

# Workplace Relations Commission: -Mediation and Adjudication During Covid-19

## Introduction

The Workplace Relations Commission (WRC) has engaged in a broad consultation process to ascertain the views of its stakeholders and users about the feasibility of alternative approaches to dealing with complaints submitted to the WRC (other than those submitted to the WRC Inspectorate<sup>1</sup>). In this regard, these complaints have heretofore been dealt with primarily by way of mediation and adjudication on a face-to-face basis. Just under 30 separate submissions were received and the service matrix set out in this document has been very much informed by these responses.

The WRC, mindful of fair procedures and the need to provide as comprehensive a service to all its users as possible, will deal with complaints by way of Mediation, Written Procedure, Virtual Hearings and, in line with the *Roadmap for Re-opening Society and Business* and the *Return to Work Safely* protocols, will re-introduce limited face-to-face hearing mediation and adjudication in large meeting rooms initially in its five premises and also will explore other suitable locations.

This matrix of delivery model sets out, at a high level, how the WRC will deliver these services over the period of Covid19 restrictions. It is a balanced response in terms of service delivery in what is an emergency but ultimately time-bound situation which, by its nature, is dynamic, will be kept under review and informed by health guidelines, and by stakeholder engagement with the process and feedback.

In the current circumstances, the WRC proposes to action its delivery models with immediate effect and parties can consider consent in light of the draft and final documentation. **We are asking parties/representatives to be positively disposed to complaints being adjudicated upon via both written proceedings and remote hearings.**

Current registration processing procedures are detailed in Appendix 1.

## Mediation

The responses to the consultation process indicated a strong appetite for the use of mediation in all cases suited to mediation. The WRC has the capacity to deal with mediation demand and urges parties to actively consider and engage with the process as much as possible. Mediation is critical to the WRC meeting overall demand in the current emergency and affords parties the opportunity to settle differences amicably in what are challenging times.

In this regard, the Mediation Service is actively engaged in offering mediation in suitable cases received and processed over the past two months and, similarly, is offering mediation to parties whose hearings have been postponed as a result of Covid19 or other reasons and are awaiting an alternative hearing date. Even where parties may have previously declined the offer of mediation, the WRC would suggest that they revisit that decision and consider again the option of mediating the dispute.

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<sup>1</sup> A separate protocol is being drafted in this regard

This service is being delivered alongside our normal mediation service for parties who have opted for mediation as a first step.

In situations where a party, for whatever reason, requires assistance (e.g. translation or where particular disabilities apply) as with current practice, this will be facilitated as much as possible.

For the present, such mediation is currently being offered by telephone only but the WRC is exploring suitable virtual ICT solutions that would permit such mediations to be carried out virtually in a secure, private and confidential manner.

### **Written Procedures**

In response to submissions, the WRC will utilise its statutory powers to investigate complaints by written procedure where possible and in line with fair procedures. In this regard, the WRC is reviewing complaints that are not suitable for mediation or have been returned to the process where mediation has not resolved the issues, to identify those which are considered suitable for this process.

Where suitable cases are identified, the WRC will write to the parties advising of their statutory entitlement to object to the procedure within the relevant period and will await expiration of this period before proceeding. In the interests of fair procedures, the WRC will only proceed using this approach where consent is provided.

In the absence of objection, the complaint will be referred to an Adjudication Officer for determination or decision.

In situations where a party, for whatever reason, requires assistance (e.g. translation or where particular disabilities apply) as with current practice, this will be facilitated as much as possible.

Guidelines and procedures for parties on how this processes once the parties agree to dealing with the matter by written procedure are set out in Appendix 2.

### **Virtual Hearings**

Again, in response to submissions, the WRC proposes to offer investigation by way of virtual hearing to all parties, initially on a pilot basis and in line with fair procedures and the “WebEx” platform has been identified as the operational substructure for virtual hearings.

In this regard, the Labour Court is using this technology for the purposes of delivering its hearings and the WRC is of the view that using the same platform will be in ease of the parties. It is recognised that not all parties will have access to such technology and, in such circumstances, complaints that cannot be disposed of for this particular reason will be afforded priority listing in the relevant locations on the resumption of face-to-face hearings.

The WRC conducted a number of trial hearings involving several stakeholders from 20 May. These trials were positively received and the Webex platform will enable remote hearings to be conducted.

The WRC has contacted parties seeking consent to hear the complaint by remote hearing and it proposes to list the first remote hearing for the week commencing 13 July. It will continue to review cases for disposal in this fashion and will contact parties seeking their consent.

Initially, and in line with the consultation document, this process will be targeted at complaints submitted in relation to Organisation of Working Time, Payment of Wages, Industrial Relations, etc. However, some responses to the consultation document asked that more complex complaints be considered for disposal in this manner and the WRC will, in light of the developing experience of all parties with procedures and technology, consider the introduction of such complaints to virtual hearings over time.

The WRC will notify parties of the virtual hearing arrangements by email.

In situations where a party, for whatever reason, requires assistance (e.g. translation or where particular disabilities apply) as with current practice, this will be facilitated as much as possible.

Protocols setting out what is required of the parties are set out in Appendix 3 .

### **Face-To-Face Mediation and Adjudication**

In line with the *Roadmap for Re-opening Society and Business* and the *Return to Work Safely* protocols, the WRC proposes to re-introduce limited face-to-face hearing mediation and adjudication from late July, 2020 in large meeting rooms initially in its five premises and is exploring other suitable locations over the period.

Consideration of how these services might resume is ongoing and the WRC will engage with the appropriate bodies and its stakeholders in the development of its plans in this regard, but the hope is that a not inconsiderable number of complaints may be disposed of in this manner when such hearings resume. The initial proposals for a return to face to face hearings are set out at Appendix 4.

The WRC recognises that, at least initially, not all cases may be suitable for disposal under the alternative options outlined above, nor will the processes suit all parties. The resumption of face-to-face hearings should assist in overcoming such difficulties.

The WRC is working in conjunction with HSE and OPW guidelines regarding the use of larger hearing rooms and we will only use 80% of room capacity. There will be no consultations between parties onsite and as such we strongly encourage that parties and their representatives engage/consult prior to the hearing, which may indeed result in a resolution or a settlement.

The WRC is receiving complaints both electronically and manually.

In the current circumstances, all parties and representatives should where at all possible submit these complaints using the electronic complaint form available on the WRC website.

**Parties should also provide an email address that the WRC can use to contact the relevant parties.**

Complaint applications are initially processed by our Information and Customer Service Division (ICS) and the WRC continues to correspond with complainants and named respondents in line with the provisions of the Workplace Relations Act 2015.

While the communication method prior to the current emergency was via posting hard copy correspondence, provision is available to serve notice and/or documents by electronic means under Section 6 of the Workplace Relations Act 2015.

In this regard, complaint forms submitted since restrictions commenced are being examined for email contact details for both the complainant and all named respondents, and where such email details are available, the complaint is being acknowledged and appropriate consent to use electronic communication in future is being sought.

Where email contact details are not included on the complaint form for any, or all, of the parties listed, the ICS is attempting initial contact by telephone to establish an email address and the person(s) called will be informed that an email will issue subsequent to the phone call. Where an email address is provided over the phone, an email as outlined above issues. Where such contact is made, the existence of a complaint application having been filed is not specified or confirmed.

## Investigating Complaints by Written Submission

### Workplace Relations Commission Guidelines for Parties/Representatives

#### Introduction

Where a case is dealt with by way of written submissions, there is no hearing where the parties are present either physically or remotely.

The power of the Workplace Relations Commission (WRC) to dispose of cases by way of written submissions only is set out in Section 47(1) of the Workplace Relations Act 2015 and in other related pieces of legislation such as section 8B of the Unfair Dismissals Acts, section 79(2A) of the Employment Equality Acts, and section 25(2A) of the Equal Status Acts. Regardless of the statute, the WRC is obliged to conduct the investigation process in accordance with fair procedures and constitutional justice, and the WRC will not exercise its discretion unlawfully.

Accordingly, in circumstances where the Director General considers that the complaint may be dealt with by written procedure only the parties are so informed. In doing so the parties are apprised of their right to object to the matter being dealt with in this manner.

The period within which a party can object to the matter being dealt with by written procedure is 42 days for complaints under the Workplace Relations Act and the Unfair Dismissals Acts and 28 days under the Equality and Equal Status Acts. In situations where there is a combination of such cases, the "objection" period is 42 days.

It should be noted that the abovementioned legislative provisions place an onus on the parties to notify the Director General if they do not wish to have the complaint dealt with on the basis of written submissions only. However, where, after the expiration of the appropriate statutory period, during which neither party has objected to the matter being disposed in this manner, the Director General shall assign the case to an Adjudication Officer (AO) in the normal fashion.

#### Identification of Complaints suitable for Written Procedures.

There is no open or closed category of cases which may be disposed of by way of written submissions only. The WRC is of the view that the types of complaints which would be most suitable to investigation by way of written procedure include:

- a) Complaints in relation to Pay and Hours of Work (under the Organisation of Working Time Act, 1997 and Payment of Wages Act, 1991);
- b) Complaints in relation to Terms and Conditions (under the Terms of Employment (Information) Act, 1994);
- c) Complaints under the Minimum Notice & Terms of Employment Act, 1973;
- d) Complaints under any statute which raise issues of a preliminary nature.

### **Initial Processing**

On assignment of the complaint, the AO will review the file to:

- (i) ensure that both parties have not objected to proceeding with the investigation by way of written procedure (and that the statutory period allowable for objection has elapsed) and,
- (ii) determine whether further details/information/documentation is necessary for the purposes of the investigation.

### **Preliminary Issue**

Where the Adjudication Officer concludes that the preliminary issue disposes of the matter (i.e. complaints referred to at (d) above) s/he can issue a Decision in that regard, which can be appealed to the Labour Court/Circuit Court as appropriate.

### **Additional Information**

The AO's review will include an assessment of whether a party should be afforded an opportunity to respond to material previously provided by the other party in order to comply with fair procedures. If the Adjudication Officer is satisfied that all relevant documentation/information for purposes of the investigation has been provided, then s/he will proceed with the investigation and complete the Decision. It is particularly important with regard to "Written Procedures Adjudications" that both parties provide all the documentation that they consider necessary for adjudication to the WRC within 14 days.

If the Adjudication Officer requires further clarification of details or information/documentation for the purposes of the investigation, then s/he will afford the party concerned a period of 14 days to provide the required clarification and/or additional information/documentation. All responses should be directed to [pru@workplacerelements.ie](mailto:pru@workplacerelements.ie). When additional clarification and/or information/documentation is being provided, the submitting party should copy it to the other side as well as sending it directly to the WRC, and they will be afforded a period of 14 days to submit any relevant observations/response.

The WRC and/or the Adjudication Officer have discretion to extend the above-mentioned period of 14 days in exceptional circumstances. Any such request for an extension must be set out in writing by the parties and outline the specific reasons for the extension.

### **Decision:**

Once the Adjudication Officer is satisfied that:

- (i) s/he has sufficient information to reach a decision on the complaint; and
  - (ii) fair procedures have been observed;
- s/he will complete a Decision for issue in the normal manner.

### **Alternative Resolution**

In the event that information emerges in the course of the investigation by way of written submissions which may alter in any way the decision of the Director General to dispose of the complaint in that manner, the decision can be reviewed by the Adjudication Officer, who may

determine that the matter should be remitted for investigation by way of oral hearing having fully considered any representations made by the parties on this matter.

Notwithstanding a party's right to object to disposal of a complaint in this manner, in the event that such objection is made, a party should nonetheless submit a comprehensive statement setting out the full details of its position in relation to the complaint and that statement should be accompanied by all relevant supporting documentation which that party will seek to rely on subsequently. This will reduce potential delays should the complaint be selected for investigation by remote hearing.

### **Assistance to Parties**

In situations where a party, for whatever reason, requires assistance (e.g. translation or where particular disabilities apply and reasonable accommodations are required) as with current practice, this will be facilitated as much as possible. Any such requests should be emailed to [pru@workplacereactions.ie](mailto:pru@workplacereactions.ie) at the earliest possible date.

## Investigating Complaints by Virtual Hearings

### WRC Guidelines for Parties/Representatives

#### Introduction

The WRC having consulted with stakeholders and taking account of ICT, legal, procedural issues, case-type and end-user capabilities will roll-out virtual hearings, initially on a pilot basis. This alternative mode of hearing is to facilitate the ongoing delivery of adjudication services during the current public health crisis and it is not envisaged or intended that this measure would become the norm or extend beyond the duration of the pandemic.

The guidance and rules provided in this notice are intended to be applied flexibly. It is not intended to be unduly prescriptive but rather to identify the minimum requirements and procedures necessary to enable the WRC to continue to operate effectively during the Covid-19 Pandemic. It may be necessary to revise this guidance in light of changing circumstances, and having regard to the experience of the WRC, and that of parties and practitioners, of how the arrangements operate in practice. The success of a virtual WRC hearing will depend on the facilities available to parties and their willingness to co-operate with the WRC and adapt quickly.

#### Selection of Complaints for Virtual Hearing

The WRC will carry out an initial screening of complaints to determine their suitability for virtual hearing. Where a complaint is deemed suitable, the WRC will notify the parties and seek written consent of their agreement to proceed by way of a virtual hearing. Parties should respond **within 14 days**. The WRC considers that it would be prudent during the initial pilot period to proceed only with remote hearings where both parties have provided consent. Therefore, during the initial pilot period if either party objects the complaint will not be selected for investigation by way of remote hearing. This situation will be kept under review by the WRC with the possibility of pursuing remote hearings on a compulsory basis following the conclusion of the initial pilot period.

**It should be noted that the WRC will be receptive to parties seeking virtual hearings on consent, and requests of this nature should be sent by e-mail directly to PRU at [pru@workplacerelements.ie](mailto:pru@workplacerelements.ie) with the other side copied.**

#### Minimal Device Requirements and Broadband

Where a complaint is selected for virtual hearing, the WRC will inform the parties of the minimum electronic and broadband capability standards required for the successful delivery of virtual hearing and parties will be required to confirm that they have access to this electronic and broadband capability to participate properly in the virtual hearing.



The WRC will conduct remote hearings via the WebEx video conferencing platform.

### **Notification to Parties**

Parties to a complaint will be requested to provide the WRC with the individual email addresses for each of the virtual hearing participants. This information should be sent to the WRC by email to [pru@workplacerelements.ie](mailto:pru@workplacerelements.ie) at least 7 days before the hearing. The WRC will then issue notifications by e-mail to all notified participants with instructions on how to join the virtual hearing.

During the initial pilot period, the initiative will not apply to cases which have been part-heard and in such cases, parties will be notified by the WRC of the arrangements for the reconvened face-to-face hearing in due course. However, WRC will prioritise the scheduling of these part heard cases subsequently.

### **Submissions/Documentation**

The WRC will write to both parties prior to scheduling of the remote hearing to request the submission of written documentation and will stipulate the applicable timeframes for the submission of this documentation. Parties will be afforded a period of 21 days within which to forward written submissions and supporting documentation to the WRC. Submissions received from either party will be copied to the other side for information.

Parties will be also asked to provide within 21 days written statements from witnesses outlining the nature of the evidence that they will adduce at hearing. A copy of all documentation should be copied to the other side, as well as sent directly to the WRC, for information prior to the remote hearing.

Parties must forward by electronic means to the WRC any written submissions and documentation that will be relied upon at the remote hearing. The Adjudication Officer (AO) may direct that certain material is provided by each party in advance.

It is essential that each party apply pagination or page numbering and paragraph numbering to all submission documentation. Without this pagination it will become next to impossible for an Adjudication Officer (AO) and the other party to reference and follow particular items in a submission during a remote hearing.

All documentation and papers being filed electronically should be delivered in PDF format and emailed to [pru@workplacerelements.ie](mailto:pru@workplacerelements.ie). **Each party should also copy the other side when lodging a submission to the WRC.**

### **Data Protection**

Parties and (where applicable) their legal representatives must take all necessary steps to ensure the confidentiality and security of any correspondence or documents of a confidential or sensitive nature being transmitted electronically and they shall at all times be responsible for compliance with all applicable requirements of GDPR.

### **Late Submissions**

Late submissions have a significant impact on the ability of a party and an AO to prepare for

an adjudication, and for a party to obtain appropriate advice which, in turn, impacts negatively on the efficient and effective running of the hearing on the day.

A virtual hearing will not proceed in situations where all required written submissions and/or relevant documentation has not been forwarded by the parties and exchanged with the other side **at least 21 days prior to the date of hearing**. The admissibility of any subsequent material will be a matter for determination by the AO against the benchmark of exceptional circumstances.

Consent to a virtual hearing includes consent to provide the documentation within this timescale. Where a party does not do so and the virtual hearing is impeded as a result, the WRC may consider withdrawing the offer of future virtual hearings to that party.

### **Attendees at Virtual Hearings**

Parties will be required to provide written confirmation in relation to the names and contact details of all of those who will be “present” at the remote hearing in respect of that party. Parties should also confirm if the participants (including representatives and witnesses) at the remote hearing will be participating from separate or common physical locations.

If the participants from either party wish to participate in the remote hearing from a common physical location (e.g. such as a solicitor’s office) it will be necessary to confirm that relevant social distancing and public health guidelines will be strictly adhered to for the duration of the remote hearing. In such circumstances, it will also be necessary for all of the individual participants to connect to the hearing via separate access devices and remain viewable by the Adjudication Officer for the duration of the remote hearing.

This information should be sent to the WRC by email to [pru@workplacerelations.ie](mailto:pru@workplacerelations.ie) at least 7 days before the hearing. In this regard, it is critical that the AO has as much certainty as possible about who should be present to ensure that the hearing does not commence until everyone has joined the virtual hearing room. Where required, participants should be able to produce confirmation of identify on screen as requested by the AO (such as Passport, Driver’s Licence or Public Services Card).

### **Recording of Proceedings**

The recording of remote hearings is strictly prohibited. The AO shall seek confirmation from the parties at the outset of the proceedings that they will not engage in the unauthorised recording or live streaming of the hearing to another location.

If the Adjudication Officer (AO) has reason to suspect that either party or any of the participants are failing to comply with this requirement s/he may decide to terminate the hearing.

### **Preparation by Parties for the Remote Hearing**

It is essential to replicate as closely as practically possible the core requirements of face-to-face hearings. Remote hearings using video conferencing facilities preserve most of the benefits of an oral hearing, allowing parties and their legal representatives and the AO to interact with each other on a real-time basis. Parties and their legal representatives will be

expected to focus their submissions (and evidence, if applicable), to promote the efficient use of the technology within the shortest possible appropriate time.

The participants should ensure that they have received an email invite to join the remote hearing from the WRC Post Registration Unit (PRU) directly so that they are ready to join the hearing in good time on the appointed day.

The parties should be **ready at least 20-30 minutes before the start of the remote hearing** and make sure the access device is fully charged, so they do not drop out of the hearings at any stage. In the event of unforeseen and unavoidable technological issues, the AO will temporarily adjourn to allow those issues to be addressed by the party experiencing those issues. If the technical issues cannot be resolved such that all parties can participate effectively, the hearing will be adjourned without prejudice to any party. These will be rescheduled in due course.

Parties should test the equipment beforehand, so the technology is not a distraction following the commencement of proceedings. Screens should be set at 90 degrees to the keyboard so the participant's face can be seen properly. Ideally, the background should be blank or neutral and the platform will also contain a feature that allows participants to blur the background.

### **General Hearing Rules**

If a party is represented at the hearing it will be necessary for the representative and client to agree how they will communicate confidentially during the hearing.

Where a party cannot access the hearing via the link to the teleconferencing platform, he/she should immediately inform the WRC by telephoning the contact details on the hearing notice or emailing [pru@workplacerelations.ie](mailto:pru@workplacerelations.ie). In such circumstances, the AO will decide whether it is possible for the hearing to go ahead or needs to be re-scheduled for a later date.

If a party does not join the hearing at the designated time, the AO (similar to face-to-face hearings) where the AO is satisfied the party is "on notice", may proceed in the absence of the party.

The parties and representatives are required to follow the same procedures that apply at a face-to-face hearing before an Adjudication Officer (AO). This means that participants are prohibited from eating and smoking (cigarettes and/or e-cigarettes) during the hearing.

All mobile phones or other electronic devices not being used for the specific purpose of the proceedings should be turned off or turned onto silent for the duration of the hearing.

### **Conduct of Remote Hearings**

#### **Participant Requirements**

Participants must ensure that they will not be interrupted or distracted during the hearing. It should be held in a quiet secure location.

Unless directed otherwise, all participants must leave their cameras turned on at all times. Participants should not move away from the screen without permission of the AO during the course of a remote hearing.

Unless addressing the AO, or otherwise requested to do so, all participants **should always have their microphones muted and should only be unmuted when invited to speak by the AO**. If a participant wishes to speak uninvited, he/she should use the 'raise hand' function on Webex to signal to the AO that he/she wishes to interject and then await the AO invitation to speak. The AO will maintain control of the "mute microphones" function for the duration of the remote hearing.

The use of earphones/headsets is permitted and encouraged if their use will assist in preserving the confidentiality of proceedings.

Having regard to the way the documents were filed, consideration should be given to the easiest way to facilitate the AO in quickly accessing any documents which require to be opened. Reference to the submission, the page number and the paragraph number being referred to, will make it easier for both the AO and the other party to follow the submission and the point being made.

In the event that any of the participants should experience technical difficulties during the remote hearing (such as a temporary or permanent loss of connection to the teleconferencing platform), he/she should immediately inform the WRC by telephoning the contact details on the hearing notice or emailing **pru@workplacereactions.ie**. In such circumstances, the AO will temporarily adjourn to allow those issues to be addressed by the party experiencing them. If the technical issues cannot be resolved such that all parties can participate effectively, the hearing will be adjourned without prejudice to any party. These will be rescheduled in due course.

A checklist of requirements is provided at Appendix 5 which may be of assistance to unrepresented parties when preparing for remote hearings.

### Procedures during Remote Hearing

#### *Preliminary Matters*

At the start of a hearing, the AO will outline the rules and protocols to be followed during the virtual hearing. The AO will control the oral contributions of the participants at the hearing, such that any and all oral contributions and interjections are subject to the invitation of the AO at all times. Participants must refrain from speaking uninvited and avoid speaking over each other so as to ensure the efficient and smooth running of the remote hearing.

The AO will request the parties to identify themselves clearly and may ask some clarification questions in order to confirm the identity of the person on camera is the same as the person involved in the complaint submitted for adjudication. The AO may give any additional directions that s/he wishes to make about the use of cameras and microphones.

The decision as to how a hearing is conducted is a matter for the AO. As with face-to-face hearings, in carrying out statutory investigative functions, the AO is obliged to comply with the requirements of fair procedure and constitutional justice. These requirements are not fixed but will depend on all the circumstances of a case and vary from one type of procedure to another.

Before commencing the hearing, the AO will ask the parties if they wish to avail of an opportunity to engage in discussions with a view to trying to reach a settlement in relation to the complaint. If the parties wish to engage in discussions the AO will temporarily adjourn the remote hearing for a period of no longer than 15/20 minutes to facilitate this engagement between the parties. The AO will unmute the microphones of the parties who will be required to remain linked into the remote hearing for the duration of the discussions. The remote hearing will remain suspended for the duration of the discussions and the parties should be ready to resume when the agreed time has elapsed. The AO will leave the meeting to minimise allegations of inappropriate behaviour and will re-join at the agreed time.

### *The Hearing*

The AO will ask if any preliminary issues need to be addressed. In most cases the AO will take evidence in relation to preliminary points raised from both parties and then proceed to hear the substantive claim(s).

Both parties will, in turn, be asked to give a concise outline of their position in relation to the claims made (the type of case and burden of proof will determine which side starts first).

Then the AO will take direct evidence from both parties and all other relevant witnesses, if required. The other party, or their representative, will be given the opportunity to question the parties and other witnesses regarding the evidence they have given. The AO may take periodical breaks during the hearing to allow parties and their representatives consult on a confidential basis.

When all evidence has been taken both parties will be given the opportunity to present a summing up of the case, firstly by the party, or their representative, on whom the burden of proof rests, including submission of legal points and introduction of relevant case law. Then by the other party, or their representative, including submission of legal points and introduction of relevant case law.

In exceptional circumstances only, the AO may accede to a request for or decide that further information needs to be submitted after the hearing and the timelines for such submissions will be agreed at the hearing. These timelines must be strictly adhered to. Failure to do so may result in decisions being issued in any event. It is incumbent on the parties/representatives to provide whatever information they consider relevant to the complaint 21 days in advance of the hearing.

The AO will inform the parties when the hearing has been concluded and s/he will be the first to leave the virtual hearing. The parties will not have any further interaction with the AO once s/he has left the hearing.

### *Witnesses*

Where a witness is giving evidence, that witness must always keep his/her camera and microphone on. The witness should be alone in a secure room with the doors closed. The witness should ensure that there will be no interruptions or distractions for the duration of the appearance at the virtual hearing. The witness may be required by the AO to prove (by moving the camera) that he/she is alone in the room.

The witness should have recently re-read all statements and any documentation relevant to his/her participation in the hearing and have a copy of those documents with them, if necessary.

Representatives should refrain from any prompting of witnesses when adducing evidence. If necessary, the AO may temporarily adjourn the proceedings to allow representatives to take instructions from witnesses. However, this shall not be granted while the witness is giving the 'evidence in chief' or while their evidence is being tested by the AO or under 'cross examination'.

### **Assistance to Parties**

In situations where a party, for whatever reason, requires assistance (e.g. translation or where particular disabilities apply and reasonable accommodations are required) as with current practice, this will be facilitated as much as possible. Any such requests should be emailed to [pru@workplacerelements.ie](mailto:pru@workplacerelements.ie) at the earliest possible date.

## Investigating Complaints by Return to Oral Hearings

### Proposed Timeslots

#### Introduction

For the immediate future the WRC will dispose of complaints primarily by way of written procedure and virtual hearings. We are asking parties/representatives to be positively disposed to complaints being adjudicated upon via both written proceedings and remote hearings. However, the WRC will provide a limited number of face-to-face hearings from late-July.

#### Time Slots for Face to Face Hearings

The WRC is proposing to re-commence the hearing of face to face hearings from late July 2020. These hearings initially will be held in WRC premises. This approach will be kept under review and additional venues will be considered in the future subject to suitability.

In Lansdowne House in Dublin hearings will be listed at the following time slots throughout each day.:

- Timeslot 1: 8am to 10:30am
- Timeslot 2: 11am to 1:30pm
- Timeslot 3: 2pm to 4:30pm
- Timeslot 4: 5pm to 7:30pm

Some variation of these arrangements will occur at the other WRC locations, depending on room and adjudication Officer availability.

The WRC appreciates that these timeslots will be extremely challenging for parties and indeed present a formidable challenge for the WRC. However, if the WRC is to dispose of the cases that require a follow-up hearing, cases that were postponed and those received since March in a timely manner then this approach is required.

The WRC is of the view that the majority of hearings, if properly prepared for by the parties can be disposed of or significantly progressed within the time allowed. Parties and representative will be contacted by the WRC when it is ready to proceed to a hearing. Postponements of these arrangements will only be granted in exceptional circumstances and for substantial reasons.

### **Guidelines and Notices**

The WRC is committed to keeping parties, representatives and witnesses safe during in-person adjudication hearings. Specific guidance will be available on the WRC website and will be issued to parties and representatives in advance of adjudication hearings. Parties and representatives are expected to co-operate with the WRC in respect of this guidance.

The WRC is following Department of Health guidelines to ensure the health and safety of all in a controlled environment. Parties/representatives should not come to an adjudication hearing if persons:

- Are showing signs of illness such as coughing and sneezing  
Are feeling unwell
- Have had close contact with a suspected, probable or confirmed case of Covid19
- Are unwilling to comply with WRC guidelines

Parties may be asked to sign a declaration that they can comply/accept the above conditions at the hearing location on the day. A failure to do so may result in the hearing being cancelled.

Participants at WRC adjudication hearings should follow the notices that are in Reception and throughout the building. Participants may wear masks if they choose but if giving evidence or communicating, including answering questions from the Adjudication Officer, these may need to be removed.

Different hearing rooms will be used for each of the timeslots listed above and all hearing rooms that have been previously used will be sanitised, cleaned and ventilated for an extended period before a further hearing will be held in that room.

### **Documentation and Submissions**

Parties and representatives **must** provide any submission/documentation immediately upon request and should copy this to the other side when sending to the WRC.



## Virtual Hearing Checklist for Unrepresented Parties

### 1. If suitable to proceed for virtual hearing

- Check minimum electronic and broadband capability standards to proceed:
  - check you have an email address and is the same as given on complaint form as it will be used for virtual hearing
  - check you can download and install [Webex]
  - check your audio mic (ability to mute /unmute)
  - check your video and camera
  - check you have the capability for all documents to be uploaded and emailed in PDF version
  - check you understand how to raise your hand, mute
  - check you can conduct virtual hearing in a secure and private location

Repeat this check for each person who will be present at the hearing (this includes witnesses)

### 2. Selection of Complaint for Virtual Hearing

- Check you have given written consent within 14 days of notice from WRC to proceed by way of virtual hearing
- Check you have provided email and contact details of each of the virtual hearing participants to WRC
- Ensure you have contact and email details of WRC host (Adjudication Service)

### 3. Before Scheduling of the Remote Hearing

- Check if written submissions (together with all relevant documents) is required, and if yes:
  - check the submission(s) are paginated or page numbering and paragraph numbering
  - check the submission(s) can be upload in PDF format if filed electronically
  - check the submission(s) is filed within the prescribed timeline as issued by WRC
  - check the submission(s) is copied to both the WRC and the other side, within the timeframe allotted by WRC

### 4. Scheduling of the Remote Hearing

- Check if written statements of witness is required and if yes check the following:
  - check the statement(s) are paginated or page numbering and paragraph numbering
  - check the statement(s) can be upload in PDF format if filed electronically
  - check the statement(s) is filed within 21 days of notice from WRC
  - check the statements(s) is copied to both the WRC and the other side, within the timeframe allotted by WR
- Ensure all submissions (together with all relevant documents), witness statements, and any replying submissions are filed and exchanged between the parties not later than 21 days before hearing date.
- Be aware that admissibility of filing of late submissions (i.e. any time within 21 days to the hearing date) will be a matter for determination by Adjudication Officer against the benchmark of exceptional circumstances
- Check all names of person you will have present at the hearing and check the following:
  - check you have each persons contact details: email, and phone

- check you have filed no later than 7 days before hearing, all names together with their contact details
- Check you have for upload a copy of identification

## 5. On Hearing Date

- Be in attendance 30 mins before the scheduled time of the hearing
  - repeat checks as per paragraph 1 above
  - ensure you have at hand WRC host direct contacts as on hearing notice (for any assistance)
  - ensure you have all documents (available for upload to share)
  - ensure all your witnesses have a full copy of all documents (complaint, submissions, witness statements).