complaints to the WRC came on stream late 2015/early 2016, the monthly volume of decisions increased over the first half of the year from a very low level. Over the second half of 2016 the number of decisions issued averaged 150 per month. It is anticipated that this rate of issue will be maintained or increased over 2017.

On average, throughout 2016, decisions issued between six and eight weeks of the hearing date or final receipt of further submissions/supporting documentation post-hearing. Taken together, the median time from referral to issue of decision is 29 weeks.

## Decisions Issued 2016

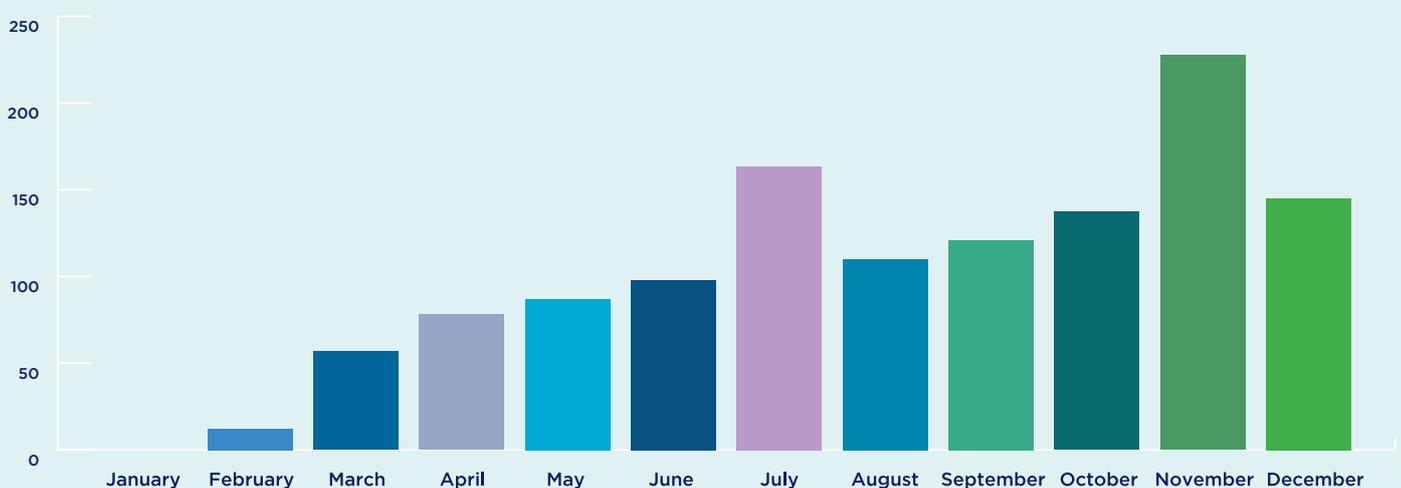


Chart 10

## Legacy Cases

The Adjudication Service inherited responsibility for a substantial overhang of “Legacy” adjudication complaints that had previously been submitted to the Rights Commissioner Service and to the Equality Tribunal but which had not been dealt with prior to the establishment of the WRC. The WRC aims to eliminate all such legacy cases during 2017.

## Employment Rights/Industrial Relations (ER/IR) Complaints

At the beginning of 2016 there were just under 2,000 employment rights/industrial relations complaints that had been referred to the Rights Commissioner Service awaiting hearing. This had been reduced to 903 at the end of 2016 - a reduction of more than a half.

## Equality Tribunal

Similar to the Rights Commissioner “legacy” cases, a number of complaints transferred from the Equality Tribunal of which there were 1,269 remaining to be dealt with at the start of 2016. This figure was reduced by 57 per cent to 725 over the course of 2016.

## Complaint Outcomes

A large proportion of complaints (56%) were withdrawn, settled or successfully mediated prior to hearing.

Of the remainder, the vast majority proceed to a full hearing. Of these, in 2016, some 47 per cent were adjudicated “Complaint Rejected” while in 53 per cent of cases they were adjudicated “Complaint Upheld”.

## Complaint Outcomes

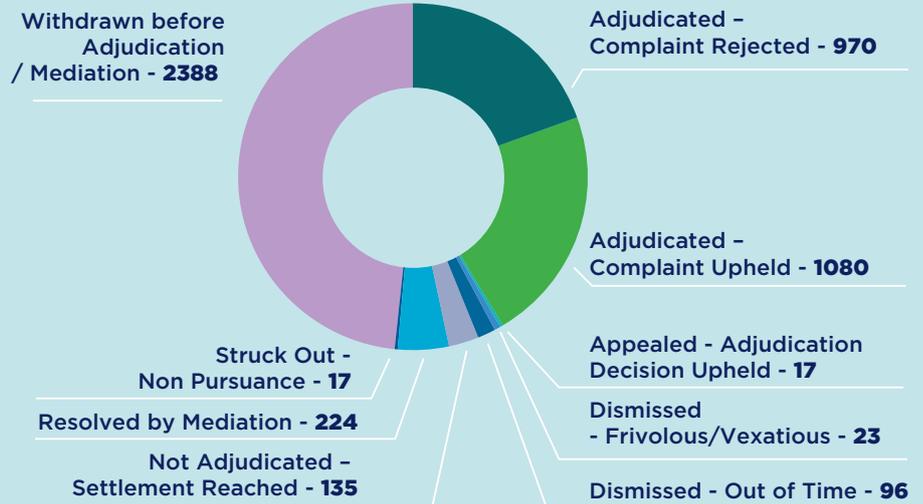


Chart 11



### Labour Court Appeal Outcomes 2016

Over the course of 2016 the Labour Court made a total of 56 decisions in relation to appeals from specific Adjudication Decisions/ Recommendations issued in 2016. These arose in cases where the initial complaint was submitted after 1 October 2015 and heard by the WRC from early-2016 onwards and subsequently appealed to the Labour Court.

The Court upheld 47 per cent of these decisions/recommendations, overturned 20 per cent, varied 21 per cent on the quantum of the award and five per cent on the terms of the recommendation, and found two to be outside the time limit in terms of the appeal<sup>5</sup>.

### Appeals to the Labour Court<sup>6</sup>

#### Employment and Equality Rights: 1 January-31 December 2016

Upheld	Overtured	Varied	Outside time-limits
17	11	11	2

#### Industrial Relations Act 1969: 1 January-31 December 2016

Upheld	Overtured	Varied	Outside time-limits
8	0	7	0

Table 8

<sup>5</sup> Given the short time frame involved a more identifiable pattern will emerge over the course of 2017.

<sup>6</sup> Refers to complaints lodged with the WRC since 1 October 2015 only and do not include any “legacy” cases prior to that date.

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## Inspection and Enforcement Services

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.

Inspectors visit places of employment and carry out inspections of employment records. This involves, but is not confined to, examining books, records and documents relating to employment, and conducting interviews with employers and with current and former employees.

Inspectors may be accompanied by other inspectors or the Gardaí. From time to time inspections are also carried out in tandem with the Garda Síochána and other regulatory bodies. Inspectors also work in Joint Investigation Units with the Department of Social Protection and the Revenue Commissioners.

### Atypical Fisheries Scheme

In 2016, following the establishment of the Atypical Worker Permission Scheme for the fishing industry, the WRC put in place a dedicated Fishing Vessel Compliance Team. Following required safety training the team carried out a total of 136 inspections on 110 vessels which came within the aegis of the Scheme. This represented 63 per cent of the relevant vessels and the balance will be inspected by Summer 2017. This was in addition to almost 50 'educational inspections' carried out by the WRC over the period April to June of 2016 as part of an educational and awareness programme undertaken prior to rolling out the inspection programme proper.

In 28 instances, WRC Inspectors detected non-EEA workers who did not have a valid permission to work on board fishing vessels (i.e. 25% of vessels inspected). In all cases, the owner and relevant non-EEA worker were advised that the latter did not, in the absence of an Atypical Permission or other permission, have permission to work. Prosecutions will be initiated under Employment Permits legislation against vessel owners where non-EEA workers continue to work without a valid permission.

The WRC maintains a database of vessels coming within the aegis of the Atypical Permission Scheme and this now incorporates a risk profiling of all vessels.

## Activity 2016

The Division carried out a total of 4,830 inspections, of which 2,877 (60%) were unannounced. These inspections related to some 74,793 employees (an average of almost 16 employees per employer inspection. Recent research by Eurostat<sup>7</sup> suggests that some 400,000 workers in Ireland are employed in what are traditionally seen as lower wage sectors of the economy. By their nature, WRC inspections in 2016 were largely targeted at these sectors and it is estimated that the employments of approximately 1 in 6 workers in these sectors were inspected by the WRC in 2016. Of the 4,830 employers inspected, 1,981 (37% a reduction of 6% on the 2015 figure) were found to be in breach

of employment legislation to some degree. A total of €1.5m in unpaid wages was recovered for employees during 2016 - an increase of 8% on 2015.

The sectors showing a higher degree of non-compliance were Electrical (60%)<sup>8</sup>, Hair and Beauty (53%), Construction (49%), Agriculture (47%), and Wholesale and Retail (45%). The aim in 2017 is to target those sectors with a higher risk of non-compliance. A total of 2,398 breaches of employment legislation were recorded - an average of 1.2 breaches per employer. By far the most common breach was the failure to keep adequate employment records (62%) followed by employment permits irregularities at 404 (17%). (See Appendix 4 for further detail).

Keeping appropriate employment records is not just a legal requirement placed on employers; it is also a protection for both employer and employee alike. Proper records ensure that documentation around monies paid, hours worked etc., is available should a dispute arise in the course of, or at the termination of the employment contract. The lack of records places the employer at a distinct disadvantage in the event of a dispute. For employees, the records are also a fundamental requirement for their protection and the enforcement of their employment rights.

## Compliance and Fixed Payment Notices

The Workplace Relations Act 2015 makes provision for the use by the WRC of two new legislative instruments, the Compliance Notice and the Fixed Payment Notice. They are designed to improve compliance while, at the same time, reducing the number and associated expense of prosecuting certain breaches of legislation.

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, a prosecution will not

## Legislative Breach

Total 2398

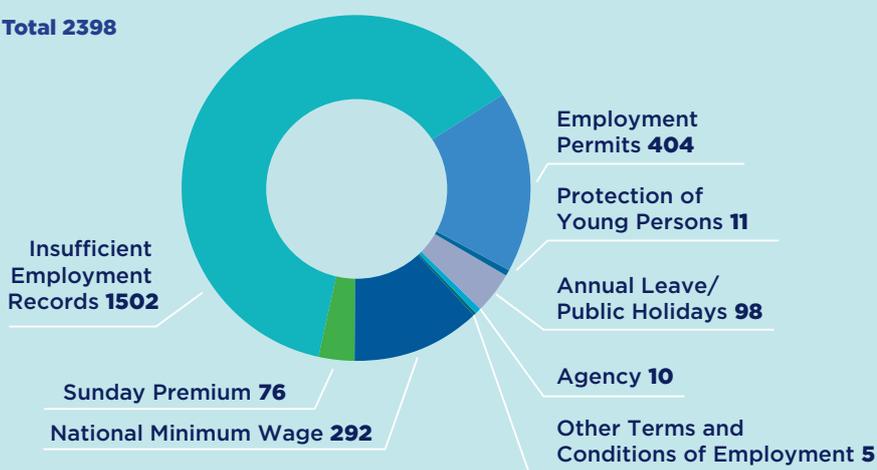


Chart 12

<sup>7</sup> Eurostat: Structure of Earnings Survey 246/2016

<sup>8</sup> From a very small sample of 5 inspections

be instituted. However, failure to make the payment will cause a prosecution to be instituted by the WRC.

The introduction of the Fixed Payment Notice was preceded by an education campaign. Over a period of nine months in 2016 a total of 20 Fixed Penalty Notices were issued, all in relation to failure by the employer to provide a written statement of wages. Of these, 11 (61%) have been paid in full while another 4 are awaiting payment. The remaining 5 (27%) were unpaid by the due date and have been approved for prosecution. This represents a significant efficiency dividend as, in the past, most if not all of these cases would have proceeded to prosecution with the attendant costs and administrative burden attached.

Similarly, 25 Compliance Notices were issued over the course of 2016. The majority of Compliance Notices issued were under the Organisation of Working Time Act 1997 and related to the provisions concerning annual leave, public holiday entitlement, and payment in respect of work carried out on a Sunday. One has been appealed to the Labour Court and eight are to be prosecuted for failing to comply with the Compliance Notice

### **Prosecutions**

Compliance and Fixed Payment Notices notwithstanding, there continues to be a requirement to prosecute recalcitrant employers; the WRC does so robustly. During 2016, a total of 136 cases were closed by way of prosecutions. It is anticipated that the broader usage of compliance notices should reduce the requirement to initiate prosecutions into the future. Details of those cases where convictions were secured are attached at Appendix 5.

In this context, the WRC is empowered to press enforcement of decisions and awards arising from decisions of adjudication and Labour Court in relation to adjudication and inspection activity: 43 such cases completed during 2016.

### **Multi-agency Collaboration**

The year witnessed an increase in the collaborative work between the WRC and other 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. A total of 657 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. In March 2016, a Memorandum of Understanding was agreed between Inspection and Enforcement Services and the Gangmasters Licensing Authority in the United Kingdom. More recently, memoranda were concluded with both the Private Security and Road Safety Authorities.

The WRC also works closely with the Garda National Immigration Bureau (GNIB) and the Garda National Protective Services Unit in terms of the reporting of potential immigration and human trafficking issues encountered during inspections. In this regard, the WRC took part in the multi-agency enforcement operation (“Operation Egg Shell”) in relation to the Atypical Fisheries Scheme undertaken on 5th October, 2016. The maintenance of good working relations at an international level is an important element of the work of the WRC. There is an ongoing involvement in the training of inspectors from other EU countries and this has been reciprocal arrangements in the training of our own Inspectors. Foreign inspectors, including those from Romania, Portugal and Estonia, have also worked with our inspectors both in Ireland and abroad.

## Corporate Service

### Governance Framework

Following the establishment of the WRC on 1 October 2015, a robust corporate governance framework was implemented to reflect its structure. This took account of the Corporate Governance Standard for the Civil Service and the Department of Jobs, Enterprise and Innovation's governance framework.

A cross-Divisional structure was established for performance monitoring and reporting which ensured that statutory functions were delivered within budget. In this regard, a Commission-specific risk-based strategic, business planning performance structure and culture was established across all levels of the organisation during 2016 and is reviewed by the Management team.

The WRC published its Customer Charter and Complaints Procedures in November 2016. These documents set out the levels of service customers can expect when dealing with the WRC and how they can make a complaint if they feel the level of service provided fell short of the appropriate standard.

In addition, a WRC Human Resource Policy was designed and initiated during 2016 with a view to ensuring our staff have the skills and experience to enable the WRC respond flexibly to demand fluctuations and to deliver on the broad objectives set out in our Strategic Strategy 2016-2018.

### Accommodation

In October 2016, WRC (Dublin) together with the Labour Court, moved from Davitt House and Tom

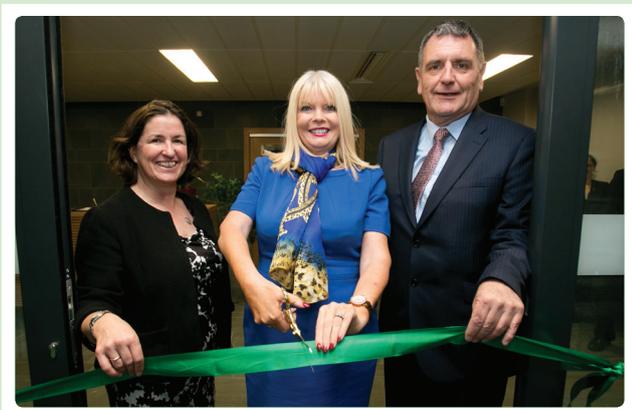
Johnson House to new offices in Lansdowne House, Lansdowne Road, Dublin 4. The new office brought about greater synergies and efficiency to our service delivery by providing a number of services at one location and by locating all of the WRC Dublin staff in one building.

Commission premises in Cork, Carlow and Sligo are currently being reviewed to ensure they are fit for purpose in the context of the service delivery requirements of the WRC during 2017 and 2018.

### Publications

The WRC published two updates and commentaries during 2016 as well as the Strategy Statement 2016-2018 and the Annual Report 2016.

These publications are available at [www.workplacerelations.ie](http://www.workplacerelations.ie).



*Minister for Jobs Enterprise and Innovation, Ms. Mary Mitchell O'Connor with Ms. Oonagh Buckley, Director General WRC and Mr. Kevin Foley, Chairman, Labour Court at the opening of Lansdowne House on 21 November 2016*



# Work Programme 2016: Our Performance

## Work Programme Requirement

Section 22(1) of the Workplace Relations Act 2015 provides that the Board, after consultation with the Director General, shall prepare and submit to the Minister, a Work Programme of the activities that the Commission intends to carry out in the year to which the Programme relates. Such a Programme must be submitted to the Minister for Jobs, Enterprise, and Innovation by 1 December every calendar year.

The purpose of the Programme is to ensure that the WRC deploys its staffing and other resources appropriately through activities targeted at achieving the strategic objectives set out in the WRC Strategy Statement 2016-2018. Our performance against our Plan targets is set out below.

## Advisory Service

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>Improve site-specific workplace relations</b>	Carry out reviews of industrial relations, chair joint working parties, facilitate resolution of individual disputes including referrals under the IR Act 2015	Throughout 2016	Effective, tailored programme delivery, high client satisfaction, and improved relations	Services delivered within agreed terms of reference and timelines as appropriate
	Facilitate voluntary dispute resolution, deliver workplace mediation and equality mediation services			Effective service delivered where requested
<b>Provide workplace training</b>	Develop bespoke training programmes for clients etc.	Throughout 2016	High success rate and customer satisfaction with service	Bespoke training on aspects of employment relationship was delivered, with high customer satisfaction feedback received
<b>Further develop and promote dispute prevention and improvement of workplace relations</b>	Reflect in Strategy for 2016 and roll out accordingly	Q2 2016	Central to WRC preventive and workplace relations improvement activities	Further promotion of the Advisory Service to meet customer needs is reflected in the strategy statement and work programmes
<b>Seek to reduce adjudication service referrals</b>	Develop a frequent user programme for Adjudication Division (on pilot basis initially)	Q2 2016	Programme implemented and impacting positively on adjudication referrals	Frequent users have been analysed and the approach to engagement on a pilot basis is being developed.
<b>Increase client take-up of relevant mediation services of WRC</b>	Research attitudes, promote and resource the services	Q2 2016	Increased awareness and take-up of mediation services	Mediation promoted and provided

## Conciliation/Early Dispute Resolution/Mediation Services

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>Provide timely, effective and efficient Conciliation service and ensure demand is met whilst maintaining delivery of all services</b>	Provide conciliation in an appropriate timeframe to facilitate resolution of industrial relations disputes. Proactively engage with clients to assist in the maintenance of positive industrial relations	As and when required by clients throughout 2016	Maintenance of high success rate in the resolution of industrial relations disputes.	86% Settlement Rate
<b>Provide a range of complementary mediation services in both employment rights and workplace relations disputes</b>	Facilitate and deliver voluntary participation in mediation processes	Throughout 2016 and within 3 weeks of acceptance by all parties to engage in mediation process dealing with employment rights claims	Cases selected in order to maximise the potential for resolution with overall reduction in numbers advancing to adjudication process in employment rights claims. High customer satisfaction with workplace relations mediation service	Subject to parties approval – suitable cases selected for mediation  Settlement/ withdrawal rate of 84%
<b>Chair and facilitate various different industrial relations and statutory fora in both the private and public sector</b>	Facilitate discussions in a timely fashion. Assist parties deal with all issues in accordance with procedures and operations as set in both voluntary and statutory requirements	Throughout 2016	Effective delivery and operation of all issues raised in accordance with protocols and procedures	Timely delivery of services with the respective fora throughout the year
<b>Ensure effective two-way communication with primary clients</b>	Maintain effective dialogue with key clients in all regions and nationally	At all times during 2016	Effective operation of communication channels maintained	Contacts and channels of communications maintained throughout 2016
<b>Ensure appropriate structures in place to deliver service across all platforms</b>	On-going review of structure of operations during 2016	Complete changes as required throughout year	Appropriate and effective structures in place in order to achieve optimal service delivery with available resources	Some technical adjustments required during 2016 – this goal will be fully met in 2017

## Adjudication Service

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>Deal with post-October complaints within established timelines and ensure that current demand is met while making significant in-roads into pre-October complaints</b>	Oversee efficient and effective throughput of cases through registration, hearing and decision - while cases received post 1st October 2015 (Vesting Day) will be prioritised, sufficient resources will be allocated to legacy case to ensure throughput at agreed levels	Throughout 2016	Throughput at levels agreed in the Memorandum of Understanding with the Department	Median length of time from complaint receipt to issuing of decision is 6 months.  Pre-October 2015 cases on hands January 2016 were halved over the period
	Monitor and review quantity and availability of adjudicators to ensure delivery capacity.	Q2 2016	Sufficient adjudicators available consistently	Monitored and reviewed – bringing additional cadre on stream initiated late-2016
<b>Deliver high quality decisions</b>	Internal Quality Control (QC) Review Group will review decisions to identify learning points, to ensure consistency of decisions in common areas, to improve the service provided to customers of the Adjudication Service. In addition, feedback on decisions appealed to the Labour Court will be formalised.	Q1 2016	High quality decisions with declining number of appeals and judicial reviews	QC Group reviewed and made recommendations on decisions throughout 2016. Stakeholder feedback indicates quality and consistency has improved over the period
<b>Establish a single adjudication standard</b>	Review and hone decision template, hearing procedures, and merge performance, pace and quality	Q1 2016	Internally and externally recognised and delivered WRC adjudication standard	Decision template designed and introduced – under review throughout 2017
<b>Ensure ICT system facilitates the delivery of efficient and effective adjudication and mediation services.</b>	Review quarterly and update where needed the Complaints & Adjudication Solution IT System	Q2-Q4 2016	Easy to use ICT system working efficiently and effectively	Work in progress: reviewed and improved during 2016. Further enhancements planned for 2017

## Inspection and Enforcement

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>Promote and enforce compliance with employment law</b>	Risk-based inspections, complaint-based inspections, with other State bodies where appropriate	Throughout 2016	4,000 Inspections concluded incl. 2,000 unannounced workplace visits	4,830 inspections concluded including 2,877 unannounced visits
	Prosecute, as appropriate, offences of non-compliance with employment legislation	Throughout 2016	100 convictions	136 cases successfully closed
	Adopt a standard approach to and measure effectiveness of issuing and processing of Compliance and Fixed Charge notices	Throughout 2016	Common standard adopted/evaluation completed	A common and consistent standard was adopted and 25 Compliance Notices and 20 Fixed Charge Notices issued
	Regular engagement with stakeholders	Throughout 2016	Key stakeholders met at least once yearly	Meetings held in relation to compliance with key stakeholders
	Ensure that former NERA activities continues to be delivered in a professional and effective manner in new context	Throughout 2016	Interaction with DJEI continues regarding employment rights (ER) policy and enforcement, enforcement of employment permits (EP) while EP and ER enforcement continue to form part of single inspections	Transition managed carefully and activities continued to be delivered professionally and effectively
<b>Enforce awards arising from decisions of adjudication and Labour Court proceedings</b>	Press enforcement of decisions and awards arising from decisions of adjudication and Labour Court in relation to adjudication and inspection activity	Throughout 2016	Decisions and awards pursued	43 such cases completed
<b>Issue licences and enforce legislation in relation to Employment Agencies and the employment of Young Persons</b>	Licenses processed and issued in an efficient and lawful manner	Throughout 2016	700 licences issued	1183 (536 PYP and 647 Employment Agency) licences issued
<b>Increase whole of Government awareness of WRC role and activities</b>	Effective participation in various Interdepartmental and Interagency groups	Throughout 2016	WRC brand recognition across Government	Full participation in interdepartmental and interagency work
<b>Co-operate with other enforcement agencies</b>	Agree MOUs with appropriate bodies	Throughout 2016	Review/Conclude in 5 months	3 new MoUs signed

## Information, Customer Service and Central Processing

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>Provide non-directive information on WRC activities generally, employment legislation and redress mechanisms through a variety of delivery formats</b>	Provide a high quality accessible, customer-focused and user-friendly response to telephone, email, white mail and other employment rights enquiries	Throughout 2016	90% of queries dealt with at initial query	59,459 calls answered (93.8%)
	Participate in and deliver employment law seminars, presentations, exhibitions, roadshows		Attend/participate in 50 events	27 key presentations made and exhibitions attended
	Update and republish information material to reflect new corporate identity and legislative changes		Full range of publications updated by June 2016	Key publications revised and rebranded
<b>Efficient processing of complaints and applications to the WRC</b>	All complaints processed in a timely and efficient manner and all complaints referred to the appropriate redress forum	Throughout 2016	15,000 complaints processed efficiently and effectively	13,230 received - all processed

## Registrar/Legal Advisor

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>WRC legal service established</b>	Embed new structures, procedures, and business processes	Q3 2016	Legal service established and fully functional.	Legal service established and fully functioning
<b>Provide appropriate legal training to staff and adjudicators – legally sound approach to all activities of WRC</b>	Identify training needs/ training intervention and deliver.	Q2 2016	Training delivered and learning being implemented.	Training provided on a range of legal issues for both staff and Adjudication Officers
<b>Manage legal services used within the WRC</b>	Implement new systems to provide for legal services where appropriate (including panels for legal advice where appropriate)	Q2 2016	New systems established and functioning effectively	Systems established to provide for legal services
<b>Manage and provide for timely, effective and robust legal advice on all aspects of legal matters before the WRC</b>	Consider correspondence and provide advice, brief Counsel where necessary, manage case progress and outcome	Throughout 2016	WRC manages legal matters effectively and efficiently.	Legal matters managed effectively and efficiently on a case by case basis
<b>Develop and maintain a specialised database and library facility for Adjudicators and WRC staff generally</b>	Ensure appropriate access to relevant external databases such as Westlaw, Bailii, etc. develop internal database on all aspects employment and equality law, and establish virtual and physical library	Q2 2016	Databases and library in place and fully utilised	External databases fully functioning and utilised by both staff and Adjudication Officers. Physical library now moved to Lansdowne House. Work completed on internal database.
<b>Set and manage legal costs within budget parameters</b>	Monitor spend on legal costs/ identify efficiencies.	Throughout 2016	Legal Costs managed effectively, efficiently and within budget	Legal costs managed within budget.

## Corporate Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2016 Performance
<b>Complete the establishment of a robust corporate governance framework in WRC</b>	<p>Review/revise current internal standards/policies/procedures and document all relevant processes</p> <p>Ensure all relevant staff fully informed, trained and carrying out revised approach</p> <p>Obtain DJEI assurance around revised framework</p>	Q2 2016	Corporate governance in WRC in line with best practice	<p>Policies and procedures reviewed and updated in line with DJEI Governance Framework.</p> <p>Staff notified where relevant; training will continue to be reflected in Learning &amp; Development plans.</p> <p>Assurance was provided through ongoing contact with DJEI standard audit and risk activity.</p>
<b>Have in place functioning cross-Divisional WRC structure</b>	<p>Identify/agree corporate and divisional functions relating to e.g. finance, HR, IT, facilities and performance reporting and agree individual divisional allocation/responsibility and reporting requirement</p> <p>Monitor performance in context of corporate governance framework</p>	Q2 2016	Structure fully serving operational requirements of the WRC	<p>The corporate and organisational functions and reporting framework developed and implemented across the divisions and with the DJEI Liaison function.</p> <p>Performance has been measured and reported in an agreed format at divisional and organisational level.</p>
<b>Ensure WRC carries out statutory functions within budget</b>	Oversee efficient and effective expenditure, monitor service demand and activity levels and liaise regularly with DJEI in this regard. Agree MoU with DJEI in this regard	Q1 2016	Work programme being achieved consistent with proper utilisation of budget allocation	Resource allocations managed to ensure effective and efficient delivery of services within budget. MoU agreed and performance against metrics monitored and discussed with DJEI.
<b>Establish Dublin-based WRC in Lansdowne House</b>	Oversee move within agreed timelines and within budget	Q3 2016	Lansdowne office of WRC fully operational by September 2016	The Dublin based WRC staff moved to Lansdowne House during October without impact on service delivery to customers.
<b>Design and implement WRC HR strategy and policy that fully supports the activities of the WRC and supports and develops its staff</b>	Develop and implement WRC-specific HR practices including performance-focused workforce planning, learning and development initiatives, and staff support systems etc.	Q3 2016	HR Policy that supports achievement of WRC mission and goals and supports and develops staff fully operational	The HR Plan was rolled out in late 2016 and will continue to be implemented throughout 2017.
<b>Establish WRC risk-based strategic, business planning performance culture at all levels of the organisation</b>	Assist in deliberation of and implementation of strategy and work programme; roll out via Corporate/Divisional/Unit/role profiles, measure and take remedial action against risks - report on progress to MC and Board on a regular basis	Q1-Q2 2016	WRC fully operating within coherent strategic and business plan framework	WRC Business Planning and Risk Manager appointed. Business plans developed and risks monitored, managed and reported to the management committee and DJEI throughout the year.

# Appendices

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# Appendix 1

## Legislation by which Complaints may be Submitted to Adjudication Service

- Organisation of Working Time Act 1997
- Unfair Dismissal Acts
- Industrial Relations Acts
- Payment of Wages Act 1991
- Terms of Employment (Information) Act 1994
- Redundancy Payments Acts
- Employment Equality Acts
- Minimum Notice and Terms of Employment Act 1973
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 ( S.I. No. 131 of 2003) (other than Regulation 4(4) (a))
- Equal Status Acts
- Protection of Employees (Fixed-Term Work) Act 2003
- National Minimum Wage Act 2000
- Regulation 5, 8, 9, 10, 11 or 12 of the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 (S.I. No. 36 of 2012)
- Safety, Health and Welfare at Work Act 2005
- Maternity Protection Act 1994
- Parental Leave Act 1998
- Protection of Employees (Part-Time Work) Act 2001
- Protection of Employees (Temporary Agency Work) Act 2012
- European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 ( S.I. No. 507 of 2006)
- Regulation 6 of European Communities (Protection of Employment) Regulations
- Protected Disclosures Act 2014
- European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (S.I. No. 494 of 2004)
- European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-border Services in the Railway Sector) Regulations 2009 (S.I. No. 377 of 2009)
- Employment Permits Act 2006
- Consumer Protection Act 2007
- Pensions Acts
- Health Act 2004
- Criminal Justice Act 2011
- Regulation 9(4) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007 (S.I. No. 285 of 2007)
- Competition Act 2002
- Carer's Leave Act 2001
- Protections for Persons Reporting Child Abuse Act 1998
- Protection of Employees (Employers' Insolvency Act, 1984)
- National Asset Management Agency Act 2009
- Chemicals Act 2008
- Regulation 19 of the European Communities (European Public Limited - Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)
- Regulation 20(1) of the European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)
- Charities Act 2009
- Regulation 39(1) of the European Communities (Cross-Border Mergers) Regulations 2008 ( S.I. No. 157 of 2008)
- Inland Fisheries Act 2010
- Protection of Young Persons (Employment) Act 1996
- An employment regulation order under section 42C (inserted by section 12 of the
- A sectoral employment order within the meaning of Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015
- Property Services (Regulation) Act 2011
- Adoptive Leave Act 1995
- Central Bank (Supervision and Enforcement) Act 2013
- Registered employment agreement within the meaning of Chapter 2 of Part 2 of the Industrial Relations (Amendment) Act 2015
- Prevention of Corruption (Amendment) Act 2001
- Paternity Leave and Benefit Act 2016
- Employees (Provision of Information and Consultation) Act 2006
- Protection of Employment Act 1977
- Transnational Information and Consultation of Employees Act 1996
- Further Education and Training Act 2013

# Appendix 2

## Key Supreme and High Court judgments and Adjudication Decisions

### Flexible and Fair Adjudication Procedures

There were a number of High Court and Supreme Court judgements given during the first year of operation of the Workplace Relations Commission. These judgements dealt directly with the powers, functions and discretion of adjudication officers.

In *Adigun v The Equality Tribunal*<sup>9</sup> the Supreme Court gave an important judgement on the powers of Equality Officers/ Adjudication Officers to deal with preliminary matters at 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 on the race ground. The Equality Officer held a preliminary hearing on whether Mr Adigun was an employee. He subsequently issued a decision the complainant was not an employee and, therefore, the Equality Officer did not have the jurisdiction to hear the substantive complaint. The complainant judicially reviewed

that decision and Mr Justice Sheehan dismissed his claims in the High Court. The complainant then appealed to the Supreme Court.

Mr Adigun argued it was contrary to fair procedures as 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." .....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 in jurisdictional matters such as the status of the complainant, time limits and other matters even where there are no specific powers in the legislation, once it is done fairly.

A judgement in a similar case was given by the Supreme Court in July 2016. In **County Louth VEC v The Equality Tribunal**<sup>10</sup> the complainant alleged discrimination and harassment on the sexual orientation ground. The respondents objected to evidence introduced which dealt with matters going back over a number of years. The High Court held a complaint could be expanded upon provided the general complaint remained the same. The Supreme Court broadly concurred with the judgement of the High Court in that it confirmed that equality officers (now adjudication officers) could allow evidence on matters and then decide on its probative value.

McKechnie J held:

“.....however, I would be quite satisfied that, subject to overall fair procedures, an equality officer has a sizeable degree of latitude in deciding how the hearing before her should be conducted. This conclusion is supported also by the decision in the case of *Aer Lingus Teoranta v. Labour Court* [1990] I.L.R.M. 485 where it was held, albeit in the context of the Labour Court, that such a body could decide whether the complaints were made within time or not, either by way of a preliminary inquiry or as part of a unitary hearing involving also the merits of the case.”

He went on to state:

“..... in accordance with long established principle, there is a presumption that both the process of making the decision and the decision itself will have due regard to natural and constitutional justice and, furthermore, will be made in accordance with law and therefore within the jurisdiction conferred on her under the 1998 Act. Accordingly, there could be no basis for this Court to intervene and in some way anticipate or infer that she will act unlawfully. “

McMenamin J held as follows;

“It is well established that the purpose of a deciding body or tribunal, such as the respondent Tribunal, is to provide speedy and effective redress in cases of alleged discrimination. It is not in dispute the procedures employed may be both informal and flexible. It is true, as Mr. Gerard Durcan, S.C., counsel for the Tribunal, submits, that the range of claimants before such a Tribunal do not fit into any one category. They may or may not be legally represented and, therefore, flexibility is both warranted and necessary.”

This judgement, together with the Adigun judgement, confirms that adjudication officers, once they adhere to fair procedures, may act with flexibility and informality.

<sup>10</sup> [2016] IESC 40

The High Court in ***Sam Dennigan Ltd V O’Connell and the Workplace Relations Commission***<sup>11</sup>

refused leave to apply for Judicial Review. The Applicants looked for leave to quash a decision of the adjudication officer when he re-scheduled a case for hearing after he became aware the complaint was not on notice of the hearing date. No decision had been made on the substantive issue. Again the High Court referred to the informal and relatively flexible procedures allowed to a quasi-judicial body although again re-iterating the importance of fair procedures.

Humphries J held

“The notice party has due process rights, which would be simply extinguished by the extreme and unacceptable legal doctrine being advanced by the applicant.”

He went on to state that the discretion of an adjudication officer to relist matter was reasonable and fair in the circumstances.

“Not only was the decision not irrational but it was a perfectly reasonable and indeed humane, sympathetic and fair response to the situation and completely in accordance with the stated policy of the respondents to permit matters to be re-listed if an explanation for non-attendance was provided before the formal dismissal of the claim.”

**Court Review of Criminal Investigation**

In ***Deirdre Foley And D2 Private Ltd v Workplace Relations Commission***<sup>12</sup>

the High Court dismissed a challenge brought against the powers used by inspectors investigating the collective redundancies of workers at Clery’s Department Store. The case dealt with an investigation under the Protection of Employees Act 1977 conducted by two WRC inspectors and, in particular, their actions during the investigation. The inspectors commenced an investigation into the collective redundancies of people who worked in Clerys’ department store as employees of OCS Operations. As part of their investigation, the WRC inspectors entered the premises of a company, D2 Private Ltd, and seized a laptop and other records. The inspectors believed the company could be connected to the Clerys’ redundancies and that the laptop contained crucial evidence which could be used if criminal proceedings were to be taken under the Act. The owner of the company, Ms. Deirdre Foley, and the company itself initiated judicial review proceedings in the High Court, claiming the inspectors and the WRC were not entitled to enter the office and take the materials. They also contested the legality and the manner in which

the searches and seizure had been carried out. Ms Foley and the company sought an injunction to stop the investigation on the grounds the inspectors did not have the power to investigate D2. The company also wanted the return of the laptop and other records and wanted damages for trespass and breach of privacy. After setting out the background to the Clery’s takeover and the redundancies that ensued, Mr Justice Twomey highlighted the main issue to be decided in the case, namely, should the Court “permit this judicial review of the investigation by the inspectors of the alleged commission of a criminal offence”.

Basing his arguments on the relevant case-law, the Judge made a preliminary observation:

“... this Court is of the view that the law on this issue is that judicial review of the manner in which an investigation is being conducted by the Gardai or State appointed Inspectors, as in this case, is only available in the most exceptional of circumstances, since such investigators, whether Gardai or WRC Inspectors, are granted the widest conceivable margin of appreciation in how they conduct their investigation”

<sup>11</sup> [2015] 688 JR

<sup>12</sup> [2016] IEHC 585

He said the case was not about whether evidence obtained by the inspectors following the seizure is admissible in any criminal trial. The case was “much more about a preliminary issue” if a Court can interfere in the investigative process by an agency of the state before the institution of criminal proceedings.

He went to state that for a Court to interfere in a criminal investigation the inspectors would have had to be acting completely irrationally. He found the inspectors were perfectly entitled under the Act to investigate parties who were not the employers and, in the particular circumstances of this case, to investigate D2 and Ms Foley. He also found that, given the knowledge of the inspectors at the time they went into D2’s premises, it was reasonable of them to believe that the investigation into D2 may have been relevant to the Clery’s redundancies. He further found that the inspectors’ entry into the premises and seizure of the laptop was not done for “an improper purpose” as they were entitled to ensure the investigation was wide-ranging and thorough. Furthermore, he stated that when a party being investigated for a criminal offence asserts legal privilege in relation to documents it is up to the judge hearing the criminal matter to decide what is privileged.

He also stated that his judgement did not mean Ms Foley’s and D2’s arguments were without merit, however the appropriate place to make their arguments was in a criminal trial if one takes place following the investigation. In applying the law to the facts of the case and refusing all of the reliefs sought, Mr Justice Twomey concluded:

“...as a matter of law the threshold for interfering in criminal investigations is exceptionally high and that the actions of the inspectors in this case do not meet this high threshold, so to justify the Court’s interference..... It is therefore premature for the applicants to seek to interfere in the investigation of whether they have any role in the alleged offences surrounding the Clerys’ Redundancies.”<sup>13</sup>

<sup>13</sup> This Ruling is under appeal

**Right, not and Obligation  
to be Heard**

**Capital Food Emporium  
(Holdings) Limited (formerly  
Capital Food Emporium Ltd) v  
John Walsh and the Employment  
Appeals Tribunal<sup>14</sup>** was a Judicial  
Review taken by the applicant  
on the basis that the Rights  
Commissioner concerned was in  
breach of principle of audi alteram  
partem when he went ahead with  
a hearing where the respondent  
representatives had not turned up.  
The representatives had written  
to the Rights Commissioner  
confirming they were representing  
the respondent, they were notified  
of the hearing date and no  
correspondence had been returned  
by the postal authorities. The Court  
found

“..... once the Rights Commissioner had satisfied himself at the hearing of 2nd August, 2012, that correspondence had been sent to ESA advising of the date, time and venue of the hearing of Ms Stewart’s complaint, he was fully entitled to proceed to hearing and to issue a recommendation thereafter. Contrary to the complaint made at the hearing of the within application, there was no obligation on the Rights Commissioner to ring ESA (and/or Capital Food Emporium Limited for that matter) and ask what was happening. There is not even the beginning of a breach of the principle of audi alteram partem, nor any semblance of a breach of the rules of constitutional or natural justice, in the Rights Commissioner’s proceeding as he did. The principle of audi alteram partem and the rules of constitutional or natural justice afford one a right to be heard, not a right to hold things up indefinitely until one elects, if one elects, to attend for hearing.

The same case also dealt briefly with the powers of a Rights Commissioner (now an Adjudication Officer) under s.39 of the Organisation of Working Time Act 1997. Barret J confirmed that s.39(2) did not require that a fresh hearing of a relevant authority into the making of an amendment into under that section and that there are no time limits imposed by the Act into the application for a correction order or the making of such an order.

### **Adjudication Officer Decisions Complaints relating to the same incidents**

In ADJ-00000493 the adjudication officer investigated complaints of discrimination, harassment, discriminatory dismissal and victimisation under the Employment Equality Act 1998 and two unfair dismissal complaint under the Industrial Relations Act 1969. She was satisfied that, taking the complainant's evidence at its height, there was no prima facie case of discrimination or harassment.

She found the first time the complainant raised the issue of discrimination was in the complaint to the WRC. Using the test set out by the Labour Court in **Department of Defence v Barrett EDA1017** she found, as the respondent was not made aware of any potential complaint of discrimination prior to the claim of victimisation, the complainant was not victimised. The complaints of unfair dismissal under the Industrial Relations Acts 1969 were based on the same facts relied on to ground the discrimination complaint.

The adjudication officer was not satisfied there were any breaches of fair procedures, nor was she satisfied his suspension was in any way connected to any complaint made to the WRC. She was of

the view the complainant should have used the internal grievance procedures and so did not make a recommendation. Prior to October 2015 these complaints would have gone to the Equality Tribunal and to the Rights Commissioners and the complainant would have had to adduce the same set of facts and the respondent defend before both fora separately.

#### **The Appropriate Forum**

A legacy case of the Equality Tribunal, DEC-E2016-130 dealt with the jurisdiction of an Irish-based forum to hear a case. While the case was lodged in the Equality Tribunal it has implications for the WRC in that the jurisdictional issue applies to all employment and equality legislation. As the jurisdictional issue was very complex and dealt with the matters of European law (in particular, Council Regulation (EC) 44/2001 (Brussels I), Council Regulation (EC) No. 593/2008 (Rome I), Council Regulation (EU) No. 1215/2012 (Brussels Recast) and Council Regulation (EC) 712/2007 (Lugano)) as well as Court of Justice of the European Union, United Kingdom, German and Irish case-law, the adjudication officer decided to hear the preliminary issue of the forum conveniens.

The complainant worked on a ship travelling between Ireland

and Wales. The respondents argued that, where an employee is peripatetic, as in this case, then jurisdiction is governed by the flag state of the ship or the location of the head office; both of which were Cyprus. The contract of employment also stated a dispute would be subject to the jurisdiction of the Republic of Cyprus. The Complainant argued the issue of jurisdiction was an attempt by the respondent to exclude employees from enforcing their legal rights as only 11 of the 772 employees were based in Cyprus. He relied on Brussels 1 in arguing the place where the contract was performed was determinative of where matters could be litigated and, on the facts of the case, this was Ireland. Complex submissions were made on the law. The adjudication officer and the parties agreed there were no European cases which involved the interpretation of Article 19.2 (b) of Brussels 1 where the employment is on board a vessel travelling from one Member State to another.

The adjudication officer found that, on the construction of the wording of Article 19.2 (b) and the contract of employment of the complainant, the place where the employee was engaged to work was Ireland as the Port of Engagement was identified as Waterford and the place where the contract was signed was Dublin.

### **Unilateral withdrawal of Christmas bonus**

A case under the Payment of Wages Act 1991 was heard in ADJ-00003012, *Two Retail Assistants v A Retailer*. The facts in each case were more or less identical in that both claimed an entitlement to a Christmas bonus in cash. They gave evidence that in 2004 the company made a unilateral change to the bonus system and replaced it with vouchers. The company stated it was entitled to vary the bonus scheme and the vast majority of the employees had accepted the change.

The adjudication officer found the fact the majority of employees accepted the change did not of itself mean the contract had been varied as a result of custom and practice. It was clear the change to the bonus scheme was not the result of a collective agreement and the clear the change to the bonus scheme was not the result of a collective agreement and the two complainants had never accepted a variation in their contracts. He found the cash payment clearly fell within the definition of wages under the Payment of Wages Act. He went on to state that this matter involving the same employees had been before the Rights Commissioners on numerous occasions and those decisions had consistently been

in favour of the complainants. He also referred to the appeals to the Employment Appeals Tribunal which upheld the decisions of the Rights Commissioners.

He stated it was disrespectful to the Rights Commissioner Service and the Employment Appeals Tribunal that the respondents would persist against the complainants. He went on to state the legal position of the complainants is well settled and it behoves the respondent to respect, accept and apply it on a continuing basis. He ordered the payment of the bonus to be paid in conformity with section 2 of the Payment of Wages Act 1991.

### **Multiple Complaints**

In ADJ-00000991, the complainant made a total of nine complaints, five under the Organisation of Working Time Act 1997 and one each under the Payment of Wages Act 1991, the Terms of Employment (Information) Act 1994, the Unfair Dismissals Act 1977 and the Minimum Notice and Terms of Employment Act 1973. The employer argued the Organisation of Working Time Act 1997 did not apply to the employee as he determined his own time as per section 3(2)(c) of the Act.

The adjudication officer found the complainant did not determine

his working hours. On hearing the evidence, she went on to find as follows: in relation to Sunday working, while the complainant may have substituted some Sundays for days lost during the week, she accepted his evidence he was required to work some Sundays and ordered the respondent to pay €500 compensation; in relation to annual leave, she found a shortfall in the amount given to the complainant and awarded a further €904 to the complainant; she found the provisions of the Act were not applied in regard to public holidays and awarded him €500 compensation; the other two complaints she found were a repetition of the annual leave and public holiday complaints. Under the Terms of Employment (Information) Act the employer submitted a document which purported to be a written contract given to the employee who professed no knowledge of the document. She preferred his evidence and awarded €1,400 compensation.

There was conflicting evidence given in relation to the circumstances in which the employment of the complainant ended. The complainant stated that, when he told the respondent he could not work the next day (Saturday) as he had a domestic

illness to attend to, the respondent told him he would get no more work from him. The respondent stated that, after he was approached by the complainant and his brother, who was also an employee, looking for money/holiday pay, and after he refused, the two gave verbal notice and finished up the following Friday.

The adjudication officer noted that, even if the complainant employee resigned “in the heat of the moment”, there was a responsibility on the employer to resolve the issue or at least give the employee an opportunity to let matters cool down. She noted that there was no written resignation and accepted the evidence of the complainant he was told he was no longer required. She did not find it credible that an employee of some 15 years’ service would walk out of his employment over a dispute regarding holiday pay. She ordered the respondent to pay the sum of €12,000 compensation.

In deciding this redress, she took into account the fact re-instatement or re-engagement was not appropriate as the respondent was sub-contracting the work. She also took into account the efforts made by the complainant to mitigate his loss. The final complaints regarding the Payment of Wages Act and Minimum

Notice and Terms of Employment Act were duplicated and the amount was covered in the total amount awarded under the Unfair Dismissals Act. The total amount awarded was €15, 304.

### **Employment Status**

The adjudication officer dealt with the preliminary issue of the status of the employee in ADJ-00004297. The union had asked that, as a number of complainants were involved, the matter be heard as a collective basis. The company objected on the basis the union did not represent all employees affected. The adjudication officer decided to hear the case on the day as it had already been delayed to allow the parties to resolve the claims. The complaints were lodged under the Terms of Employment (Information) Act 1994, the Organisation of Working Time Act 1997 and the Industrial Relations Act 1969.

The adjudication officer dealt in detail with the evidence of the complainant and the respondent concerning the status of the complainant as an independent contractor. She looked extensively at the case-law in the area including *The Minister for Agriculture and Food v Barry*, *Henry Denny & Sons Ltd v Minister for Social Welfare*, and a recent Labour Court case of *St James’*

*Hospital v O’Flynn*. She also looked at English case-law, the Code of Practice for determining employed and self-employed status and the ILO definition of “disguised employment relationships”.

Based on her analysis of the facts and circumstances of this particular case, the adjudication officer found the label on the position commenced by the complainant in March 2015 differed markedly from its core substance and function in everyday reality. It was her opinion that the complainant was involved in the role and function of an employee from the beginning of her employment. On the substantive complaints she ordered the respondent to give the employee a written statement as per section 7(2)(c) of the 1994 Act. She found the Organisation of Working Time 1997 complaint out of time. She recommended the payment of €3,000 under the Industrial Relations Act 1969 for the unfair and inequitable treatment of the complainant (albeit mitigated by the offer of a fixed term-contract) and recommended the respondent re-issue its offer of a permanent contract.

### **Cross-Border Bodies**

A complex case under the Payment of Wages Act arose in ADJ-00000285 where the complainant was employed in a cross border body. In her contract of employment her contributions to her pension scheme were 1.5% and the terms of the scheme set out. As a result of legislative changes in the UK and Northern Ireland to public sector pensions, her pension contributions rose to 5.45% with substantially poorer pension benefits. Despite her objections the respondent made deductions from her monthly salary under the new scheme. She objected and lodged a complaint under the payment of Wages Act 1991 that the higher contributions were an unlawful deduction and not fall within the scope of section 5(1)(a) of the Act and were not required by law.

The Adjudication Officer considered the legal status of the “Belfast” Agreement, the British-Irish Agreement Act 1999 and its Schedules and whether the pension scheme and the decision to increase the contribution fell within the definition of a “statutory instrument” as provided for under the Statutory Instruments Act 1947 and the judgement of the Supreme Court in *O’Neill v The Governor of Castlerea Prison*. He also referred to a previous decision of an Adjudication Officer ADJ-00000254. He found that the Annex to the British-Irish Agreement Act did not form part of the Statute and therefore other enactments made did not have statutory effect. He found that the decision of the respondent to deduct additional monies on top of the 1.5% were “not required or authorised by statute” and were therefore unlawful and in breach of the Act.

### **Calculation of Payment of Public Holidays**

The Complainant worked part-time for eighteen hours per week. There had been no formal agreement as to her exact hours of work but it was clear that she worked more hours on Mondays than any other weekday. As a result she argued she was entitled to six hours pay for all Monday Bank Holidays. The respondent argued that her average daily hours of work were 3.6 hours being one fifth of her weekly hours and so that was the amount payable in respect of Public Holidays. The Adjudication Officer applied the rationale set out in the *Revenue Commissioners v Gerard Doyle* and found that, as she had no particular pattern of working hours or days, Regulations 3(2) and 5(1)(b) applied as opposed to Regulation (5)(1)(a). Therefore, the average daily rate based upon her contractual arrangements to work 18 hours per week applied as opposed to the actual hours she had worked on the two days which were the subject of the complaint.

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### **Discriminatory treatment under the Equal Status Acts**

The Adjudication Service of the WRC hears complaints at first instance under all equality legislation including discrimination under the Equal Status Acts 2000 to 2015 which apply to the provision of goods and services, accommodation and education.

In ADJ- 00001248 the complainant alleged discrimination on the Traveller ground when she was asked to leave the respondent shop by a security guard. She had already purchased some items and was waiting for her sisters-in-law to finish shopping. She asked for an explanation and was informed only that if she did not leave the Gardai would be called. She told the staff she would wait and while she was waiting the security guard asked her children if they were frightened the Gardai were coming for them. The complainant felt this was further intimidation and when she asked for a name he refused. The respondent did not attend the hearing.

The adjudication officer was satisfied there was a prima facie case of discriminatory treatment and that the complainant was asked to leave the shop because the security guard recognised her as a Traveller. The complainant was awarded €1,000. She also ordered the respondent to provide staff training on the Equal Status Acts.

In ADJ-00004056 a complaint was made of discrimination in the provision of rented accommodation on the new Housing Assistance ground. The respondent confirmed that the complainant had been refused accommodation on the basis that he was in receipt of Social Welfare but that it was an inadvertent mistake. He apologised to the complainant and indicated that updated procedures were now in place in the business to prevent a reoccurrence. However, the Adjudication officer found that a breach of the Act had occurred and awarded €300 to the complainant.

# Appendix 3

## Complaint Applications 2016: Legislative Basis

Legislation	No.	%
Organisation of Working Time Act 1997	1104	17.5
Unfair Dismissal Acts	1036	16.5
Industrial Relations Acts	992	15.8
Payment of Wages Act 1991	894	14.2
Terms of Employment (Information) Act 1994	538	8.5
Redundancy Payments Acts	365	5.8
Employment Equality Acts	340	5.4
Minimum Notice and Terms of Employment Act 1973	288	4.6
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 ( S.I. No. 131 of 2003) (other than Regulation 4(4) (a))	211	3.4
Equal Status Acts	131	2.1
Protection of Employees (Fixed-Term Work) Act 2003	105	1.7
National Minimum Wage Act 2000	81	1.3
Regulation 5, 8, 9, 10, 11 or 12 of the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 ( S.I. No. 36 of 2012)	56	0.9
Safety, Health and Welfare at Work Act 2005	40	0.6
Maternity Protection Act 1994	22	0.3
Parental Leave Act 1998	19	0.3
Protection of Employees (Part-Time Work) Act 2001	10	0.1
Protection of Employees (Temporary Agency Work) Act 2012	9	0.1
European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 ( S.I. No. 507 of 2006)	7	0.1
Regulation 6 of European Communities (Protection of Employment) Regulations	7	0.1
Protected Disclosures Act 2014	6	0.1
European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 ( S.I. No. 494 of 2004)	3	0.1
European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-border Services in the Railway Sector) Regulations 2009 ( S.I. No. 377 of 2009)	2	0.1
Employment Permits Act 2006	2	0.1
Consumer Protection Act 2007	2	0.1
Pensions Acts	2	0.1
Health Act 2004	1	
Criminal Justice Act 2011	1	
Regulation 9(4) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007 ( S.I. No. 285 of 2007)	1	
Competition Act 2002	1	
Carer's Leave Act 2001	1	
Protections for Persons Reporting Child Abuse Act 1998	1	
Protection of Employees (Employers' Insolvency Act, 1984)	1	
	<b>6281</b>	<b>100</b>

# Appendix 4

## Inspection Activities and Outcomes to 31 December 2016

Sector	Cases	In Breach	Breach (%)	Employees	Unpaid Wages (€)
Agriculture	47	22	47%	1,009	30,137
Construction	69	34	49%	1,376	127,100
Contract Cleaning	24	6	25%	7,980	9,480
Domestic Worker	22	5	23%	11	4,728
Electrical	5	3	60%	25	6,363
Fisheries	9	0	0%	31	0
Food & Drink	717	343	48%	10,634	332,903
Hair & Beauty	89	47	53%	427	23,393
Health Nursing and Childcare	73	15	21%	2,990	156,071
Hotel	89	31	35%	4,821	73,506
Manufacturing	45	16	36%	3,974	25,385
Other	283	112	40%	15,789	311,260
Professional Services	126	25	20%	12,481	3,872
Security	17	5	29%	3,667	52,779
Transport	43	18	42%	774	16,072
Wholesale And Retail	295	132	45%	8,804	348,550
<b>GRAND TOTAL</b>	<b>4,830</b>	<b>1,811</b>	<b>37%</b>	<b>74,793</b>	<b>1,521,600</b>
Announced Visit Total	1,953	814	42%	-	-
Unannounced Visits Total	2,877	997	35%	-	-

# Appendix 5

## Inspection and Enforcement

### Prosecutions Resulting in Convictions January - December 2016

Employer Details	Sector	Legislation
Ming Feng Ltd. t/a Rose Palace Restaurant Well Rd. Portlaoise Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Michael Herbs t/a Herbst Manufacturing Ltd. /Polo Wicklow Kilpoole Hill Wicklow	Agriculture	Employment Permits Acts 2003 and 2006
River View Chinese Restaurant & Takeaway Ltd. t/a River View 1 Abbey St. Tipperary Town	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act 1997
Mr. Xie Xiao Biao t/a River View Chinese Restaurant & Takeaway Ltd. 1 Abbey St. Tipperary Town	Food & Drink	Organisation of Working Time Act 1997
Xiu Yu Lin t/a River View 1 Abbey St. Tipperary Town	Food & Drink	Organisation of Working Time Act 1997
Royal Court Chinese Restaurant Ltd. t/a Royal Court Chinese Restaurant Unit 5-6 Hawthorn House Limerick Rd. Ennis, Co. Clare	Food & Drink	Employment Permits Acts 2003 and 2006

<p>Xin Ju You Ltd. t/a Apache &amp; Peking 20-21 JKL St. Edenderry Co. Offaly</p>	<p>Food &amp; Drink</p>	<p>Organisation of Working Time Act 1997</p>
<p>Bin Zhao Director Xin Ju You Ltd. Flat 2, 44 Pearse St. Dublin 2</p>	<p>Food &amp; Drink</p>	<p>Payment of Wages Act 1991</p>
<p>Ru Jian Zhang Director Xin Ju You Ltd. Flat 2, 44 Pearse St. Dublin 2</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Kildangan Farm Ltd. Kildangan Kinnegad Meath</p>	<p>Agriculture</p>	<p>National Minimum Wage Act 2000</p>
<p>Mark Moore Director Kildangan Farm Ltd. Kildangan, Kinnegad Meath</p>	<p>Agriculture</p>	<p>National Minimum Wage Act 2000</p>
<p>Enda Moore Director Kildangan Farm Ltd. Kildangan, Kinnegad Meath</p>	<p>Agriculture</p>	<p>National Minimum Wage Act 2000</p>

Employer Details	Sector	Legislation
<p>Xiujun Yu t/a Sunshine House Main St. Rathvilly Co. Carlow</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Orchid House Ltd. t/a Orchid Harbour Main St. Kilmuckridge, Gorey Co. Wexford</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Ms. Fei Fei Song t/a New Star House Chinese Takeaway Allenwood Cross Allenwood, Naas Co. Kildare</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Good Days Chinese Restaurant &amp; Takeaway Ltd. t/a Good Days Takeaway Finlays Shopping Centre Rathangan Rd., Monasterevin Co. Kildare</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Melanie An t/a Good Days Takeaway Finlays Shopping Centre Rathangan Rd. Monasterevin, Co. Kildare</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Xun Liu t/a Good Days Takeaway Finlays Shopping Centre Rathangan Rd. Monasterevin, Co. Kildare</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>

Rajpal Singh t/a Spicy Food Guru Takeaway Port Road Letterkenny Co. Donegal	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act 1997
Fei Fei Song t/a New Star House Chinese Takeaway Allenwood Cross Allenwood Co. Kildare	Food & Drink	Employment Permits Acts 2003 and 2006
Xiao Yong Wang t/a Emperors House Restaurant JFL House James Fintan Lawlor Ave. Portlaoise, Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Louise Rafferty t/a Ace Contract Cleaners Naas 40 Pacelli Rd. Naas Co. Kildare	Contract Cleaning	Organisation of Working Time Act 1997
Brian Case t/a Mario's Takeaway 3 Irish St. Bunclody Co. Wexford	Food & Drink	National Minimum Wage Act 2000
Ozzies Diner Ltd. t/a Mick the Chipper and Ozzies Diner/Ambrose Maloneys Market Square, Bunclody, Co. Wexford and Courtown Harbour, Gorey, Co. Wexford	Food & Drink	National Minimum Wage Act 2000  Organisation of Working Time Act 1997

<b>Employer Details</b>	<b>Sector</b>	<b>Legislation</b>
Yue Jiao Liu t/a Denis Kebab House Castle Hill Enniscorthy Co. Wexford	Food & Drink	Payment of Wages Act 1991
Shi Qi Chen t/a Emperor Palace High St. Tuam Co. Galway	Food & Drink	Employment Permits Acts 2003 & 2006
J.S.F. Construction Ltd. t/a J.S.F. Construction Wellington Place Wellington St. Clonmel, Co. Tipperary	Construction	Organisation of Working Time Act 1997
Tao Chen t/a Dynasty Restaurant Eagle House Main St. Hacketstown, Co. Carlow	Food & Drink	Employment Permits Acts 2003 and 2006
Tao Chen t/a Taos Chinese Restaurant Hawkins Lane Abbey St. Tullow, Co Carlow	Food & Drink	Employment Permits Acts 2003 & 2006
Parmatma Ltd. t/a Saffron 19 Castle St. Bray Co. Wicklow	Food & Drink	Employment Permits Acts 2003 & 2006

Mahmood Ahmad t/a Flames Takeaway 26 Castle Street Cahir Co. Tipperary	Food & Drink	Employment Permits Acts 2003 & 2006
Jin Shan Chinese Restaurant t/a Peking Apache Pizza Dublin Rd. Monasterevin Co. Kildare	Food & Drink	Organisation of Working Time Act 1997
Yuan Zhao t/a Peking Apache Pizza Dublin Rd. Monasterevin Co. Kildare	Food & Drink	Organisation of Working Time Act 1997
Fika Ros Ltd. t/a Curvy Girls Fitness Henry St. Tullamore Co. Offaly	Other (Gym/Fitness Centre)	National Minimum Wage Act 2000
Sorat Shan Khan t/a Pizza Dome 10 Merchants Quay Waterford	Food & Drink	Employment Permits Acts 2003 and 2006
Asghar Ali Khan t/a Pollard Fast Food & Indian Take Away Castlepollard Co. Westmeath	Food & Drink	Organisation of Working Time Act 1997  Payment of Wages Act 1991

Employer Details	Sector	Legislation
Giu Liu t/a Peking Apache 9 Harbour St. Tullamore Co. Offaly	Food & Drink	Employment Permits Acts 2003 & 2006
Xun Liu t/a Peking Apache 9 Harbour St. Tullamore Co. Offaly	Food & Drink	Employment Permits Acts 2003 & 2006
Duan Yi Gao t/a Jade Garden Abbey St. Tullow Co. Carlow	Food & Drink	Employment Permits Acts 2003 & 2006  Organisation of Working Time Act 1997
Muhammad Ibrahim t/a Hot Corner Mulcair Court Unit 7, Black Rd. Newport, Co. Tipperary	Food & Drink	Employment Permits Acts 2003 & 2006
Nessa Foods Ltd. t/a Indie Spice 3 New Row Naas Co. Kildare	Food & Drink	National Minimum Wage Act 2000  Organisation of Working Time Act 1997
Tariq Salahuddin t/a Nessa Foods Ltd. 3 New Row Naas Co. Kildare	Food & Drink	National Minimum Wage Act 2000  Organisation of Working Time Act 1997

Analog Digital Security Systems Ltd. t/a Analog Digital Security Systems Kilmallock Road Enterprise Centre Limerick	Security	National Minimum Wage Act 2000
Linkat Ltd. t/a Peking Inn Main St. Virginia Co. Cavan	Food & Drink	Employment Permits Acts 2003 & 2006
Mamo Café Ltd. t/a Peking Inn Unit 2, Ardlo Manor Mullagh Co. Cavan	Food & Drink	Employment Permits Acts 2003 & 2006
Peking Inn Ltd. t/a Peking Inn Main St. Bailieborough Co. Cavan	Food & Drink	Employment Permits Acts 2003 & 2006
Muhummad Atif Khan Apt 135, The Oval Tullyvale Cabinteely Dublin 18	Employee	Employment Permits Acts 2003 & 2006
Golden Jade Ltd. T/A Golden Jade Restaurant Uluru Dunmore Road Co. Waterford	Food & Drink	Employment Permits Acts 2003 and 2006

Employer Details	Sector	Legislation
Mircea Cirpaci T/A Car Wash Pearse Road Letterkenny Co. Donegal	Other (Car Wash)	Organisation of Working Time Act 1997  Payment of Wages Act 1991 National Minimum Wage Act 2000
Wayrom Ltd, T/A Ecokell Brushwood Ovens Co. Cork	Contract Cleaning	National Minimum Wage Act 2000  Organisation of Working Time Act 1997 Payment of Wages Act 1991
Anphabe Ltd. T/A Benny's Chinese Restaurant 18 Castle Street Shopping Centre Bray Co. Wicklow	Food & Drink	Employment Permits Acts 2003 and 2006
David Sheridan T/A Brookville B&B Rahan Rd. Tullamore Co. Offaly	Hotel	Organisation of Working Time Act 1997 National Minimum Wage Act 2000
Denis O'Riordan T/A Mostly Just 2 Euro Patrick St. Fermoy Co. Cork	Wholesale & Retail	Organisation of Working Time Act 1997
Xitong Wu t/a Oriental Express 70 Market Square Cootehill Co. Cavan	Food & Drink	Employment Permits Acts 2003 and 2006

Golden Spring Chinese Takeaway t/a Golden Spring Chinese Takeaway Unit 260 Gandon Court Portlaoise Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Minfa Ltd. t/a New Oriental Star Matthews Courtyard Portarlinton Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Defa Chen t/a New Oriental Star Matthews Courtyard Portarlinton Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Qin Juan Gao t/a New Oriental Star Matthews Courtyard Portarlinton Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Mr. Kevin Lee t/a Silks Restaurant The Moorings Malahide Co. Dublin	Food & Drink	Employment Permits Acts 2003 and 2006
Mr. Tung Wah Lee Bo Bo Catering Limited t/a Silks Restaurant The Moorings Malahide, Co. Dublin	Food & Drink	Employment Permits Acts 2003 and 2006

Employer Details	Sector	Legislation
<p>Midland Web Printing Limited t/a Midland Web Printing Limited Synegield Birr Co. Offaly</p>	<p>Other (Printers)</p>	<p>National Minimum Wage Act 2000</p>
<p>Arnold Fanning (Also known as James Fanning) t/a Midland Web Printing Ltd. Syngefield Birr, Co. Offaly</p>	<p>Other (Printers)</p>	<p>National Minimum Wage Act 2000</p>
<p>Miller Bros Stone Development Co. Ltd. t/a Miller Bros Stone Development Co. Ltd. Charvey Lane Rathnew, Co. Wicklow</p>	<p>Construction</p>	<p>Employment Permits Acts 2003 and 2006</p> <p>Organisation of Working Time Act 1997</p>
<p>F &amp; I Ventures Ltd. t/a Tandoori Night Station Road Thomastown Co. Kilkenny</p>	<p>Limited Company</p>	<p>Organisation of Working Time Act 1997</p> <p>National Minimum Wage Act 2000</p> <p>Employment Permits Acts 2003 and 2006</p>
<p>Irfan Saleem t/a Tandoori Night Station Road Thomastown Co. Kilkenny</p>	<p>Food &amp; Drink</p>	<p>Organisation of Working Time Act 1997</p> <p>Employment Permits Acts 2003 and 2006</p>
<p>Martin O'Connor t/a Derryclare Restaurant Market Square Clifden Co. Galway</p>	<p>Food &amp; Drink</p>	<p>Organisation of Working Time Act 1997</p>

<p>Superior Bistro &amp; Pizza Limited t/a Peking Apache Pizza Frederick House Frederick Street Ashbourne, Co. Meath</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Vivaj Ltd. t/a The Red Chilli 16 Brennon Place Bray Co. Wicklow</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Mr. Vivek Hooda t/a The Red Chilli 16 Brennon Place Bray Co. Wicklow</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Mr. Ajayveer Malhan t/a The Red Chilli 16 Brennon Place Bray Co. Wicklow</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>
<p>Xian Zi Huang t/a China Kitchen Unit 7 Captains Hill Leixlip Co. Kildare</p>	<p>Food &amp; Drink</p>	<p>Organisation of Working Time Act 1997</p>
<p>You Ling Want t/a New Century Oriental Takeaway Martins Bar Riverstown Cooley, Co. Louth</p>	<p>Food &amp; Drink</p>	<p>Employment Permits Acts 2003 and 2006</p>

Employer Details	Sector	Legislation
Chee Ming Look t/a Ming Garden 38 Main Street Gorey Co. Wexford	Food & Drink	Employment Permits Acts 2003 and 2006
E & W Catering Limited t/a Mings Court Chinese Restaurant Cois na Mara Davitts Quay Dungarvan, Co. Waterford	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act 1997
Mr. Weijie Zheng t/a King Ding Ltd. t/a Tenda Oriental Chinese Restaurant Main Street Duleek, Co. Meath	Food & Drink	Employment Permits Acts 2003 and 2006
Ms. Xiaojin Lin t/a King Ding Ltd. t/a Tenda Oriental Chinese Restaurant Main Street Duleek, Co. Meath	Food & Drink	Employment Permits Acts 2003 and 2006
King Ding Ltd. t/a Tenda Oriental Restaurant & Takeaway Main Street Duleek, Co. Meath	Food & Drink	Employment Permits Acts 2003 and 2006
Ms. Li Chong t/a Sunrise Chinese Restaurant & Take Away Main Street Duleek, Co. Meath	Food & Drink	Employment Permits Acts 2003 and 2006

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Ling Chen t/a Director of Ho Ting Unit 7, Sandhills SC Hacketstown Road Carlow	Food & Drink	Organisation of Working Time Act, 1997

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