



An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission



# Workplace Relations Commission

Annual Report **2021**



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Workplace Relations Commission

## **Workplace Relations Commission**

2021 Annual Report

Presented to the Minister of State for Business,  
Employment and Retail, in accordance with sections  
23(1) and 23(3) of the Workplace Relations Act, 2015.

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## 1

# Director General's Report

**I have pleasure in submitting to the Minister the Annual Report of the Workplace Relations Commission (WRC) in respect of its activities in 2021.**

The WRC has five regional offices; Dublin, Carlow, Cork, Ennis and Sligo and a complement of just over 200 civil servants who are staff of the Department of Enterprise, Trade and Employment, supplemented by a further 44 Adjudication Officers who are contracted by the Minister to assist the Adjudication Service on a case-by-case basis.

While the trajectory of the pandemic across the year meant that the WRC was required to adapt and respond to the evolving circumstances and associated Government guidelines, the staff of the WRC continued to deliver across all areas of its remit.

In this regard,

- the Information and Customer Service Division managed a notable increase (+6%) in requests for information service on employment and equality rights and industrial relations matters, while web visits increased by 30%,
- the number of adjudication hearings scheduled weekly exceeded pre-Covid levels and the number of hearings held increased by 75% year-on-year, while almost all cases received prior to Covid that can be progressed have now been disposed of, heard, or scheduled,
- while Covid restrictions in place in the first quarter of 2021 adversely impacted the ability to carry out on-site inspections, across the year, WRC inspectors concluded just under 4,500 workplace inspections which included some 3,400 Covid site visits carried out in tandem to ensure compliance with the Covid protocols,
- mediated, conciliated, and facilitated negotiations remotely and in-person, in some 1,700 meetings in assisting the resolution of individual and collective disputes – an increase of 8% on 2020,
- developed a Code of Practice on the Right to Disconnect which came into effect on 1 April 2021,
- opened a new WRC office in Cork, ensured that our remote services functioned optimally, and that WRC premises and facilities provided a safe environment for our staff and visitors,
- produced, in respect of 2020, the first review of WRC jurisprudence across a calendar year, and
- initiated and rolled out targeted social media campaigns in relation to employment and equal status rights.

But 2021 presented other challenges:

In terms of impact, the Supreme Court judgment in *Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24 represented the most significant framework development with regard to the adjudication service of the WRC since establishment. The judgment in this landmark constitutional challenge handed down in April 2021 by the Supreme Court found that the WRC was 'administering justice' but that this was permissible under Article 37 of the Constitution which creates a stratum of bodies exercising limited powers and functions of a judicial nature. Such bodies (of which the WRC is one), whilst still creatures of statute, must operate fair procedures in the same way as a court.

This judgment changed fundamentally the adjudicative model from that in existence between 2015 and 2021 to one where the service must act consistent with the full standards expected in a higher court both in terms of processing and hearing complaints, i.e., hearings should take place in public, decisions published that, for the most part, name the parties, and an oath must be administered where there may be a serious and direct conflict of evidence.

This judgment required the introduction of new legislation to empower Adjudication Officers to administer an oath or affirmation and to provide for hearings to be in private where "special circumstances" arise, and the Workplace Relations (Miscellaneous Provisions) Act 2021 which came into effect on 29 July made such a provision.

The judgment also required significant amendments to processes and procedures to enable members of the public attend what were mainly virtual hearings,

- witness guidelines on the oath and affirmations translated into ten languages,
- guidance on public hearings and the term 'special circumstances',
- updated guidance on adjudications before the WRC introducing a new timeframe for evidence and submissions to be lodged 15 working days before the hearing so that parties and Adjudication Officers can prepare adequately for hearings in the interests of fair procedures, and

- updated guidance on the application of the Supreme Court's judgment particularly in relation to part-heard cases.

The latter guidance was subject to challenge in a judicial review *Burke v WRC, AO and Arthur Cox* (Notice Party) 2021 IEHC 677. In his November judgment Simons J dismissed the review in its entirety and acknowledged the challenge facing the WRC in applying the Supreme Court judgment and that it had endeavoured to apply that Court's findings in good faith and that this would invariably mean that, in a handful of cases, Adjudication Officers might have to recuse themselves so that a new Adjudication Officer could take over and fairly hear the evidence afresh on oath.

Separately, in the intervening period between the Supreme Court judgment and the enactment of the Workplace Relations (Miscellaneous Provisions) Act 2021, just under 400 hearings (which account for over a month of hearings in the normal course) were postponed and/or adjourned and held aside, as the Adjudication Officers with *seisin* of the case deemed that the hearing could not proceed without the case being heard under oath or affirmation.

In terms of scheduling adjudication complaints, this disruption added to the build-up of cases that had occurred across 2020 when the equivalent of five months of hearings were lost due to Covid related circumstances. However, the WRC scheduled between 100 and 140 hearings a week during 2021 – considerably more than pre-Covid - and increased the number of hearings by 75% on 2020. This has resulted in a position where almost all cases received prior to Covid that can be progressed have now been disposed of, heard, or scheduled and, with the exception of a single-issue occurrence of 1,600 multiple complaints (which are being dealt with by way of a small number of prototype hearings) the majority of complaints submitted in 2020 have been dealt with or have been scheduled. The remainder will be scheduled for a hearing within 6 months, and any received in 2021 that have not been heard or given a hearing date will be scheduled by the end 2022. Current cases should anticipate a median time of ten months from submission of complaint to issuing of decision in situations where there are no delays due to parties' unavailability or where submissions are not received.

The WRC has witnessed a number of instances where multiple identical complaints were submitted against the same employer and has worked with complainant representatives and respondents to engage in collective mediation processes with a view to resolving the complaints in an effective and efficient manner. Each such individual mediation or adjudication, if not resolved collectively, is typically assigned a half-day slot as a minimum and consequently takes up resources that could be assigned for other complaints and impacts on the effective use of tax-payer funding. The WRC would continue to encourage all parties to deal with such matters en masse where at all possible.

Based on the experience of the last two years, and the considerable capacity of virtual platforms to assist in this area notwithstanding, it is the WRC's view that face-to-face interaction, which allows for full interpersonal engagement both by and with parties who are in dispute, is the most effective and ultimately most efficient method of achieving resolution for everyone involved. As such, as the pandemic recedes, it is the intention of the WRC to carry out most of its conciliation and mediation activity in-person. Similarly, as circumstances permit, the WRC will quickly bring forward to hearing the complaints that require in-person hearings and will look to increasing the number of in-person hearings more generally.

Provision will still be made for parties to disputes to contribute remotely via the platforms currently being utilised either in full virtual session or a hybrid of virtual and in-person.

The remit of the WRC Adjudication Service has expanded considerably since its establishment in 2015 and looks set to expand further across 2022. This expansion has taken the form of newly introduced pieces of legislation (and amendments to legislation) which come within the auspices of the WRC, at first instance, or as a result of rights enshrined in EU Directives. These changes are elaborated on in the body of this Report and in Appendix 2.

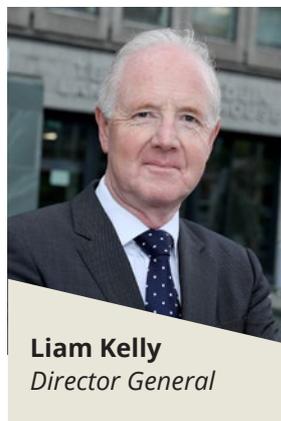
The Minister for Enterprise, Trade and Employment and the Department of Enterprise, Trade and Employment have fully supported the WRC in terms of the resources required to service these expansions to remit and the total staffing allocation has increased accordingly by 25% since 2015.

As the WRC deals with Covid and addresses the policy, administrative and operational challenges attached to any new work, this continued support is both very welcome and necessary.

The WRC witnessed significant staff turnover during the year; some 11 additional staff were recruited and, in all, almost 40 staff joined the WRC during the year - a turnover of 20%. Additional Adjudication Officers and Inspectors will also come on board in 2022 and I would like to thank the Public Appointments Service for its considerable assistance in these recruitment campaigns. This has been a particularly difficult period for new entrants to the WRC with the majority of their training and interaction with managers and colleagues taking place virtually and the support provided by their colleagues was invaluable.

A Strategy Statement is drafted by the Board and presented to the Minister every three years; the most recent "Meeting Stakeholder Expectations in a Changing World of Work" for the period 2022-2024 was submitted to the Minister in September 2021. On 1 October 2021, the terms of office of many of the Board members concluded. I would like to place on record my thanks, and those of all the staff of the WRC for the support and guidance provided by those Board members during their tenure.

The singular achievements detailed in this Report would not have been possible without the unremitting commitment of the staff of the WRC and contracted Adjudication Officers. Likewise, the support of the Board, the Minister and the Department has been crucial in assisting the WRC through what has been a most challenging period.



**Liam Kelly**  
*Director General*

# 2 Key Indicators

 <b>55,810</b> Infoline Calls (+6% on 2020)	 <b>3,393,844</b> Website Views (+30% on 2020)	 <b>12,014</b> Specific Complaints	 <b>3,320</b> Adjudication hearings held (+75% on 2020)
 <b>Two-thirds</b> of adjudications decisions upheld on appeal	 Conciliation Conferences <b>+25% on 2020</b>	 <b>Over half</b> of mediations resolved	 <b>4,432</b> Inspections concluded
 Code of Practice on the Right to Disconnect	 Employment Rights and Equal Status Campaigns	 Increase in outreach via followers on Twitter <b>(+42%)</b> and LinkedIn <b>(+26%)</b>	 New Procedures/ Protocols post-“Zalewski”
 Full year commentary on adjudication decisions	 New office in Cork		

# 3



## Workplace Relations Commission

The Workplace Relations Commission (WRC) was established on 1 October 2015 under the Workplace Relations Act 2015.

### Functions of the WRC

**The main functions of the WRC are to:**

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

Within this framework, the Commission's core services include the provision of pre-adjudication mediation, mediation, conciliation, facilitation and advisory services, adjudication on complaints and disputes, the monitoring of employment conditions to ensure compliance with and (where necessary) enforcement of employment rights legislation, the provision of information, and the processing of employment agency and protection of young persons (employment) licences.

<sup>1</sup> Delayed due to external factors such as cases which are pending the decision of an appellate body or superior court, or party/representative unavailability or cases unsuited to being heard remotely

## Board

The WRC board is responsible for the setting of the WRC's Strategy and annual Work Programmes.

The Work Programme is submitted to the Minister for approval by 1 December every year and the most recent Strategy Statement was submitted to the Minister in 2021.

The Board comprises a chairperson and eight ordinary members appointed by the Minister for Enterprise, Trade and Employment.



*Minister for Business, Employment and Retail, Damien English TD and Dr David Begg, Chairperson of the WRC Board, launching the WRC Statement of Strategy 2022-2024.*

## Board of the Commission

Dr. David Begg was appointed as Chairperson by the Minister on 1 February 2021. During 2021, the Board met on three (3) occasions in March, May and September 2021.



**Dr. David Begg**  
Chairperson  
(From 01 Feb 2021)



*Liam Berney<sup>2</sup>*



*Maeve McElwee<sup>2</sup>*



*Audrey Cahill<sup>2</sup>*



*Ethel Buckley*



*Geraldine Hynes<sup>2</sup>*



*Richard Devereux<sup>2</sup>*



*Dr. Michelle O'Sullivan<sup>2</sup>*



*Deirdre O'Brien<sup>2</sup>*

<sup>2</sup> Term of office expired 30 September 2021

## Fees/Ethics in Public Office

All Board members, 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 Chairperson and members of the Board are not in receipt of any fee in connection with the performance of their duties as Board members.

## Work Programme 2022

In accordance with Section 22(1) of the Workplace Relations Act 2015, the Board prepared the WRC Work Programme 2022.

## Management Committee

The Management Committee comprises of the Director General and the Directors of the Divisions of the WRC:

- **Mr. Liam Kelly**  
*Director General*
- **Ms. Anna Perry**  
*Director of Conciliation, Advisory and Mediation*
- **Ms. Aoibheann Ní Shúilleabháin**  
*Deputy Director of Conciliation, Advisory and Mediation*
- **Mr. David Small**  
*Director of Adjudication*
- **Mr. John Kelly**  
*Director of Information, Inspection and Enforcement (since 1/10/2021)*
- **Ms. Derval Monahan**  
*Director of Corporate, Strategy and Digital Services*
- **Ms. Gwendolen Morgan**  
*Registrar and Director of Legal Services*

## Budget and Staffing

Pay	€12.556m
Non-Pay	€2.614m
<b>Total</b>	<b>€15.170m</b>

The WRC is an office of the Department of Enterprise, Trade and Employment and is funded from the overall Departmental vote.

At the end of 2021, the staff allocation stood at 204 permanent employees who are full time civil servants and part of the overall staffing of the Department of Enterprise, Trade and Employment. The staffing is supplemented by a further 42 Adjudication Officers who are contracted to assist the Adjudication Service on a case-by-case basis.

## Staffing of the Commission

WRC Staffing: End December 2021	
Grade	Total FTE's
Director General	1
Registrar	1
Director	5
Solicitor	1.73
AP/AO	28.2
HEO	25.3
EO	73.93
CO	60.05
<b>Total</b>	<b>196.21</b>

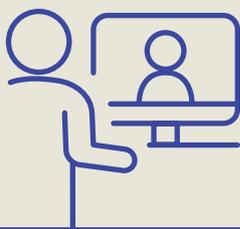
The WRC has five regional offices: Dublin, Carlow, Cork, Ennis and Sligo



## Inter-Agency Conference 2021

On 2 December 2021, the Workplace Relations Commission (WRC) with the Labour Relations Agency (LRA) in Northern Ireland co-hosted a Dispute Resolution Inter-Agency Conference on a virtual platform across multiple time-zones.

The Inter-Agency group is a very valuable platform for similar dispute resolution bodies to share and exchange information on a range of issues including new developments, best practice and emerging issues.



**The Inter-Agency group is a very valuable platform for similar dispute resolution bodies to share and exchange information on a range of issues.**

# 4

## Service Reports



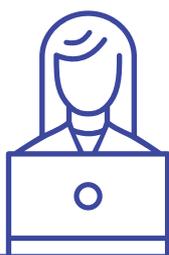
## 4.1 | Conciliation, Advisory and Mediation Services

The Conciliation, Advisory and Mediation (CAM) Division continued to provide an impartial, timely and effective service to assist employers and workers and their representatives in resolving disputes by agreement and working with organisations, their employees and representatives to assist in developing effective industrial relations practices, procedures and structures.

The impact of COVID-19 restrictions across the year required much of this service to be delivered remotely, and largely successfully, via Cisco, Microsoft Teams and other platforms. The practical and technical glitches associated with resolving collective disputes involving, at times, considerable numbers attending via virtual means, as well as in numerous locations, did not impact on the continued provision of services. As circumstances allowed, a number of face-to-face conciliations, facilitations and mediations did take place during the year.

Based on the experience of the last two years, and notwithstanding the considerable capacity of virtual platforms to assist in this area, it is the WRC's view that face-to-face interaction, which allows for full interpersonal engagement both by and with parties who are in dispute, is the most effective and ultimately most efficient method of achieving resolution for everyone involved. As outlined in the 2020 Annual Report, the confidential nature of conciliation brings its own challenges when carried out virtually, as the one-to-one engagement that might take place in the margins of conciliations cannot happen spontaneously. The experience of the service with the Covid restrictions preventing representatives being in the same room/location as their membership proved challenging and, at times elongated the overall dispute resolution process. Throughout 2021, technical difficulties and variable broadband quality for some attendees continued as an unwelcome burden in some negotiation processes.

For these reasons, as the pandemic recedes, it is the intention of the WRC to return to face-to-face engagement and to normal pre-Covid activity.



**The continuing impact of COVID-19 restrictions saw the continued delivery of all services remoted by way of Webex and other IT applications.**

## Conciliation

Demand for conciliation remained at the same level as 2020 (689 in 2021 as compared with 688 in 2020) but the number of conciliation conferences associated with the referrals was somewhat higher (926) in 2021 as compared with 735 in 2020. The resolution rate of 86% was on a par with previous years.

### Issues at Conciliation

The requests for conciliation involved a broadly similar range of issues as those referred in 2020:

- Pay issues (44%)
- Industrial Relations issues such as changes to conditions of employment, new technologies, union management agreements, grading, productivity, outsourcing etc. (24%)
- Organisation structure such as shift work, staffing, restructuring, rosters, hours of work, change in work practices, redeployment, and recruitment (20%)
- Benefits such as bonuses, profit sharing, service pay, sick pay, staff incentives, expenses etc (4%)
- Redundancy (3%)
- Types of Leave (3%)
- Pension issues (2%)

## Sectors at Conciliation

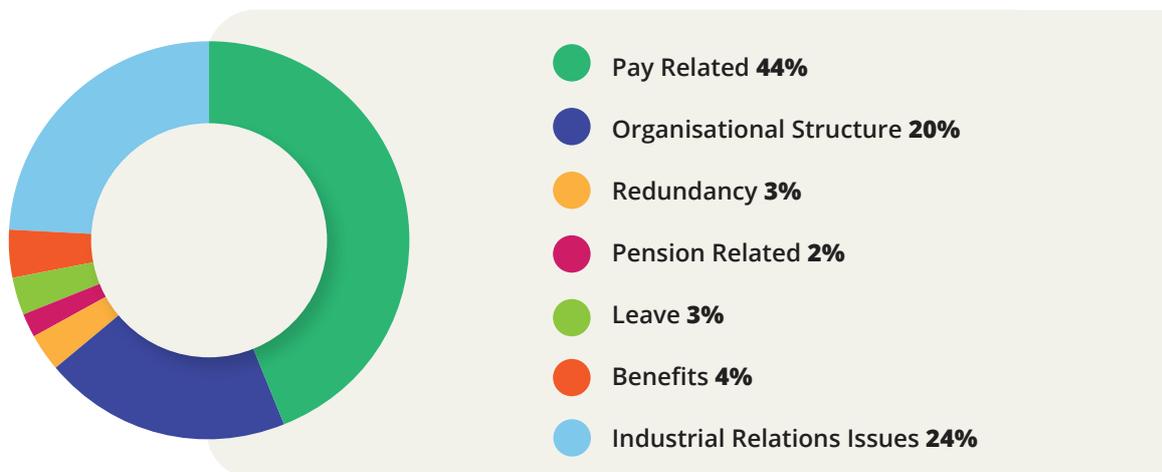
The disputes dealt with at conciliation were spread across the public and private sectors and in the latter respect much of the activity centred on the Manufacturing, Pharmaceutical, Retail, Pharmacy and Transport sectors. Disputes in the public sector reflected issues arising from Pay Related issues to Job Evaluation and Regrading claims, as well as matters arising from the implementation of the Building Momentum Agreement negotiated under the auspices of the WRC in December 2020.

As the year progressed it became evident that issues were arising regarding the resolution of disputes within the agreed dispute resolution framework of that Agreement, particularly with regard to the next stage in the agreed process following conciliation. These issues have been addressed.

## Referrals to the Labour Court

During 2021 a total of 95 disputes were referred to the Labour Court for a recommendation under Section 26(1) of the Industrial Relations Act 1990 where full resolution was not possible at conciliation. In very many of these cases, the conciliation process at the WRC played a significant role in reducing the differences between the parties, refining the matter requiring a definitive Labour Court Recommendation to resolve the dispute.

**Figure 1:** Types of Issues heard in Conciliation 2021



## Advisory

### Industrial Relations Reviews

WRC reviews of industrial relations involve in-depth assessment of workplaces to identify industrial relations or workplace issues, make recommendations around improved practices and procedures and work with all concerned to implement those recommendations. A typical review might include a number of information gathering exercises such as individual interviews, questionnaires and focus groups to help accurately identify any problems and work with all concerned to develop effective remedies.

While Covid-related restrictions impacted on the ability of parties to engage on an in-person basis, this in turn impeded the progression of some reviews. There were 14 referrals to the service during 2021. Two were fully completed, four were withdrawn and the remaining caseload is advancing towards completion. Ongoing engagement with parties centred on improving communications, dealing with specific IR related issues peculiar to the individual organisations work practices, interactions, etc., all of which were aimed at enhancing constructive industrial relations engagement between parties. It is the intention to continue to promote this service as Covid recedes.

### Code of Practice

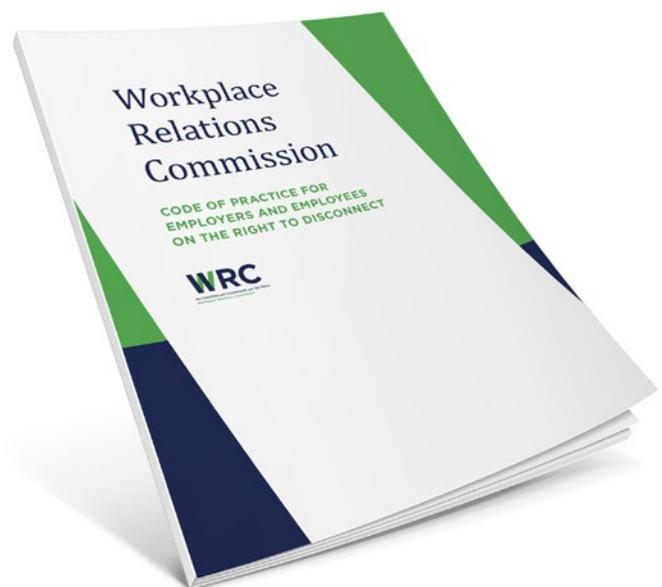
The WRC develops Codes of Practice to give guidance and set out what it believes to be best practice in good industrial relations.

Following a request from the Minister for Enterprise, Trade and Employment in 2020, the Advisory Service of the WRC developed a Code of Practice on the Right to Disconnect which came into effect on 1 April 2021.

As part of the related consultation process, the WRC received 37 submissions in respect of the Code and engaged with representatives of employers and employees in finalising the Code.

The Code sets out best practice and policies to provide for employees to disconnect or switch off from their roles outside of normal working hours. The Code is applicable irrespective of whether an employee is a remote worker, office based or is a mobile worker.

While failure to follow a Code prepared under section 20(1)(a) of the Workplace Relations Act, 2015 is not an offence in itself, section 20(9) provides that in any proceedings before a Court, the Labour Court or the WRC, a Code of Practice shall be admissible in evidence and any provision of the Code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be considered in determining that question.



## Mediation

The WRC provides two distinct forms of mediation: pre-adjudication mediation and workplace mediation.

### Pre-adjudication Mediation

WRC pre-adjudication mediation is available for any complaint referred to the Adjudication Service where both parties have agreed to participate, and the Director General is of the view that the matter is capable of being resolved through mediation<sup>3</sup>.

The benefit of such an approach is that it allows the parties to engage and reach a solution to the complaint or dispute in a confidential and informal manner while having full control over the outcome. It also minimises the time and expense involved in preparing and proceeding to a full adjudication hearing. The parties also have an opportunity to mutually agree on a resolution that suits their needs that may not be possible at adjudication. A mediated agreement under Section 39 of the Workplace Relations Act 2015 is confidential and legally binding on the parties.

All agreements reached at mediation are reflective of the particular/specific circumstances and issues associated with each individual case. When parties participate in the mediation process, they do so on a without prejudice and strictly confidential basis. Where agreement is not reached at mediation, the parties may choose to progress the complaint on to the Adjudication service, albeit in some cases the complaint is settled or withdrawn prior to an adjudication hearing.

For information purposes, the Adjudication service is entirely separate to the pre-adjudication mediation service and, as such, Adjudicators are not made aware that parties may have participated in mediation, or the potential outcomes explored.

Mediation may take place over the phone or face-to face, either in-person or virtually through a video conferencing platform.

Similar to other dispute resolution activities of the WRC the vast majority of mediation engagements took place via telephone or virtually during 2021.

In total, in some 1,760 cases the complainant indicated mediation as an option to explore. And in some 1,112 cases (63%) the respondent agreed to attempt resolution of the dispute in this manner. Of these, as provided for in the Workplace Relations Act, 2015, 6.6% were deemed as not being capable of being resolved through mediation.

Of cases mediated some 70% were conducted through telephone mediation and 29% virtually just 1% were in person. 259 cases in total were resolved at mediation, a 52% success rate.

Employment rights complaints had a resolution rate of 50% whereas mediations for equality complaints (both Employment Equality and Equal Status combined) had a resolution rate of 45%. In addition, 58% of all complaints resolved at mediation included a specific unfair dismissal complaint and 25% of all employment equality complaints that were resolved also included a specific unfair dismissal complaint.

During 2021, in cases where agreements were reached using the pre-adjudication mediation process, almost 5% of agreements did not include any financial settlement terms, and of those over half related to employment equality complaints. 28% of agreements included a non-monetary element in addition to a financial settlement of which 41% of employment equality settlements included additional non-monetary terms compared to 23% of employment rights settlements. 46% of agreements reached in a face-to-face mediation included additional non-monetary terms compared to 20% of telephone mediation settlements.

3 With the exception of single complaints under Section 13 of the Industrial Relations Act, 1969 or the Redundancy Payments Act, 1967

**Figure 2:** Pre-adjudication Mediation Process

- Agreements that did not include any financial terms **4%**
- Agreements included a non-monetary element in addition to a financial settlement **23%**
- Employment equality settlements included additional non-monetary terms **34%**
- Agreements reached in a face-to-face mediation included additional non-monetary terms **38%**

In 38% of mediated settlements, neither party had third party representation. In 19% of cases successfully mediated both parties were represented. In all resolved cases in 2021, 46% of complainants were represented and 40% of respondents were represented.

Similar to conciliation, feedback from stakeholders and mediators alike would indicate that in-person engagement in relation to mediation can often be more meaningful for parties and leads to better outcomes. As restrictions ease the WRC is returning to a model of in-person mediations in 2022 while providing virtual access for parties as required.

## Multiple Complaints

In situations where multiple identical complaints were submitted against the same employer the Service worked with complainant representatives and respondents to engage in collective mediation processes with a view to resolving the complaints in an effective and efficient manner. As each such individual mediation or adjudication impacts on the effective use of tax-payer funding resources. The WRC would continue to encourage all parties to deal with such matters en masse where at all possible.

The WRC is and has been of the view that mediation can be of significant benefit to the parties to a dispute. In this regard, the WRC is more than adequately resourced to deal with current mediation demand and is in the process of reviewing service delivery to prioritise in-person engagement with a view to enhancing participation in pre-adjudication mediation.

## Workplace Mediation

Workplace mediation provides a prompt, confidential and effective remedy to workplace conflicts, disputes and disagreements. This Mediation service is provided on an ad-hoc basis and best suits disputes involving individuals or small groups of workers. These can include interpersonal differences; conflicts and difficulties between colleagues working together; the breakdown of a working relationship; and issues that arise from a grievance and disciplinary procedure, particularly before a matter becomes a disciplinary issue.

A total of 56 workplace mediation requests were received during 2021 of which 42 are now closed.

## Facilitation

The Division also took an active role outside what would normally be considered traditional conciliation, advisory and mediation work and, throughout 2021, facilitated discussions in 273 such engagements.

In this regard:

- The Commission continued to chair a range of other negotiation fora such as the Health Service National Joint Council, National Negotiating Forum in respect of Technological Universities, the Construction Industry NJIC, the Teachers' Conciliation Council, the State Industrial NJIC, the Local Authority National JIC, Irish Prison Service National Monitoring and Review Group and Joint Labour Committees (JLCs) - the Contract Cleaning JLC and the Security JLC.
- Officers of the Commission also played a role within the Education and Training Board (ETB) structure in their role as Appeals Officers with the ETB Appeals Procedures where its grievance, disciplinary, or bullying and harassment procedures have been initiated as well as, in the Community and Comprehensive Schools grievance and procedures' structure. In addition, the Service chaired the Bord Na Móna Joint Industrial Council (JIRC).

## WRC Training

The delivery of education awareness/training programmes is very much part of the Division's outreach services. The focus and priority in delivering this service is to promote orderly industrial relations and positive working relationships within the workplace.

The delivery of this service continued to be impacted by COVID-19 during 2021, albeit the provision of online learning continued during 2021. This included information sharing and guidance on dealing with issues raised in the workplace through the correct use of policies and procedures relating to grievance, disciplinary and dignity and respect. These were delivered successfully through our virtual and face-to-face training workshops during the year.

In all, seven education training programmes were delivered. This included three Modular Workshops to a midlands-based College, as well as two private sector organisations and another programme to CIPD.

In 2022, the focus is to drive forward the development of good workplace relations and to assist adaptability amongst stakeholders. The WRC aims to enhance and broaden its training function via different media and methodologies to publicise and engender good practice generally.

## 4.2 | Information, Inspection and Enforcement

### Information and Customer Service

#### 2021 Activity

The Information and Customer Service Unit of the WRC is responsible for:

- Providing impartial information on legislation governing employer obligations, employee's employment rights, employment equality, equal status obligations of service providers, industrial relations and employment permits to both employees and employers,
- Processing complaint applications received for Adjudication/Mediation,
- Processing Employment Agency licences and renewals, and
- Processing requests for licences under the Protection of Young Persons Acts for the employment of children working in film, theatre, advertising, artistic or cultural activities.

Information is provided through:

- An *Infoline* operated by experienced Information Officers (0818 80 80 90)
- The WRC website ([www.workplacerelations.ie](http://www.workplacerelations.ie))
- Information leaflets and other literature
- Tailored outreach presentations to stakeholders
- General and targeted outreach

The *Infoline* also provides status updates to parties on complaints referred for Adjudication and to Employment Permit applicants awaiting a permit.

Throughout 2021, with some exceptions as restrictions lifted across the year, staff of the Information and Customer Service Unit primarily worked off-site. This presented significant administrative challenges but these challenges notwithstanding, continuity of service was maintained.

The table below shows that the Information and Customer Service Unit witnessed a significant upturn in its activities in 2021 when compared with 2020. This is most pronounced in the increase in web views (up 31%) and phone calls dealt with (up 6%). Employment Agency and Child Employment Licences issued also increased significantly (12% and 63% respectively).

**Table 1: 2021 Information and Customer Service Activity**

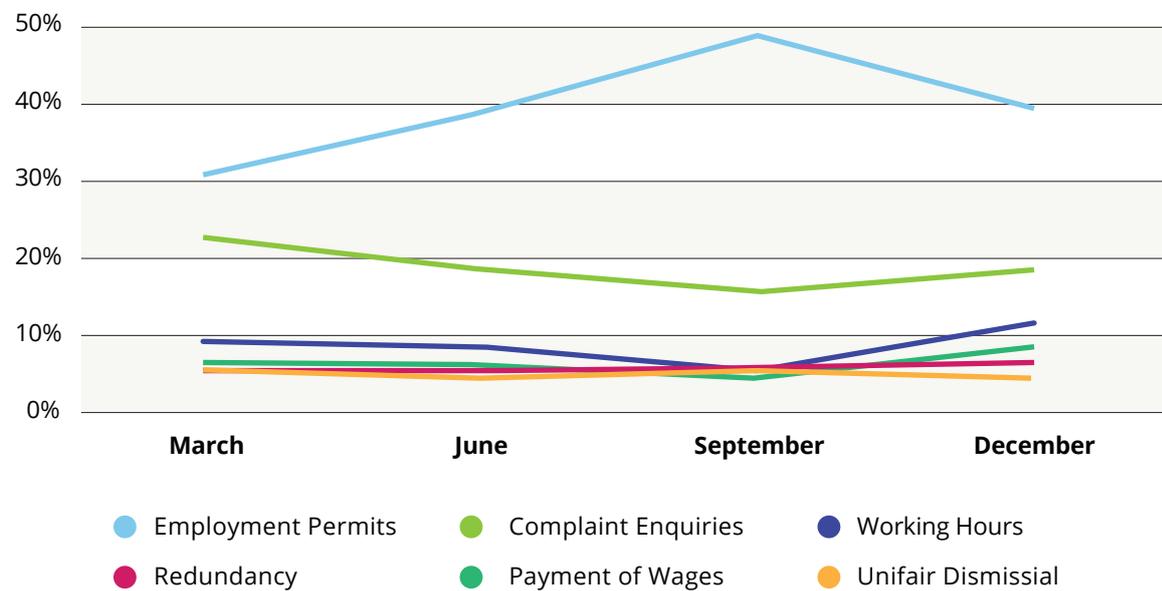
Activity	2021	2020
Phone calls dealt with	55.8K	52.8K
Web views	3.4m	2.6m
Complaints Applications Processed	6K	8.1K*
Outreach Presentations	4	3
Employment Agency Licences issued	820	731
Child Employment Licences issued	544	341
No. of children employed under licence	1,202	646

\*Includes 1,600 single employer multiple complaints received in 2020

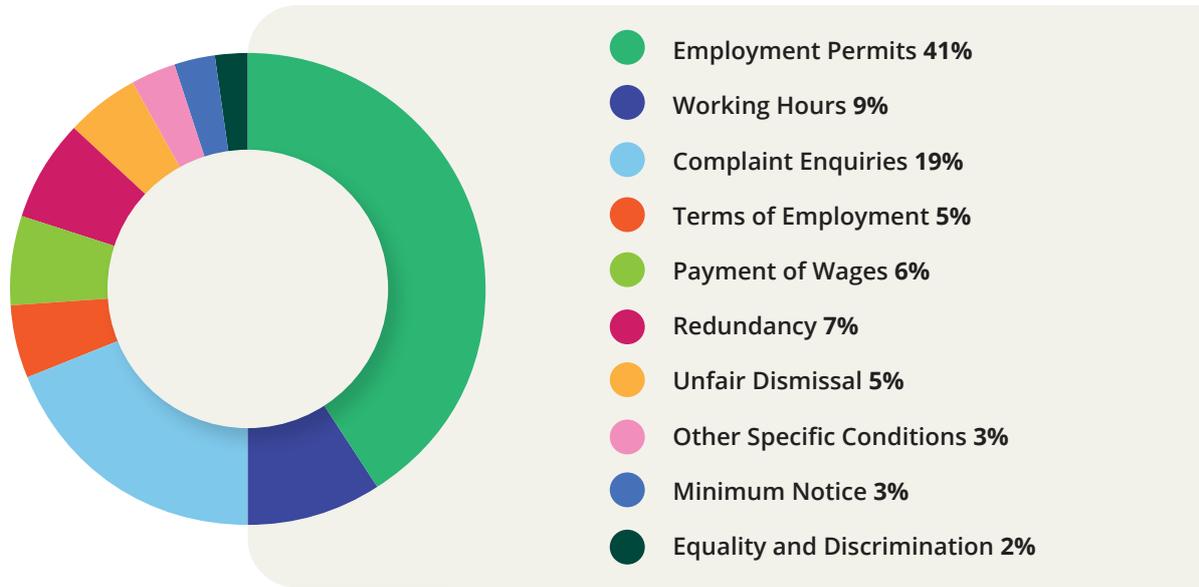
### Calls to Information and Customer Service

As noted earlier a significant increase in telephone calls to the *Infoline* was witnessed alongside, a noticeable rise in requests for information on Employment Permits, with this topic now accounting for over 41% of all calls received. Information requests on other employment related topics was relatively consistent over the year.

**Figure 3: Infoline call type received by Quarter**



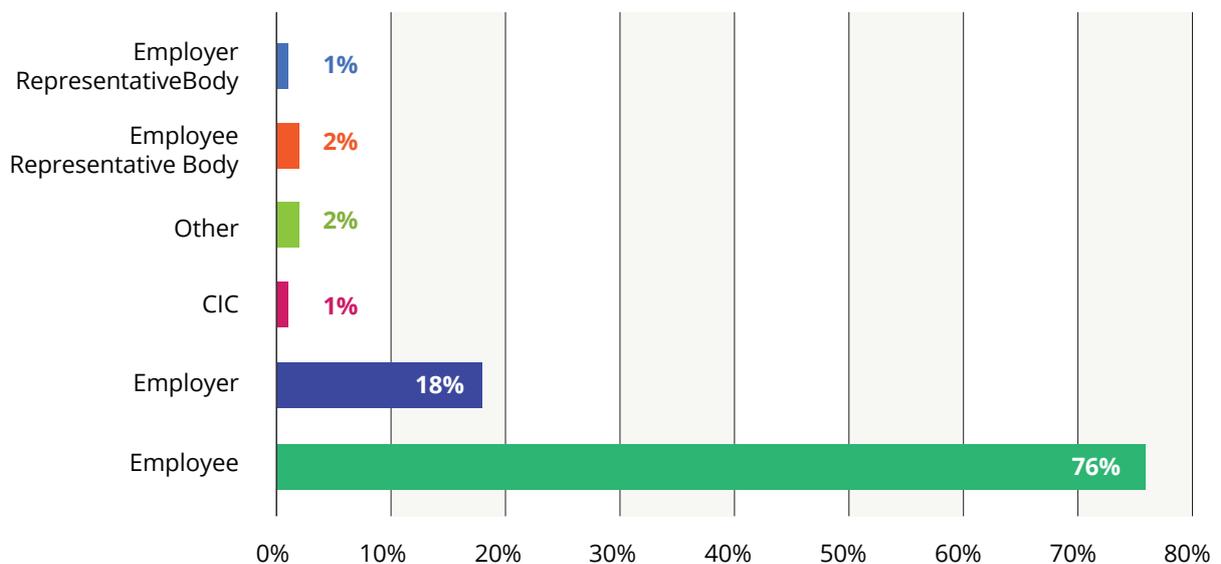
**Figure 4:** Infoline Topic Trends 2021



Information on Employment Permits, followed by callers seeking information on the status of complaints submitted to the WRC (19%) and queries on working time (9%) - which include annual leave, rest breaks, night workers and Sunday working were the most common topics dealt with during the year.

Employees comprise over three-quarters of all callers. Employer callers account for 18% of calls, while calls from representative bodies (employees and employers) accounts for 3% of calls dealt with.

**Table 2:** Infoline Caller Type



## #Rights4AllSeasons Campaign



## Outreach

The Information and Customer Service Unit plays an integral role in the overall Outreach Programme of the WRC. This is achieved through presentations on employment legislation, information exhibitions, design and production of information booklets, leaflets and other literature, social media, videos and management of the website. Good examples of these types of outreach campaigns, include the 'Rights for All Seasons' campaign (which involved both the Information and Customer Service Unit and Labour Inspectorate) and a social media campaign aimed at highlighting the rights of young workers in the hospitality sector.

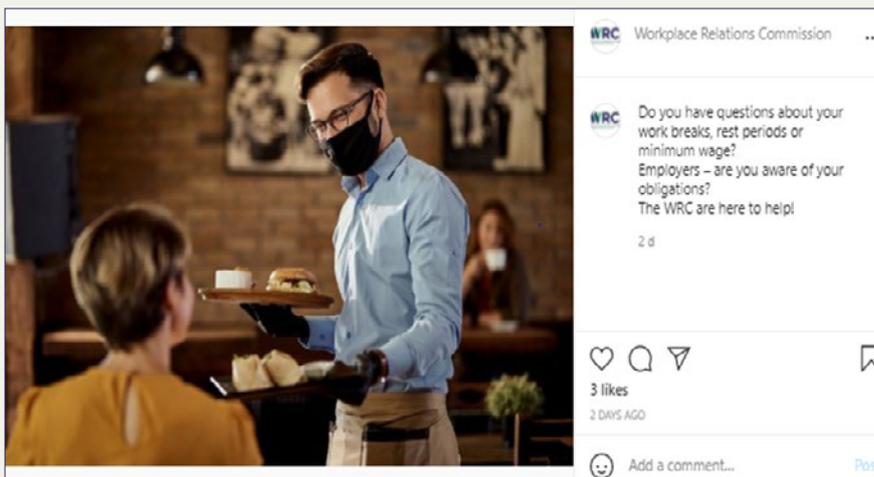
In June 2021, the WRC participated in an EU-wide campaign 'Rights for All Seasons'. The campaign was launched on 15 June 2021 and ran until October 2021. The campaign was an initiative of the European Labour Authority (ELA) to support fair and safe working conditions for seasonal workers employed across EU countries. Due to the restrictions imposed by the Covid pandemic the campaign assumed a social media approach.

The campaign:

- raised awareness of employment rights and entitlements of seasonal workers, both domestic and cross border,
- promoted awareness of statutory obligations of employers, including the labour and social security rules, and
- highlighted the availability of assistance and support.

The WRC actively participated in the campaign and delivered a range of key information messages across social media. A webpage, dedicated to seasonal workers was created on the WRC website and a leaflet entitled *Employment Rights of Seasonal Workers in Ireland* was also published. As part of a Week of Action (20-24 September), WRC Inspectors carried out 32 targeted employer inspections, mainly in the agricultural sector in support of the campaign.

## Examples of WRC Social Media Postings for #Rights4AllSeasons Campaign



### Young Workers in Hospitality Social Media Campaign

During September and October 2021, the Workplace Relations Commission ran a social media campaign targeted primarily at young workers in Ireland, many of whom work part-time or in the service industries, to enhance their awareness of their rights as employees. The campaign also aimed at informing employers of their obligations under employment law.

The campaign used four distinct images, targeted at males and females aged 17-25 and were delivered on Instagram and Facebook.

The total campaign reach was 610,450, while total campaign impressions were 1,488,907, providing a high degree of visibility amongst target young people in the hospitality sector.

## Licensing

### Employment Agency & Protection of Young Persons Licensing

The WRC processes applications for employment agency licences on behalf of the Department of Enterprise, Trade and Employment. An Employment Agency operating in the State must hold a licence to carry on its business. Licences are renewable on an annual basis. A total of 820 Employment Agency licences were issued in 2021 an increase of 12% on 2020.

In addition, the WRC, on behalf of the Department of Enterprise, Trade and Employment, issues licences authorising the employment of children by employers engaged in cultural, artistic, sports or advertising work. Licences for the employment of children set out conditions under which the child(ren) may be employed, governing general conditions of employment, parental consent, child supervision, education arrangements, and the maximum working times and minimum breaks appropriate to each child or group of children employed. In 2021, 544 licences were issued authorising the employment of 1,202 such children, increases of 60% and 100% respectively on the previous year.

## Inspection and Enforcement Service

### 2021 Activity

**Table 3: 2021 Inspection activity**

Employer Inspection cases concluded	4,432
Employers breaching employment law obligations	1,249
Unpaid Wages Recovered	€964,281
Number of Specific Complaints Received	588
Inspections (including RWSP/WSP checks) <sup>4</sup>	3,433

The Inspection and Enforcement Services of the WRC undertake inspection of employment records to ensure employers compliance with employment law in the State. The process involves, but is not confined to, examining employer's employment-related books and records, and conducting both employer and employee interviews. Inspectors visit places of employment to carry out these functions. Visits may be both announced and unannounced and their objective is to verify employer compliance with the relevant employment law and if necessary, to enforce compliance with the law. Compliance may include redress for the employees concerned in the form of payment of any unpaid wages arising from breaches detected. Inspections may also take place in tandem with An Garda Síochána and other regulatory bodies such as officers of the Department of Social Protection and the Revenue Commissioners.

### Inspections in 2021

Inspection activity is generally focused on sectors where the risk of non-compliance has been identified, where previous non-compliance was detected, through intelligence or information provided by other bodies or persons (including other State bodies) or in response to complaints received regarding alleged non-compliance by specific employers. The table below contains details of inspection activity in 2021.

4 National Return to Work Safely Protocol / Work Safely Protocol

**Table 4:** 2021 Inspection activity and outcomes by employment sector

Sector	Cases	No in Breach	Incidence of Breach %	Employees	Unpaid Wages
Accounting & Financial Services	20	4	20%	199	€4,283
Activities of Households as Employers	2	2	100%	2	€325
Administration & Support	13	5	38%	4,391	€461
Advertising & Marketing	10	3	30%	178	€2,754
Agriculture	57	31	54%	894	€28,189
Arts, Entertainment & Recreation	37	9	24%	490	€14,713
Beverage Service Activities	58	12	21%	514	€9,400
Construction	71	29	41%	2,264	€33,947
Contract Cleaning	17	7	41%	5,250	€28,313
Education	9	5	56%	106	€169
Electrical Contracting	4	3	75%	1,158	€861
Equine Activities	2	2	100%	11	€4,571
Fishing	28	17	61%	59	€13,567
Food Service Activities	763	263	34%	7,136	€145,609
Hair & Beauty	243	58	24%	843	€27,853
Hotels	38	9	24%	1,419	€9,466
Human Health & Social Work	75	23	31%	9,530	€60,255
Information & Communications	20	10	50%	2,998	€781
Legal Services	6	2	33%	28	€0
Manufacturing	156	38	24%	10,293	€15,886
Meat Processing	5	3	60%	422	€0
Mechanical Eng. Building Services	15	6	40%	1,261	€4,416
Mining & Quarrying	1	0	0%	0	€0
Other Accommodation	3	2	67%	22	€3,329
Other Service Activities	192	49	26%	1,845	€14,619
Postal & Courier Services	3	1	33%	111	€0
Professional Services	50	18	36%	1,902	€3,334
Public Administration	11	0	0%	8	€0
Real Estate Activities	9	3	33%	112	€0
Security	16	7	44%	2,724	€73,853
Transport	60	21	35%	549	€5,510
Travel & Tour Operators	1	0	0%	4	€0
Veterinary & Animal Health Services	11	3	27%	99	€316
Warehousing & Support Activities	9	3	33%	375	€645
Water Supply, Sewerage & Waste Remediation	3	2	67%	548	€0
Wholesale & Retail Trade	2,414	599	25%	35,662	€456,856
<b>TOTAL</b>	<b>4,432</b>	<b>1,249</b>	<b>28%</b>	<b>93,407</b>	<b>€964,281</b>

COVID-19 restrictions in place in the first quarter of 2021 impacted on the ability to carry out normal on-site inspection activity in that period. Inspection cases which were already open were progressed on a remote basis by inspectors, some new inspections were carried out remotely ('desktop inspections') and onsite inspections (which also included checks to ensure compliance with COVID-19 restrictions and workplace safety) were also carried out.

It should be noted that the non-compliance rates shown below reflect non-compliance on the part of the specific employers inspected and should not be taken as representative of the relevant sector as a whole.

Of the 4,432 cases completed in 2021, some 2,722 inspections (61%) were unannounced and 57 joint inspections were carried out with An Garda Síochána and other regulatory bodies of the State.

## Inspections and Covid

The National Return to Work Safely Protocol and the subsequent Work Safely Protocol were published to support employers and employees returning to their traditional workplace. Throughout 2021, WRC Inspectors carried out onsite inspections to ensure compliance with the protocols and safe workplace practices. As in 2020, the main sectors for which the WRC had responsibility included businesses engaged in the provision of accommodation, food and drink, retail and wholesale, and the fishing sector.

In 2021 some 3,433 protocol related inspections were carried out, of which almost 90% of employments inspected were found to be complying with the appropriate measures then in place.

The WRC participated fully as a member of the Regulators Forum during 2021 to facilitate cooperation, and allow for ongoing engagement, discussion, and information sharing relating to inspection of and compliance with COVID-19 related public health guidance.

## Sectors of Specific Interest

### Fishing Sector

Inspection activity is ongoing within the Fishing Sector to enforce the Atypical Worker Permission Scheme for Non-EEA Workers engaged on certain Irish-registered whitefish fishing vessels as well as ensuring compliance by employers with employment law obligations.

In 2021, 14 desktop inspections and 37 in-port inspections were completed by WRC Inspectors, covering some 45 of the 170 vessels coming within the scope of the Atypical Scheme. Some 50 contraventions of employment rights or employment permits legislation, relating to 21 vessel owners, were detected. In addition, a specific, targeted operation, Operation Pallas, took place in September 2021.

WRC Inspectors detected 4 instances in 2021, involving 7 fishers, where the fishers did not have permission to work in the State. During 2021, 30 fisheries investigations/cases, covering 39 vessels coming within the scope of the Atypical Scheme, were closed. Contraventions were detected in 18 of those cases; compliance was achieved in 15 cases following the issue of contravention notices and associated engagement with the vessel owners while prosecutions were initiated in the other three cases.

In Q4 2021, the WRC undertook a consultative process on the use of interpreters and additional outreach measures that could be of assistance to fishers and trawler owners in relation to rights and responsibilities. The Report will be published, and the recommendations acted upon early in 2022.

### Agriculture (including Horticulture)

A total of 57 inspections were carried out in 2021 (including 32 carried out as part of the "Rights for all Seasons" campaign). This was an initiative of the European Labour Authority (ELA) to support fair and safe working conditions for seasonal workers employed across EU countries. See above for details.

## Meat Processing Sector

The WRC continues to be active in this sector. In 2021, 5 inspections were carried out and 3 employers were found to be in breach of employment law.

In late 2021, the WRC undertook a consultative process with operators in the meat processing sector with a view to conducting a series of compliance checks during 2022 to raise awareness and to check and ensure compliance with relevant employment legislation in this sector. The WRC received responses from 85 operators in the meat sector arising from the consultative process, and 25 (29%) of these respondents indicated they have availed of the services of Employment or Work Placement Agencies or similar intermediaries to engage workers or source of employees in this sector.

## EMPACT

EMPACT (European Multidisciplinary Platform Against Criminal Threats) is a security initiative driven by EU Member States to identify, prioritise and address threats posed by organised and serious international crime. The WRC participates in an annual EMPACT day of action focused on labour exploitation and human trafficking, which involves labour inspectorates and police forces across Europe.

The 2021 EMPACT campaign consisted of two "Joint Days of Action" on 2-3 June complemented by WRC inspections during the weeks of 31 May to 6 June and 7 to 13 June. A total of 79 employers were inspected and 134 contraventions of legislation were detected. Other Issues detected outside of the WRC remit were referred to the relevant State agencies.

## International Activities

The WRC participated in several on-line seminars / meetings organised by the European Labour Authority (ELA).

The seminars included:

- New forms of Labour Intermediation (Temporary Work Agencies and other Intermediaries).
- Meetings of the Working Group on Information.
- Meetings of the Working Group on Inspections.
- Meetings regarding the transposition of Directive 2020/1057 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

## 4.3 | Adjudication Service

### Function

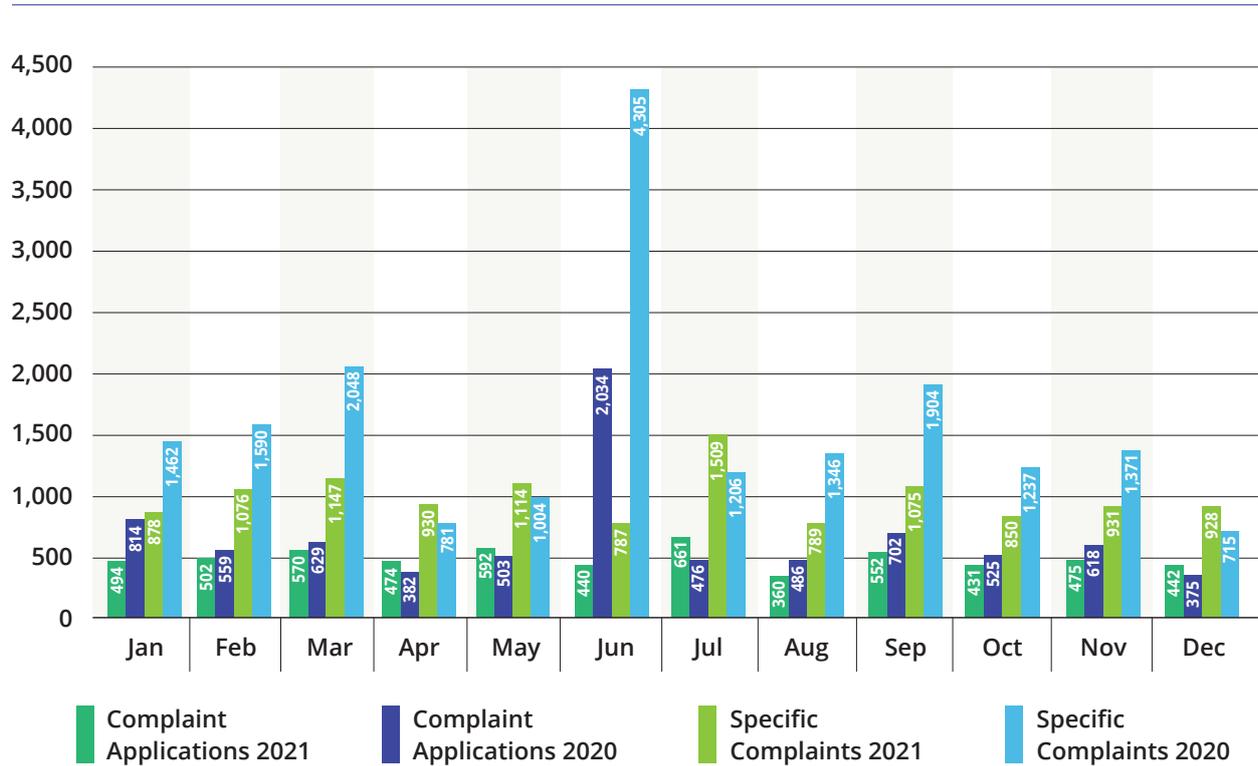
The Adjudication Service investigates disputes, grievances and claims made by individuals or small groups under employment, equality and equal status legislation. The legislation under which complaints may be made is set out in Appendix 5.

### Complaints Received 2021

Over the course of 2021, some 5,993 complaint applications were received, which comprised 12,014 individual complaints which require to be processed, heard and decided on if they proceed to a full hearing.

This represented a fall of some 2,110 complaint applications when compared with 2020. However, it should be borne in mind that just over 1,600 almost identical complaints in relation to a single employer were received in June that year. As such the broader monthly pattern for 2021 reflects the experience of 2020. While there is evidence that referrals have fallen post the onset of COVID-19, as the pandemic recedes it is possible that the level of complaints will begin to rise again.

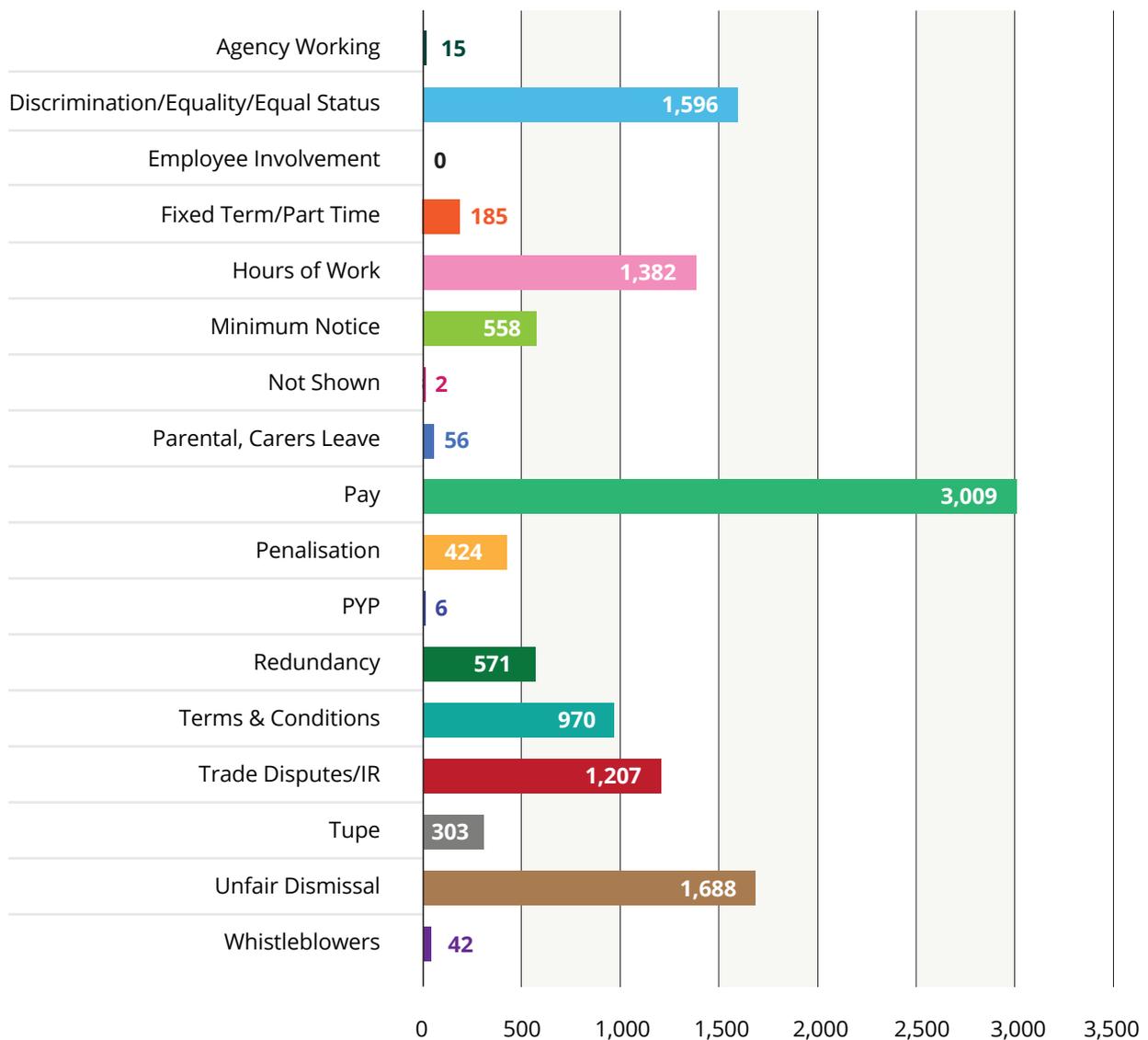
Figure 5: Complaints by Month 2021



## Complaint Breakdown

Specific complaints in relation to Pay (3,009) 25% were the most prevalent followed by unfair Dismissal (1,688) 14%, and Discrimination/ Equality/Equal Status (1,596) 13%, which is some 20% higher in the Equality complaints category when compared with 2020.

There is a notable decrease on specific complaints relating to Redundancy (571) compared with what was received in this regard in 2020 (3,894) and represents a return to the level of such referrals pre-Covid.

**Figure 6: Specific Complaints by Complaint Type**

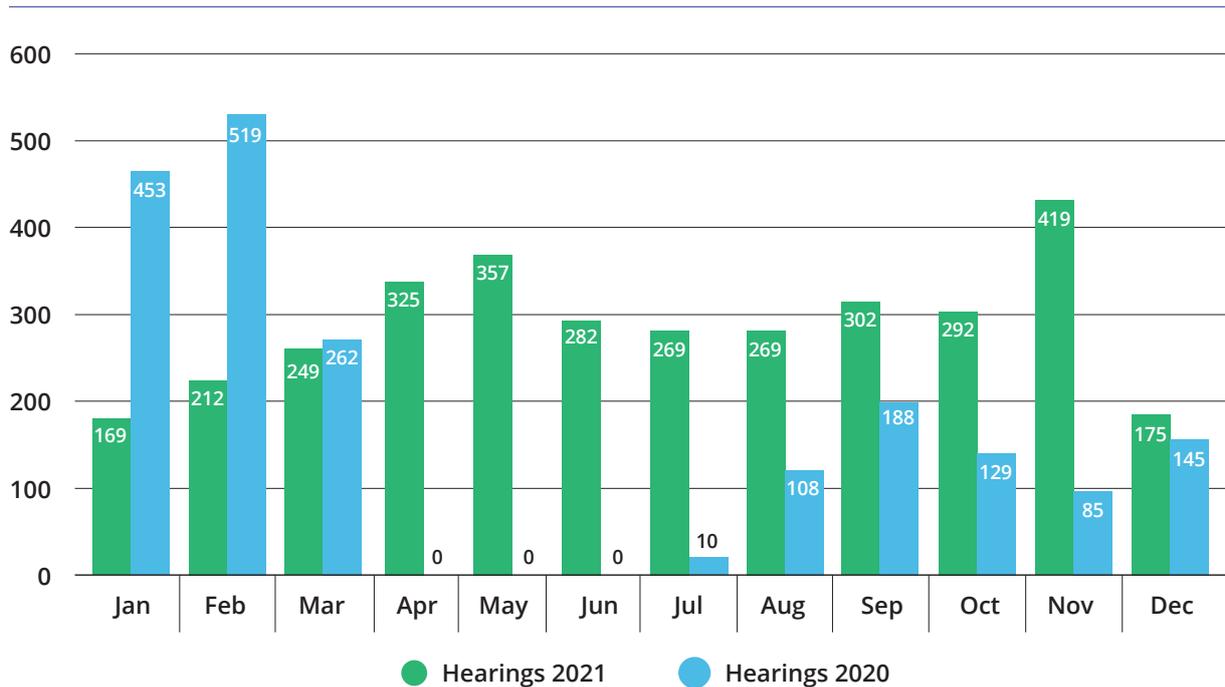
## Hearings

With the continued restrictions to counteract COVID-19 in place throughout 2021, most adjudication hearings were held by remote means albeit it was possible to schedule some in-person hearings as restrictions allowed.

Notwithstanding these restrictions and some adjustments arising from the Zalewski judgment of the Supreme Court (see below), a total of 3,320 adjudication hearings were held in the period 1 January to 31 December 2021. This represented a significant increase of (75%) on the 1,899 hearings held in 2020. As outlined, almost all such hearings were held by remote means with just over 90 face-to-face/in person hearings.

Since the introduction of the *Workplace Relations (Miscellaneous Provisions) Act 2021* the WRC has been in a position to schedule an average of more than 120 hearings each week, often reaching considerably more than that by year-end. The WRC will complement this level of scheduling with in-person hearings in 2022.

**Figure 7: Hearings Held by Month: 2021**



## Postponement Requests

Some 2,216 postponement requests or objections to remote hearings were received from the parties during 2021, which represented an increase of 154% on 2020.

Of the postponements sought, some 1,421 (64%) were granted. Many of these related to requests arising from pre-booked holidays, witnesses' unavailability, and long-term illness. In addition, many reasons related to issues concerning COVID-19.

This level of postponement requests, and understandable in the particular circumstances that pertained in 2021, impact heavily on the ability of the WRC to move cases quickly through the system. The WRC will review the process in 2022 in tandem with exploring the possibility of offering parties longer lead-in times to hearings.

## Decisions

A total of 1,549 decisions/recommendations were issued in 2021, a decrease of 5% on the 1,629 issued in 2020: this decrease arose as due to the reduction of overall hearing activity in 2020 arising from the initial impact of COVID-19 on hearing scheduling that year.

## Referrals Under the Equal Status Acts 2000-2015

The year witnessed a significant increase in complaint referrals under the Equal Status Acts 2000-2015, in that some 572 referrals were made under the Acts, relating to 810 specific grounds compared to 305 referrals in 2020 relating to 452 specific grounds: an annual increase of just under 90% when compared with 2020.

Within the overall referrals, there were increases in 7 of the 10 grounds provided for in the legislation. The most notable increases were in Disability (+298%) with 362 referrals, and (+91%) in Family Status, while referrals under the Race ground recorded the second highest referral under the statutory grounds provided, with 85 referrals.

In Equal Status complaints, the sexual orientation ground was the least referred and has seen a reduction from 21 complaints in 2020 to 8 in 2021, a decline of 62%.

**Table 5:** Equal Status Complaints Received 2020/2021

Equal Status Grounds	2020	2021	% Difference
Age	31	54	74%
Civil Status	23	38	65%
Disability	91	362	298%
Family Status	23	44	91%
Gender	45	71	58%
Member of Traveller Community	51	61	20%
Race	76	85	12%
Religion	30	29	-1%
Sexual Orientation	21	8	-62%
Accommodation	61	58	-5%
<b>Total</b>	<b>452</b>	<b>810*</b>	<b>79%</b>

\* **Note:** While 572 referrals were received, 810 grounds were cited as complainants may choose more than one ground when making a specific complaint.

## Referrals made under Employment Equality Acts 1998-2015

Referrals were much the same as in 2020: in 2021, some 932 Employment Equality complaint referrals were received citing 1,347 specific grounds, compared to 939 referrals citing 1,260 specific grounds in 2020.

Within Employment Equality complaints, the highest number of complaints received in 2021 were in relation to Disability (323) up 11% on last year, followed by Gender (316) up 14%. These two grounds are consistently in the top three grounds cited since the establishment of the WRC.

Membership of the Traveller Community saw the biggest percentage increase on 2020 figures; however, this is from a low base comprising 20 referrals, which represents the ground with the least number of referrals received under Employment Equality Acts.

**Table 6:** Employment Equality Act Referrals 2020/2021

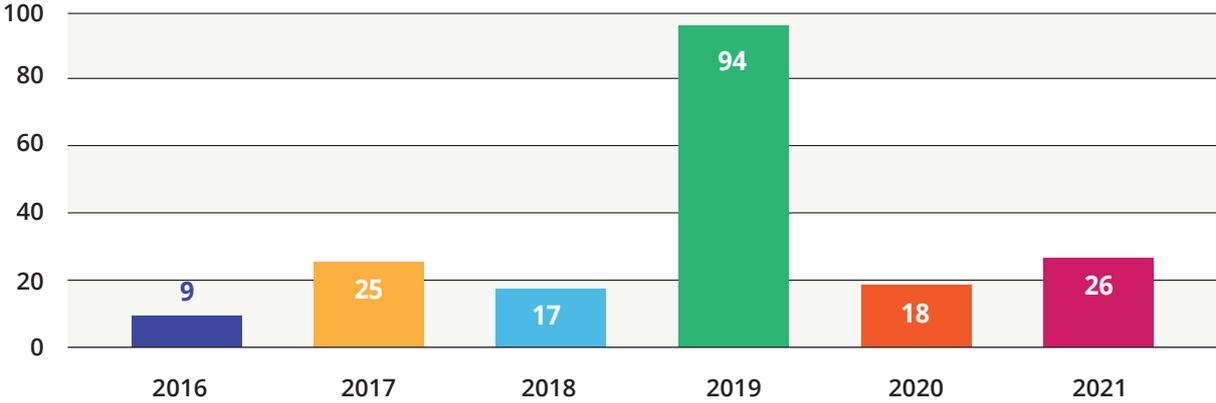
Breakdown specific complaints by ground			
	2020	2021	% Difference
Age	206	186	-10%
Civil Status	39	42	8%
Disability	290	323	11%
Family Status	187	202	8%
Gender	278	316	14%
Member of Traveller Community	6	20	233%
Race	210	181	-14%
Religion	19	41	115%
Sexual Orientation	25	36	44%
<b>Total</b>	<b>1260</b>	<b>1347*</b>	<b>7%</b>

\* **Note:** While 932 referrals were received under the Employment Equality Acts, 1,347 grounds were cited, as complainants can chose more than one ground when making a specific complaint.

### Referrals Received Under the Pensions Act 1990

In 2021, some 26 referrals were received under the Pensions Act 1990 which is a 44% increase on 2020.

**Table 7:** Referrals under Pension Acts: 2016-2020



## Supreme Court Judgment:

### Amendment to Practices and Procedures

On 6 April 2021 the Supreme Court in *Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24 identified the legislation governing certain WRC procedures as being inconsistent with the Constitution, namely, the conduct of hearings in private; the absence of a provision for an Adjudication Officer to administer an oath or affirmation; and the absence of a possibility of punishment for giving false evidence.

This judgment required the introduction of new legislation to empower Adjudication Officers to administer an Oath or affirmation. Consequently, four months of hearing scheduling was disrupted until the Workplace Relations (Miscellaneous Provisions) Act 2021 came into effect on 29 July 2021 to address these issues.

Further to the judgment and in the period prior to the enactment of the above legislation, some 370 hearings scheduled were postponed and/or adjourned and held aside, as the Adjudication Officers with *seisin* of the case deemed that the hearing could not proceed, without the case being heard under Oath or affirmation between April and August.

All of these cases, (which account for over a month of hearings in the normal course) required to be rescheduled subsequently.

Prior to the judgment, all Decisions and Recommendations of the Service were, for the most part, published on the WRC website in an anonymised format. However, following delivery of the judgement on 6 April 2021 and the consequential Orders made on 15 April 2021, all adjudication cases are now held in public, with the exception of disputes taken under the Industrial Relation Acts or where an Adjudication Officer decides that due to the existence of 'special circumstances', the proceedings should be conducted in private.

The decisions on cases held in public are now published in a non-anonymised format on the WRC website.

### Adjudicative Remit of the WRC

In addition to clarifications from the Superior Courts, most notably the 2021 Supreme Court decision of *Zalewski v Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24, which necessitated the introduction of The Workplace Relations (Miscellaneous Provisions) Act 2021 and relevant EU Directives, the adjudicative remit of the WRC has expanded considerably in the six years since establishment. This expansion has taken the form of newly introduced legislation (and amendments to legislation) aspects of which come within the adjudicative remit of the WRC, at first instance.

**The key changes are set out below.**

- |  |
|--|
| <p><b>1. Amendment to the Equal Status Act, with the Housing Assistance Payments (HAP) as a new discrimination ground. (Equality (Miscellaneous Provisions) Act 2015)</b></p>  |
| <p><b>2. The WRC is the enforcing body in respect of each of the Acts below.</b></p> <ul style="list-style-type: none"> <li>a. The Paternity Leave and Benefit Act 2016 (No. 11 of 2016)</li> <li>b. Parent's Leave and Benefit Act 2019 (No. 35 of 2019)</li> <li>c. The Parental Leave (Amendment) Act 2019 (No. 11 of 2019)</li> <li>d. The Family Leave and Miscellaneous Provisions Act 2021 (No. 4 of 2021)</li> </ul> |
| <p><b>3. Terms and Conditions of Employment</b></p> <ul style="list-style-type: none"> <li>a. Employment (Miscellaneous Provisions) Act 2018 (No. 38 of 2018) <ul style="list-style-type: none"> <li>i. Five-day statement and Zero Hours</li> <li>ii. Minimum payments and banded hours</li> </ul> </li> </ul>  |
| <p><b>4. Gender Pay Gap Information Act 2021 (No 20 of 2021)</b></p>   |

Further extensions of remit are under consideration in relation to interpreting and adjudicating on the new “tips” legislation, the Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022, the gender pay gap reporting framework, the Sick Pay Bill 2021, the Right to Request Remote Work Bill 2021 and may be consulted regarding the transposition of the EU Work-life Balance for Parents and Carers Directive 2019/1158, and the EU Transparent and Predictable Working Conditions Directive 2019/1152, require to be transposed into Irish law by August 2022.

## Labour Court Decisions on WRC Appeals

In 2021, the WRC was notified of 275 decisions issued by the Labour Court in relation to appeals from the WRC Adjudication Officer Decisions/Recommendations. Of the decisions notified some 171 (62%) were upheld, 47 (17%) varied, 50 (18%) overturned and a further 7 (3%) failed to be considered. The number of WRC decisions upheld stood at the highest since the establishment of the WRC.

## Stakeholder Engagement

Throughout 2021 the Adjudication team were involved in a number of bilateral meetings with key stakeholder groups and provided bespoke training as part of its commitment to ongoing service improvement and customer consultation/feedback mechanisms, in line with our customer service evaluation and reporting commitments. Due to the pandemic restrictions, engagements were more limited and were facilitated via Webex meetings, emails and telephone conversations.

**Figure 8:** Labour Court Outcomes

Labour Court Outcomes	2017	%	2018	%	2019	%	2020	%	2021	%
Decisions Issued	351		372		383		142		275	
Upheld	171	49%	179	48%	171	45%	69	49%	171	62%
Varied	84	24%	88	24%	110	29%	30	21%	47	17%
Overturned	91	26%	99	26%	81	21%	33	23%	50	18%
Failed: Time-limits/ Jurisdiction/Other	5	1%	6	2%	21	5%	10	7%	7	3%



## 4.4 | Corporate, Strategy and Digital Services Division

### Governance

The WRC must ensure that its activities and resources are applied in the most efficient and effective manner, in compliance with governance requirements. This includes regular ongoing monitoring of progress against business plans, regular review of the risk environment and, where necessary, action to mitigate potential risks.

The Division provides key resource and facilities support for the WRC in the delivery of its core objectives. The Division is responsible for corporate governance, budgets, business planning, risk and information management, ICT, staffing, communications, supporting the work of the Divisions, providing secretariat support to the Board, Director General and providing financial management and facilities management across all WRC locations.

### COVID-19 Response

The year in review proved to be very challenging for the Division. The trajectory of the pandemic across the year meant that the WRC was required to adapt and respond to the evolving circumstances and associated Government guidelines. During the year, other than a period in November/December when staff returned to the office for several days a week over a number of weeks, most staff were working from home. The exception to this being staff attending the offices for essential work, a small number of onsite conciliations, mediations and adjudications, and inspectors carrying out on-site inspections.

Over the period of the pandemic during 2021, the Division was central to:

- ensuring WRC public offices were fitted-out and operational in accordance with public health guidance,
- induction and support for almost 40 new staff in a challenging remote working environment,
- progressing initiatives inline with the Digital First pillar of the Public Service ICT Strategy including advancing work on a new self-service portal,

- participation and finalists in the Department of Public Expenditure and Reform's Future Tech Challenge,
- delivery of various social media campaigns to raise awareness of rights and obligations under employment rights legislation,
- working with OPW on the delivery of the new WRC Cork office where the full suite of WRC services can be delivered, and
- facilities management of all WRC buildings including the upgrading of the Carlow office to facilitate the holding of face-to-face hearings.

## Human Resources

The Corporate Division supports the staff in the delivery of the core objectives of the WRC.

The WRC witnessed a significant staff churn during the year in terms of retirements, transfers and promotions; in all some 11 additional staff were recruited and, in all, almost 40 staff joined the WRC during the year - a turnover of 20%.

In addition to upgrading staff skills to reflect the changing legal and operational environment, significant recruitment and associated training took place in terms of the adjudication and inspection services in 2021: Similar to the previous year, 2021 was a particularly difficult period for new entrants to the WRC as the majority of their training and interaction with managers and colleagues took place virtually and the support provided by their colleagues was invaluable.

Staff capacity, succession planning, and staff engagement were also advanced in 2021 while the well-being of staff and staff morale was a priority for the organisation. The publication of the in-house staff magazine, updates, regular team meetings, and a number of coffee/quiz sessions and the brief phased return to the office all assisted in maintaining a sense of community across the WRC.

## Information Communications and Technology

Throughout 2021, the WRC continued to build upon the progress previously made in developing and deploying web-based, user-friendly ICT solutions.

A new case management system for the WRC's Conciliation service was designed and work on its development progressed during 2021 with the goal of delivering the new system during the year.

In alignment with "Digital First" pillar of the Public Service ICT Strategy, the WRC initiated scoping work around enhanced automated business processes, and advanced its self-service portal, which will go live in 2022.

## WRC success at FutureTech Challenge

The Workplace Relations Commission was a finalist in the FutureTech Challenge (FTC) with a project to develop a "Hybrid Hearing Solution". This was a pilot competition organised by the Public Service Innovation team in the Department of Public Expenditure and Reform, (DPER), in partnership with IDA Ireland and Enterprise Ireland and supported by AWS, Cisco, and IBM.

The WRC and the service provider are currently working to bring the concept to fruition.



*The WRC FutureTech Challenge presentation team, (left to right), Shane Grant, Mary Coyle and Alan Barron*

## Communications and Outreach

### Website

The WRC website is a vital source of information and an interface with the WRC for service users, particularly in relation to updates on service delivery models and employment rights, both generally, and aligned to COVID-19 developments in the area.

Since the launch of the revised website in May 2019, the site has been regularly reviewed to ensure that it complies fully with all web standards in terms of the structure, layout and content and that it follows web standards laid out by the World Wide Web Consortium (W3C) and the Irish National Disability Authority. In this regard, each WRC Division conducted a review and update of relevant content on the website.

Further, during 2021, the WRC updated their skillsets on accessibility issues to ensure that WRC practices continue to meet, and where practicable, exceed the required standards.

### Information Videos

To assist visitors for face-to-face hearings in WRC Offices during COVID-19 restrictions, information videos were available on the WRC website to inform parties and representatives of the arrangements for accessing hearings in WRC offices when these were permitted.

### Social Media

Over the year, the WRC social media channels were used to share information updates with the public. The reach of these platforms increased throughout 2021 and currently the WRC\_IE Twitter account has more than 2,100 followers and the WRC LinkedIn account more than 6,100: increased by 42% and 26% respectively, since the start of the year.

During 2021, the WRC ran several campaigns including a social media campaign with a reach of over 600,000 targeted at young workers and their employers in Ireland, focused on the service/hospitality industries to make them aware of their rights and obligations, particularly as the economy opened up in the Summer.

The WRC engaged with advocacy groups such as LGBT Ireland, BeLonG To, TENI and Gay Project Cork to develop and share social media content promoting the role of the WRC in supporting people who believe they have suffered discrimination either in work or the provision of services.





## WRC Office Premises

The WRC has five regional offices in Dublin, Carlow, Cork, Ennis and Sligo. In June 2021, the WRC took possession of a new Southern Region office, centrally located in Cork city. The new facility now allows the WRC to offer the full suite of services to all its stakeholders in the Southern region. In Carlow, the annex to the WRC premises was significantly reconfigured and upgraded during 2021 to enable adjudication and mediation hearings be held in a secure and safe manner for all parties.

During 2021, the WRC arranged a review of physical accessibility within Lansdowne House and the building was found to be compliant with access requirements. Suggestions for certain improvements will be actioned in 2022.

## Public Sector Equality and Human Rights Duty

The Irish Human Rights and Equality Commission Act 2014 introduced a positive duty on public bodies to have due regard to human rights and equality issues in the exercise of its functions and proactive approach is taken to implement this duty throughout the work of the WRC. Creating an accessible and inclusive space for everybody who uses or works in our offices is a key priority.

In line with established principles and section 42 of the Irish Human Rights and Equality Act 2014, the WRC places a strong emphasis on the right to fair procedures, the right to privacy, equal access and equal treatment in all aspects of the services provided. Such considerations were factored into the design of remote hearings and related procedures. Against the backdrop of remote working in a pandemic, the WRC continues to work to ensure the dignity and welfare of all staff is protected and a culture of participation and respect is encouraged. The human rights and equality issues affecting staff include the right to fair procedures, the right to privacy, equal access, equal treatment and dignity in the workplace.

All internal policies are kept under review to ensure compliance with best practice in those areas, including, for example the *Dealing with Unreasonable Customers* policy introduced during 2020, and updated in November 2021, which protects staff against third party harassment.

## Protected Disclosures Act 2014

As a public body, the WRC is required under section 22 of the Protected Disclosures Act 2014 to publish an annual report in relation to the number of protected disclosures made to it in the preceding year, and the action taken in response to any such protected disclosures.

Pursuant to this requirement, the WRC confirms that two external reports were received in accordance with the provisions of the Protected Disclosures Act, 2014 from 1st January 2021 to 31st December 2021. One was referred for inspection by the WRC and the second was deemed not to be a protected disclosure following investigation. The outcome was communicated to the individuals in both cases. No internal reports were received by the WRC.

Under SI 367/2020 Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 the Director General is designated as a 'prescribed person' pursuant to section 7 of the Act.

## 4.5 | Legal Services

**The Legal Division's primary function is to provide effective support so that legally robust systems are in place throughout all activities of the WRC.**

In this regard, the Division advises the WRC in relation to its wide range of functions from adjudication to inspections, conciliations, mediation and information provision. It also provides relevant EU, administrative, employment and equality law updates and support to Adjudication Officers and staff.

### 2021: Legislation and Jurisprudence

Much of the Division's work in 2021 related to the WRC's adjudication function. In this regard, it was a particularly busy year for the Legal Division with no fewer than fifteen core new pieces of legislation including the Workplace Relations (Miscellaneous Provisions) Act 2021, which fundamentally altered WRC adjudication procedures. In terms of litigation, of the twelve Superior Court matters live in 2021 the vast majority were decided wholly or partly in the WRC's favour, or withdrawn. Costs were awarded in the WRC's favour in two judicial review matters. The WRC was also successful in defending five sets of proceedings brought against it in the WRC and the plaintiff withdrew his proceedings in a legacy Circuit Court matter.

### Supreme Court Judgment

In terms of impact, the Supreme Court judgment in *Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24 represented the most significant administrative, procedural and operational development with regard to the adjudication service of the WRC since establishment. The judgment in this landmark constitutional challenge was handed down in April 2021 by the Supreme Court finding that the WRC was 'administering justice' but that this was permissible under Article 37 of the Constitution which creates a stratum of bodies exercising limited powers and functions of a judicial nature. Such bodies (of which the WRC is one), whilst still creatures of statute, must operate fair procedures in the same way as a court.

The Supreme Court also made two findings in relation to the 2015 legislation underpinning the WRC namely that the absence of a power to take evidence on oath or an offence for providing false testimony before the WRC, and the default of hearings being in private, were inconsistent with the Constitution. The Court found in the WRC's favour in relation to a challenge to the qualifications required of Adjudication Officers. It also found that the lack of an explicit reference to the power to cross-examine was not unconstitutional and noted that cross-examination occurred in practice and this provision was also clear from the *Guidance for WRC Adjudications published in 2015*.

The judgment had immediate effect. Overnight, WRC hearings were required to be in public which presented a challenge given that hearings at that time (and throughout most of 2021) were held predominantly virtually. The WRC reacted deftly and published hearing schedules for members of the public to apply and be sent login details. Transitional provision also had to be made for sensitive cases for example, those involving a protected disclosure made in confidence or sexual harassment allegations to be in private.

A further consequence of the judgment was that decisions would no longer automatically be anonymised to comply with the constitutional requirements of 'open justice'. Therefore, a certain number of cases had to be adjourned pending new legislation to permit parties to apply to have their details anonymised on grounds that 'special circumstances' pertained in the matter.

For part-heard and new matters, the WRC was faced with an additional challenge of whether to cancel all hearings and await remedial legislation or continue on, subject to some adjustments. Mindful of the duty to provide an effective remedy without undue delay, the latter course was adopted and parties were encouraged to keep their pre-scheduled hearing dates and use the opportunity to narrow down the issues in contention, seek directions, or potentially settle, withdraw or seek a referral to mediation. Many parties welcomed this approach rather than a complete standstill whilst the WRC awaited the new legislation empowering it to take evidence on oath etc.

Nonetheless, as set out earlier, not all complaints could proceed in this manner and just under 400 cases were adjourned *sine die* pending the enactment of the amending legislation as the Adjudication Officers with *seisin* of the case deemed that the hearing could not proceed without the evidence in the case being heard under Oath or affirmation. For part-heard matters (i.e., hearings that commenced prior to the judgment but had not yet been completed) which involved a serious and direct conflict of evidence, the WRC produced policy guidance to reflect the Supreme Court's judgment. This guidance was subsequently challenged in a judicial review *Burke v WRC, AO and Arthur Cox* (Notice Party) 2021 IEHC 677. In his judgment of 11 November 2021 Simons J dismissed the judicial review in its entirety and acknowledged the challenge facing the WRC applying the judgment and that it had endeavoured to apply the Supreme Court's findings in good faith. Inevitably, this would mean that in a handful of cases Adjudication Officers might have to recuse themselves so that a new Adjudication Officer could take over and fairly hear the evidence afresh on oath.

Simons J agreed with the WRC approach noting that *"In order to ensure confidence in the process, it was entirely reasonable to direct that the fresh hearing be conducted by a different adjudication officer who has not heard any of the unsworn evidence previously tendered. Considerations such as administrative convenience, efficiency or delay cannot trump the requirement that justice is not only done but is seen to be done."* He also emphasised the fact that applicants should not expect the courts to micromanage interim procedural matters in adjudications, and that alternative statutory appeal mechanisms should be availed of in most cases.

## Workplace Relations (Miscellaneous Provisions) Act 2021

On 29 July 2021 the Workplace Relations (Miscellaneous Provisions) Act 2021 was commenced. The Act empowers the WRC to take evidence on oath and created a new offence of perjury, alongside the Criminal Justice (Perjury and Related Offences) Act 2021, which came into force on 28 July.

The Workplace Relations (Miscellaneous Provisions) Act 2021 also provided for hearings to be in public and parties to be named in decisions unless the Adjudication Officer of their own motion or upon request of the parties decided that ‘special circumstances’ warranted a private hearing and/or the decision to be anonymised in whole or part.

To explain to parties how this new legislation would operate, the WRC issued four new sets of guidance:

- witness guidelines on the oath and affirmations translated into ten languages<sup>5</sup>;
- guidance on public hearings and the term ‘special circumstances’<sup>6</sup>;
- updated guidance on the application of the Supreme Court’s judgment particularly in relation to part-heard cases<sup>7</sup>; and
- updated guidance on adjudications before the WRC introducing a new timeframe for evidence and submissions to be lodged 15 working days before the hearing so that parties and Adjudication Officers can prepare adequately for hearings in the interests of fair procedures<sup>8</sup>.

Internally, considerable training and guidance was provided by the Division to those administering complaints and to Adjudication Officers applying the new law.

## Adjudication Postponement Guidelines

Separately, in July 2021 the WRC issued new guidelines on postponement applications<sup>9</sup> and objections to remote hearings<sup>10</sup>. In light of Covid, postponement numbers were particularly high in 2021 (see earlier) and a new policy was identified as necessary to streamline the process and provide parties with further clarity and an effective appeal mechanism.

## Outreach

The Legal Division continued its outreach programme to engage with stakeholders and disseminate information, one of the WRC’s core functions. In September 2021, the Division provided input to a legal podcast, provided training to DPER on administration of justice, presented to the Interagency Plenary on remote hearings, spoke at legal conferences and provided internal training sessions for Adjudication Officers and staff throughout the year.

## Data Protection

The Division also supports its colleagues on Freedom of Information and Data Protection issues. The Division’s legal adviser acts as Data Protection Liaison Officer (“DPLO”) for the WRC and liaises with the Department Data Protection Officer on all data protection issues. The DPLO is advised of any data breaches and advises on policy updates for data protection matters and queries in relation to GDPR.

5 [WRC Witness Guidelines - Workplace Relations Commission](#)

6 [Workplace Relations \(Miscellaneous Provisions\) Act 2021 - Workplace Relations Commission](#)

7 [Supreme Court judgment: Impact on WRC Adjudications, the Workplace Relations Act 2015 and related statutes - Workplace Relations Commission](#)

8 [Procedures in the Adjudication and Investigation of all Employment and Equality Complaints - Workplace Relations Commission, 21 December 2021.](#)

9 [Postponement Policy - Workplace Relations Commission](#)

10 [Objections to Remote Hearings - Workplace Relations Commission](#)

## Review of WRC Adjudication Decisions and Recommendations 2020

With the assistance of law graduate interns and AI legal research, the Legal Division produced the first review of WRC jurisprudence across a calendar year which analysed the WRC's 2020 jurisprudence<sup>11</sup>. The report examines complaints made to the WRC as regards: complaint breakdown; party representation; and awards made (both monetary and corrective action). The key findings were as follows: A total of €5,152,152.37 was awarded by the WRC in 2020; the overall average award was €5,117.42; and there were approximately 181 successful complaints where a non-monetary award was made — in other words, a “course of action” was directed or recommended.

In terms of complaint breakdown, the report noted that most complaints were made under the Organisation of Working Time Act 1997, with 577 complaints. This was followed by the Unfair Dismissals Act 1977 with 454 complaints, and the Industrial Relations Act 1969 with 354 disputes.

The report also looked at party representation before the WRC and found as follows: 1,305 parties (47%) had third party representation. 1,255 parties (45%) were self-represented, which broke down as follows: 716 (57%) complainants and 539 (43%) respondents.

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11 [Review of WRC Adjudication Decisions & Recommendations - Workplace Relations Commission](#)

# APPENDIX

# 1

## Work Programme 2021: Outcomes

### Conciliation, Advisory and Mediation

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Provide timely, effective and efficient conciliation service and ensure demand is met whilst maintaining delivery of all services</b>	Provide in-person and virtual conciliation in an appropriate timeframe to facilitate resolution of industrial relations disputes. Proactively engage with service users to support and provide assistance in the maintenance of positive industrial relations	As and when required by clients throughout 2021	Maintenance of high success rate in the resolution of industrial relations disputes.	<b>Conciliation and facilitation had 86% success rate – broadly similar to the 2020 success rate.</b>

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Enhance client usage of relevant mediation services of WRC</b>	Maintain mediation service delivery levels and aim to increase usage and provide more mediation regionally where required	Throughout 2021	Depending on ongoing Covid restrictions assess and renew levels of participation in the mediation process maintained and increased if possible. Consultation process undertaken. Cases triaged effectively and efficiently to bring about an overall reduction in numbers advancing to adjudication process in rights-based claims.	<b>Substantial engagement on complaints submitted to identify and offer mediation as appropriate in line with demand</b>
<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 to deal with all issues in accordance with procedures and operations as set in agreed terms of reference	Throughout 2021	Effective delivery, operation and conclusion of all issues raised in accordance with protocols and procedures with the agreement of all parties	<b>All requests for assistance were fully delivered</b>
<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 2021	Effective operation of communication channels maintained	<b>Constant dialogue maintained throughout 2021</b>
<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 2021	Effective, tailored programme delivery, high service user satisfaction, improved workplace relations	<b>Assistance supplied as needed to high outcome and satisfaction levels</b>
<b>Provide workplace knowledge sharing</b>	Develop and deliver further appropriate educational programmes with emphasis on positive industrial relations principles and working relationships	Throughout 2021	High Client Satisfaction – better understanding of issues and improved workplace relations	<b>7 education training programmes were delivered through virtual and in person workshops</b>

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Review transition of An Garda Síochána into WRC processes</b>	Work with parties on the ongoing transition to WRC services	Throughout 2021	Full transition achieved	Transition achieved
<b>Develop and implement new conciliation management system</b>	Work with all WRC colleagues in developing and rolling out new system	Throughout 2021	System fully operational as designed	Significant progress made in developing the system to be delivered in 2022

## Information and Customer Services

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<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, postal and other employment rights enquiries	Throughout 2021	90% of queries dealt with at initial query	55,810 calls and 6,815 emails dealt with
	Co-ordinate the targeted participation of the WRC at employment law seminars, presentations, exhibitions, roadshows, webinars, etc.	Throughout 2021	Key events identified, targeted message delivered effectively and efficiently	WRC participated in EU #Rights4All Seasons campaign
	Use WRC social media platforms to raise awareness of employment legislation, relevant decisions, WRC activities/remit and promote WRC redress mechanisms to the public.	Throughout 2021	Increased awareness of the WRC and its remit/services using social media accounts.  Key events, days, campaigns. research and data identified and effectively publicised on social media.  10% y.o.y increase in following on WRC social media platforms  Evidentiary links between posts and referrals / contacts	Web views 3.4m, social media reach increased throughout 2021

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Efficient processing of complaints and applications to the WRC</b>	All complaints processed in a timely and efficient manner and referred to the appropriate redress forum	Throughout 2021	All current complaints processed efficiently with 90% of files created within 10 working days and respondent put on notice	<b>12,000 specific complaints processed</b>
<b>Deliver Outreach and Communications Strategy</b>	Identify WRC activities (including web-based and remote outreach) which can be used to enhance efficiency and effectiveness of WRC generally	Throughout 2021	Increased awareness and understanding of the WRC, its identity, role and functions, across industrial relations, employment rights, equality and equal status matters	<b>4 outreach presentations delivered throughout 2021</b>
	Complete Equal Status campaigns on the specific role of the WRC in terms of discrimination complaints relating to minority ethnic and the LGBT+ communities for both provision of information to communities and their representative organisations and the protection of rights	End-2021	Increased awareness of WRC role in this area and rise in relevant referrals to WRC	<b>Information and Customer Service attended awareness training provided by LGBT Ireland in 2021</b>
	Prepare bespoke targeted printed guides and templates for employees and employers	Q3 2021	Guides and templates launched and being used and accessed	<b>Significant outreach achieved with additional printed material provided</b>

## Inspection and Enforcement Services

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Promote and enforce compliance with employment law</b>	Risk-based inspections, complaint-based inspections, with other State bodies where appropriate	Throughout 2021	4,432 workplace investigations completed	Of the 4,432 cases completed some 2,722 (61%) were unannounced
	Prosecute, as appropriate, offences under employment legislation	Throughout 2021	A 90% successful prosecution rate	89 employers were convicted in the District Court
	Issuing and processing of Compliance and Fixed Payment notices and defend appeals to Compliance Notices	Throughout 2021	Notices issued appropriately and having effect. Appeals defended.	3 Fixed Payment Notices were issued in 2021
<b>Focused targeting of non-compliant employers, sectors, regions</b>	Deploy new risk selection arrangements for Inspection cases	Mid-21 onwards	25% of inspections will be focused on high risk employers	WRC targeted specific sectors in line with WRC/HSA RWTS Memo of understanding
<b>Enforce awards arising from decisions of Adjudication and Labour Court proceedings</b>	Pursue civil enforcement of decisions and awards arising from decisions of Adjudication Officers and Labour Court in relation to adjudication and inspection activity and escalate to prosecution where appropriate.	Throughout 2021	Decisions and awards pursued in manner that maximises efficiency and effectiveness	71 Cases Closed
<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 2021	Applications processed within 21 days of receipt	820 Employment Agency licences and 544 licences authorising the employment of children were issued
<b>Co-operate with other enforcement agencies</b>	Facilitate training, staff exchanges, joint inspections and sharing of appropriate data, review MoUs to ensure they are current, valid and in compliance with GDPR requirements	Throughout 2021	Successful activities underpinned by legislation and appropriate MoUs. Review and renew, if appropriate, all existing MoUs	57 joint inspections carried out with other State agencies

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Carry out targeted campaigns in the identified sectors</b>	Campaigns carried out effectively and efficiently	Throughout 2021	Positively impact compliance and create/enhance awareness of relevant rights and duties	In addition to inspection campaign in support of the National Return to Work Safely Protocol and the subsequent Work Safely Protocol, inspectors also participated in campaigns such as the EU #Rights4All Seasons campaign, campaigns, EPMACT against labour exploitation, fishing, horticulture and meat processing
<b>SME information and education programme to improve compliance generally</b>	Work with Communications and Information Unit to ensure programme is effective and efficient programme.	Throughout 2021	Enhance compliance through targeted campaigns	Social media campaign carried out in relation to the rights of young workers
<b>Cooperate with International agencies on areas of mutual interest</b>	Work with agencies, platforms and authorities with similar objectives such as the International Labour Organisation, the European Labour Authority, the European Platform for Undeclared work, EUROPOL	Throughout 2021	Attend all plenary sessions where designated as Irish member/delegate/expert, provide appropriate assistance to programmes	WRC participated in a number of ELA and EU Platform for Undeclared Work conference and workshops as well as ELA Board and EU Platform for Undeclared Work Plenaries

## Adjudication

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Deal with impacts arising from pandemic restrictions imposed during 2020.</b>	Provide Adjudication Officers with full administrative support and oversight to achieve the goal	Throughout 2021	Deal with any Covid related build-up	Increased service levels provided
<b>Consider approaches to deal with anticipated increase in volume of complaints during 2021</b>	Maintain appropriate administrative resourcing and monitor and review quantity and availability of adjudicators to ensure delivery capacity.	End 2020 onwards	Structured approach in place to deal with redundancy complaints and anticipated increase generally	Processes adapted as required
<b>Early receipt of concise submissions</b>	Work with stakeholders to achieve this and explore development of templates or sample submissions to be published on website	Throughout 2021	Informative submissions received in a timely manner	Worked with stakeholders to achieve
<b>Deliver high quality decisions</b>	Internal Quality Control 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.	Throughout 2021	High quality decisions issue in a timely manner, subject to available resources  Internally and externally recognised and delivered WRC adjudication standard	Decisions accepted in 82% of cases and of the 18% of cases appealed to the Labour Court, 62% were upheld and less than 20% were overturned  Quality control maintained

## Corporate, Strategy, Digital Services

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Maintain robust corporate governance framework in WRC</b>	Oversee and monitor internal standards/policies/procedures	Throughout 2021	Corporate governance in WRC in line with best practice	<b>Robust corporate governance delivered throughout 2021</b>
<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 DBEI in this regard	Throughout 2021	Work programme achieved consistent with proper utilisation of budget allocation	<b>Resources supplied within budget</b>
<b>WRC has functional flexibility</b>	Ensure that the WRC can respond quickly to shifting demand and resource patterns across the full range of its activities.	Throughout 2021	WRC able to respond quickly to Divisional demand spikes and shifting resource patterns	<b>WRC responded to fluctuating demands throughout 2021</b>
<b>Manage the WRC risk-based strategic, business planning performance culture at all levels of the organisation</b>	Assist in implementation of Board strategy and Work Programme and roll out via Corporate, Divisional, Unit and personal business plans, measure and take remedial action against risks and report on progress to MC and Board on a regular basis	Throughout 2021	WRC operating within coherent strategic and business plan framework	<b>Risk and business framework are fully operational</b>
<b>Enhance and inform the policy debate on workplace relations developments</b>	In consultation with other Divisions identify areas of policy concern and input to policy formulation	Throughout 2021	Input provided and understood	<b>Input provided</b>
<b>South WRC region providing full service in WRC premises</b>	Work with OPW to ensure the southern WRC region can facilitate the delivery of all WRC services by Q2	Q2 2021	Office fully operational	<b>Cork office fully operational, the full suite of WRC services can be delivered</b>
<b>Standardisation: Monitor ICT systems to ensure they facilitate the delivery of efficient and effective WRC services</b>	Review quarterly and update where needed (within budgetary considerations)	Throughout 2021	Easy to use ICT systems working efficiently and effectively	<b>Ongoing monitoring of systems</b>

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Build of Industrial Relations Information System (IRIS)</b>	Work with DE TE, Codec and internal partners to complete user-friendly case management system for Conciliation and Workplace Mediation.	Q4 2021	System operational	Project advanced with delivery scheduled for 2022
<b>Build Portal</b>	Phase 1 of Web Portal live	Q3 2021	Web form rolled out	Project advanced. Web complaint form to be delivered in Q2 2022
	Phase 2 of Web Portal live	Q4 2021	Document upload	
<b>Automation:</b>  <b>Leveraging Technology to improve efficiencies and use of resources</b>  <b>Data Analytics:</b>  <b>Use of data analytics solutions to better inform management decision making</b>	WRC will work with DE TE to explore the potential uses of process automation in early-stage complaint receipt processing	Q1 2021	Potential uses identified and medium-term strategy developed, early pilot delivered Q1 2021	Scoping work around feasibility of process automation carried out. Work to continue in 2022
	Tool Selected. Initial Dashboards designed and available	Q1 2021 onwards	Analytics fully utilised in decision making	Initial dashboards designed. Work to continue in 2022
	Work with Inspection Risk Modelling Project to assist build of risk IT evaluation system as required	Q2 2021	Risk Model operational	Operational
	Develop a Communications Strategy to support the business objectives of the WRC	Q1 2021	Strategy developed and approved. Strategy supports the business objectives of Divisions	Co-ordination of communications significantly improved

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>Communications</b>	In consultation with the relevant Divisions proactively plan, deliver and measure WRC Communications content and campaigns. We will identify and deliver a number of priority campaigns, possibly an equal status campaign and the role of the WRC in terms of discrimination complaints relating to minority ethnic and the LGBTI+ community,	Throughout 2021	WRC content is preplanned, published and measured	A number of key campaigns rolled out in 2021  On target to deliver equal status campaign in Q2 2022
<b>Digital Media</b>	Collaborate with DE TE and other Government Comms Units  Social Media Channels developed: <ul style="list-style-type: none"> <li>➤ Twitter</li> <li>➤ LinkedIn</li> <li>➤ WRC.ie</li> </ul>	Throughout 2021  Throughout 2021	Participate in GIS Communications Network  Twitter, LinkedIn and WRC website all regularly used to support business plans	Ongoing engagement with DE TE  Regular content developed and posted on social media WRC-IE Twitter account has 2,100 followers and LinkedIn has 6,140 an increase of 62% and 26% respectively
	Work with stakeholders to evaluate effectiveness of the website and amend as necessary	Throughout 2021	Website current, relevant and used	The WRC website had 3.4 million views in 2021, a significant increase from 2.6 million in 2020

## Legal Affairs

Work Programme Objectives	Action/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
<b>WRC legal service operating effectively and efficiently</b>	Excellent independent, objective legal service to be provided with structures, procedures, and business processes operating efficiently	Throughout 2021	Legal service established and fully functional.	Legal services efficiently and effectively delivered with no fewer than fifteen core new pieces of legislation introduced
<b>Provide appropriate legal training to staff and adjudicators – legally sound approach to all activities of WRC</b>	Identify training structures, training needs and deliver. Provide training of legal services staff as needs arise and ensure CPD achieved	Throughout 2021	Training being implemented and Adjudicators up to date on jurisprudence	Training delivered throughout 2021
<b>Assist Adjudication Services ensure Quality and Consistency</b>	Regular quality assurance meetings reviewing issues arising, making recommendations and providing guidance.	Throughout 2021	Quality enhanced.	Recommendations and guidance provided throughout 2021
<b>Manage legal services used within the WRC</b>	Provide for legal services where appropriate (including panels for legal advice where appropriate)	Throughout 2021	Systems functioning effectively	Managed appropriately
<b>Manage and provide for timely, effective and robust legal advice on all aspects of legal matters before, and involving, the WRC</b>	Consider correspondence, provide advice, brief Counsel where necessary, manage case progress and outcome, liaise with CSSO, AGO and DBEI on legal issues as appropriate.	Throughout 2021	WRC manages legal matters effectively and efficiently. WRC has effective role in relevant legislative developments	Quality advice provided
<b>Maintain a specialised database and library facility for Adjudicators and WRC staff generally</b>	Ensure appropriate access to relevant external databases and virtual and physical library kept up to date	Throughout 2021	Databases and library in place and fully utilised	Achieved

<b>Work Programme Objectives</b>	<b>Action/Tasks</b>	<b>Delivery Timeframe</b>	<b>Key Performance Indicators</b>	<b>Outcomes</b>
<b>Set and manage legal costs within budget parameters</b>	Monitor spend on legal costs/identify efficiencies	Throughout 2021	Legal Costs managed effectively, efficiently and within budget	<b>Achieved</b>
<b>Use available tools to help inform stakeholders of trends in complaints and decisions</b>	Publish analyses of employment rights complaints and WRC decisions with particular regard to equality and equal status cases	Throughout 2021	Commentaries published	<b>The first review of WRC jurisprudence was produced</b>
<b>Work with DETE to identify legal issues impacting on delivery of statutory remit</b>	Identify key legislative priorities and assist progression where possible and liaise with DETE in context of Supreme Court constitutional challenge and urgent Covid-related legislative reforms.	Throughout 2021	Issues identified with Department and progressed as appropriate	<b>Key amendments passed</b>
<b>Develop stakeholder networks domestically, at EU and international level to share best practice</b>	Stakeholder mapping and engagement	Throughout 2021	Strong network established to share best practice and be abreast of emerging legal trends in employment and equality law internationally	<b>Managed appropriately</b>
<b>Adjudication Services supported in relation to remote hearings and Covid-related adjustments to WRC services</b>	Advise WRC in relation to new procedures and policies around COVID-19, remote hearings and other adjustments required to ensure continuity of service, effective remedies, fair procedures and equality law obligations adhered to.	Throughout 2021	Robust, efficient systems in place to ensure WRC can pivot to deal with lockdowns and any new modalities required in light of evolving public health guidelines, providing a safe environment for service users and staff whilst ensuring continuity of service.	<b>Quality advice provided</b>

# APPENDIX

# 2

## Introduction

The remit of the WRC has expanded considerably since its inception on 1 October 2015. This expansion has taken the form of:

1. Newly introduced pieces of legislation (and amendments to legislation) which come within the auspices of the WRC, at first instance,
2. Clarifications from the Superior Courts with immediately implementable consequences, most notably the 2021 Supreme Court decision of *Zalewski v Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24, which necessitated the introduction of The Workplace Relations (Miscellaneous Provisions) Act 2021, and
3. EU Directives.

## Key Changes

### Amendment to the Equal Status Act: Housing Assistance Payments (HAP)

The Equal Status Acts 2000-2015, prohibit discrimination in the provision of goods and services, the provision of accommodation and access to education, on any of the nine equality grounds as well as prohibiting victimisation of anyone who makes a complaint under any of the grounds. The Equality (Miscellaneous Provisions) Act 2015 inserted a new ground in the provision of accommodation only - the “housing assistance” ground. This introduction of this ground meant that it was unlawful for landlords to discriminate against a tenant or potential tenant on the basis that he/she was in receipt of housing assistance payment (HAP) and such cases come before the Workplace Relations Commission for adjudication, at first instance.

## Family Leave

The types of family leave available, who can avail of them, and the period during which such leave can be taken have expanded several times since 2015. The WRC is the enforcing body in respect of each of the Acts below.

**(a) The Paternity Leave and Benefit Act 2016**

The Paternity Leave and Benefit Act 2016 created a new legal right to paternity leave in Ireland. Under the PLBA, paternity leave must be taken within 26 weeks of the birth/ placement of the child.

**(b) Parent's Leave and Benefit Act 2019**

The Parent's Leave and Benefit Act 2019 created a new legal entitlement. It entitled parents to two weeks' paid leave for any child born or placed with their adoptive family, on or after 1 November 2019, the leave to be taken within 52 weeks of the birth or adoptive placement.

**(c) The Parental Leave (Amendment) Act 2019**

The Parental Leave (Amendment) Act 2019 increased the maximum period of parental leave from 18 to 22 weeks from 1 September 2019 and increased it again to 26 weeks from 1 September 2020. The age of the child for which parental leave is available has increased from 8 to 12 years. For a child with a disability the parental leave age threshold remains unchanged and is available up to the age of 16.

**(d) The Family Leave and Miscellaneous Provisions Act, 2021**

The Family Leave and Miscellaneous Provisions Act, 2021 came into force in April 2021 and entitles working parents to an additional three weeks of Parents' Leave, increasing the entitlement to 5 weeks for each parent. It amended the Parent's Leave and Benefit Act 2019 to extend the period in which a relevant parent is entitled to avail of the leave under that Act, and to extend the period of time in which such leave may be taken to 104 weeks. The five weeks' leave can be taken in one complete block, or in blocks of at least one week at a time. From August 2022 on, Parent's Leave is set to increase to seven weeks per parent.

The 2021 Act also amended The Adoptive Leave Act 1995 to enable a couple who jointly adopt a child to choose which member of the couple is to be entitled to leave under the Act for the purpose of the adoption, remedying an anomaly in the existing legislation which precluded married male same-sex couples from availing of adoptive leave. (Previously, adoptive leave could be availed of by an adoptive mother or a single adoptive father). Paternity Leave and Benefit is now available to the parent who is not availing of adoptive leave.

## Terms and Conditions of Employment

### Employment (Miscellaneous Provisions) Act 2018

The Employment (Miscellaneous Provisions) Act 2018 introduced

- a requirement on employers to provide an additional written statement of core terms, not later than 5 days after the commencement of an employees' employment,
- provisions to curtail the use of 'zero-hours' contracts
- a minimum pay obligation on employers where employees are called into work and do not receive the expected hours of work and
- an employee entitlement to request "banded hours" reflective of their work pattern in the previous 12 months.

## Day Five Statement

The Terms of Employment (Information) Act 1994 was amended to require employers to provide employees with a written statement of the following core terms of employment, within five days of commencing employment.

1. The full names of the employer and the employee.
2. The address of the employer.
3. The expected duration of the contract, in the case of a temporary contract, or the end date if the contract is a fixed-term contract.
4. The rate or method of calculation of the employee’s pay.
5. The number of hours the employer reasonably expects the employee to work per normal working day and per normal working week.

This obligation is in addition to the existing employer obligation to issue a written statement of terms of employment which must be given within two months of commencing employment.

Failure or refusal to provide an employee with a Day Five statement within 5 days of commencing employment may give rise to the issue of a Fixed Penalty Notice by a WRC inspector or prosecution in the District Court.

## Zero Hours Contracts

The Organisation of Working Time Act 1997 was amended to prohibit zero hours contracts except in specified circumstances:

- where the work is of a casual nature
- where the work is done in emergency circumstances
- where short-term relief work is used to cover routine absences for the employer

## Minimum Payment in Certain Circumstances

A new minimum payment applies when an employee on a zero hours contract, is called in to work and does not receive the expected hours of work. The minimum payment is three times the national minimum hourly rate of pay or three times the minimum hourly rate of pay set out in an Employment Regulation Order (if one exists for the sector).

The already existing method of payment (at least 25% of the contract hours or 15 hours) continues to apply overall.

Under section 28 of the Workplace Relations Act, 2015, a WRC inspector may issue a Compliance Notice where non-compliance with these obligations is detected.

## Banded Hours Provisions

The Organisation of Working Time Act 1997 was amended to enable employees to request to be placed in a band of weekly working hours reflective of their actual work pattern. Employees whose contract of employment or statement of terms of employment does not reflect the reality of the hours they habitually work are now entitled to request to be placed in a band of hours that better reflects the hours they have worked over a 12-month reference period.

The band of hours is as follows:

**Figure 9:** Banded Hours Provision

Band	From	To
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours	

An employee must be working for their employer for at least a year before making this request.

An employee who believes that his or her employer has failed to place them in a band of weekly working hours reflective of their actual work pattern in the previous 12 months, having been requested to do so, may make a complaint for hearing by a WRC Adjudication Officer.

## The Right to Disconnect

The WRC published a Code of practice (guidance) on the Right to Disconnect in April 2021.

The Code sets out that the right to disconnect has three main elements:

- The right of an employee to not routinely perform work outside normal working hours.
- The right to not be penalised for refusing to attend to work matters outside of normal working hours.
- The duty to respect another person's right to disconnect (e.g., by not routinely emailing or calling them outside of normal working hours).

## Gender Pay Gap Information Act 2021

The Gender Pay Gap Information Act 2021 commenced in July 2021, and it introduced mandatory reporting obligations for both the private and the public sector. Initially, it will apply to employers with 250+ employees. The Act allows for the expansion of the mandatory reporting obligations to employers with 150+ employees (from 2023 onwards) and employers with 50+ employees (from 2024 onwards).

The Act requires relevant employers to report on (and publish) the difference in male and female remuneration as follows:

- Mean and median hourly remuneration for full-time and part-time employees.
- Mean and median bonus remuneration.
- Percentage of all employees who have received a bonus or benefits in kind.

The Act provides that additional regulations may be enacted to provide further clarity on the class of employer, employee and pay to which the regulations apply; how the remuneration of employees is to be calculated and the form, manner and frequency in which information is to be published.

Enforcement is through the referral of a complaint by an employee to the WRC for investigation, which may order a specified course of action.

## EU Work-life Balance Directive (to be fully implemented by August 2022)

EU Member States were given three years from 1st August 2019 to adopt the Work-life Balance Directive in full. It provides employees with an entitlement to request flexible working and a requirement on employers to have flexible working policies. It also mandates a range of family leave (parental, paternity) for which Ireland already has legislative provision. It also provides for a right to carer's leave.

## Protected Disclosures

### The Protected Disclosure (Amendment) Bill 2022

The Protected Disclosure Act 2014 predated the inception of the WRC.

In 2021, the Supreme Court held that the 2014 Act encompasses a complaint made by an employee that their own health or safety is endangered by workplace practices in *Baranya v Rosderra Meats Group Limited [2021] IESC 77*.

In 2022, the Protected Disclosure (Amendment) Bill is expected this year, the purpose of which is to transpose the EU Whistleblowing Directive into Irish law.

## APPENDIX

## 3

## Convictions 2021

Employer	Sector	Entity Type	Legislation	Address
<b>Purple East L&amp;G Ltd</b>	Hair & Beauty	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Quinnsboro Road, Bray, Co Wicklow
<b>Rustic Catering Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Tullaha, Broadford, Limerick
<b>Abdul Shakoor Awan</b>	Food Service Activities	Sole Trader	Organisation of Working Time Act, 1997	The Cobweb, Portarlinton, Co Laois
			Employment Permits Acts 2003 and 2006	
<b>Syed Redwan Ahmed</b>	Food Service Activities	Business name - Individual	Employment Permits Acts 2003 and 2006	2 Watergate, Kilkenny
			Organisation of Working Time Act, 1997	
<b>Positive Accounting Solutions Limited</b>	Accounting & Financial Services	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Clonmoney House, Newenham St, Limerick
<b>TAJ Catering Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	157-159 Upper Salthill, Salthill, Galway
<b>Clancy's Foodstore Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	Blackwater, Co Clare
<b>Takumi Precision Engineering Limited</b>	Manufacturing	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Raheen Business Park, Limerick
<b>Troys Abattoir Limited</b>	Meat Processing	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Dalystown, Mullingar, Co Westmeath
<b>Orientaloriginal Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Ashford House, Ashford, Co Wicklow
			Organisation of Working Time Act, 1997	

Employer	Sector	Entity Type	Legislation	Address
<b>SD Pro Fence Limited</b>	Construction	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Gaybrook Demense, Mullingar, Co Westmeath N91 A9C6
<b>The Black Wok Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Main St, Blackrock, Co Louth
			National Minimum Wage Act 2000 (as amended)	
			Organisation of Working Time Act, 1997	
<b>Paesano Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Main St, Prosperous, Co Kildare
<b>Peony Inn Restaurant Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Stanhope Street, Athy, Co Kildare
			Workplace Relations Act, 2015	
<b>Lee &amp; Ryan Cuisine Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Turkey Road, Tramore, Co Waterford
			Organisation of Working Time Act, 1997	
<b>Nice Street Food Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Quinnsboro Rd, Bray, Co Wicklow
<b>Navan Express Car Wash Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	National Minimum Wage Act 2000 (as amended)	Canon Row, Navan, Co Meath
			Organisation of Working Time Act, 1997	
			Organisation of Working Time Act, 1997	
<b>Orges Lluskaj</b>	Food Service Activities	Business name - Individual	Organisation of Working Time Act, 1997	53 Barrack Street, Waterford
<b>Waterford Magic Wok Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	34 Parnell Court, Parnell St, Waterford
<b>Smak Wholesalers Ltd</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Nugent St, Station Rd, Kildare
<b>Wen Tai Xue</b>	Food Service Activities	Business name - Individual	National Minimum Wage Act 2000 (as amended)	Main Street, Castleblaney, Co Monaghan
			Organisation of Working Time Act, 1997	
			Employment Permits Acts 2003 and 2006	
<b>Deb's Dresses Dublin Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Unit 16A, The Plaza, Main St, Swords, Co Dublin

Employer	Sector	Entity Type	Legislation	Address
<b>Coffee Delights Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	IDA Business Park, Southern Cross Road, Bray, Co Wicklow
<b>Bill Madden Nurseries Limited</b>	Real Estate Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Frenchfort, Oranmore, Co Galway
<b>LaneMMXIX Limited</b>	Hotels	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Kiltartan House, Forester St, Galway, H91 Y2EW
<b>Xinji Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	37 Newcastle Road, Galway,
<b>Nethercross Limited</b>	Hotels	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Roganstown, Swords, Co Dublin
<b>Rivervalley Convenience Stores Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	Unit 4 Rivervalley Shopping Centre, Swords, Co Dublin
<b>Mr Zhen Nan Liu</b>	Food Service Activities	Business name - Individual	Employment Permits Acts 2003 and 2006	Unit 3 Supervalu, Drogheda Street, Balbriggan, Co Dublin
<b>Koon Po Li</b>	Food Service Activities	Business name - Individual	Organisation of Working Time Act, 1997	4 Main Street, Milltown, Co Kerry
<b>Star Court Chinese Takeaway Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	12 Church View, Ballyhaise, Co Cavan
<b>Quint Ventures Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Main Street, Clarinbridge, Co Galway
<b>Balooch Traders Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	41 Haymarket, Limerick
<b>19 Mary Asian Food Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	19 Mary Street, Clonmel, Co Tipperary
<b>Rory Catering Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	5/6 Main St, Duleek, Co Meath
<b>Jidi Zheng</b>	Food Service Activities	Sole Trader	Organisation of Working Time Act, 1997	Malin Street, Carndonagh, Co Donegal
<b>Asim Akhtar Rana</b>	Wholesale & Retail Trade	Sole Trader	Organisation of Working Time Act, 1997	Unit 9B Courtyard Shopping Centre, Letterkenny, Co Donegal
			Employment Permits Acts 2003 and 2006	
			Workplace Relations Act, 2015	
<b>Drumkeeran Retail Solutions Ltd</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Main Street, Drumkeerin, Co Leitrim
<b>Ivory Foods Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Tagoat, Co Wexford

Employer	Sector	Entity Type	Legislation	Address
<b>Hair Master Limited</b>	Hair & Beauty	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	50 North St, Swords, Co Dublin
<b>The Shipyard Inn Ltd</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Main St, Courtown, Co Wexford
			Organisation of Working Time Act, 1997	
<b>Andrew Slattery</b>	Equine Activities	Sole Trader	Organisation of Working Time Act, 1997	Killenaule, Thurles, Co Tipperary
			Workplace Relations Act, 2015	
<b>Rayan Foods Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Lower Gate Square, Cashel, Co Tipperary
			Workplace Relations Act, 2015	
<b>John Healy</b>	Fishing	Sole Trader	Employment Permits Acts 2003 and 2006	Durrus, Bantry, Co Cork
<b>XingDao Ou</b>	Hair & Beauty	Sole Trader	Employment Permits Acts 2003 and 2006	6 Castlemaine St, Athlone, Co Westmeath
			Workplace Relations Act, 2015	
<b>Xie Jia Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Main St, Killenaule, Co Tipperary
			Organisation of Working Time Act, 1997	
<b>Zaffron Catering Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	44 JKL St, Edenderry, Co Offaly
			Organisation of Working Time Act, 1997	
<b>Panag &amp; Sons Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	River St, Clara, Co Offaly
<b>Fatmir Cakiqi</b>	Food Service Activities	Business name - Individual	Employment Permits Acts 2003 and 2006	Main St, Kilcullen, Co Kildare
<b>Acc Restaurant Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	18 New St, Skerries, Co Dublin
			Organisation of Working Time Act, 1997	
<b>Bonanza Food Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Hillcrest, Kilcullen, Co Kildare
<b>Kings Garden Takeaway Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Main St, Kilcullen, Co Kildare
<b>Marios Ventures Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Low St, Thomastown, Co Kilkenny
			Employment Permits Acts 2003 and 2006	
<b>Thi Mai an Nguyen</b>	Hair & Beauty	Sole Trader	Employment Permits Acts 2003 and 2006	Castle Shopping Centre, Bray, Co Wicklow

Employer	Sector	Entity Type	Legislation	Address
<b>Ling Bing Zhou and Tai Ri Lin</b>	Food Service Activities	Sole Trader	Organisation of Working Time Act, 1997	Drumgold, Chapel Lane, Enniscorthy, Co Wexford
<b>Xinxing Food Co Ltd</b>	Food Service Activities	LTD - Private Company Limited by Shares	Payment of Wages Act, 1991	Main St, Bray, Co Wicklow
			National Minimum Wage Act 2000 (as amended)	
<b>Xue Hai Chen</b>	Other Service Activities	Sole Trader	Workplace Relations Act, 2015	48A Rear Main St, Bray, Co Wicklow
<b>Farid Ahmad Mohammad &amp; Waheed Ulah Nasser</b>	Food Service Activities	Sole Trader	Employment Permits Acts 2003 and 2006	4 Tyrone Road, Lismore Park, Waterford
<b>Big John's Takeaway Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	National Minimum Wage Act 2000 (as amended)	Main St, Mohill, Co Leitrim
			Organisation of Working Time Act, 1997	
			Employment Permits Acts 2003 and 2006	
<b>CANDK Star Ltd</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Unit 2 The Mall, Blessington Town Centre, Co Wicklow
			Workplace Relations Act, 2015	
			Organisation of Working Time Act, 1997	
<b>Zainab Halal Foods Ltd</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	18 Harbour Court, Mullingar, Co Westmeath
<b>Alan Bakery Limited</b>	Manufacturing	LTD - Private Company Limited by Shares	Payment of Wages Act, 1991	9C Racecourse Business Park, Galway
			Organisation of Working Time Act, 1997	
<b>Bright Fans Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Dublin Street, Ballyjamesduff, Co Cavan
			Organisation of Working Time Act, 1997	
<b>Mohammad Ishaq</b>	Food Service Activities	Business name - Individual	Employment Permits Acts 2003 and 2006	12 St Michael's St, Tipperary Town
			Organisation of Working Time Act, 1997	
<b>Tani Restaurants Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	3-4 Row Street, Naas, Co Kildare

Employer	Sector	Entity Type	Legislation	Address
<b>Hemanta Bohora</b>	Food Service Activities	Business name - Individual	Employment Permits Acts 2003 and 2006	Unit 4 Ballyederown, Burnfoot, Co Donegal
			Protection of Young Persons Act 1996	
<b>Jin Sheng Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	3 Meehan House, James Fintan Lalor Avenue, Portlaoise, Co Laois
<b>Boyne Valley Meats Ltd</b>	Meat Processing	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Ardcath, Garristown, Co Meath
<b>Lee Asain Delight Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	Ballyragget, Co Kilkenny
<b>Farrelly's Supermarket Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Abbeylands Crescent, Navan, Co Meath
<b>Rana Ali Raza</b>	Wholesale & Retail Trade	Sole Trader	Employment Permits Acts 2003 and 2006	30 Main Street, Arklow, Co Wicklow
<b>Damien Whoriskey</b>	Agriculture	Business name - Individual	Workplace Relations Act, 2015	Keeldrum Middle, Gortahork, Letterkenny, Co Donegal
			Organisation of Working Time Act, 1997	
			National Minimum Wage Act 2000 (as amended)	
			Payment of Wages Act, 1991	
<b>Sudeep Sudeep</b>	Food Service Activities	Sole Trader	Organisation of Working Time Act, 1997	Main Street, Falcarragh, Co Donegal
			Employment Permits Acts 2003 and 2006	
<b>Manuela Singh</b>	Food Service Activities	Business name - Individual	Employment Permits Acts 2003 and 2006	Main Street, Cresslough, Co Donegal
<b>SR Convenience Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Knocknagoran, Omeath, Co Louth
<b>Hollywood Nails Limited</b>	Hair & Beauty	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	38 Aungier St, Dublin 2
			Employment Permits Acts 2003 and 2006	
<b>L&amp;L Ocean Palace Chinese Takeaway Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Unit 8, Blackrock Shopping Centre, Navan, Co Meath
<b>Zhi Min Liu</b>	Food Service Activities	Business name - Individual	Organisation of Working Time Act, 1997	2-3 St Alberts House, Main St, Dunboyne, Co Meath

Employer	Sector	Entity Type	Legislation	Address
			Employment Permits Acts 2003 and 2006	
			National Minimum Wage Act 2000 (as amended)	
<b>R and Joy Pizza Express Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	25 Bank Place, The Diamond, Carndonagh, Co Donegal
<b>Rajbir and Sons Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	49 Upper Main St, Buncrana, Co Donegal
<b>Kamal Kamal</b>	Food Service Activities	Sole Trader	Employment Permits Acts 2003 and 2006	9 Lower Main Street, Dungloe, Co Donegal
<b>Sukhdev Singh and Kamal Kamal</b>	Food Service Activities	Sole Trader	Workplace Relations Act, 2015	Greens Corner, Carnmore Rd, Dungloe, Co Donegal
<b>Super Bites Restaurant Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Flat 1 Teeling Street, Tubbercurry, Co Sligo
<b>Affirmo Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Workplace Relations Act, 2015	Quay St, Sligo
<b>The Butlers Pantry Holding Limited</b>	Wholesale & Retail Trade	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Unit 16-18, Southern Cross Business Park, Boghall Road, Bray
			Workplace Relations Act, 2015	
<b>Athlone Apache Pizza Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Organisation of Working Time Act, 1997	Unit 5C Inish Carraig, Golden Island, Athlone, Co Westmeath
			Employment Permits Acts 2003 and 2006	
<b>Slieve Bloom Coach Tours Limited</b>	Transport	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	Killeen, Mountmellick, Co Laois
<b>Champion Meats Limited</b>	Food Service Activities	LTD - Private Company Limited by Shares	Employment Permits Acts 2003 and 2006	1&2 Turnpike, Ennis, Co Clare
<b>Bobbi Covaci</b>	Other Service Activities	Sole Trader	Organisation of Working Time Act, 1997	Units 1-3 Glencar Shopping Centre, Letterkenny, Co Donegal
			National Minimum Wage Act 2000 (as amended)	

# APPENDIX

# 4

## Notable WRC Adjudication Decisions

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## Overview

The following case summary appendix provides an overview of some of the key legal issues arising in the decisions and recommendations issued by the Workplace Relations Commission (“WRC”) during 2021. It is published as part of the WRC’s overall policy of transparency and accessibility. It seeks to give a convenient and informative overview of the wide range of legal issues considered in 2021. Decisions and recommendations referred to here may have been subsequently overturned on appeal. No warranty, undertaking or guarantee is given as to their legal status.

As regards the 2021 WRC decisions and recommendations, the criterion for inclusion has been whether the issue is likely to be relevant and of interest to parties involved in cases before the WRC. However, it should be noted that they merely represent a snapshot of the decisions published in 2021.

This appendix is published for the purposes of general information and accessibility only. It is not a statement of the law by or on behalf of the WRC: all readers are referred to the texts of the original decisions, which contain the only statements of the law made by the WRC or its staff. The case summaries are not, and should not be treated as, legal advice. In accordance with its statutory obligation to publish its decisions, the WRC has also made the full texts of its decisions and recommendations available on its website at [www.workplacereactions.ie](http://www.workplacereactions.ie). The website is updated regularly and includes advanced search filters. It is hoped that it is a useful and practical resource for all users.

## Employment Status

### Case/Decision

**A Translator v. A Translation Services Company, ADJ-00029108:**

### Keywords:

Freelancer, unlawful deductions, jurisdiction.

### Background

This case concerned the non-payment of fees to the Complainant, a freelancer who completed tasks assigned by the Respondent, a translation services company. The Respondent consistently maintained that the Complainant was not an employee and that the matter therefore could not be determined by the WRC. The Respondent did not dispute the amounts outstanding.

### Findings

The AO considered the definition of “*employer*”, “*wages*” and what constitutes an employment contract under the Payment of Wages Act 1991 (“*PWA*”). The AO also considered the Irish Revenue’s Code of Practice for Determining Employment or Self-Employment Status of Individuals. The AO noted *The Minister for Education and Skills v. Boyle* [2018] IESC 52 where the (then) Chief Justice stated: “*the definition of ‘contract of employment’ for the purposes of the 1991 Act clearly includes any person ‘who is liable to pay the wages of the relevant person.’*” Based on the character of the tasks assigned by the Respondent which were personally performed by the Complainant and the definition of a contract of employment for the purposes of the PWA, the AO found that the Complainant could rely on the PWA to bring a claim.

The Complainant provided evidence of unpaid work that she had personally undertaken totalling €2,320.95. The AO noted that pursuant to s.41(6) of the Workplace Relations Act 2015, he could only consider complaints brought within 6 months of the date of contravention. The AO noted that in this matter, the date of contravention was 30 days after the invoice was sent based on the agreed terms between the parties. The AO found that, based on the unpaid invoices that he could properly consider within the above time limit, the Complainant could make a claim for unpaid wages totalling €2,106.81. Finally, the AO found that the complaint was well founded and that the claim for unpaid wages of €2,106.81 constituted an unlawful deduction under the PWA. The AO directed the Respondent to pay compensation in the sum of €2,106.81 to the Complainant, less any lawful deduction.

#### Case/Decision

**Padraic Hanley v. PBR Restaurants Limited, ADJ-00030290:**

#### Keywords:

Status of employment, excessive hours, breach of the Terms of Employment (Information) Act 1994.

### Background

In August 2008, the Complainant set up a business which by 2019, comprised of five restaurants and a mobile takeaway at various Dublin locations. In August 2019, the company went into examinership and in December 2019, it was acquired by a holding company and exited examinership under new directors. Two of the restaurants were sold and the business was then comprised of three restaurants and a takeaway – the Respondent in these proceedings. As a result of the examinership, the Complainant's shares transferred to the holding company, he resigned as managing director and became the general manager, reporting to two directors of the holding company. Prior to the examinership, the Complainant's salary was €97,500, whereas from December 2019, it was €71,500. This claim ultimately encompassed three complaints pursuant to the Unfair Dismissals Act 1977 ("UDA"); the Organisation of Working Time Act 1997 ("OWT"); and the Terms of Employment (Information) Act 1994 ("TEIA").

### Findings

The AO firstly considered whether the Complainant was an employee, through the prism of a number of caselaw-established tests. The AO considered the High Court decision in *Minister for Agriculture and Food v. Barry* [2008] IEHC 216, which held that while the tests are potential aids for identifying the nature of the working relationship, there is no single definitive test. The AO also considered the Code of Practice for Determining Employment or Self-Employment Status of Individuals. Looked at "in the round," the AO found that, from August 2008 until the date of examinership in August 2019, it was clear that the Complainant was engaged with his co-directors in an enterprise in which they shared equally the risk of failure and the potential for success. As such, during this time, he was an employer and a self-employed company director. In December 2019, when the Complainant sold his shares, relinquished the role of managing director and became the general manager, he also became an employee. As the Complainant was made redundant in August 2020, he did not have the requisite service of one year's employment to bring a complaint under the UDA.

The AO then considered the Complainant's claim that from December 2019 until March 2020, he worked more than 48 hours a week. The AO noted that at his level of seniority, the Complainant could determine the time at which he started and finished on any given day and was responsible for ensuring that he did not work excessive hours to his own detriment. The AO noted that there was no evidence to show that the Complainant was constrained in his effort to determine his hours of work, and he provided no information to show that he was prevented from exercising the normal discretion of a general manager to manage his own time. The AO found that in these circumstances, Part II of the OWT, in respect of hours of work, does not apply to the Complainant and so this complaint was not well-founded.

The AO then considered the Complainant's claim that as his status changed in December 2019, when he became the general manager, he was entitled to a written statement of his terms and conditions of employment pursuant to the TEIA. The AO found that this written statement should have been issued by the directors, and not based on a document drafted by the Complainant himself. Referring to *Megan Hayes Kelly v. Beechfield Private Homecare*, DWT 1919, the AO found the failure to issue any statement of terms and conditions of employment was more serious than issuing an imperfect statement. The AO therefore found that this claim was well founded and awarded him €5,500 in compensation, equivalent to four weeks' pay.

### Case/Decision

**An Adjudicator v. A Statutory Body, ADJ-00020182, ADJ-00020185, ADJ-00020187 and ADJ-00020191:**

#### Keywords:

Protection of Employees (Part-Time Work) Act 2001, Protection of Employees (Fixed-Term Work) Act 2003, Organisation of Working Time Act 1997, incorrect respondent/employer, jurisdiction, application to initiate fresh proceedings against correct respondent/ employer.

### Background

The case concerned separate complaints by four adjudicators concerning their rights under the Protection of Employees (Part-Time Work) Act 2001 ("PEPTW"); the Protection of Employees (Fixed-Term Work) Act 2003 ("PEFTW"); and the Organisation of Working Time Act 1997 ("OWT"). As there was a factual overlap between the complaints, it was agreed that the hearing in relation to the jurisdictional matters involving all four Complainants would be conducted together. This case essentially deals with four jurisdictional issues:

1. An incorrectly named respondent;
2. An application pursuant to s.39(4) of the OWT for leave to initiate proceedings against the Minister as co-respondent;
3. An application to add the Minister as a co-respondent to the proceedings; and
4. A request for the AO's recusal.

## Jurisdictional issues

### 1. Incorrectly named respondent

#### Background:

The Respondent argued that it was a legal impossibility for the Complainant to be employed by the Respondent and that the correct Respondent would be the Minister in this case. The Respondent representative sought the Complainant's consent to contact the Minister to seek confirmation for him to be named as the correct respondent in this case. The Minister indicated by letter of 9 October 2020, that it was his view, that he, as the person who appoints Adjudicators pursuant to the relevant statutory provisions, was the appropriate respondent to the instant complaints. The Respondent contended that the Minister is the correct respondent, but that the Complainant was statute barred from amending or adding this entity as a party to the proceedings. The Complainant argued that his relationship with the Respondent satisfies all the relevant tests which have been established by the courts when determining the employment status of an individual as an employee.

#### Findings:

The AO highlighted the distinction between office holder and those who hold their appointment at the pleasure of the government or a Minister of the government, as opposed to those who are engaged on a contract of employment in the conventional sense. He noted that it is clear from the statutory framework that the power to appoint AOs is vested in the Minister and that the Complainant was also paid a set fee on a *per diem* basis by the Minister in relation to the work that he conducted as an Adjudicator. Therefore, the AO found that this Adjudicator appointment contained all the characteristic features of a statutory office and that while in the position of Adjudicator, the Complainant was an office holder.

The AO further noted that it is clear from the definitions of the terms “employee” and “employer” under the PEPTW, the PEFTW, and the OWT, that an office holder is not precluded from protection under these Acts. Furthermore, the definition of “employee” explicitly states that an office holder who is engaged under a contract of employment in the service of the State shall be deemed to be an employee employed by the State or Government. In applying the abovementioned legislative provisions, the AO found that the establishment of any possible employment relationship arising from the Complainant’s appointment as an Adjudicator could only have existed between him and the Minister and not the Respondent.

Additionally, the AO noted that the cases cited by the Complainant undermined the contention that the Respondent was correctly named. Commenting on the cases submitted by the Complainant, the AO noted that it was clear that the relevant Government Ministry/Department was deemed to be the correct respondent rather than the actual Tribunal or statutory body for which the applicants discharged the duties associated with their statutory office.

The AO found that there was no employer/employee relationship between the Complainant and the Respondent within the meaning of the terms provided for in the relevant enactments in this case and therefore the Complainant did not have the required *locus standi*. Lastly, the AO noted that any consideration of the relationship between the Respondent and Complainant in the context of the relevant tests for determining employment status as laid down by the courts would properly fall for consideration in terms of any proceedings against the Minister and not the Respondent.

## 2. Application pursuant to s.39(4) of the OWT for leave to initiate proceedings against the Minister as co-respondent

### Background:

The Minister confirmed that he would consent to any application which the Complainant may wish to make under s.39(4) of the OWT for leave to initiate proceedings against him in relation to this matter. However, the Minister confirmed that such consent was without prejudice to any and all defences on which he might rely in meeting the complaints, once joined.

### Findings:

In order to grant leave to an employee to invoke the provisions of s.39(4) of the OWT, an AO must be satisfied that the conditions specified in the subsection are met, namely:

- (a) That a complaint was previously initiated in respect of the same matter against an incorrectly named or described party;
- (b) The proposed respondent has been afforded an opportunity to be heard in relation to the application;
- (c) That the error in naming or describing the employer in the original case was due to inadvertence; and
- (d) That the proposed new respondent would not suffer an injustice if leave is granted.

Applying the above tests, the AO was satisfied that the conditions outlined at (a) to (d) were met in this case. Therefore, the AO granted leave to the Complainant pursuant to s.39(4) of the OWT to initiate proceedings against the relevant Minister in relation to the complaints under the PEPTW, the PEFTW and the OWT.

Finally, the AO clarified that the provisions of s.39(4) of the OWT do not provide for the substitution of one respondent with another in a claim already in being. Where leave is granted pursuant to s.39(4), the Complainant must then initiate their claim afresh against the correct party through the established procedures of the WRC by completing the normal initiating form.

### 3. Application to add the Minister as a co-respondent to the proceedings

#### Background:

The Complainant did not seek to amend the name of the Respondent or to substitute one Respondent for another but rather sought to join the Minister as a co-respondent to the proceedings. The named Respondent objected to this application.

#### Findings:

Relying on the *Travelodge Management Limited v. Sylwia Wach EDA1511* decision, the AO held that the application to add the Minister as a co-respondent was made outside of the statutory time limits and therefore, the AO does not have the jurisdiction to allow this amendment.

### 4. Request for recusal

#### Background:

The Complainant's solicitor raised the issue that the AO appointed to this case, Enda Murphy, should recuse himself. The Complainant argued that as the AO assigned to this case had previously served as an Equality Officer in the Equality Tribunal and as an Assistant Principal Officer in the relevant Department, both of which are named as comparators for the purpose of the within complaints, this could give rise to a perception of a conflict of interest. The Complainant relied on the objective bias test outlined Fehilly J in *O'Callaghan v. Mahon [2008] 2IR 514*. The Respondent did not make any submissions in response.

#### Findings:

Applying the objective bias test outlined by Denham J at para. 54 in the Supreme Court decision of *Goode Concrete v. CRH [2015] 3 IR 493*, the AO found that the Complainant failed to establish that a reasonable person, in all the circumstances of the case, would have a reasonable apprehension that they would not be afforded a fair and impartial hearing in the event that the AO was to proceed with the investigation of these complaints. The common law doctrine of necessity also meant that he should not shirk his duty. Therefore, there was no basis upon which the AO, Enda Murphy, should accede to the Complainant's request for recusal in relation to this matter.

### Conclusion

It was held that the Complainant had pursued the incorrect respondent and that he was not engaged pursuant to a contract of employment by the named Respondent within the meaning of the specific enactments in question in this case. Therefore, the AO found that the Complainant did not have the required *locus standi* and subsequently the AO had no jurisdiction to hear these complaints. The AO granted leave to the Complainant pursuant to s.39(4) of the OWT to initiate proceedings against the relevant Minister in relation to all of the complaints.

Finally, in ADJ-00020185 and ADJ-00020187, the Complainant also claimed that the Respondent had contravened the Redundancy Payments Acts 1967 by failing to pay his statutory redundancy entitlements on the termination of his employment. In ADJ-00020185, ADJ-00020187 and ADJ-00020191, the Complainant claimed that the Respondent has contravened the Minimum Notice and Terms of Employment Act 1973 by failing to provide him with his statutory notice entitlements on the termination of his employment. However, for the reasons set out above those complaints also failed, as the incorrect respondent had been named.

## Payment of Wages

### Case/Decision

**Fisherman v. Fishing Trawler Owner, ADJ-00026812:**

#### Keywords:

Working excessive hours, unpaid wages, public holidays.

### Background

The Complainant was employed as a fisherman from 22 December 2016 to 15 August 2019. This case concerned a number of complaints under the National Minimum Wage Act 2000 ("NMW"), the Payment of Wages Act 1991 ("PWA") and the Organisation of Working Time Act 1997 ("OWT"). The Complainant claimed that he was not paid in accordance with the NMW; that he was not paid for hours that he worked; that he was not compensated for the Public Holidays he worked; that he did not receive the correct holidays; and that he worked in excess of a 48 hour week. The Respondent's representative failed to attend the second hearing day but indicated that he was satisfied for the AO to issue a decision. The Complainant's representative also indicated that he was satisfied for the AO to issue a decision.

### Findings

#### Preliminary Matter – Extension of Time Limit

The AO noted that the Complainant is a foreign national in precarious employment. He also noted that the Complainant was not aware of his employment rights until he received assistance from "Migrant Rights". The AO found that the reasons provided by the Complainant both explain the delay and provide an excuse for the delay.

The AO therefore granted an extension to the time limit as per s.41(8) of the Workplace Relations Act 2015. As the complaint was presented on 30 January 2020, the AO found that the period of investigation encompassed 31 January 2019 to 15 August 2019, the date of termination of employment.

### The Complaints

#### National Minimum Wage Act 2000:

The AO noted that the Complainant did not request a statement in writing from the Respondent concerning his hourly rate of pay. As a result, and pursuant to s.24(2) of the NMW, a dispute concerning hourly rate of pay cannot be referred to the WRC or heard by an AO. Therefore, the AO found this claim not well founded.

#### Payment of Wages Act 1991 and Organisation of Working Time Act 1997:

The AO noted that there was a conflict of evidence here insofar as the Complainant alleged that he worked 17 hours per day while at sea but was only paid for 8 hours per day. The Respondent argued that this was not the case as the boat did not operate to "full throttle" and there was significant downtime. However, the Respondent did not keep records for the boat and instead paid the Complainant the same each week as it was "an averaging week". The AO found that the Respondent had violated s.25 of the OWT and S.I. No. 709/2003 – European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of Working Time) Regulations 2003, in failing to maintain records of hours worked. The AO also found that in the absence of any records, he was obliged to accept the Complainant's evidence. Therefore, he found that on the balance of probabilities, the Complainant worked an average of 17 hours a day while at sea and 8 hours day while on shore. The AO consequently found that the claim was well founded and that the Respondent made an illegal deduction from the Complainant's wages in breach of s.5 of the OWT for the amount of €5,364.79 net.

As regards the complaint concerning public holiday pay, the AO referred to his above findings that as the Respondent failed to keep any records, on the balance of probabilities, the Complainant worked 17 hours per day while at sea. Pursuant to the PWA, the AO awarded the Complainant a total of €191.10 for the economic loss of the public holidays worked.

Finally, as regards the complaint concerning a working week in excess of 48 hours, the AO noted that this is an *“industry that is subject to some very challenging weather conditions and the safety of fishermen is of paramount importance.”* The AO further noted that *“it is essential that fishermen are protected against working excessive hours which may cause them to make errors in their work which could negatively impact on their safety and that of their colleagues.”* The AO referred to the principles set out by the ECJ in *Van Colson Kamann v. Land Nordrhein-Westfalen* [1984] ECR1891, *“where an individual right is infringed, the judicial redress provided should not only compensate for the claimant’s economic loss but must provide a real deterrent against future infractions”*. Consequently, the AO found that in addition to awarding back pay as far as 12 months maximum before the date the complaint is referred to the WRC, the OWT permits the award of compensation, up to a maximum of 2 years’ salary. The AO noted that this is to provide an effective remedy pursuant to EU law, and *“an effective, dissuasive and proportionate deterrent against future infractions.”* For these reasons, the AO awarded the Complainant compensation of €15,000.

The AO directed that these payments be made within six weeks of the date of the decision.

#### Case/Decision

**A Traffic Warden v. A Parking Management Company, ADJ-00030203:**

#### Keywords:

Payment of Wages Act, COVID-19 subsidy.

### Background

This complaint concerns an allegation of unlawful deduction of wages contrary to s.5 of the Payment of Wages Act 1991 (“PWA”). The Complainant was employed by the Respondent since 8 January 2018 on a gross salary of €1,928 per month, or €11.48 per hour. The Complainant maintained that the Respondent unlawfully deducted her wages to the amount of €576, despite there being no reduction in her hours of work during the relevant period. In response, the Respondent submitted that due to a downturn in business as a consequence of COVID-19, the company was granted the COVID-19 wage subsidy scheme. The Respondent maintained that it paid the Complainant the wage subsidy relating to her net average pay for January and February, and that it paid the maximum top up which it could provide under the scheme.

### Findings

The AO found the complaint to be well founded. He noted that that the Complainant’s hours of work did not cease during the relevant period, except for when she was absent due to having to self-isolate. He further found that the Complainant was entitled to be fully paid at €11.48 per hour for each hour she worked, irrespective of the COVID-19 subsidy. The Complainant never consented to a reduction in her hourly rate of pay, and so the Respondent should not have adjusted her rate of pay. The AO found that the Respondent had breached s.5 of the PWA in making deductions from the Complainant’s wages without her consent. The AO directed the Respondent to pay the Complainant her proper rate of pay for the 440 hours she worked over the period, at €11.48 per hour.

## Unfair Dismissal

#### Case/Decision

**A Tour Coach Driver v. A Coach Company, ADJ-00026224:**

#### Keywords:

Unfair dismissal, continuity of service, computation of service, doubt as to dismissal.

### Background

The Complainant was employed by the Respondent coach company as a seasonal driver/guide from April 2016. He alleged that he was unfairly dismissed by the Respondent on 15 July 2019 and sought compensation by way of remedy for unfair dismissal under s.8 of the Unfair Dismissals Act 1977 (“UDA”). It was accepted by the parties that the Complainant was never provided with an employment contract or disciplinary procedures. It was also accepted by the parties that the Complainant was paid an average of €550 gross per week. The Respondent argued that the Complainant did not have the requisite one year of continuous service to pursue a UDA claim. The Respondent also submitted that the Complainant had abandoned his employment and so it had been assumed that he had resigned.

When the hearing resumed, the Respondent further submitted that the Complainant had been removed from his usual assignment of work at the request of a Third-Party Tour Operator, but that there had been alternative work available for the Complainant. The Complainant refuted the Respondent's submissions.

## Findings

As regards whether the Complainant had one year of continuous service, the AO considered s.2(1)(a) and s.3(4) of the UDA. The AO also considered the Minimum Notice and Terms of Employment Act, 1973 and the Redundancy Payments Act 1971. The AO noted that the Complainant was employed by the Respondent on a seasonal basis from 2016 to 2019 and there was no evidence of termination by either party for the intervening periods. The AO was therefore satisfied that at all material times between April 2016 and July 2019, the Complainant remained an employee and that the periods between employment should properly be considered as either lay-off or absence by agreement. The AO referred to *Ryan's Redmond on Dismissal Law*, relying on *Farrell v. Farcourt Foods Ltd*. UD/610/1989: "An employee on lay-off has not had his contract of employment terminated and in such circumstances the issuing of a P45 does not necessarily constitute a termination." The AO found that on the balance of probabilities, the Complainant was not absent from his employment for more than twenty-six weeks between consecutive periods of employment. Consequently, the AO found that the Complainant had the requisite one year's continuous service within the meaning of UDA for the purposes of bringing a complaint of unfair dismissal.

The AO then considered the meaning of "dismissal" under the UDA and the objective test set out under *Devaney v. DNT Distribution Company Ltd* UD412/1993 as "...what needs to be considered is how a reasonable employee in all the circumstances would have understood the employer's intention." Based on the non-contested facts alone, namely that the Complainant considered his assignment to the same tour for several seasons to be his regular work, the AO was satisfied that a reasonable employee in the Complainant's position would have understood himself to have been dismissed when he was removed from that tour in the circumstances.

The AO noted that s.6 of the UDA places the burden on the employer to prove that a dismissal was not unfair. The AO noted that the Respondent failed to proffer any evidence to show that there were substantial grounds for the Complainant's dismissal. The AO was therefore satisfied that the Complainant was unfairly dismissed within the meaning of the UDA.

Finally, the AO considered it just and equitable in all the circumstances to award the Complainant a sum of €7,700 in compensation, being equivalent to remuneration for the remainder of the tourist season.

### Case/Decision

**An Operations Coordinator v. A Facilities Management Service Provider, ADJ-00028293:**

#### Keywords:

Unfair Dismissals Act, constructive dismissal, health and safety, COVID-19 pandemic, repudiation of contract, reasonableness.

## Background

The Complainant worked as a facilities operations coordinator in UCD from 1 May 2014 to 12 May 2020, earning €742.50 per week. The Complainant and two colleagues took certified sick leave following what they say was the Respondent's refusal to address COVID-19 related health and safety concerns that they raised about the workplace. The Respondent denied this and denied that the Complainant was entitled to consider herself to have been constructively dismissed on 12 May 2020.

## Findings

The AO noted that pursuant to the statutory definition of "dismissal" and case law (*Western Excavating (ECC) Ltd v. Sharp* [1978] IRLR 27 and *Conway v. Ulster Bank* UD474/1981), there are two distinct tests for constructive dismissal: the contract repudiation test and the reasonableness test. The AO further noted that an employee is only required to meet one test.

The AO found that the Complainant met the contract repudiation test for constructive dismissal. The AO noted that the requirement that the Complainant attend the workplace without adequate consideration of the elimination of risk amounted to repudiation of contract.

This arose as providing a safe place of work is a fundamental term of the contract of employment. The Respondent did not comply with the statutory framework by first seeking to eliminate risk, causing the Complainant to attend work in greater danger. In this case, the risk could have been readily eliminated or reduced through “*reasonably practicable*” steps, as suggested by the Complainant.

The AO further found that the Complainant met the reasonableness test for constructive dismissal. The Complainant articulated a clear grievance and suggested how the work could be done in the safest way possible. This was not adequately considered by the Respondent, leaving her with no real option but to resign.

As regards redress for the unfair dismissal, the AO noted that the Complainant had successfully sought alternative employment in early 2020. This hire was delayed by the pandemic and the Complainant began the new role five weeks after her resignation. The AO noted that an employee who has been unfairly dismissed is entitled to redress that is just and equitable, including financial loss arising from the dismissal. The Complainant was not in employment for five weeks after her dismissal and the resultant loss of income constituted such financial loss. The Complainant was entitled to compensation equivalent to five weeks of pay, consisting of a 45-hour week and an hourly rate of remuneration of €16.50. This amounted to €3,712.50.

Finally, the AO held that loss arising from a dismissal does not include loss of income prior to a dismissal. The Complainant was, therefore, not entitled to compensation for the loss of income incurred while she was on certified sick leave. The AO noted that there was no claim pursuant to the Payment of Wages Act and the AO did not see any contractual entitlement to paid sick leave.

## Employment Equality Act 1998-2015 – Compulsory Retirement

### Case/Decision

**Barbara Geraghty v. The Office of the Revenue Commissioners, ADJ-00000031:**

#### Keywords:

WRC and legislation, powers to amend, jurisdiction of WRC and High Court, age discrimination, fixed retirement ages, Civil Service Regulation Act 1956.

### Background

This case concerned the Complainant's challenge to her compulsory retirement age of 65, pursuant to s.8 of the Civil Service Regulations Act 1956 (“1956 Act”). The Complainant was a former civil servant holding various roles from 1969 to 1980 and 2000 to 2015. She had a good work record and received formal commendation. As her retirement date approached, she informed the Respondent that she wished to work past 65. However, she was told that her retirement age was fixed. The Complainant argued that the compulsory retirement age was discriminatory not least because her colleagues employed after 2004, who carried out similar duties, were not subject to the 1956 Act and did not have to retire until they reached 70.

### Preliminary Matters

There was some dispute regarding (i) the WRC's jurisdiction; and (ii) the named Respondent.

#### Jurisdiction:

The AO noted that age discrimination arose in the case of *Boyle, Cotter and Fitzpatrick v. the Minister for Justice, Equality and Law Reform and the Commissioner of an Garda Síochána and The Workplace Relations Commission* (“Boyle Case”). When the *Boyle Case* came before the Supreme Court, it ruled that the WRC did not have the statutory jurisdiction to disapply a piece of legislation enacted by the Oireachtas.

However, the Boyle case was subsequently referred to the CJEU which disagreed and ruled that “EU law, in particular the principle of primacy of EU law, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a national body established by law in order to ensure enforcement of EU law in a particular area lacks jurisdiction to decide to disapply a rule of national law that is contrary to EU law.” Consequently, the AO found that as EU-derived employment equality matters came within the scope of the WRC, it clearly had jurisdiction in this matter, and could disapply a national provision which conflicted with EU law.

**Named Respondent:**

The AO found that while a broader range of named joined Respondents may have been preferable, the Revenue Commissioners are “from a practical daily point of view, an integral part of the Civil Service establishment” and therefore a correctly named Respondent.

**Findings**

The AO noted that under s.34(4) of the Employment Equality Act 1998-2015 (“EEA”), a compulsory retirement age must be “objectively and reasonably justified by a legitimate aim” and that “the means of achieving that aim are appropriate and necessary”. The AO considered the UK Supreme Court case of *Seldon v. Clarkson Wright & Jakes* [2012] IRLR 590 to be analogous to the facts of this case. The AO noted Lady Hale’s finding that “[t]here is a difference between justifying a retirement age and justifying this retirement age.” The AO found that s.8 of the 1956 Act applied to a “rapidly diminishing” cohort insofar as it only applied to those recruited prior to 2004. The AO found that the s.8 compulsory retirement age of 65 could therefore not be objectively justified when so many of the Complainant’s colleagues who carried out similar duties could work until aged 70.

The AO found that the Complainant had made out a *prima facie* case that she was subjected to age discrimination. Following the EU Directive 2000/78/EC and the *Boyle Case* confirming the primacy of EU Law, the AO noted that s.8 of the 1956 Act must be disapplied as it applies individually to the Complainant. Pursuant to s.82(4) of the EEA, the AO awarded the Complainant €82,000 - the maximum in compensation in light of the CJEU’s dicta in the seminal case of *Van Colson v Land Nordrhein-Westfalen* Case 14/83 that damages in discrimination cases should be effective, dissuasive and proportionate.

This case is the first instance of the WRC disapplying national law for conflicting with EU law post-Boyle; there have been two cases in which the AO gave the Organisation of Working Time Act 1997 an EU “conformity-reading” based on the obligation to interpret national law in conformity with the content and objectives of directive and CJEU case law: *A Facilities Coordinator v. A Bakery* ADJ-00019188; and *An Employee v. A Security Company* ADJ-00028656.

**Case/Decision**

**A Senior Staff Nurse v. A Nursing Home (In Liquidation), ADJ-00027325:**

**Keywords:**

Sections 2, 6, 34, 76, 79, 82 & 104 of the Employment Equality Acts 1998-2015, discrimination and discriminatory dismissal on the ground of age, compulsory retirement, no objective justification.

**Background**

The Complainant started working for a nursing home in 2014 under a “Relief Panel Fixed Term Contract”. As there were no further renewals of the contract or any other terms of employment in writing, the Complainant’s employment effectively became a contract of indefinite duration. The contract contained a retirement condition that stipulated: “Retirement age is 65 years. Employment beyond retirement age is exceptional and only by agreement of the employer.” On being notified that her retirement date was approaching, the Complainant notified her employer that she wished to continue working beyond the age of 65 and she met with a manager to discuss the possibility of extending her contract. The Respondent affirmed to the Complainant that she would be employed for another year on a “Post-Retirement Fixed Term Contract of Employment.”

Eight months later, the Complainant expressed her wish to remain in the company for another year. Her previous manager with whom she had corresponded was unavailable and any further dealings were with the director of nursing. He informed her that it would not be possible for her to remain in employment after October 2019, the end of her contract. The Complainant corresponded with the director and board of directors noting that the Respondent had applied to obtain visas for non-EEA nurses who were due to commence work there shortly.

She was concerned that she would be replaced without cause. On 25 October 2019, the Complainant received a final one-line communication from the director of nursing confirming that her last working day would be 28 October 2019. The Respondent continued to operate for another eleven months before being subjected to insolvency proceedings before the High Court. Before the Respondent entered liquidation, the Complainant sought an award of compensation for the age discrimination she had experienced. In addition to the distress and indignity caused, she was also at a loss of eleven months' salary of circa €64,713, statutory redundancy of approximately €7,500 and an *ex gratia* payment of circa €3,000. The appointed liquidator took the place of the Respondent.

### Findings

The AO noted that s.34(4) of the Employment Equality Acts 1998-2015 ("EEA"), as interpreted by recent case law, requires an employer to show that setting a retirement age is not only objectively and reasonably justified by a valid goal, but also that retirement at that age is an appropriate and necessary way of accomplishing that goal. In the Complainant's case compulsory retirement appeared to be based solely on her date of birth. No objective justification was given either verbally or in writing and the Fixed Term Contract was silent in terms of satisfying s.6(3)(c) of the EEA. Accordingly, the Fixed Term Contract which was issued in 2018, upon the Complainant reaching the age of 65, was discriminatory on the grounds of age and tainted with illegality. When the Complainant requested a further extension in writing in advance of the expiry of her contract in October 2019, there was no meaningful engagement by the Respondent contrary to the Code of Practice on Longer Working (S.I. 600/2017) and her employment was simply terminated. Again, no rationale was provided to show that her compulsory retirement was objectively and reasonably justified by a legitimate aim and was appropriate and necessary to achieve that aim.

The AO noted that the Complainant had an impeccable work record without any capacity issues and there was ample work available, particularly as the Respondent was hiring agency and non-EEA employees at the time of her termination on 28 October 2019. As a consequence, the AO found that the Complainant was denied another eleven months of employment, statutory redundancy, and an *ex gratia* pay-out before the Respondent ceased operation and was subject to a Winding-up Order.

The AO found that the Complainant established a *prima facie* case that she was subjected to discriminatory dismissal, which was not rebutted. The AO awarded the Complainant €85,000 in compensation for breaches of the EEA and having regard to the requirement that the sanction be "*effective, dissuasive and proportionate*".

## Employment Equality Act 1998-2015 – Discrimination

### Case/Decision

**An Employee v. A Restaurant, ADJ-00031747:**

### Keywords:

Equality, pregnancy, dismissal.

### Background

Since 2019 the Complainant worked as a waitress for the Respondent. The Complainant maintained that she had a good relationship with the owner of the Respondent, Mrs S., until she informed her that she was pregnant. This case concerned the Complainant's allegations of discriminatory dismissal on the grounds of pregnancy; victimisation; and discrimination on the grounds of gender in relation to her conditions of employment. There was also disagreement between the parties as to whether the Complainant was dismissed, and as to the Complainant's wages. The AO considered *inter alia* oral evidence given on affirmation at the hearing, as well as conversations, text messages, and written correspondence between the parties.

### Findings

The AO noted that the burden of proof rests with the Complainant to establish that she did not resign. The AO considered the evidence of the parties, noting that there was "*considerable confusion*" on the part of the Respondent as to its own evidence concerning the Complainant's alleged resignation. The AO, preferring the clear evidence of the Complainant, found that the Complainant did not resign from her position but was dismissed by the Respondent on 12 March 2020 and was not made aware of this until receiving a letter dated 22 June 2020, which she did not receive before 27 June 2020.

The AO then considered the law in relation to discrimination on the grounds of pregnancy, namely: Council Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; the “Recast Directive” which expressly provides that less favourable treatment on the grounds of pregnancy is a form of prohibited discrimination; Council Directive 92/85 Pregnancy Directive; and s.2A of the Employment Equality Acts 1998-2015 (“EEA”) which prohibits discrimination on the grounds of pregnancy. The AO noted that the leading Irish case for dismissal on the grounds of pregnancy is *O’Brien v. Persian Properties trading as O’Callaghan Hotels*, DEC-E2012-010, where the Equality Officer relied on the decisions of the Court of Justice in *Dekker*, *Webb* and *Brown* in confirming that pregnancy is “a special protected period” and pointed out that the Labour Court in *Trailer Care Holdings Ltd v. Healy*, EDA128 had found that only the “most exceptional circumstances not connected with the condition of pregnancy allow a woman to be dismissed while pregnant”.

The AO noted the conflicts of evidence between the parties. The AO also noted that the Respondent chose to defend this case in an unacceptable manner, namely repeatedly calling the Complainant the wrong name and making serious and unsubstantiated allegations against the Complainant in her dealings with the Department of Social Protection. In conclusion, the AO found that the Complainant established a *prima facie* case of discriminatory dismissal on the grounds of pregnancy and that her claim for dismissal on the grounds of pregnancy was well founded. The AO did not find that the Complainant was victimised by the Respondent nor that the Complainant was discriminated against on the ground of gender in relation to the conditions of employment.

The AO noted that the Complainant’s wages were in dispute between the parties. As the Respondent was unable to advise as to exactly what she paid the Complainant, and as there was no contract of employment, the AO accepted the Complainant’s figure of €439.35 for 30 hours a week based on 6 hours a day over 5 days. In conclusion, the AO awarded compensation in the sum of €15,000 to the Complainant for the discriminatory treatment she suffered and to dissuade the Respondent from discriminatory acts into the future.

## Case/Decision

**Marie O’ Shea v. Health Services Executive, ADJ-00024740:**

### Keywords:

Reasonable accommodation.

## Background

This case concerned an alleged failure of the Respondent to accommodate the Complainant in returning to work following an injury, amounting to disability discrimination under the Employment Equality Acts 1998-2015 (“EEA”). The Complainant went on sick leave due to an arm injury in or around July 2018. In February 2019, the occupational health specialist confirmed that the Complainant was fit for “modified duty.” Three more reports followed, all of which indicated some fitness for duty but not “normal duty.” The earliest record of the Complainant being denied reasonable accommodation was a telephone conversation held in May 2019. While the deciding officer did engage in subsequent communications regarding possible alternative duties, these were subsequently not offered. The actual reason for refusing a reasonable accommodation was never stated. The Complainant claimed that she was treated unfairly as she was denied the option to continue working for the Respondent due to her disability.

## Findings

The AO noted that a failure to present stated grounds for refusing a reasonable accommodation would leave the Complainant in limbo, causing her to compare herself to others in the workplace and feeling that she had been treated unfairly. Furthermore, the AO noted that the Respondent’s obligation to give such information is required for the Complainant to make a well founded appeal in using the HSE grievance procedure.

The AO noted that there was no extensive medical assessment of the Complainant’s duties set against her role. Instead, the Respondent’s defence was that the role of a paramedic is so confined to emergency responses that she could not be accommodated, a position inconsistent with the legislation as found by the High Court in *Cunningham v. Irish Prison Service* [2020] IEHC 282.

On reviewing the duties of the paramedic grade, the AO found that the role of a paramedic as set out in the job description is not confined to the provision of an emergency service yet the assessment of fitness for duty and the defence of the complaint was confined to the emergency tasks – a selection of tasks not consistent with the Supreme Court in *Nano Nagle School v. Daly* [2019] IESC 63.

The AO found that the Respondent's limited assessment concluded that she was unable to perform her duties and relied on her disability to exclude her from the workforce and in doing so had not met their obligations under s.16 of the EEA. As a result, the AO found that the Respondent discriminated against the Complainant on the ground of disability. In arriving at this conclusion, it was also found that to establish a valid complaint under s.16 of the EEA, it is not necessary to provide a named comparator. Noting that a failure to provide a reasonable accommodation is not defined as discrimination under the EEA, the AO clarified why a failure to apply s.16 of the EEA, as in this case, represents discrimination.

The AO found that the complaint was well founded and so directed the Respondent to review the application of the EEA and prepare written guidelines and training for line managers and HR as to how they apply the terms of s.16 of the EEA within their sphere of influence. The AO also awarded €65,000 to the Complainant by way of compensation pursuant to s.82 of the EEA.

## Equal Status Act 2000-2018 – Discrimination

### Case/Decision

**Francis Eneas Kearney v. The Workplace Relations Commission, ADJ-00031944:**

#### Keywords:

Equal Status Act, disability, indirect discrimination, *Nathan v. Bailey Gibson, Stokes v. Christian Brothers High School Clonmel, CHEZ Razpredelenie Bulgaria AD v. Nikolova*.

## Background

This case encompassed a disability discrimination claim under the Equal Status Act 2000-2018 ("ESA"). The Complainant, Francis Eneas Kearney, took issue with the service he received and his treatment by the Respondent, the Workplace Relations Commission. The Complainant initially sought in 2020 to make a number of complaints against a newspaper, several private entities and public service bodies concerning his treatment by them. In the course of making these complaints to the Respondent, he took issue with (1.) the requirement to use the ES1 form and the complaint form; (2.) the treatment he encountered when using the Respondent's phone line in October 2020; and (3.) receiving 30 full complaint forms by post, amounting to approximately 1,000 pages. The Complainant alleged that this treatment, in accessing a service, amounted to direct and indirect discrimination as well as harassment, on the disability ground.

## Findings

The AO considered the relevant provisions regarding the burden of proof under s.38A of the ESA which requires a complainant to point to facts which raise an inference of discrimination or harassment. The AO also noted the Respondent's obligations under the Disability Act 2005 and s.42 of the Irish Human Rights and Equality Commission Act 2014.

The AO found that the Complainant failed to raise the inference of direct discrimination insofar as he failed to show that any action of the Respondent employees were "on the grounds of" the Complainant's disability. While the Respondent was incorrect to ask the Complainant to complete the ES1 form and the complaint form, it had not done so "on the grounds of" the Complainant's disability. The AO noted that the Respondent took steps to accommodate the Complainant's disability insofar as the centre manager took ownership of the complaints, spoke with the Complainant and apologised to him, and took steps to assist in the validation of his complaints. The AO found that no direct discriminatory action was taken "on the grounds of" the Complainant's disability.

The AO then considered the allegations of indirect discrimination. The AO examined the meaning and legal implications of "administrative practice", "excessive formalism" and "impartiality".

The AO also considered *inter alia*: the US case of *Griggs v. Duke Power* 401 US 42 (1971), the European Court of Justice decision in *CHEZ Razpredelenie Bulgaria AD v. Nikolova* (C-83/14); and the Irish Supreme Court cases of *Nathan v. Bailey Gibson* [1996] ELR 114 and *Stokes v. Christian Brothers High School Clonmel* [2015] IESC 13. The AO noted that as regards the complaint of indirect discrimination, he was tasked with examining whether a “provision” – in this case, the use of mandatory form – put a person with a disability such as the Complainant at a particular disadvantage and if so, whether the “provision” could then be objectively justified. The AO noted that there was a great deal of communication with the Complainant, and that on two occasions he was incorrectly told that the completion of either the ES1 or complaint form were mandatory. The AO also noted the Respondent’s quick reaction (and the centre manager’s in particular), to contact the Complainant and inform him that neither form was required and that it was a mistake. As a result, the AO found that there was insufficient evidence of the forms being mandatory to constitute a “provision”. The AO found that a “mistake” that was directly discriminatory, *i.e.*, an action on grounds of a protected characteristic would still be discriminatory, even if an error and not intentional. However, he further noted that a mistake can only be indirectly discriminatory if it forms part of a wider practice, regime etc., which was not the case here.

Finally, the AO found that that the Complainant had not been subjected to harassment by the Respondent. The Complainant called the Respondent and entered into a discussion when he was wrongly told that the ES1 form was mandatory. The AO noted the Complainant had said that he is hard of hearing and finds it difficult to regulate his voice volume. During the course of the telephone call, the Respondent employee said that he would end the call and did so. The Respondent’s centre manager later called the Complainant with the correct information regarding the ES1 form and apologised for what had happened. Taken at their highest, the AO noted that this set of events cannot be said to amount to harassment by violating a person’s dignity and creating an environment which was “intimidating, hostile, degrading, humiliating or offensive”, as per s.11(5) of the ESA. Similarly, the AO found that in sending the Complainant 30 complaint forms, the Respondent did not intend any negative consequences.

The Complainant wanted to take complaints against several parties and had technical difficulties using the online complaint form. The forms were then sent to facilitate the Complainant. The AO noted the inconvenience caused, but taken at its height, found that this did not amount to harassment.

In conclusion, the AO found that the Complainant did not establish a *prima facie* case of direct or indirect discrimination, nor of harassment on the disability ground.

### Case/Decision

**Anthony Lyttle v. Buy Wise Discount Stores Costcutter North Strand, ADJ-00032493:**

#### Keywords:

Facemask, face covering, discrimination, equal status, disability.

### Background

This case encompassed two discrimination complaints under the Equal Status Act 2000-2018 (“ESA”) regarding an obligation to wear a face covering in a retail outlet. The Complainant submitted that he suffered from claustrophobia and was therefore exempt from wearing a mask. The Complainant argued that in early January 2021, he was discriminated against by the Respondent on the grounds of his disability on two separate occasions. This occurred on (i) 5 January 2021, when he was refused access to a service as he failed to wear a facemask, thereby amounting to discrimination; and (ii) some days later when he returned to speak to the owner and noted a number of signs denying access to those not wearing facemasks, thereby amounting to discrimination. The Complainant also argued that the Respondent failed to provide him with reasonable accommodation for his disability.

### Findings

The AO examined s.3 of the ESA concerning discrimination on the grounds of disability; s.4 of the ESA concerning the provision of reasonable accommodation; and s.38A of the ESA concerning the burden of proof. The AO noted that in order to succeed in a claim for discrimination on grounds of disability before the WRC, it was for the Complainant to first establish a *prima facie* case of discriminatory treatment upon which the burden of proof would shift to the Respondent to rebut the allegations of discrimination.

The AO noted that the Complainant must establish that (i) he suffered from a disability; and (ii) that the Respondent was aware of such disability and treated the Complainant less favourably due to his disability. The AO noted that the Complainant did not adduce any evidence in relation to his disability. In this regard, the Complainant did not have any medical diagnosis, medical report, or other documentation to evidence his claustrophobia. The AO further noted that there was no evidence adduced to suggest that the Complainant was treated less favourably due to his disability – indeed the Complainant did not provide any details of his disability to the Respondent during either incident. In the circumstances, the AO found that the Complainant failed to demonstrate a *prima facie* case of discrimination on grounds of disability. The AO therefore concluded that the Complainant was not discriminated against by the Respondent on the grounds of his disability; and was not discriminated against by the Respondent on the grounds of disability in respect of a failure to provide him with a reasonable accommodation for his disability.

## Equal Status Act 2000-2018 – Harassment

### Case/Decision

**Suchavadee Foley v. Atercin Liffey Unlimited T/A Starbucks Tallaght, ADJ-00028487:**

### Keywords:

Equal Status Act, harassment, picture, race.

### Background

The Complainant, a person of Thai-Irish heritage, was ordering a beverage from the Respondent, a coffee shop, when the incident complained of occurred on 12 January 2020. It is common practice for employees of the Respondent to inscribe the customer's cup with their name when taking an order. The employee on duty could not spell the Complainant's name and instead drew the Complainant's smile and eyes upon the cup. The eyes as drawn by the employee were referred to by the Complainant as "*slanty*" eyes, which the Complainant found to be offensive.

It was apparent from the CCTV footage of the incident that the Complainant initially smiled and laughed when shown the drawing, but she contended that this was a nervous response, and that the situation made her feel very uncomfortable. In June 2020, the Complainant submitted a complaint of harassment on grounds of race to the WRC, seeking redress under s.21 of the Equal Status Act 2000-2018 ("ESA").

### Findings

Reviewing the ESA, the AO noted that there is a legal obligation on the "*responsible person*", in this case the coffee shop, to not permit another person who has a right to be present in or to avail himself or herself of any facilities, goods or services provided at that place, to suffer sexual harassment or harassment at that place.

The AO further noted that harassment is "*unwanted conduct*" related to a discriminatory ground and which may have the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. It includes acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

The AO found that the employee did not intend to humiliate the Complainant or make her feel uncomfortable. However, the AO also found that the Respondent had not provided sufficient training to staff about the power of drawings and pictures, and that what was important is how they are perceived. The AO found that the Respondent was incorrect in asserting that this was not a racist incident or to rely on the perceived acquiescence of the person at the receiving end of the conduct. The AO concluded that the Respondent had not taken reasonably practicable steps to prevent the harassment.

In conclusion, the AO decided that the Complainant was the victim of racial harassment and that the Respondent is the "*responsible person*" under s.11 of the ESA. The AO found that the Respondent did not take reasonably practicable steps to prevent the act of harassment and was also vicariously liable. The AO awarded the Complainant compensation of €12,000 – in doing so, the AO had regard to the Complainant's account of the effects that the harassment had on her and that the Respondent had not accepted that this was a racist incident.

**Case/Decision****A Member of the Public v. A Public Transport Company, ADJ-00016728:****Keywords:**

Service provider, burden of proof, harassment, discrimination, redress.

**Background**

The Complainant alleged that he had been treated less favourably by the Respondent, a public transport company, on grounds of his sexual orientation and disability on several occasions over a specified time period, contrary to s.3 of the Equal Status Act 2000-2018 ("ESA"). The Complainant also submitted that the Respondent's treatment of him constituted harassment contrary to s.11 of the ESA. The Complainant sought redress under s.21 of the ESA.

The Complainant submitted that he was subjected to humiliating treatment. This included derogatory name-calling, on a number of occasions by a particular bus driver of the Respondent's, referred to as Mr X. The Complainant also submitted that Mr X also refused to drive the bus with the Complainant on board. The Complainant stated that terms used during the derogatory name-calling were clearly linked to discriminatory grounds of his sexual orientation and disability, and that he was evidently treated less favourably than other service users on this basis. Several written complaints were also made by the Complainant to the Respondent following each incident. The Respondent submitted on behalf of Mr X that he denied ever using the alleged derogatory terms at any time. The Respondent argued that the entire ordeal had commenced with a dispute over fares, as Mr X had become aware that the Complainant was often not paying the correct fare while travelling. The Respondent accepted that matters were perhaps not dealt with as they should have been by Mr X, but that he had been provoked by the Complainant. Evidence was submitted by the Respondent that the Complainant had filmed Mr X and referred to him as being homophobic in public and on social media.

**Findings**

The AO found that there was insufficient evidence to find that Mr X had been aware of the Complainant's disability at any point, and that accordingly that part of the complaint could not succeed. However, he found that the submissions made by the Complainant, supported by the contemporaneous complaints which he submitted to the Respondent, were sufficient to establish a *prima facie* case of discrimination on grounds of sexual orientation under s.38A (1) of the ESA. He also found that the Complainant was subjected to harassment on the sexual orientation ground in contravention of the ESA. The AO found that there was insufficient evidence produced by the Respondent to rebut this presumption, and that accordingly it was found liable for the actions of Mr X on the basis of vicarious liability under s.42 of the ESA. The Complainant was awarded €7,500 as redress.

**Fair Procedures – Cross-Examination****Case/Decision****Sandra Blakeney v. Verve Marketing Ltd., ADJ-00029223:****Keywords:**

Cross-examination, burden of proof, Working Time Directive, *Zalewski v. Workplace Relations Commission*, *Federación de Servicios de Comisiones Obreras (CCOO) v. Deutsche Bank*.

**Background**

The Complainant was laid off due to the COVID-19 pandemic. She brought a series of complaints under the Organisation of Working Time Act 1997 ("OWT"), as well as singular complaints under the Terms of Employment (Information) Act 1994 ("TEIA"), the Payment of Wages Act 1991 ("PWA"), the Unfair Dismissals Act 1977 ("UDA") and the Redundancy Payments Act 1967 ("RPA") respectively. The complaints under the UDA and the RPA were later withdrawn. The Complainant submitted that the Respondent failed to maintain working time records as required by s.25 of the OWT. The Respondent submitted that the nature of the Complainant's role meant that she could choose her breaks. The Respondent did not maintain its own records.

## Findings

The AO considered that, in light of the CJEU case of *Federación de Servicios de Comisiones Obreras v. Deutsche Bank C-55/18* (“CCOO Case”), the complainant does not carry any sort of evidential burden in presenting their case. However, the complainant is, as part of fair procedures, required to sufficiently particularise their case so that the respondent knows which records to present *i.e.*, stating which days or weeks are at issue. Once the complainant particularises their case and the employer has no records, it falls on the employer to prove compliance. If the respondent does not have records, the most likely interpretation of the CCOO Case is that the evidence relied upon to show compliance must be akin to the objectivity, reliability and accessibility of records. The AO found that in this case, the Complainant did particularise her complaints. Thus, the burden of proof had shifted to the Respondent to show compliance in the absence of records.

A key issue in the case was the role of cross-examination. It was submitted by the Complainant’s solicitor that the Complainant should not be cross-examined because she had not given evidence and the burden of proof was on the Respondent. However, the AO indicated that he was obliged to allow cross-examination based on the procedural rights of the Respondent. At this point, the Complainant and her solicitor withdrew from the hearing.

The AO noted that the Complainant’s argument was based on the fact that the burden of proof was on the Respondent to show compliance with the OWT. However, the AO noted that not all of the complaints were made under the OWT. Even if the only claims were working time claims, the right to cross-examine is not determined by a burden of proof. Rather, it is a procedural right of the respondent irrespective of whether the complainant gave direct evidence. The Supreme Court decision in *Zalewski v. Workplace Relations Commission* [2021] IESC 24 was cited as indicating the importance of cross-examination as “a fundamental part of fair procedures.”

The AO further noted the duties of an AO as set out under s.41(5) of the Workplace Relations Act 2015. Whilst these do not specifically refer to cross-examination, they refer to the duty to inquire into the complaint and to allow the parties to be heard. He noted that “it is well-established that the opportunity to be heard encompasses the opportunity to cross examine.”

Further, the AO noted that one purpose of cross-examination is to elicit facts and this purpose is not confined to evidence given by the witness but can be regarding any relevant fact. Therefore, cross-examination was available to the Respondent despite the fact that the Complainant had not given evidence.

The AO also noted that within employment and equality law there are differing burdens of proof. Where a series of complaints have been made, it would be impractical to allocate procedural rights according to these differing burdens.

Finally, the AO noted that not only must he decide if a complaint is well founded, he also must decide the extent of the contravention in order to assess redress. Cross-examination, where sought, is important for addressing the appropriate redress to be awarded.

However, due to the fact that the Complainant and her solicitor left the hearing, the AO concluded that, in accordance with fair procedures, he could not find that the complaints were well founded.

## Industrial Relations Dispute

### Case/Decision

**Assistant National Director v. Health Service Provider, ADJ-00027118:**

### Keywords:

Industrial Relations Acts, additional responsibilities.

### Background

This matter concerned a dispute under s.13 of the Industrial Relations Act 1969. The worker was employed as an Assistant National Director specialist in Public Health Medicine since 2005. From May 2016 until July 2019, the worker took on the Director role, as well as other responsibilities. Despite his numerous requests, neither his grade nor his allowance were increased. In August 2019, his employer recommended that he receive an allowance for the period which he covered for the National Director in 2016, but this was not approved by the Department of Public Expenditure and Reform (“DPER”).

DPER concluded that the allowance sought was historically only paid to those at consultant level. DPER agreed to apply the allowance to a permanent appointee to the Director role but would not approve its payment to someone covering the role.

## Findings

The AO noted that the worker had taken on additional responsibilities at a very high level. He further noted that the worker was highly regarded by the employer. The AO found that the value of these additional responsibilities in relation to the Director role from May 2016 to July 2019 was evidenced by the approval of the allowance of €50,000 by DPER for the competition to fill the role permanently. The AO noted that this allowance was historically only paid to those at consultant level. The AO noted that there are ongoing discussions at a national level concerning the applicability of consultant status to senior doctors in public health.

The AO recommended that the “Clinical Director Allowance” (from October 2020 €50,000 but previously €46,000) be applied to the worker from May 2016 for the period he covered the National Director role until July 2019. The AO also recommended that the payment of this allowance be continued thereafter on an ongoing basis, in recognition of the additional responsibilities the worker continues to undertake. The AO recommended that this allowance be paid at least until the implementation of whatever is the conclusion of the current discussions concerning the applicability of consultant status to senior doctors in public health. At that time, the AO recommended that the employer fully reviews the worker’s role and ensures that he is graded and rewarded appropriately.

The AO highlighted that these recommendations were made in relation to and in recognition of the individual and particular circumstances of the worker’s situation and should not be taken to have any implications for anyone else.

## APPENDIX

## 4B

# Legal Challenges involving the WRC

## 2021 Legal Challenges to the WRC

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**Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General [2021] IESC 24:**

## Introduction

In *Zalewski v. Adjudication Officer & Ors* [2021] IESC 24, the Supreme Court scrutinised the procedural fairness afforded by the WRC pursuant to its founding legislation Workplace Relations Act 2015 (“**WRA 2015**”). While the benefits of “*providing a cheap, relatively informal and efficient decision-making function*”<sup>1</sup> were noted, it was held that they cannot come at the expense of “*the law and those procedures necessary for a fair determination*”.<sup>2</sup> The Supreme Court identified the legislation governing certain WRC procedures as being inconsistent with the Constitution, namely: the absence of a provision for an Adjudication Officer (“**AO**”) to administer an oath or affirmation; the absence of a possibility of punishment for giving false evidence; and the conduct of hearings in private. The Workplace Relations (Miscellaneous Provisions) Act 2021 was subsequently introduced and the WRC duly amended its procedures.

## Background

Mr. Zalewski was employed by Buywise Discount Store Limited as a security guard and supervisor. When dismissed from his job for allegedly failing to follow company procedures, he brought unfair dismissal and non-payment of notice claims before the WRC. The parties attended a hearing and the AO accepted written submissions and documentation. The matter was adjourned and another date was scheduled. However, when the parties attended, they were told that a decision had been rendered in favour of the Respondent, based upon the written submissions. This resulted in an appeal to the Labour Court; and the institution of judicial review proceeding before the High Court – seeking *inter alia* to quash the AO’s decision and challenge the constitutionality of the WRC’s adjudicative process, as established under the WRA 2015.

The High Court essentially upheld the constitutionality of the WRC’s adjudicative process and the matter was appealed to the Supreme Court.

The Supreme Court appeal encompassed four complaints under Article 40.3 of the Constitution: (i) there was no requirement that AOs or members of the Labour Court have any legal qualifications, training, or experience; (ii) there was no provision for an AO to administer an oath or affirmation and there was no criminal sanction for a witness who gave false evidence before an AO; (iii.) there was no express provision made for the cross-examination of witnesses; and (iv.) the proceedings before an AO were held otherwise than in public.

## Findings

The Supreme Court’s majority judgment was delivered by O’Donnell J:

Firstly, he noted that while the administration of justice is a function which is usually reserved for the courts under Article 34 of the Constitution, bodies such as the WRC are permitted to do so “*in a context that is non-criminal and limited*”<sup>3</sup> under Article 37. O’Donnell J. held that in exercising such functions, the WRC must act in accordance with the “*fundamental components of independence, impartiality, dispassionate application of the law, openness, and, above all, fairness*” and that “[t]he standard of justice administered ... cannot be lower or less demanding than the justice administered in courts”.<sup>4</sup>

O’Donnell J. found that it was not unconstitutional that AOs were not required to hold legal qualifications. However, he emphasised that “*it is not possible to have claims fairly determined in accordance with law in the absence of law and fair procedures.*”<sup>5</sup>

1 Judgment, para.137.

2 Judgment, para.139.

3 Judgment, para.138.

4 Judgment, para.138.

5 Judgment, para.139.

O'Donnell J. found that the absence of a provision for the administration of an oath or any possibility of punishment for giving false evidence is inconsistent with the Constitution. He noted that *"the requirement to give evidence on oath, and the possibility of prosecution for false evidence, is an important part of ensuring that justice is done in cases where there is serious and direct conflict of evidence."*<sup>6</sup>

O'Donnell J. emphasised the benefits of cross-examination as a core part of fair procedures. He held that while it was unsatisfactory that there was no express provision for cross-examination in the WRA 2015, it was not unconstitutional. He also noted that the 2015 Guidance Note for a WRC Adjudication Hearing provides for cross-examination and, in any event, if it is wrongly refused, a remedy would be available.

O'Donnell J. did not accept that a blanket prohibition on public hearings could be justified. He noted that public hearings may bring forward further relevant evidence and witnesses; allow a party to achieve public vindication; and allow the public to see justice administered. He noted that *"from time immemorial [the requirement for a public hearings has] been regarded as fundamental to the administration of justice"*.<sup>7</sup>

Finally, O'Donnell J. noted that the independence of decision-makers was touched upon in argument but did not constitute a specific challenge. He further noted that *"[i]ndependence and impartiality are fundamental components of the capacity to administer justice"*.<sup>8</sup> As such, he found that the power of revocation over the AO's appointment could not be exercised in a manner which interfered with, or detracted from, their independence.

**Ammi Burke (Applicant) v. An Adjudication Officer and the Workplace Relations Commission (Respondents) and Arthur Cox LLP (Notice Party) [2021] IEHC 667:**

## Introduction

This judicial review matter concerned a challenge to the handling of an unfair dismissal claim by the WRC. Simons J. provided a robust judgment, dismissing the Applicant's challenges in their entirety and making salient and more widely applicable findings regarding the application of the Supreme Court judgment in *Zaleski v. An Adjudication Officer & Ors* [2021] IESC 24; the administration of justice; and the appropriate use of judicial review proceedings.

## Background

On 31 January 2020 the Applicant brought an unfair dismissal claim against the Respondent before the WRC. The claim had had been part heard, but not yet determined, when the *Zaleski* judgment was handed down on 6 April 2021. The *Zaleski* judgment identified legislative shortcomings governing certain WRC procedures, one of which concerned the absence from the Unfair Dismissals Act 1977 of any provision for the administration of an oath or affirmation. The legislation was subsequently amended in July 2021 by the Workplace Relations (Miscellaneous Provisions) Act 2021.

Having heard submissions from the parties on 12 May 2021, the Adjudication Officer ("**AO**") wrote to the parties on 26 May 2021, outlining her decision to recuse herself from the case so that it could be heard afresh before a different AO who would administer the oath or affirmation. She noted *"I am firmly of the view that, in light of the [Zaleski] Supreme Court judgment, this is the safest and most prudent course of action"*.<sup>9</sup> On 19 July 2021, the Applicant brought judicial review proceedings essentially challenging this decision. The Applicant sought an order directing the AO to resume the hearing of the unfair dismissal claim. The Applicant also sought an order compelling the AO to direct the disclosure of certain documentation.

6 Judgment, para.144.

7 Judgment, para.142.

8 Judgment, para.147.

9 Judgment, para.20.

## Findings

Simons J. dismissed the logic of the Applicant's argument that the AO should determine the unfair dismissal claim by reference to the unamended and (now) unconstitutional legislation. Simons J. found that the Applicant would not be at a disadvantage as the procedural safeguards upheld by the *Zalewski* judgment are for the benefit of all parties. Moreover, he found no support for the proposition that the *Zalewski* judgment did not apply as the unconstitutionality finding concerned a legislative omission. Finally, relying on *Wily v. Revenue Commissioners* [1994] 2 I.R 160, Simons J. noted that the Applicant *"cannot be said to have any legitimate expectation that her claim for unfair dismissal would be completed under the unamended, invalid version of the legislation."*<sup>10</sup>

Simons J. emphasised from the outset that *"it would be most unusual for this court, in the exercise of its judicial review jurisdiction, to intervene in the proceedings of any tribunal exercising a judicial function prior to the conclusion of those proceedings."*<sup>11</sup> In any event he found it highly apparent that there were significant conflicts of fact. Simons J. found that these conflicts could only be addressed properly and fairly by requiring the evidence to be given under oath and submitted to cross-examination. As a result, he found that *"there can be no doubt but that the decision to discontinue the hearings, and to direct that this claim for unfair dismissal be heard and determined by a different adjudication officer is legally correct."*<sup>12</sup> Simons J. noted: *"It was eminently sensible for the (original) adjudication officer to take the precaution of ensuring that the fresh hearing be before a different adjudication officer who had not had any prior involvement."*<sup>13</sup>

Simons J. accepted that hearing the unfair dismissal claim afresh will result in some delay. However, he found that any concerns about delay were outweighed by the elimination of any possible perception of predetermination, relying on the Court of Appeal findings in *Commissioner of an Garda Síochána v. Penfield Enterprises Ltd* [2016] IECA 141.<sup>14</sup>

Simons J. found that there was no basis whatsoever for the Applicant's personal criticisms of the AO and noted that the Applicant subsequently withdrew the allegations of bias on the part of the AO or the WRC at the hearing.

Simons J. rejected in full the arguments that the WRC's published notices were an incorrect interpretation of the *Zalewski* judgment and a "whitewash" of the AO's decision. He found no evidential basis for these allegations and was satisfied that the policy revised on 30 July 2021 correctly interpreted and applied the *Zalewski* judgment.

Simons J. noted the gravity of the Applicant's disclosure request which would result in the High Court intervening in a part-heard claim for unfair dismissal and making a significant decision as to how it should be conducted. He referred to s.8(13)(a) of the Unfair Dismissals Act 1977, stating that the production of documents was solely a matter within the statutory discretion of the AO. He refused to order the disclosure on a number of grounds, namely, the matter would be heard afresh and so any complaint regarding the disclosure of documents was moot; the AO had not made any final decision concerning the disclosure of documents and it would therefore be premature to grant judicial review (see *Huntstown Air Park Ltd v. An Bord Pleanála* [1999] 1 I.L.R.M. 281); and in this case, there was also a full right of appeal to the Labour Court once the decision-making at first instance concluded.

Finally, Simons J. made some general observations regarding the appropriateness of seeking judicial review of interim procedural rulings made in the context of an unfair dismissal claim. He noted that judicial review is a discretionary remedy and relief will be refused where the application is premature or where there is an adequate alternative remedy. He stressed that it was not for the High Court to micromanage proceedings before an AO. He stated that a judicial review concerns the legality of a decision and that the High Court would have to be *"satisfied that the ruling was manifestly unfair, unreasonable or otherwise made without jurisdiction before it could set aside an interim procedural ruling."*<sup>15</sup>

<sup>10</sup> Judgment, para.57.

<sup>11</sup> Judgment, para.62.

<sup>12</sup> Judgment, para.69.

<sup>13</sup> Judgment, para.72.

<sup>14</sup> Judgment, para.74.

<sup>15</sup> Judgment, para.115.

## Erdogan v. The Workplace Relations Commission [2021] IEHC 348:

### Introduction

This case concerned an application for leave for judicial review. The underlying challenge concerned an Adjudication Officer's ("**AO**") decision to dismiss a complaint under the Employment Equality Act 1998-2015 ("**EEA**") because it was made outside of the prescribed 6-month time limit.

### Background

The Applicant brought a discrimination claim under the EEA, alleging that he was discriminated against during his employment and dismissed by acts of discrimination and victimisation. The Respondent argued that the complaint was made outside of the 6-month time limit – the employment terminated on the 14 February 2017 and the complaint was filed on 24 May 2018.

The 6-month time limit may be extended where the delay is due to a misrepresentation by the respondent under s.77(6) of the EEA. The Applicant contended that certain information only came to his attention on 15 January 2018, at a separate hearing before the WRC in respect of an unfair dismissal claim which was later withdrawn. He argued that minutes of meetings produced at this hearing were '*false*' and '*forged*', and that witnesses lied during the hearing. The AO concluded that the Applicant failed to provide evidence of misrepresentation and so the complaint was out of time.

### Findings

Simons J. identified the principal issue as being whether the statutory appeal before the Labour Court is an adequate alternative remedy. He applied the *McGoldrick v. An Bord Pleanála*<sup>16</sup> approach:

*"The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided, of course, that the applicant has not gone too far down one road to be estopped from changing his mind."*

He cited the six relevant factors listed in *O'Donnell v. Tipperary (South Riding) County Council*<sup>17</sup> and in particular looked to the fourth factor which states:

*"The essence of the issue raised relates to evidence as to the allegedly fraudulent actions of the applicant and this may be dealt with fully by an appeal before the EAT, rather than as a review of procedure. It is manifestly a matter for an appeal process rather than a review of procedure."*

Simons J. emphasised that judicial review is not the appropriate procedure to address allegations of fraud. He then looked at the following aspects of the decision-making structures under the Workplace Relations Act 2015:

- The appeal before the Labour Court is a *de novo* appeal.
- The procedure before the Labour Court is more formal than in the WRC and entails procedural safeguards which are not statutorily required before an AO, in particular the jurisdiction to hear evidence on oath and allow for cross-examination (this case was decided before the Supreme Court decision in *Zalewski* was handed down).
- There is a right of appeal against the determination of the Labour Court to the High Court on a point of law.<sup>18</sup>

<sup>16</sup> [1997] 1 I.R. 497 (at 509)

<sup>17</sup> [2005] IESC 18; [2005] 2 I.R. 483.

<sup>18</sup> Judgment, para.22.

Simons J. then addressed the Applicant's three judicial review grounds, in light of the above principles:

**1. Requirement to Hear the Other Side:**

Simons J found that the allegation that the AO's decision goes beyond the time-limit point, is not something which justifies a judicial review. He noted that it is not possible to treat the underlying merits of the claim as hermetically sealed from the time-limit point.<sup>19</sup>

**2. The AO's Decision was Unreasonable:**

Simons J. found the Labour Court to be much better positioned to resolve this allegation, as this issue goes to the factual dispute between the parties.<sup>20</sup>

**3. Allegation of Bias:**

Simons J. noted that bias must be external to the decision-making process. Relying on *O'Callaghan v. Mahon*,<sup>21</sup> Simons J held that normal interventions, including debate and argument, and even the expression of strong views on the subject-matter, will not normally justify a finding of bias.<sup>22</sup> Simon J found that an AO is entitled to ask parties to confine themselves to relevant issues, and to put questions to the parties.<sup>23</sup>

Simons J. concluded that the proper forum for the resolution of this factual dispute was the Labour Court and dismissed the application.

**Jennifer Morgan v. The Workplace Relations Commission, High Court, No. 514/2019:**

Ms Morgan was refused a postponement of her adjudication claim and did not attend the hearing. The Adjudication Officer ("**AO**") issued their decision and dismissed the case. Ms Morgan applied by way of judicial review for an order of *certiorari* to quash the decision of the AO and she also sought an injunction on the matter proceeding in either the WRC or to the Labour Court until certain findings were made by the DPC. The matter was defended and a Motion to Dismiss was heard in March 2021. The case was struck out in April 2021.

**Kenneth Smullen v. The Workplace Relations Commission & Joe Mallon Motors, High Court, No. 561/2020:**

The Applicant sought to prevent a part-heard adjudication hearing going ahead after a refusal to postpone it and lodged a judicial review application. There were related civil and criminal proceedings in the background. A few days later the hearing was in any event postponed due to COVID-19. The Applicant continued to move their judicial review application, which subsequently became entirely moot. At a contested costs hearing in March 2021, the WRC was awarded its costs by Hyland J.

**Donal Coughlan v. The Workplace Relations Commission, South Eastern Circuit, Carlow Circuit Court, No. 12/2020:**

This was a legacy Labour Relations Commission matter. By Ordinary Civil Bill, issued in December 2019, the Plaintiff, Donal Coughlan, instituted proceedings against the WRC. He sought damages for negligence and breach of duty. This included a breach of statutory duty in respect of the alleged failure by the predecessor body to relist his statutory employment law claims in a timely manner after they had been adjourned pending the outcome of an appeal by the Plaintiff in another statutory employment law claim against the same employer.

The WRC filed a full defence and the plaintiff subsequently withdrew the matter on 25 June 2021.

19 Judgment, para.24.

20 Judgment, para.23.

21 [2007] IESC 17; [2008] 2 I.R. 514.

22 Judgment, para.27.

23 Judgment, para.28.

## APPENDIX

## 5

# Legislation by which complaints may be submitted to the Adjudication Service

Organisation of Working Time Act, 1997

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Unfair Dismissal Acts

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Industrial Relations Acts

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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, 2000 (S.I. No. 488 of 2000)

---

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 noting that the Criminal Justice (Corruption Offences) Act 2018 is part of Schedule 1 of the 2011 Act

---

European Union (reporting, Analysis and Follow-up of Occurrences in Civil Aviation) Regulations 2020 (S.I. 195/2020) in relation to a complaint of a contravention of Article 16(9) of EU regulations 376/2014

---

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 S.42C (inserted by S.12 of the Industrial Relations (Amendment) Act 2012) of the Industrial Relations Act, 1946

---

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

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Protection of Employment Act, 1977

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Transnational Information and Consultation of Employees Act, 1996

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Further Education and Training Act, 2013

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## Explanatory Note

The legislative basis for the referral of complaints and disputes to the Director General of the WRC for adjudication arises from a number of different enactments which include the Workplace Relations Act 2015, the Unfair Dismissals Act 1977, the Employment Equality Act 1998, the Equal Status Act 2000, the Pensions Act 1990, the Protection of Employees (Employers' Insolvency) Act 1984, the Redundancy Payments Act 1967 and the Industrial Relations Act 1969.

The legislative basis for the referral of complaints and disputes under most of the enactments in respect of which the Director General of the WRC has first instance jurisdiction are governed by the provisions of Section 41 of the Workplace Relations Act 2015 (No. 16 of 2015).

Section 41 of the Workplace Relations Act 2015 creates a common procedure for the presentation of complaints and the referral of disputes under various pieces of employment legislation to the Director General of the WRC. The individual employment enactments under which a person can present a complaint or refer a dispute to the Director General of the WRC in accordance with the provisions of Section 41 are listed in Schedule 5 of the Workplace Relations Act, 2015.

The provisions of Section 41 of the Workplace Relations Act 2015 have been amended by the Section 24(b) of the Industrial Relations (Amendment) Act 2015 (S.I. No. 329 of 2015) and Section 20(1)(g) of the National Minimum Wage (Low Pay Commission) Act 2015 (S.I. No. 411 of 2015)).

The legislative basis for the referral of complaints to the Director General of the WRC under the Unfair Dismissals Act 1977 arises from Section 8 of that Act (the relevant provisions of Section 8 of the Unfair Dismissals Act 1977 have been amended by Section 80 of the Workplace Relations Act 2015 and Sections 14 and 20(1) (l) of the National Minimum Wage (Low Pay Commission) Act 2015 (S.I. No. 410 of 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Employment Equality Act 1998 arises from Section 77 of that Act (the relevant provisions of Section 77 of the Employment Equality Act 1998 have been amended by Section 83 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Equal Status Act 2000 arises from Section 21 of that Act (the relevant provisions of Section 21 of the Equal Status Act 2000 have been amended by Section 84 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under 44 the Pensions Act 1990 arises from Part VII of that Act (the relevant provisions of Part VII of the Pensions Act 1990 have been amended by Section 82 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Redundancy Payments Act 1967 arises from Section 39 of that Act (the relevant provisions of Section 39 of the Redundancy Payments Act 1967 have been amended by Section 76 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Protection of Employees (Employer's Insolvency) Act 1984 arises from Section 9 of that Act (the relevant provisions of Section 9 of the Protection of Employees (Employer's Insolvency) Act 1984 have been amended by Section 81 of the Workplace Relations Act 2015).

The legislative basis for the referral of a trade dispute to the Director General of the WRC under the Industrial Relations Act 1969 arises from Section 13 of that Act (the relevant provisions of Section 13 of the Industrial Relations Act 1969 have been amended by Sections 8, 40(9) and Schedule 2 Part 1 Item 2 of the Workplace Relations Act 2015).

## APPENDIX

## 6

# Complaints submitted to Adjudication by Legislation

ADJUDICATION	TOTAL
Section 6 of the Payment of Wages Act, 1991	2,033
Section 27 of the Organisation of Working Time Act, 1997	2,018
Section 8 of the Unfair Dismissals Act, 1977	1,473
Section 13 of the Industrial Relations Act, 1969	1,202
Section 77 of the Employment Equality Act, 1998	927
Section 7 of the Terms of Employment (Information) Act, 1994	876
Section 21 Equal Status Act, 2000	644
Section 12 of the Minimum Notice & Terms of Employment Act, 1973	557
Section 39 of the Redundancy Payments Act, 1967	416
Regulation 10 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)	303
Industrial Relations Acts (1946 - 2015)	221
Section 14 of the Protection of Employees (Fixed-Term Work) Act, 2003	157
Section 28 of the Safety, Health & Welfare at Work Act, 2005	150
Regulation 6 of the European Communities (Protection of Employment) Regulations, 2000	136
Section 24 of the National Minimum Wage Act, 2000	110
Regulation 18 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	106
Section 45A of the Industrial Relations Act, 1946	95
Schedule 2 of the Protected Disclosures Act, 2014	69

ADJUDICATION	TOTAL
Section 16 of the Protection of Employees (Part-Time Work) Act, 2001	57
Section 23 of the Industrial Relations (Amendment) Act, 2015	36
Section 86 of the Employment Equality Act, 1998	36
Section 9 of the Industrial Relations (Miscellaneous Provisions) Act, 2004	36
Section 81(e) of the Pensions Act, 1990 as amended by the Social Welfare (Miscellaneous Provisions) Act, 2004	26
Section 18 of the Parental Leave Act, 1998	22
Section 30 and 31 of the Maternity Protection Act, 1994	23
Regulation 15 of the European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations, 2006 - S.I. No. 507 of 2012	19
Section 18A of the Organisation of Working Time Act, 1997	18
Section 25 of the Protection of Employees (Temporary Agency Work) Act, 2012	17
Part 14 Section 103(55M) of the Health Act, 2007	14
Section 19 of the Carer's Leave Act, 2001	12
Section 24 of the National Minimum Wage Act, 2000	9
Schedule 6 of the Consumer Protection Act, 2007	9
Section 20(1) of the Industrial Relations (Amendment) Act, 2015	8
Section 67(5) of the Property Services (Regulation) Act, 2011	8
Section 9 of the Protection of Employees (Employers' Insolvency) Act, 1984	7
Schedule 2 of the Criminal Justice Act, 2011	7
Section 6(1) of the Prevention of Corruption (Amendment) Act, 2010	7
Schedule 3 of the Employees (Provision of Information & Consultation) Act, 2006	7
Section 18 of the Protection of Young Persons (Employment) Act, 1996	7
Schedule 2 of the Employment Permits Act, 2006	5
S.I. No. 494 of 2004 and Clauses 6 of the EC (Working Conditions of Mobile Workers engaged in Interoperable Cross-Border Services in the Railway Sector) Regulations, 2009-S.I. No. 377 of 2009	5
Complaint seeking adjudication by the Workplace Relations Commission under Schedule III of the Competition Acts, 2002-2010	5
Regulation 8 of the European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-Border Services in the Railway Sector) Regulations, 2009-S.I. No. 377 of	4
Section 27 of the Paternity Leave and Benefit Act, 2016	3
Section 62(2) of the Charities Act, 2009	3
Section 23 of the Parent's Leave and Benefit Act, 2019	3
Schedule 4(1) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations, 2007	2
Section 23 of the Parent's Leave and Benefit Act, 2019	2
Section 8(1) of the European Communities (Working Conditions of Mobile Workers Engaged in Inter-Operable Cross-Border Services in the Railway Sector) Regulations, 2009 - S.I. No. 3	1
Section 35 of the Further Education and Training Act, 2013	1

ADJUDICATION	TOTAL
Schedule 2 of European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations, 2006	1
Schedule 3 of the Employees (Provision of Information & Consultation) Act, 2006	1
Section 11A of the Protection of Employment Act, 1977	1
Section 4 of the Protection of Persons Reporting Child Abuse Act, 1998	1
Other/not specified	98
<b>Total</b>	<b>12,014</b>

# Notes

# Notes



