



# WORKPLACE RELATIONS COMMISSION ANNUAL REPORT 2018

Presented to the Minister of State  
with special responsibility  
for Trade, Employment, Business, EU Digital  
Single Market and Data Protection

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



# WRC

An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission



# DIRECTOR GENERAL'S REPORT

I have the pleasure of submitting to the Minister the fourth Annual Report of the Workplace Relations Commission (WRC).

With a workforce of just under 200, supplemented by over 30 external Adjudicators, offices in five locations and operational bases for hearings and meetings in many counties, the WRC provides a key, high-quality service nationally, which is free of charge.

The year in review witnessed significant demand and output increases across all services:

- **Telephone enquiries increased by 10%**
- **Conciliation referrals increased by 13%**
- **Individual complaints submitted for adjudication or inspection increased by 10%**
- **Inspections concluded increased by 20%**
- **The number adjudications heard increased by 20%**
- **The number of adjudication decisions increased by 32%**
- **The number of mediations increased by 220%**

The WRC hosted its inaugural seminar 'The World of Work: A Shifting Landscape' at Dublin Castle in February 2018. The seminar explored current and prospective changes that effect or will shortly affect a very large proportion of the Irish workforce. At the same time, together with the Economic and Social Research Institute, we also published an important report, 'Measuring Contingent Employment in Ireland'.

In 2018, the WRC continued to expand and improve its internal systems; a new process platform for the Inspections and Enforcement Division went live, while preparatory work started on a new case management system for the Conciliation, Advisory and Mediation Service.

The Board of the WRC submitted a strategy statement to the Minister, 'Fair and Compliant Workplaces and Equal Treatment in Services,' to cover the period 2019-2022. The statement sets the WRC a target to establish itself as a world leader in delivering an effective, efficient and trusted workplace relations service through its core values of Trust, Independence, Impartiality and Innovation.

The Strategy builds on the work of the staff who, since the WRC was established in 2015, have worked tirelessly to put in place a workplace relations service recognised for the quality service it delivers to all our users. The outcomes and achievements of the past year, which are outlined in this report, would not have been possible without their dedication and commitment.

Last year also saw the departure of the Director General, Ms. Oonagh Buckley. On behalf of the staff of the WRC I would like to thank her for her very significant contribution to the WRC and wish her every success in her new role.

I would also like to acknowledge the continued support of the Minister, the Board, and the Department of Business, Enterprise and Innovation, which has been central to the achievements of the WRC to date.



**Liam Kelly**  
Director General (*Acting*)

# BOARD OF THE COMMISSION

The Board of the Workplace Relations Commission (WRC) is chaired by Dr. Paul Duffy, Vice-President, Pfizer Global Supply



Dr. Paul Duffy (Chair)

## BOARD MEMBERS



Liam Berney



Maeve McElwee



Dr. Michelle O'Sullivan



Deirdre O'Brien



Geraldine Hynes



Richard Devereux



Audrey Cahill



Shay Cody

## Fees/Ethics in Public Office

All Board members, Adjudicators, Rights Commissioners and relevant Officers of the Commission have completed the appropriate returns under the Ethics in Public Office Acts. The Chairman and members of the Board are not in receipt of any fee in connection with the performance of their duties as Board members.

## Board Meetings

The Board met on four occasions in 2018, in February, May, September and November. The May meeting was held in the WRC Office in Shannon, Co. Clare.



## Work Programme 2019

In accordance with section 22(1) of the Workplace Relations Act 2015, the Board prepared the Work Programme 2019. This programme was subsequently approved by Minister Pat Breen, T.D., Minister of State with special responsibility for Trade, Employment, Business, EU Digital Single Market and Data Protection. The Work Programme 2019 is available to download on the WRC website.

## Statement of Strategy 2019 - 2022

In accordance with section 21 of the Workplace Relations Act 2015, the Board submitted a three year strategy statement to the Minister, 'Fair and Compliant Workplaces and Equal Treatment in Services,' in December 2018. It is a successor to the first such strategy, 'Assisting the Recovery in a Changing and Challenging Environment'.

## Director General

On 1 November 2018, the Minister assigned Liam Kelly, Chief Operations Officer, to act as Director General, pending the appointment of a new Director General.

# KEY PERFORMANCE METRICS WRC ACTIVITY 2018



## 7,724

Adjudication complaint files received



## 15,451

Specific complaints received



## 5,312

Adjudication hearings



## 2,964

Adjudication decisions issued



Almost all **adjudication complaints** processed in **less than 9 months**



## Type of complaint

of the specific complaints received

## 27%

Related to  
Pay Issues



## 13%

Related to  
Working Time



## 14%

Related to  
Unfair Dismissal

## 14%

Related to  
Discrimination  
/ Equality

## 9%

Related to  
Trade Disputes  
/IR Issues

## 8%

Related to  
Terms & Conditions  
of Employment

## KEY PERFORMANCE METRICS WRC ACTIVITY 2018



**5,753**  
Inspections  
concluded

**133,462**

Employees covered by  
inspections



**€3.1m**  
Wages  
recovered (up 75%)



**1,145**

Conciliation  
conferences held,  
covering over

**900,000**  
employees



**€2.7m**  
Web views  
(up 17%)

Legacy  
adjudication  
complaints  
reduced to

**151**



**57,348**  
Calls to  
infoline



**Face-to-Face**  
mediation up

**206%** on 2017

# KEY PERFORMANCE INDICATORS

## Three Year Activity Review 2016-2018

Activity	2016	2017	2018	Total
<b>Conciliation</b>				
Conferences	1,348	1,239	1,145	3,732
Facilitation	423	995	500	1,918
<b>Mediation</b>				
Telephone	662	376	1,241	2,279
Face-to-Face	69	197	603*	869
<b>Adjudication</b>				
Complaint files	6,863	7,317	7,724	21,904
Complaints	14,004	14,001	15,451	43,456
Adjudications heard	3,518	4,370	5,312	13,200
Decisions issued	1,232	2,247	2,964	6,443
Legacy (on hands)	1,628	295	151	-
<b>Advisory</b>				
New projects	64	68	44	176
<b>Inspection</b>				
Concluded	4,830	4,747	5,753	15,330
Wages recovered	€1,500,000	€1,770,000	€3,100,000	€6,370,000
Prosecutions	136	125	98	359
<b>Information</b>				
Calls answered	59,549	52,001	57,348	168,898
Web visits	2.2m	2.3m	2.7m	7.2m

\*Includes 363 'Class Mediations'



# FUNCTIONS OF THE COMMISSION

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

- Promote the improvement and maintenance of good workplace relations.
- Promote and encourage compliance with relevant employment, equality and equal status 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 Business, Enterprise and Innovation on the application of, and compliance with, relevant legislation.
- Provide information to the public in relation to employment legislation.<sup>1</sup>

The Commission's core services reflect these functions and include early dispute resolution, mediation, conciliation, facilitation and advisory services, and adjudication on complaints and disputes. It promotes compliance with employment rights and equality, and equal status legislation and, where necessary, achieves this through enforcement. It also provides employment rights and industrial relations information to the public and processes employment agency and protection of young persons (employment) licences.

# RESOURCES IN 2018

## The cost of providing WRC services

The WRC is an office of the Department of Business, Enterprise and Innovation and is funded through the overall Departmental Vote.

<b>Non-pay</b>	<b>€2,314m</b>
<b>Pay</b>	<b>€11,700m</b>
<b>Total</b>	<b>€14,014m</b>

At the end of 2018, staff allocation stood at 179 permanent employees who are civil servants and part of the overall staffing of the Department of Business, Enterprise and Innovation. The staffing is supplemented by a further 31 external Adjudication Officers who are contracted to assist the Adjudication Service on a case-by-case basis. This number will increase with the addition of new external Adjudicators in 2019.

## Staffing

<b>Director General</b>	<b>1.00</b>
<b>Chief Operations Officer</b>	<b>1.00</b>
<b>Principal Officer</b>	<b>6.00</b>
<b>Assistant Principal</b>	<b>20.40</b>
<b>Solicitor</b>	<b>1.53</b>
<b>Higher Executive Officer</b>	<b>21.30</b>
<b>Executive Officer</b>	<b>67.06</b>
<b>Clerical Officer</b>	<b>60.50</b>



# SERVICE REPORTS

## CORPORATE SERVICES

The Corporate Services Division provides key resource and facilities support for the WRC in the delivery of its core objectives.

### Governance

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

### Human Resources

Implementation of the WRC's comprehensive HR policy is well underway and has been tailored to reflect the ambitions of the statement of strategy 2019-2022, which builds on our expertise, delivery of service excellence, and the preservation and enhancement of our extensive knowledge base. Staff capacity, succession planning, skills, staff engagement and wellbeing were reviewed and improved on an ongoing basis in 2018 to ensure staff maximised their potential and stakeholder needs were met.

### Communications and Outreach

In June 2018, the WRC was assigned a communications and media specialist, who is tasked with drafting the WRC's first communications strategy for 2019-2020. A Communications Committee was established, which is chaired by the Director General and includes representatives from across the WRC's Divisions and from the Department of Business, Enterprise and Innovation's Communications Unit.

### WRC Seminar

The WRC hosted its inaugural seminar 'The World of Work: A Shifting Landscape' in Dublin Castle on 6 February 2018.

The seminar explored current and prospective changes that will affect a very large proportion of the Irish workforce. It also discussed broader policy questions, such as temporary work contracts, which are more and more a feature of working life, and the implications of an ageing workforce on employment relations.



### Customer Survey

In May 2018, the WRC published the results of its first customer survey.

The key findings of the customer survey were:

- Levels of satisfaction with the Conciliation Service were very high (c.90%), driven by the professionalism, ability, skills, understanding of the issues and impartiality of the team.
- Overall ratings of the inspection process were high; 91% of respondents were very impressed with the professionalism of the Inspectorate, 85% viewed it as impartial, 83% said they had a better understanding of employment legislation post-inspection and over half of non-compliant employers became compliant voluntarily shortly thereafter.
- Among those who had engaged with the Advisory Service satisfaction with the service, the process and the staff were all high, and, should the need arise, respondents said they would use the Service again.
- Satisfaction with the telephone service was high with over 90% satisfied with the service, the knowledge base of the staff, and the clarity and usefulness of the information provided.

- The Mediation Service was viewed as completely impartial by over 80% of users and two-thirds were happy with the service they received – albeit this was influenced by the outcome. Satisfaction rates of those who experienced a positive outcome in the mediation process were noticeably higher.
- Similarly, it appears respondents' perception of the Adjudication Service was also influenced by the outcome. Of those interviewed, 56% were satisfied with their overall experience of the Service. However, Adjudicators were positively rated, with seven out of ten service users rating the Adjudicators and support as professional and two-thirds rating them positively for impartiality regardless of outcome.

### New WRC Website

A redesigned website for the WRC was procured and designed throughout 2018. The new website will go live in early 2019. This will deliver an enhanced user experience and create separate online identities for the WRC and the Labour Court.



### Employment Rights Compliance Enforcement System (ERCES)

The WRC continued to design and rollout business applications on its Customer-Relationship Management (CRM) technology platform to support and underpin its operations, drive efficiency and effectiveness, and inform decision-making. A business application had already been rolled out for Complaints and Adjudication Management while a new Inspection and Enforcement Application (ERCES) went live in December 2018.

The WRC will fully exploit the investment in ERCES to produce 'real-time' information on the inspection and enforcement process, enhance operational efficiency and effectiveness, and explore how this technology can be used in conjunction with other public bodies to enhance targeting and risk profiling to further drive compliance. For example, work is at an advanced stage to integrate ERCES with the Department of Employment Affairs and Social Protection systems.

### New case management system for Conciliation

In 2018, work began on developing a new case management system for the Conciliation, Advisory and Mediation Service.

# INFORMATION AND CUSTOMER SERVICE

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

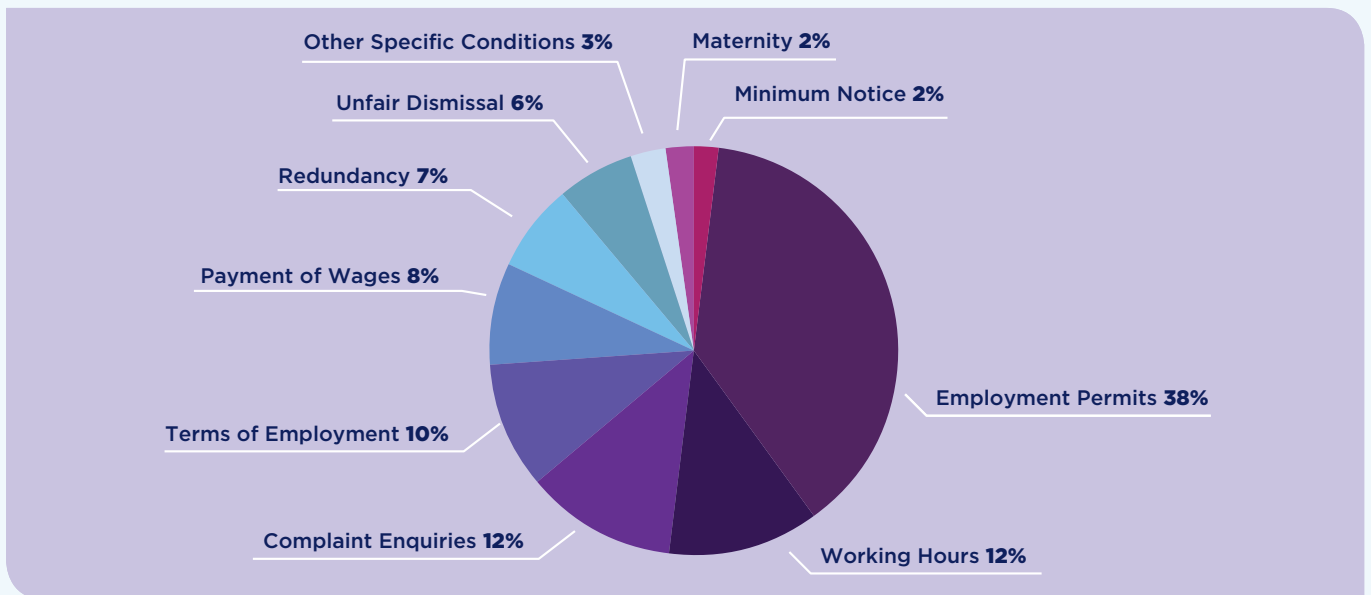
- Providing information on employment rights, equality, industrial relations and employment permits.
- Processing all complaint forms received.
- Processing all employment agency licensing and child work permit requests for film, culture, sport or advertising.

Information is provided to the public in the following ways:

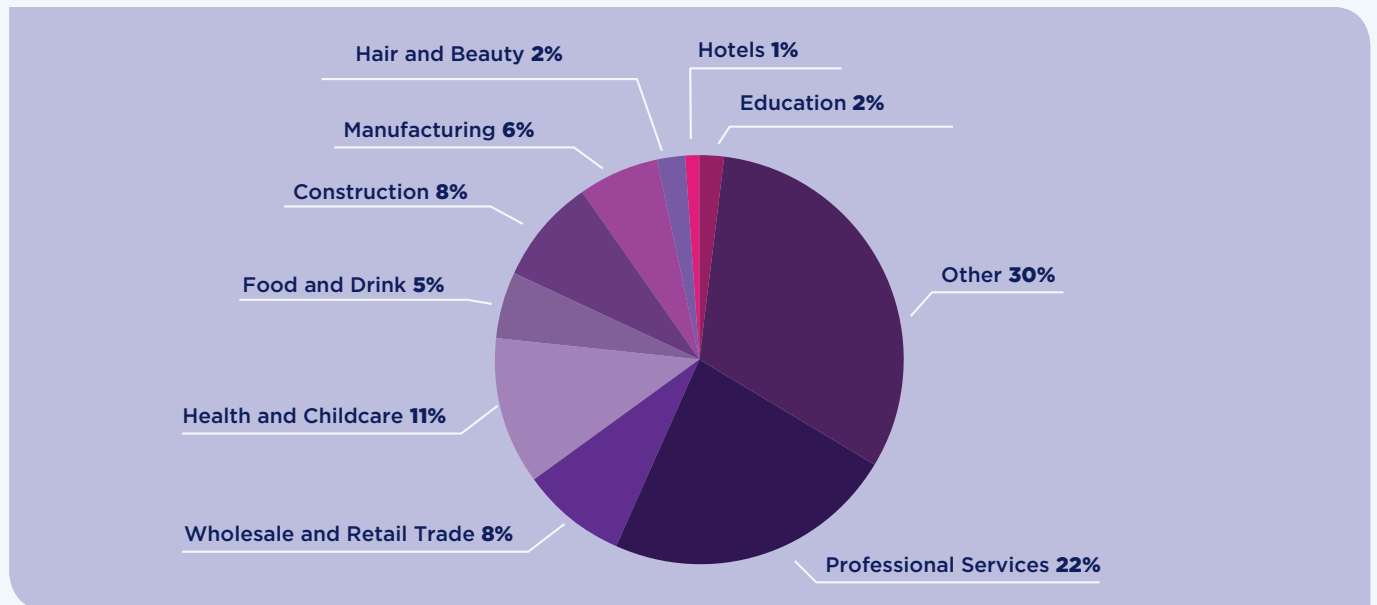
- A dedicated infoline, which is operated by experienced Information Officers (lo-call 1890 80 80 90).
- The WRC website ([workplacerelements.ie](http://workplacerelements.ie)).
- Information booklets, leaflets and other literature. For example, our 'Guide to Working Life' is made up of a series of information sheets targeted at employees, SMEs and 'start-ups' and covers the five key stages of working life.
- Providing relevant parties with updates on the status of complaints, dispute referrals and work permit applications.

## Key Figures 2018

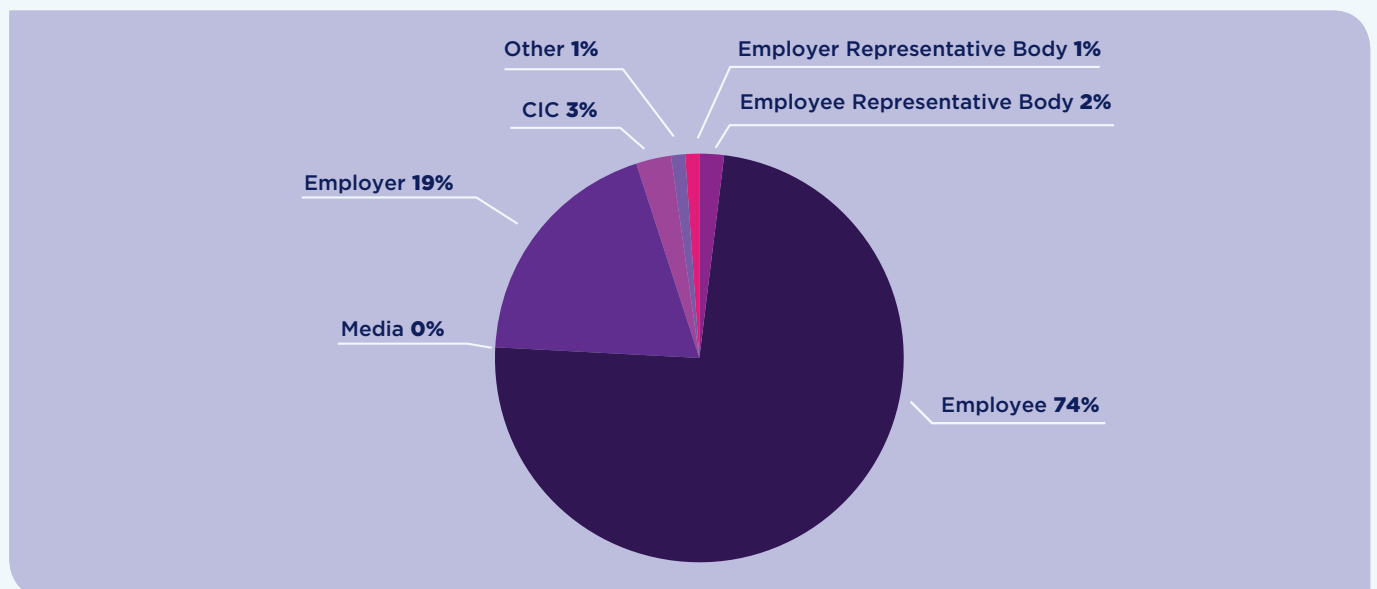
### Call topic



## Industry



## Caller type



## Activity Report

<b>Calls dealt with</b>	<b>57,348</b>
<b>Web views</b>	<b>2.7m</b>
<b>E-forms received</b>	<b>5,930</b>
<b>Presentations/Exhibitions</b>	<b>44</b>

## Protection of Young Persons and Employment Agency Licencing

In 2018, the Division issued 576 licences covering a total of 1,487 children in relation to the Protection of Young Persons (Employment) Act. It also issued 753 employment agency licences.

# ADVISORY SERVICE

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

The Service works with employers and employees and their representatives across all sectors, in small and large organisations, and in union and non-unionised employments. It customises its advice and intervention model to the needs of each workplace.

## SI 76 ('Collective Bargaining')

The Advisory Service helps management and employee representatives to resolve disputes in situations where negotiating arrangements are not in place. This is commonly referred to as the 'collective bargaining' element of the Industrial Relations Act 2015. The Advisory Service also works to facilitate engagement between the parties on issues other than collective bargaining, for example terms and conditions of employment and related matters. In 2018, a total of six such referrals were made to the Service.

## WRC Training

The WRC places a strong emphasis on enhancing the capacity of organisations to have in place effective industrial relations practices and procedures with a focus on orderly dispute resolution, (be it collective or individual), at an early, informal and 'in-house' stage. The Advisory Service oversees the WRC's training programme, which is key in helping organisations understand all aspects of the employment relationship and all training interventions are customised to the individual needs of each workplace. The training is delivered by staff from all Divisions of the WRC, drawing on their extensive knowledge and experience.



## Training requests are assessed using the following criteria:

- The degree to which training would promote improved industrial relations and good practice in the organisation.
- An assessment by the Advisory Service that training would enhance the organisation's dispute resolution capacity.
- The organisation's history of using the services of the WRC e.g. Adjudication and Conciliation.
- The capacity of the WRC to deliver training at the time of assessment in the context of resource constraints.

In 2018, 18 training programmes involving 45 modules were delivered to a wide range of private and public sector organisations.

**In 2018, 18 training programmes were delivered to private and public-sector organisations**



The programmes delivered included Dignity in the Workplace, Effective Utilisation of Procedures, Conflict in the Workplace, and Communications.

## Industrial Relations Reviews

Reviews of industrial relations involves an in-depth assessment in workplaces to identify problem areas, make recommendations around improved practices and procedures, and work with all concerned to implement those improvements. A typical review might include several information gathering exercises such as individual interviews, questionnaires, and focus groups to help accurately identify problem areas and work with all concerned to develop effective remedies. In 2018, a total of seven such reviews took place.

### Codes 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. In January 2018, the WRC published a Code of Practice on Longer Working, which sets out best practice in managing the engagement between employers and employees in the run up to retirement age including requests to work longer.

In 2018, the Minister requested the WRC and the Health and Safety Authority develop a joint Code of Practice on Bullying in the Workplace to replace the existing code published by both organisations. Work on the code continues and it will be published in 2019.

### Research

Following a competitive procurement process the WRC engaged the Economic and Social Research Institute to carry out research to determine the nature and incidence of contingent working in Ireland. Its report 'Measuring Contingent Employment in Ireland' was published in August 2018 and is available on the WRC website.

### Activity Report

<b>Workplace Industrial Relations reviews</b>	<b>7</b>
<b>Facilitations</b>	<b>13</b>
<b>SI 76 ('Collective Bargaining')</b>	<b>6</b>
<b>Training</b>	<b>18</b>





# CONCILIATION, FACILITATION AND MEDIATION

The Conciliation, Facilitation and Mediation Division's mission is to enhance the industrial relations environment in Ireland. It works at national, sectoral and enterprise level to promote, maintain and improve good workplace relations.

It provides an impartial, timely and effective suite of services to assist employers, employees and their representatives resolve disputes by agreement. The Commission provides four methods of voluntary disputes resolution: conciliation, facilitation, pre-adjudication mediation and workplace mediation.

## Conciliation

In 2018, just 4,050 days, involving 1,184 workers, were lost to industrial relations disputes compared to 50,191 days, involving 9,456 workers in 2017. While 2018 was a relatively peaceful year in terms of industrial relations and had the lowest number of days lost to industrial action since 2012, the 1,062 requests to the WRC for conciliation represented a 13% increase on 2017. In all, 1,145 conferences were convened with a resolution rate of 87%.

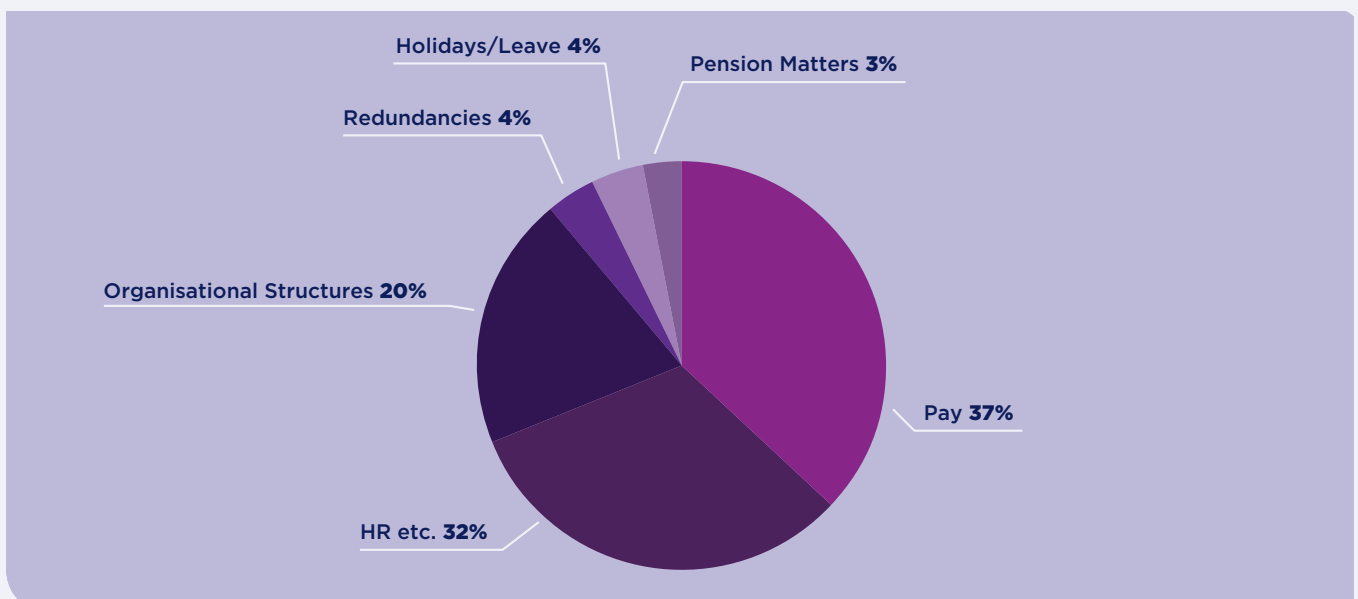
The issues dealt with at conciliation in 2018 concerned:

- pay (37%),
- human resources or industrial relations issues such as changes to terms and conditions, company/union agreements, grading, overtime allocation, productivity, outsourcing, etc. (32%),
- organisational structures related to changes in work practices, resourcing levels, staffing, shift work, etc. (20%),
- redundancies (4%),
- holidays or other forms of leave (4%), and
- pension matters (3%).

**In 2018,**  
**87%**  
**of conciliation**  
**conferences were**  
**resolved**



## Issues referred to conciliation in 2018



The Commission brokered agreements across several sectors of the economy, a number of which are already in the public domain including GSK, MSD, Novartis, Pinewood Healthcare, Wellman International, Dairygold, Donegal Meat Processors, Mondelez, Newmarket Co-op, Rosderra Meats, Independent News & Media, Smurfit Kappa New Press, Musgrave, Lufthansa Technik Shannon, Rubicon Heritage, Bórd na Móna, DAA, and Ervia. The Service also provided significant assistance to the public and healthcare sectors including engagements in relation to employees of bodies assisted by the HSE under Section 39 of the Health Act, 2004.

A total of 139 cases were referred to the Labour Court for a recommendation under Section 26(1) of the Industrial Relations Act 1990 where resolution was not possible at conciliation. In most of these cases, the conciliation process played a significant role in reducing the differences between the parties, refining the matter requiring a definitive Labour Court Recommendation to resolve the dispute.

A total of 926,427 employees were covered by disputes referred to the Commission in 2018, albeit some of these workers may have been party to more than one dispute before the Service throughout the year.

### **Mediation**

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

### **Pre-Adjudication Mediation**

Pre-adjudication mediation only happens when both parties agree to take part. The benefit of such an approach is that parties may agree a solution to the complaint or dispute in a confidential and informal manner while having full control over the outcome. It can take place over the phone or face-to-face, depending on the complexity of the issue and the willingness of both parties to engage.

In 2018, the WRC witnessed a significant increase in uptake of pre-adjudication mediation with 1,844 interventions taking place. Of these, 603 were face-to-face mediation (an increase of 206% on 2017\*) and 1,241 were dealt with by telephone (an increase of 70% on 2017). Almost two-thirds of cases (64%) where parties engaged with mediation were resolved at this stage.

**Face-to-Face mediations**  
increased by **206%** in 2018



The Division continued to actively promote the benefits of mediation through stakeholder presentations and education programmes and this was reflected in the increased use of the service in 2018.

### **Workplace Mediation**

Workplace mediation provides a prompt, confidential and effective remedy to workplace conflicts, disputes and disagreements on an ad-hoc basis. It suits disputes involving individuals or small groups of workers. Examples of situations where workplace mediation can be beneficial include interpersonal differences, conflicts and difficulties between colleagues working together, the breakdown of a working relationship, and issues arising from a grievance and disciplinary procedure, particularly before a matter becomes a disciplinary issue.

The demand for workplace mediation continued to rise in 2018 with a total of 81 requests - an increase of 16% on the previous year - and the third year of growth since the WRC was established in October 2015. The service is provided across the country and subject to the availability of resources within the Commission.

### **Facilitation**

The Service also engaged in several intensive, extended activities outside what would normally be considered traditional conciliation. In 2018, the Commission provided assistance at 500 meetings through facilitated discussions and engagement.

Significant support was provided to the parties of the Public Service Pay Agreement (PSSA) through ongoing facilitation and chairing several sectoral and national oversight bodies. Facilitation was also provided where requests were made to chair joint management/staff forums to work through issues of mutual concern, e.g. workplace change or difficult industrial relations issues.

The Commission continued to chair a range of other negotiation fora such as the the Irish Water Consultative Group, Health Service National Joint Council, the Teachers' Conciliation Council, and a range of Joint Industrial Councils (e.g. Construction, Electrical, State Industrial) and Joint Labour Committees (JLCs) such as the Contract Cleaning JLC and the Security JLC.

Officers of the Commission again played a key role within the Education and Training Board (ETB) structure in their role as Appeals Officers with the ETB Appeals Procedures where its grievance, disciplinary, and bullying and harassment procedures have been initiated. A total of four such appeals were processed in 2018. In addition, the Service chaired the Bórd na Móna Joint Industrial Council (JIRC) throughout 2018 and 26 issues were referred to the Council for decision.

### **Access to Services of the WRC**

In anticipation of An Garda Síochána and the Civil Service gaining access to the WRC and Labour Court, the Division, along with other WRC personnel met with and provided training and support to various stakeholders.

The Officers of the Division also played a leading role in developing and delivering training and support to existing service users.

# ADJUDICATION SERVICE

The Adjudication Service investigates disputes, grievances and claims made by individuals or small groups under employment, equality and equal status legislation. The list of legislation under which complaints can be made are set out in Appendix 2.

All Decisions and Recommendations are published on the WRC website with the parties anonymised, with the exception of claims taken under the Employment Equality Acts, Equal Status Acts and the Pensions Acts, where the parties are named unless the Adjudication Officer decides there is a valid reason to anonymise.

Over the course of 2018, 7,724 complaint applications were received, which encompassed 15,451 individual complaints (i.e. two complaints per application on average)

**15,451**  
**individual**  
**complaints** received in 2018



The number of individual complaints received increased by over 10% on 2017 while the number of complaint applications, i.e. complaint forms lodged, increased by 11% since 2016. These increases have placed some strain on the Service as all complaint applications require acknowledgement and to be assigned a hearing date and venue, to ensure all submissions are received and all individual complaints fall to be considered at an adjudication hearing and in the formulation of a decision.

The number of complaint applications received remained consistent throughout the year with the exception of a spike at the end of the year when a total of 1,000 complaint applications were received in the month of December alone. A more detailed evaluation of the complaint applications and specific complaints by month for 2017-2018 is set out on the next page.

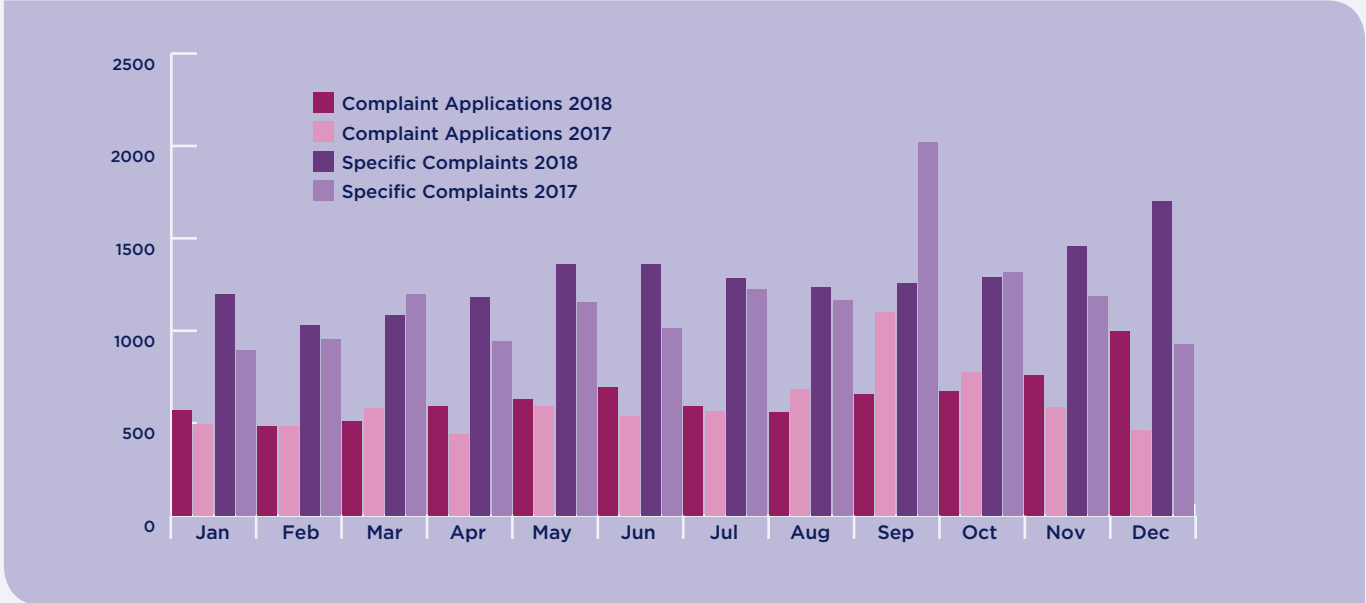
The specific complaints received in 2018 by complaint type are also set out on the next page. Specific complaints in relation to pay are by far the most prevalent at 4,311. Some 2,156 complaints were lodged relating to unfair dismissal, 2,138 in relation to discrimination and equality and 2,026 regarding hours of work. While still relatively small in number (31), complaints received under the Protected Disclosure legislation have increased by 140% on 2016.

## Multiple Similar Complaints

An emerging trend in 2018 was the noticeable uptick in multiple referrals for identical rights-based complaints submitted for adjudication against a single employer, often with the same representative submitting the initial complaints. Over the period, close to 1,000 such complaints were submitted or were being completed. In the case of one employer, this amounted to more than 350 identical complaints under the same piece of legislation. In most of these cases, following engagement and agreement with the parties, these matters were redirected to the Mediation Service where, a resolution common to all individuals was achieved without the need for adjudication.

This is a matter of some concern to the Commission as the submission of multiple identical complaints through the Adjudication Service causes delays in the overall registration and processing of complaints generally and can significantly impact on service delivery. In these scenarios, the Commission will continue to engage with complainants and employers to ascertain if a voluntary resolution is possible on a collective basis. However, the Commission would encourage representatives prior to submitting such complaints to consider engaging informally with the WRC voluntary dispute services, to explore whether resolution can be achieved through collective facilitation. This provides the most cost-efficient and effective resolution of similar issues that affect a body of workers.

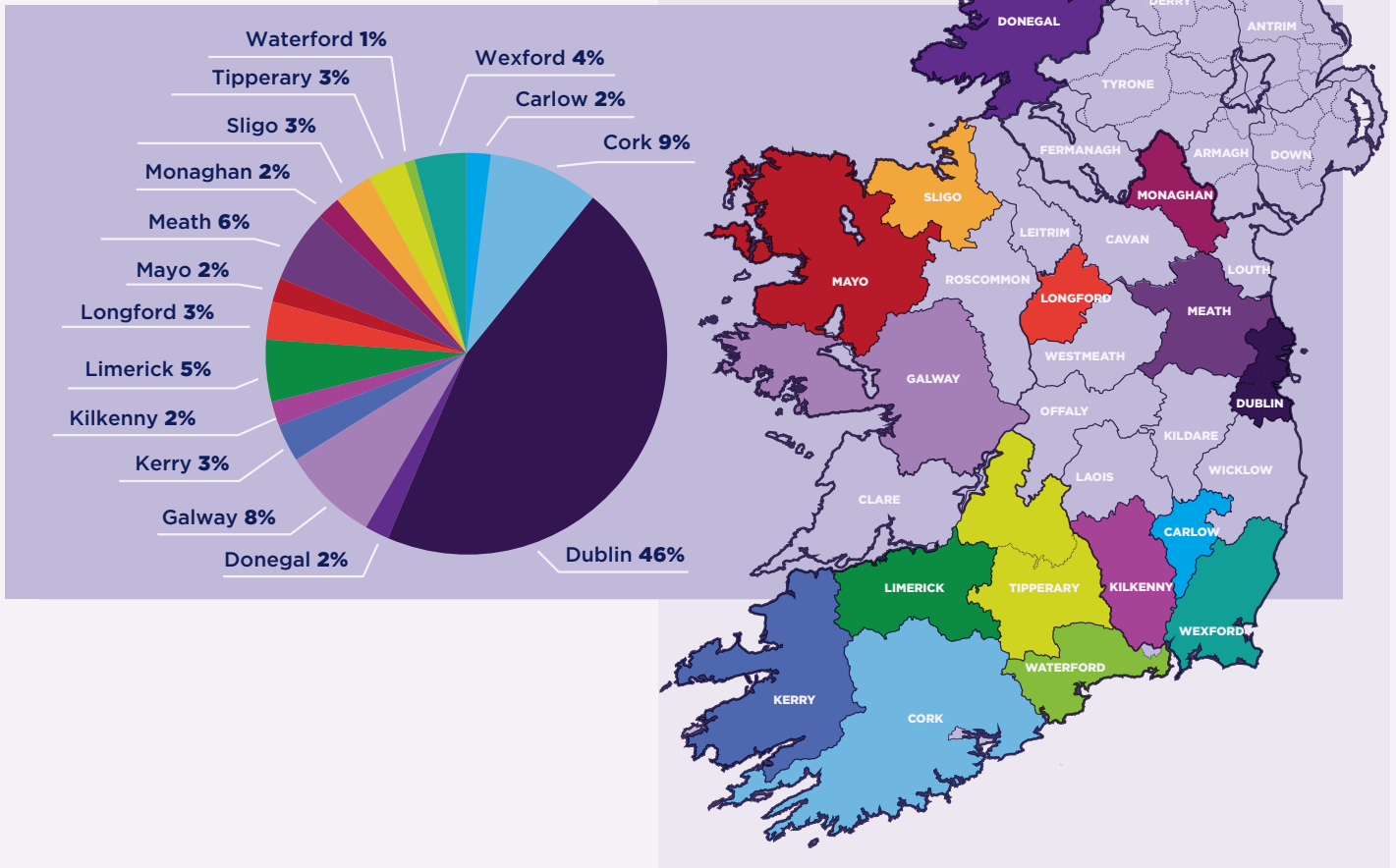
**Total complaint applications and specific complaints received - 2018 v 2017**



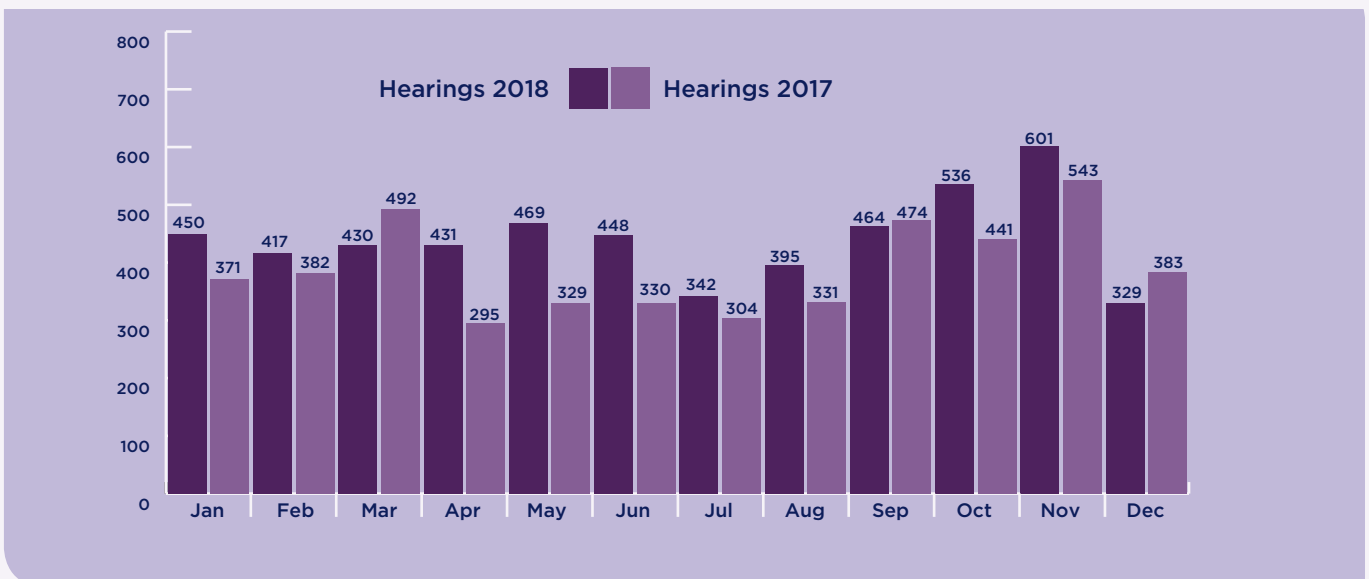
**Specific complaints by type**



### Hearings by region



### Hearings held by month





### Hearings

A total of 5,312 adjudication hearings were held in 2018. This represented an increase of 22% compared to 2017 and an increase of 34% on 2016. The average number of hearings held per working day in 2018 was 21.

Currently, over 90% of complaints received by the Adjudication Service are processed from receipt to hearing and decision within six months where there are no requests for postponement, where all parties are available, and where submissions are received in a timely manner. Where parties are not available for the initial hearing date offered, or where they have attempted to mediate the dispute or where submissions are not received in a timely manner then the median time from receipt to decision is nine months. The Work Programme 2019 sets a target to reduce this by a further 14 days by the end of the year.

### Postponement Requests

A total of 2,133 postponement requests were received from January - December 2018 - a 17% increase on 2017. Currently some 75% of requests are granted as parties may have scheduling difficulties, for example, pre-booked holidays, long-term illness, or the parties are looking to resolve the matter through mediation, etc. This impacts significantly on overall processing times as these deferrals mean 1,600 adjudication applications, which could have been heard within 10 weeks of receipt could not be heard for at least 18 weeks and possibly longer, as the dates offered may not be acceptable to the parties for the reasons outlined earlier.

The timing of the postponement requests also causes difficulty for scheduling as 70% of all postponement requests received in 2018 were received less than 20 days prior to the hearing, which is too short a time to offer the hearing date to other parties, meaning it is not possible to backfill the slot.

The WRC is working with its stakeholders and it is hoped this pattern of late postponement requests will decrease in 2019.

### Decisions

A total of 2,964 decisions were issued in 2018, which is an increase of 32% on the 2,247 decisions issued in 2017 and an increase of 60% on 2016.

**2,964 decisions**  
**were issued in 2018,**  
**an increase of**  
**60% on 2016**



### Referrals Under Equal Status Acts 2000-2015

In 2018, 595 referrals were made under the Acts, relating to 868 specific grounds compared to 668 referrals in 2017 on 1,113 specific grounds. While this represents a sizable annual reduction of 11% on referrals since 2017, a considerable increase was witnessed in the number of complaints in relation to Age (+35%), Disability (+58%) and Housing Assistance (+65%) but a substantial decrease in relation to Membership of the Traveller Community (-70%) and Race (-20%), albeit Membership of the Traveller Community and Race are still the most cited grounds of referrals made under the Acts.

Equal Status Complaints	2017	2018
Age	46	62
Civil Status	18	22
Disability	57	90
Family Status	28	33
Gender	101	116
Member of Traveller Community	408	124
Race	363	292
Religion	20	19
Sexual Orientation	9	6
Housing Assistance	36	104
<b>Total</b>	<b>1,113</b>	<b>868</b>

*Note: While 595 Equal Status complaints were received, 868 grounds were cited as complainants may choose more than one ground when making a specific complaint.*

### Referrals Under the Employment Equality Acts 1998-2011

In 2018, there were 1,449 referrals made under the Acts, relating to 1,792 specific grounds compared to 671 referrals in 2017 and 1,113 specific grounds. This represents a 116% increase. A considerable increase was witnessed in the number of complaints in relation to Age (+343%), Religion (+244%) and Disability (+43%) while a fall occurred in relation to Civil Status (33%) and Gender (11%).

Equality Complaints	2017	2018
Age	161	714
Civil Status	52	36
Disability	204	292
Family Status	114	154
Gender	353	318
Membership of the Traveller Community	7	6
Race	189	213
Religion	9	31
Sexual Orientation	24	28
<b>Total</b>	<b>1,113</b>	<b>1,792</b>

Note: While 1,449 Equality complaints were received, 1,792 grounds were cited as complainants may choose more than one ground when making a specific complaint.

### Referrals Under the Pensions Acts 1990

In 2018, 17 referrals were received under the Pensions Act compared to 35 in 2017 and nine in 2016.

### Legacy Cases

In October 2015, the Adjudication Service took ownership of just under 4,000 'legacy' adjudication complaints submitted to the Rights Commissioner Service and the Equality Tribunal.

### Employment Rights/Industrial Relations Complaints

At the beginning of 2018, only five employment rights/ industrial relations complaints were still awaiting hearing. All cases have been now heard and there are no legacy cases outstanding.

### Equality Tribunal

At the beginning of 2018, 293 Equality Tribunal referrals remained to be processed. By the end of the year the figure had halved to 146 and all but 51 of these legacy cases have a hearing date assigned or are awaiting confirmation of parties' availability.

## Equality Tribunal cases halved in 2018



### Labour Court Decisions

Approximately 10% of adjudication decisions are appealed annually to the Labour Court. In 2018, the Labour Court issued 372 appeal decisions.

The Court outcome in terms of what was upheld, overturned, varied or out of time is shown in the table below. Of appeals to the Adjudication Officers' decision, 179 (48%) were upheld, 99 (27%) were overturned and 88 (24%) varied. Three cases were not decided upon by the Labour Court due to jurisdictional matters.

Labour Court Outcomes	2017	2018
Decisions Issued	351	372
Upheld	171	179
Overtaken	91	99
Varied	84	88
Outside Time Limits	5	6

While not matching year on year, as some appeals heard and decisions issued by the Labour Court relate to adjudication decisions issued in 2017, approximately 95% of decisions issued in 2018 by the Adjudication Service were accepted by the parties or upheld on appeal.



### **Service Improvements**

Over the course of 2018, the Adjudication Service delivered service improvements in the following areas:

- A 'Practical Guide to Hearings' was published on the WRC website to provide clarity for parties around the adjudication process.
- The Adjudication Service increased the number of hearing locations to 17 compared to 10 in 2016 and following a review of regional courthouses and their facilities with the help of the Courts Service, the WRC will start using some courthouses in 2019.

### **Intra-WRC Collaboration**

In 2018, Adjudication Officers provided considerable support to the Advisory Service by delivering bespoke training throughout the year.

### **Stakeholder Engagement**

The Adjudication Service engages extensively with major stakeholder bodies such as the Irish Congress of Trade Unions, Ibec, ISME, legal representative bodies, such as ELAI/Law Society/Bar Council, and NGOs.

In 2018, discussions centred around:

- processing and consideration of requests for the postponement of hearings,
- the submission of statements in good time,
- linking related cases to improve process efficiency,
- consistency of hearings and consistency of decision style, and
- improving the search function for decisions on the website.

Service delivery has improved considerably because of these engagements and the WRC is very grateful for the important and constructive input provided by its stakeholders.



# INSPECTION AND ENFORCEMENT SERVICE

The Inspection and Enforcement Service undertakes inspections of employment records to ensure compliance with employment law. This involves, but is not confined to, examining employer's employment related books, records and documents, and conducting interviews with the employer and current and former employees.

The aim is to monitor employment conditions, to ensure compliance with employment legislation, and, if necessary, enforce employment rights legislation. This might include redress for, and payment of, any unpaid wages arising from breaches of employment rights.

Inspectors may be accompanied by other Inspectors. Inspections may also take place in tandem with Gardaí and other regulatory bodies. Inspectors also participate in Joint Investigation Units with the Department of Employment and Social Protection and the Revenue Commissioners.

The focus of inspections is on sectors and employers considered to be 'high risk' in terms of statutory employment rights transgressions.

The table below sets out the number of cases in 2018 by sector, number of initial breaches found, the number of employees covered by the inspection, and the amount of unpaid wages recovered.

## Inspection activities and outcomes by sector to 31 December 2018

Sector	Cases	No. in Breach	Breach %	Employees	Unpaid Wages (€)
AGRICULTURE	106	46	43%	6,312	188,597
CONSTRUCTION	81	37	46%	1,835	109,562
CONTRACT CLEANING	22	8	36%	10,351	4,119
DOMESTIC WORKER	5	1	20%	2	1,207
ELECTRICAL	11	7	64%	887	2,538
EQUINE	45	38	84%	949	73,469
FISHERIES	40	27	68%	43	433
FOOD AND DRINK	656	439	67%	14,113	472,824
HAIR AND BEAUTY	121	75	62%	654	45,941
HEALTH NURSING AND CHILDCARE	69	35	51%	11,607	824,216
HOTEL	64	37	58%	3,950	129,453
MANUFACTURING	48	19	40%	3,678	51,584
OTHER	236	144	61%	7,128	142,686
PROFESSIONAL SERVICES	218	83	38%	29,863	189,612
SECURITY	18	9	50%	14,113	29,286
TRANSPORT	71	43	61%	3,860	141,040
WHOLESALE AND RETAIL	363	216	60%	24,117	731,351
<b>UNANNOUNCED VISITS</b>	<b>3,579</b>	<b>1,284</b>	<b>36%</b>	-	-
<b>ANNOUNCED VISITS</b>	<b>2,174</b>	<b>1,264</b>	<b>58%</b>	-	-
<b>GRAND TOTAL</b>	<b>5,753</b>	<b>2,548</b>	<b>44%</b>	<b>133,462</b>	<b>3,137,916</b>

In 2018, a total of 5,753 inspections were completed (of which 60% were unannounced), which represented an increase of 20% on 2017. The inspections covered 133,462 employees – a 35% increase on 2017.

While just under 45% of all employers inspected were found to be in breach of employment legislation to some degree, the level of breaches across sectors generally was in excess of 50%. Sectors with breach rates higher than 60% included Electrical, Fisheries, Food and Drink, Hair and Beauty, Transport, Wholesale and Retail, with the highest being the Equine sector at 84%.

At 52% of all breaches discovered in 2018, it is important to bear in mind the failure to keep adequate employment records continues to be the most common breach of employment legislation.

**A total of €3.1m  
in unpaid wages was  
recovered in 2018**



#### **Compliance and Fixed Payment Notices**

In most instances, initial breaches uncovered are rectified reasonably quickly with Inspectors working with employers to bring about compliance. However, where this does not occur, there are several avenues available to the Division.

Compliance and Fixed Payment Notices are designed to improve compliance, while at the same time, reducing the number and associated expense of prosecuting certain breaches of legislation.

A total of 120 Compliance Notices were issued in 2018. Most were in relation to annual leave, public holiday entitlement, and payment in respect of work carried out on a Sunday under the Organisation of Working Time Act 1997, while some were issued under the Payment of Wages Act.

A total of nine notices were appealed to the Labour Court. An employer who does not comply with the terms of such a notice may be guilty of an offence and 42 employers were prosecuted for this in 2018.

Twenty-one Fixed Payment Notices relating to employers failing to provide employees with written statements of wages were issued in 2018.

#### **Prosecutions**

There are circumstances where it is necessary to prosecute employers who fail to comply. In 2018, 98 cases led to prosecution. Details of the cases, which led to a conviction are set out in Appendix 3. The WRC completed 66 such cases in 2018.

#### **Multi-Agency Collaboration**

The WRC works collaboratively with other government agencies to have a more focused approach to employers and sectors considered to be most at risk of being non-compliant in the employment rights, social protection and taxation areas.

In 2018, Inspectors from the WRC participated in 684 joint investigation visits with Revenue and the Department of Employment and Social Protection.

**Inspectors participated in  
684 joint  
investigations**



The WRC worked closely with the Garda National Immigration Bureau (GNIB) and the Garda National Protective Services Unit to report potential immigration and human trafficking issues encountered during inspections. The WRC also took part in joint enforcement operations in car washes and nail bars.

Maintaining good working relationships at an international level is an important element of the work of the WRC. There is an ongoing involvement in the training of Inspectors from other EU countries and there are reciprocal arrangements for the training of our own Inspectors. During the year, the WRC helped colleagues in Romania under the EU Mutual Assistance Programme and took part in EU peer reviews of our work.

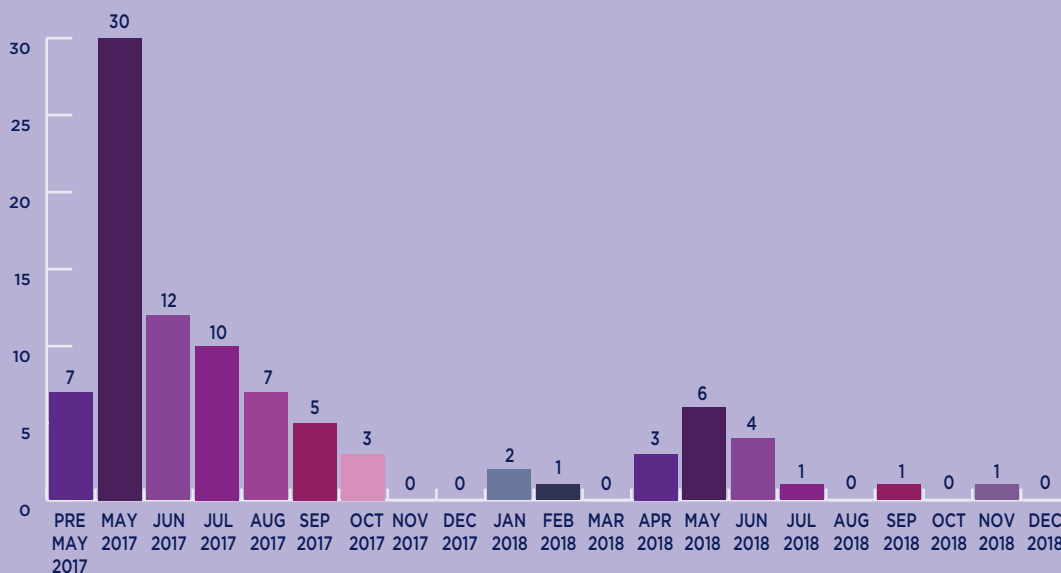
## Sectoral Campaigns

### Equine

The WRC carried out a focused campaign in the Equine industry to bring about greater compliance with employment legislation in what has been identified as a 'high-risk' sector. The campaign featured a targeted and coordinated approach to inspections, engagement with representative organisations and an awareness-raising programme (including website content, bespoke training and presentations).

The initial phase of the campaign, involving 74 cases, took place between May - October 2017. The second phase ran from January - October 2018 and involved 19 cases, with on-site inspection in each case.

### Equine campaign inspections (to end 2018)



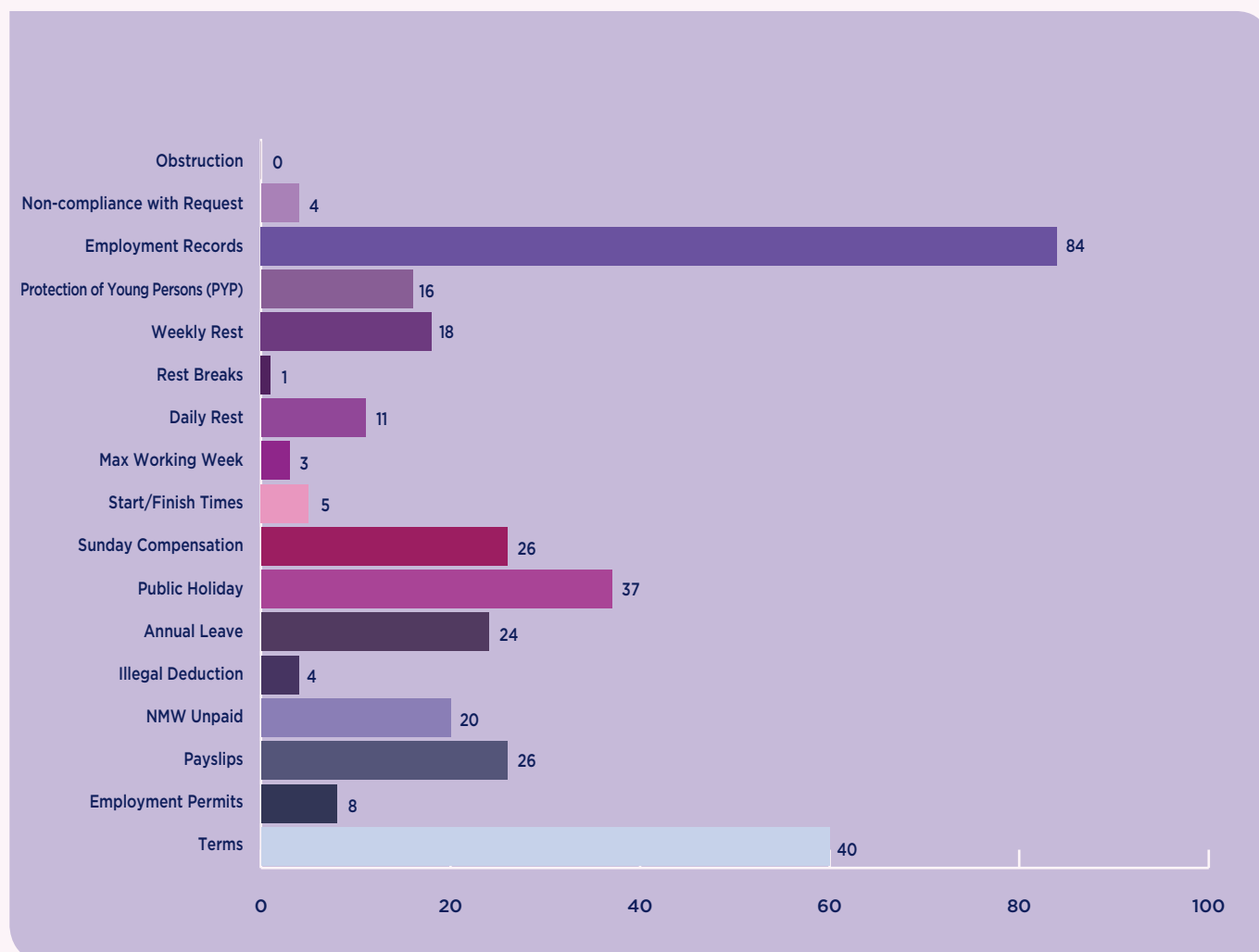
### Contraventions

In all, 347 contraventions were detected by the end of 2018. Of these, 24% related to records and 17% related to terms of employment. A further 25% related to a failure to grant Sunday, public holiday or annual leave entitlements while hours/rest and payslip accounted for 11% and 7% respectively. In addition, 7% of contraventions involved a failure to pay National Minimum Wage (NMW) rates or contracted amounts. Contraventions were also detected of employment permits and Protection of Young Persons (PYP) legislation. Unpaid wages amounting to €100,000 arising from contraventions detected, was secured in 31 of the 82 cases closed by the end of 2018.

**25%** of contraventions  
in the Equine sector related to  
**failure to grant  
proper leave  
entitlements**



## Equine campaign - contraventions



### Outreach

The WRC attended the Irish Thoroughbred Breeders Association (ITBA) Expo on 26-27 January 2018. The WRC worked closely with Horse Racing Ireland, Horse Sport Ireland and the ITBA on measures to enhance compliance including producing a guide for employers on employment rights and obligations within the industry, which will be published in early 2019.

### Fisheries Sector: Atypical Worker Permission Scheme for Non-EEA Workers

In 2018, the WRC continued to contribute to multi-agency efforts to enforce the Atypical Worker Permission (AWP) Scheme for Non-EEA Workers on certain whitefish vessels.

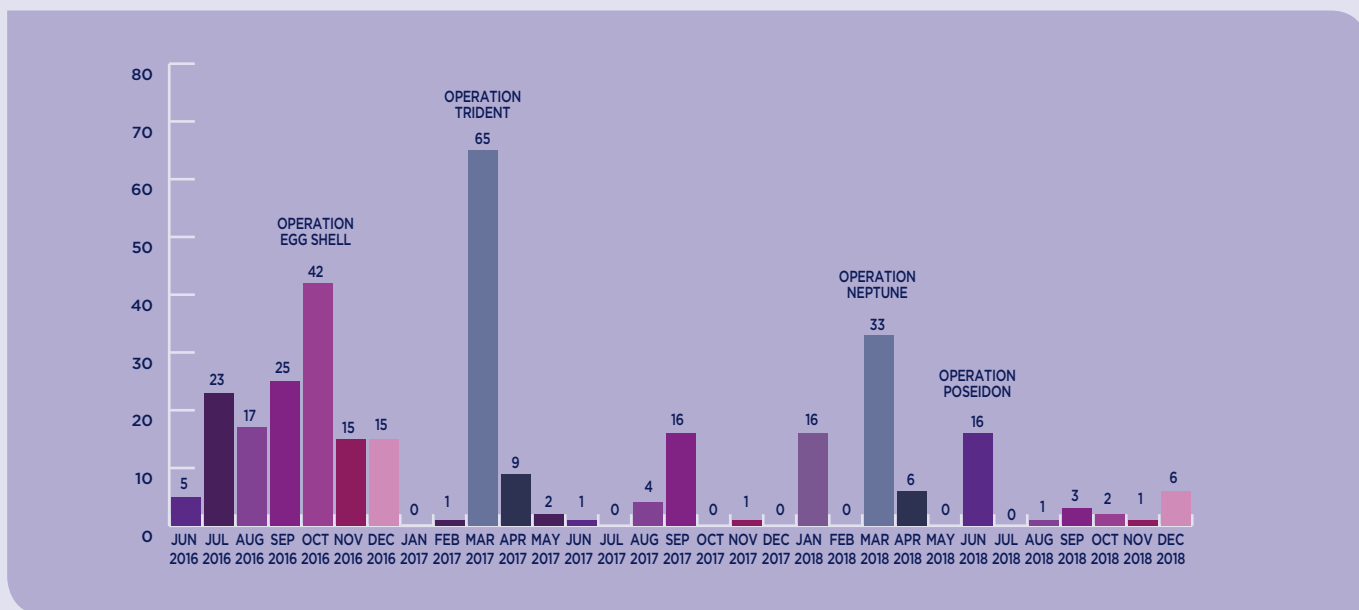
This Scheme, in operation since 2016, provides that non-EEA nationals may be engaged as employees on these vessels on the basis of AWP's issued by the Irish National Immigration Service (INIS) and subject to compliance with certain conditions including employment rights entitlements.

Two targeted operations were conducted by the WRC in 2018. Operation Neptune, which took place in March 2018 and Operation Poseidon, which took place in June 2018 involved unannounced inspections at several fishing ports by Inspectors. These operations followed on from similar operations, which took place in 2016 and 2017.

Inspections are multi-faceted and may involve surveillance, on-board inspections of records and interviews with crews, on-shore inspections of records at the owner’s premises, and detailed examination of records off-site.

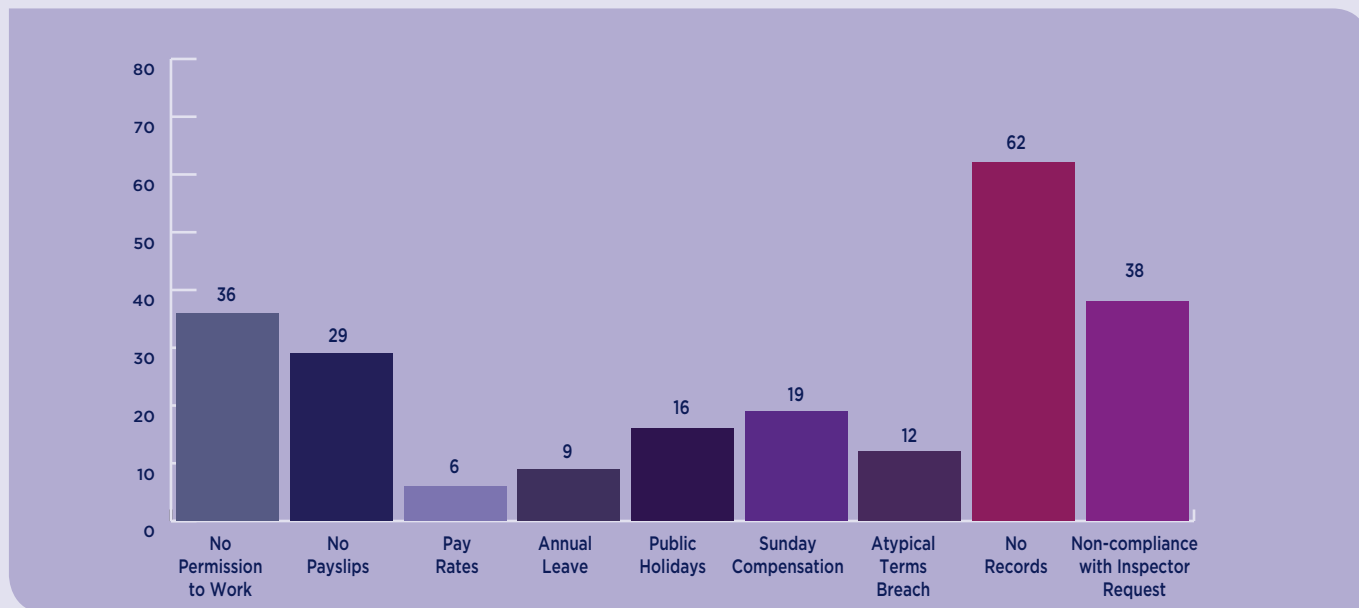
Between April 2016 and the end of 2018, the WRC carried out 325 port inspections of whitefish vessels. There are currently 172 vessels within the scope of the Atypical Scheme and the WRC has carried out inspections on 169 of these vessels.

**WRC fisheries inspections to end-2018**



By the end of 2018, the WRC has detected 227 contraventions across the 169 vessels inspected.

**Contraventions detected to end-2018**



The WRC actively engages with fishing vessel owners to achieve compliance and is successful in most cases. However, while every effort is made to secure compliance, some owners fail to rectify contraventions or to pay unpaid wages due to their employees. In 2018, 12 prosecutions against whitefish vessel owners were initiated (i.e. 7% of vessels inspected); five convictions have been secured and proceedings are pending in the remaining cases.



### **Outreach**

The WRC has consistently engaged with owners, skippers, and other stakeholders, including the International Transport Workers Federation and the Fish Producer Organisations to bring about compliance with the Scheme.

These include meeting with representatives, participating in events organised by the Sea Fisheries Protection Authority (SFPA), distributing leaflets on the Atypical Scheme and employment rights for workers on fishing vessels, and including useful content on the WRC website. For example, the publication 'Employment Law Explained' is available in Arabic, Mandarin, Hindi and Filipino, the primary languages of non-EEA workers. In addition, a circular letter was issued to all owners setting out the steps to take to ensure full compliance with the Scheme.





# APPENDIX 1

## Work Programme 2018

### Advisory

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Improve site-specific workplace relations	Carry out reviews of industrial relations, chair joint working parties, facilitate resolution of individual disputes including referrals under the IR Act 2015  Facilitate voluntary dispute resolution, deliver workplace mediation and equality mediation services,	Throughout 2018	Effective, tailored programme delivery, high client satisfaction, and improved workplace relations	Significant levels of assistance provided across all disciplines with high positive impact
Expand provision of workplace training	1. Establish and upskill Training Unit 2. Training Unit Operational 3. Develop bespoke training programmes for clients etc.	Q318  Q418  Throughout 2018	Staff identified and trained All Unit staff operational High success rate and customer satisfaction with service	Unit established, staff selected and upskilled;  18 programmes delivered
Frequent Users Programme Fully Operational	Engage systematically with Top 10 Frequent Users	Throughout 2018	Consequent reduction in WRC resource allocation arising directly from this initiative	Initiated and ongoing
Promote awareness of the WRC and contribute to policy debate	Publish ESRI Report on 'Contingent Workers'	Q118	Report published and findings disseminated	Report published
Review efficacy of Codes of Practice on Bullying and Harassment	Review with HSA and identify possible initiatives if/	Q218	Codes having greater impact	Review ongoing - to be published in 2019

## Conciliation/Early Resolution/Mediation

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Provide timely, effective and efficient Conciliation service and ensure demand is met while maintaining delivery of all services	Provide conciliation in an appropriate timeframe to facilitate resolution of industrial relations disputes.  Proactively engage with clients to assist in providing assistance in the maintenance of positive industrial relations	As and when required by clients throughout 2018	Maintenance of high success rate in the resolution of industrial relations disputes.	1,145 conciliation conferences held with 87% settlement rate
Enhance client usage of relevant mediation services of WRC	Maintain 2017 mediation levels and provide more mediation regionally	Throughout 2018	2017 levels maintained, regional mediation as standard and stakeholder satisfaction high. Cases triaged effectively and efficiently to bring about an overall reduction in numbers advancing to adjudication process in employment rights claims.	Mediation levels significantly increased by 233% on 2017: 66% agreement rate.
Chair and facilitate various different industrial relations and statutory fora in both the private and public sector	Facilitate discussions in a timely fashion. Assist parties to deal with all issues in accordance with procedures and operations as set in both voluntary and statutory requirements	Throughout 2018	Effective delivery and operation of all issues raised in accordance with protocols and procedures	500 discussions facilitated
Ensure effective two-way communication with primary clients	Maintain effective dialogue with key clients in all regions and nationally	At all times during 2018	Effective operation of communication channels maintained	Delivered
Transition An Garda Síochána into conciliation process	Work closely with prospective users to familiarise them with the process, culture and norms	Q1-Q418	Transition achieved	Work ongoing as transition continues

## Adjudication Service

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Time-frame for all decisions will be less than 6 months where no postponement requests arise and all submissions and documentation have been received on time.	Oversee efficient and effective throughput of cases through registration, hearing and adjudication	Throughout 2018	Target achieved	Over 90% of such cases are processed in 6 months
Deliver high quality decisions	Monitor and review quantity and availability of Adjudicators to ensure delivery capacity.	Throughout 2018	High quality decisions with a small number of appeals and judicial reviews	2,964 decisions issued with 90% acceptance rate
	Internal Quality Control Review Group will review decisions to identify learning points, to ensure consistency of decisions in common areas, and to improve the service provided to customers of the Adjudication Service. In addition, feedback on decisions appealed to the Labour Court will be formalised.	Throughout 2018	Internally and externally recognised and delivered WRC adjudication standard	Operating successfully
Ensure ICT system facilitates the delivery of efficient and effective adjudication and mediation services	Review quarterly and update where needed the Complaints & Adjudication Solution IT System	Throughout 2018	Easy to use ICT system working efficiently and effectively	Reviewed quarterly and process amended as appropriate

## Inspection and Enforcement Services

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Promote and enforce compliance with employment law	Risk-based and complaint-based inspections, with other State bodies where appropriate	Throughout 2018	4,000 inspections concluded including 2,000 unannounced workplace visits	5,763 inspections completed of which 3,457 were unannounced
	Prosecute, as appropriate, offences of non-compliance with employment legislation	Throughout 2018	A 90% successful prosecution rate	89% success rate achieved in 2018
	Maintain standard process with regard to and measure effectiveness of issuing and processing of Compliance and Fixed Charge notices	Throughout 2018	Notices issued appropriately and having effect.	63 notices issued
	Regular engagement with stakeholders	Throughout 2018	Key stakeholders met at least once yearly	Ongoing
Enforce awards arising from decisions of adjudication and Labour Court proceedings	Press enforcement of decisions and awards arising from adjudication and Labour Court	Throughout 2018	Decisions and awards pursued in manner that maximises efficiency and effectiveness	66 cases pursued
Issue licences and enforce legislation in relation to Employment Agencies and the employment of Young Persons	Licenses processed and issued in an efficient and lawful manner	Throughout 2018	1,000 licences issued	1,329 licenses issued
Cooperate with other enforcement agencies	Facilitate training, staff exchanges, joint inspections and sharing of appropriate data, review MoUs to ensure compliance with GDPR requirements	Throughout 2018	Successful activities underpinned by legislation and appropriate MoUs	Training facilitated and MoUs reviewed in light of GDPR
Drive value through technology	Complete roll out ERCES system for Division	Q218	New administrative system operating successfully delivering significant resource and processing efficiencies	Live in 2018
Carry out targeted campaign in the transient 'market garden' sector	Campaign carried out effectively and efficiently	Q1-Q318	Sector inspected effectively, breaches/monies owed identified, compliance largely achieved in sites inspected	Campaign successfully executed
Roll out SME and 'start-ups' information and education programme to improve compliance generally	Work with Information Unit to ensure programme is effective and efficient	Q218	Improve compliance rates in these employments by end-2018	Targeted information campaigns undertaken via presentations, information days etc.

## Information and Customer Service

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Provide non-directive information on WRC activities generally, employment legislation and redress mechanisms through a variety of formats	Provide a high quality accessible, customer focused and user friendly response to telephone, email, white mail and other employment rights enquiries	Throughout 2018	90% of queries dealt with at initial phase	57,348 calls answered - high satisfaction rate
	Coordinate the targeted participation of the WRC at employment law seminar presentations, exhibitions, roadshows	Throughout 2018	Key events identified, targeted messages delivered effectively and efficiently	Attended 20 exhibitions and 24 presentations given in 2018
Efficient processing of complaints and applications to the WRC	All complaints processed in a timely and efficient manner and referred to the appropriate redress forum	Throughout 2018	All current complaints processed efficiently and effectively (this process dealt with some 13,000 specific complaints in 2017)	Complaints acknowledged and registered within 10 working days
Roll out outreach and communications strategy	Identify WRC activities and external events that can be used to enhance efficiency and effectiveness of WRC generally	Q218	Increased awareness and understanding of the WRC, its identity, role and functions, across industrial relations, employment rights, equality and equal status matters. WRC suite of services marketed at seminars and roadshows and bespoke presentations delivered to stakeholders and target audience	Communications strategy in place for 2019-2020
As part of outreach strategy roll out SME and 'start ups' information and education programme to improve compliance generally	Work with Inspection and Enforcement Division to ensure programme is effective and efficient	Q218	Improved compliance rates in these employments by end-2018	Targeted information campaigns undertaken via presentations, information days etc.

## Registrar/Legal Advisor

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
WRC legal service operating effectively and efficiently	Structures, procedures, and business processes operating efficiently	Throughout 2018	Legal service established and fully functional	Additional staff assigned and fully functional
Provide appropriate legal training to staff and Adjudicators - legally sound approach to all activities of WRC Manage legal services used within the WRC	Identify training structures, training needs and deliver.  Provide for legal services where appropriate (including panels for legal advice where appropriate)	Throughout 2018	Training structures in place and learning being implemented  Systems functioning effectively	Training provided  Relevant advice sourced appropriately
Manage and provide for timely, effective and robust legal advice on all aspects of legal matters before the WRC	Consider correspondence, provide advice, brief Counsel where necessary, manage case progress and outcome	Throughout 2018	WRC manages legal matters effectively and efficiently.	Managed accordingly
Maintain a specialised database and library facility for Adjudicators and WRC staff generally	Ensure appropriate access to relevant external databases such as Westlaw, Bailii, etc. develop internal database on all aspects employment and equality law, and establish virtual and physical library	Throughout 2018	Databases and library in place and fully utilised	Fully operational and utilised
Set and manage legal costs within budget parameters	Monitor spend on legal costs/identify efficiencies	Throughout 2018	Legal costs managed effectively, efficiently and within budget	Costs managed within overall budget
Inform stakeholders of trends in complaints and decisions	Publish analyses of employment rights complaints and WRC decisions with particular regard to equality and equal status cases	Q218 onwards	High quality informative commentaries published	To be published to coincide with information campaign on role of WRC in equality and equal status matters in 2019

## Corporate Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Maintain robust corporate governance framework in WRC	Oversee and monitor internal standards, policies and procedures	Throughout 2018	Corporate governance in WRC in line with best practice	Managed accordingly
Ensure WRC carries out statutory functions within budget	Oversee efficient and effective expenditure, monitor service demand and activity levels and liaise regularly with DBEI in this regard	Throughout 2018	Work programme achieved, consistent with proper use of budget allocation	Estimates, receipts and expenditure carried out and reported appropriately
Appropriate WRC cross-functional capability optimised	Work to ensure the WRC staffing resource has the capability to work across its service functions as appropriate to deliver bespoke interventions and assistance, and to ensure the WRC has the ability to respond quickly to shifting demand across the full range of its activities.	Throughout 2018	Appropriate capability established and functioning	HR Plan operational: significant staff training and upskilling undertaken
Manage the WRC risk based strategic, business planning and performance culture at all levels of the organisation	Assist in deliberation around, and 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 Management Committee and Board on a regular basis	Throughout 2018	WRC operating fully within coherent strategic and business plan framework. Website delivering clear brand recognition, enhanced customer service and considerable process efficiencies	Business plans and risk registers reviewed against strategy and programme – reported to Board and Department
Drive value through technology	Roll out interactive and process-driven website	Q118	website live	Website designed and tested: launch early-2019

## Corporate Division (continued)

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	Outcomes
Enhance and inform the policy debate on workplace relations developments	Identify areas of policy concern and input to policy formulation	Throughout 2018	Regular relevant commentaries and reports published	Research on contingent working published
	Publish regular commentaries/data on WRC activities that contain clear and focused data presentation	Throughout 2018	Enhanced understanding of WRC activities and services and of how well positioned workplaces are around compliance and best-practice.	Publicised WRC activities at conferences, seminars and information sessions
WRC services fully regionalised	Work with OPW to ensure all regional WRC offices are capable of facilitating the delivery of all WRC services by mid-2019	Throughout 2018	Suitable regional premises identified and progressed in West and South and final specification agreed for Midlands	Sites identified and planning significantly advanced
General Data Protection Regulation Implementation	Coordinate the full implementation of the General Data Protection Regulation	May 2018	All Divisions will have ensured individual regulatory requirements are actioned in time	Full implementation achieved



## APPENDIX 2

<b>Adjudication</b>	
Section 27 of the Organisation of Working Time Act, 1997	2639
Section 8 of the Unfair Dismissals Act, 1977	1886
Section 6 of the Payment of Wages Act, 1991	1872
Section 77 of the Employment Equality Act, 1998	1488
Section 13 of the Industrial Relations Act, 1969	1319
Section 7 of the Terms of Employment (Information) Act, 1994	1044
Section 21 Equal Status Act, 2000	615
Section 11 of the Minimum Notice & Terms of Employment Act, 1973	593
Section 39 of the Redundancy Payments Act, 1967	566
Regulation 10 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)	409
<b>Industrial Relations Acts</b>	<b>260</b>
Regulation 18 of the European Communities (Road Transport)(Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 - S.I. No. 36/2012	155
Section 45A of the Industrial Relations Act, 1946	155
Section 28 of the Safety, Health & Welfare at Work Act, 2005	139
Section 14 of the Protection of Employees (Fixed-Term Work) Act, 2003	127
Section 24 of the National Minimum Wage Act, 2000	116
Section 41 of the Workplace Relations Act, 2015.	98
Schedule 2 of the Protected Disclosures Act, 2014	73
Regulation 6 of the European Communities (Protection of Employment) Regulations 2000	71
Section 25 of the Protection of Employees (Temporary Agency Work) Act, 2012	46
Section 16 of the Protection of Employees (Part-Time Work) Act, 2001	42
Section 30 and 31 of the Maternity Protection Act 1994	38
Section 18 of the Parental Leave Act 1998	33
Section 86 of the Employment Equality Act, 1998	24
Section 81(e) of the Pensions Act, 1990 as amended by the Social Welfare (Miscellaneous Provisions) Act 2004	18
Regulation 15 of the European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 - S.I. No. 507 of 2012	14
Schedule 6 of the Consumer Protection Act, 2007	12
SI 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-SI No. 377 of 200	11
Section 20(1) of the Industrial Relations (Amendment) Act, 2015	9
Section 9 of the Protection of Employees (Employers' Insolvency) Act, 1984.	9
Schedule 3 of the Employees (Provision of Information & Consultation) Act, 2006	7
Part 14 Section 103(55M) of the Health Act, 2007	6
Schedule 2 of the Employment Permits Act, 2006	6
Section 24 of the National Minimum Wage Act, 2000	5
Section 19 of the Carer's Leave Act 2001	5
Section 4 of the Protection of Persons Reporting Child Abuse Act, 1998	4

## APPENDIX 2 (CONTINUED)

Section 6(1) of the Prevention of Corruption (Amendment) Act 2010	4
Schedule 2 of the Criminal Justice Act 2011	3
Section 26 of the Chemicals Act, 2008	3
Section 62(2) of the Charities Act 2009	2
Section 67(5) of the Property Services (Regulation) Act 2011	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	2
Regulation 8 of the European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-Border Services in the Railway Sector) Regulations, 2009-SI No. 377 of	1
Section 27 of the Paternity Leave and Benefit Act, 2016	1
Section 32 of the Adoptive Leave Act, 1995	1
Section 35 of the Further Education and Training Act 2013	1
Section 9 of the Industrial Relations (Miscellaneous Provisions) Act 2004	1
Inspection	
Request for an investigation by a Workplace Relations Commission Inspector under the Payment of Wages Act, 1991.	503
Investigation by an Inspector under the Payment of Wages Act, 1991	383
Request for an investigation by a Workplace Relations Commission Inspector under the Organisation of Working Time Act, 1997	337
Request for an investigation by a Workplace Relations Commission Inspector under the National Minimum Wage Act, 2000.	126
Request for an investigation by a Workplace Relations Commission Inspector.	37
Request for an investigation by a Workplace Relations Commission Inspector under the Industrial Relations Acts.	16
Request for an investigation by a Workplace Relations Commission Inspector under the Protection of Young Persons (Employment) Act, 1996	4
Request for an investigation by a Workplace Relations Commission Inspector under the European Communities (Protection of Employment) Regulations 2000	3

# APPENDIX 3

## Convictions 2018

Employer	Sector	Legislation of which Conviction Relates	Legal Entity Address	Trading Address
Mr Xian Ping Yu t/a Jumbos Chinese Takeaway	Food & Drink	Employment Permits Acts 2003 and 2006	51 Ballybricken, Co Waterford	51 Ballybricken, Co Waterford
Indian Ocean Restaurant Limited t/a Indian Ocean	Food & Drink	Employment Permits Acts 2003 and 2006	Harbour Mill, Davitts Quay, Dungarvan, Co Waterford	Harbour Mill, Davitts Quay, Dungarvan, Co Waterford
Lucio Patriarca t/a Roma Grill	Food & Drink	Organisation of Working Time Act, 1997	The Crescent, Boyle	The Crescent, Boyle
Harrington Bookmakers Limited t/a Harrington Bookmakers	Other	Workplace Relations Act, 2015 Organisation of Working Time Act, 1997	The Square, Castlecomer, Co Kilkenny	Various Locations
Muca Yu & Feng Chen t/a Noarks Asian Cuisine	Food & Drink	Employment Permits Acts 2003 and 2006	Unit 25/26 Dungarvan SC, Dungarvan, Co Waterford	Unit 25/26 Dungarvan SC, Dungarvan, Co Waterford
Day 2 Day Express Limited t/a Day 2 Day Express Limited	Wholesale & Retail	Employment Permits Acts 2003 and 2006	11 Burgh Quay, Dublin 2	11 Burgh Quay, Dublin 2
Marek Miziolek t/a Marek Mizolek Take Away Shop	Food & Drink	Workplace Relations Act, 2015	Unit 14 Brasscock Shopping Centre, Dunmore Rd, Waterford	Unit 14 Brasscock Shopping Centre, Dunmore Rd, Waterford
Kedharam Catering Limited t/a Food Guru	Food & Drink	Employment Permits Acts 2003 and 2006 Workplace Relations Act, 2015	Unit 7 North Street Business Park, Swords, Co. Dublin	Unit 7 North Street Business Park, Swords, Co. Dublin

## Convictions 2018

Employer	Sector	Legislation of which Conviction Relates	Legal Entity Address	Trading Address
Ms Lan Wang T/A Chinatown Take Away	Food & Drink	Employment Permits Acts 2003 and 2006	Hall Street, Ballybay, Co Monaghan	Hall Street, Ballybay, Co Monaghan
Mr. Binh Quoc Ngo t/a New Yorki Nails	Food & Drink	Employment Permits Acts 2003 and 2006	3 Main Street, Bray, Co Wicklow	3 Main Street, Bray, Co Wicklow
Ms Jennifer Mccluskey t/a Belles Tea Rooms	Food & Drink	Workplace Relations Act, 2015	Main Street, Blackrock, Co Louth	Main Street, Blackrock, Co Louth
Michelle Reamsbottom t/a Café Royale	Food & Drink	Organisation of Working Time Act, 1997	The Square, Kilcormac, Co. Offaly	The Square, Kilcormac, Co. Offaly
Fred Tamen t/a Fred Tamen Cleaning Services	Professional Services	Workplace Relations Act, 2015	2 Muchcross Close, Powerscourt Lawns, Waterford	Unit 10A, Storage City, Mill Lane Complex, Ballinadud, Tramore Road, Waterford
Ms Mai Chai Chen t/a Scissor Hands	Hair & Beauty	Employment Permits Acts 2003 and 2006	6A Gladstone Street, Waterford	6A Gladstone Street, Waterford
R & B Restaurant Foods Limited t/a Taco Kebab	Food & Drink	Workplace Relations Act, 2015	Abra Apartment, Church Street, Tullamore, Co. Offaly	Church Street, Tullamore, Co. Offaly
Bigger Trees Limited t/a New Peking	Food & Drink	Employment Permits Acts 2003 and 2006	Main Street, Clane, Kildare	Main Street, Clane, Kildare
Amol Pathak t/a Bombay Bistro	Food & Drink	Employment Permits Acts 2003 and 2006	Main Street, Clane, Kildare	Main Street, Clane, Kildare
Kwok Wing Tsang t/a Flaming Wok	Food & Drink	Employment Permits Acts 2003 and 2006	Unit 2 The Woods, Clane, Co. Kildare	Unit 2 The Woods, Clane, Co. Kildare

## Convictions 2018

Employer	Sector	Legislation of which Conviction Relates	Legal Entity Address	Trading Address
Ms. Dolores Ward t/a Annie Lynn's Public House	Food & Drink	Workplace Relations Act, 2015	Main Street, Donegal Town	Main Street, Donegal Town
Nasir Khan t/a Kabana Pizza Bar	Food & Drink	Employment Permits Acts 2003 and 2006	Hill Street, Cloghan, Co. Offaly	Hill Street, Cloghan, Co. Offaly
My Culture Sands Limited t/a Sands Hotel	Hotel	National Minimum Wage Act, 2000  Workplace Relations Act, 2015	Strand Road, Tramore, Co. Waterford	Strand Road, Tramore, Co. Waterford
Pooi Ken Wan t/a New Golden Dragon	Food & Drink	Employment Permits Acts 2003 and 2006  National Minimum Wage Act, 2000	Main Street, Dunshaughlin, Co. Meath.	Main Street, Dunshaughlin, Co. Meath.
Dehinder Marine Limited t/a MFV Mary Kate	Other	Employment Permits Acts 2003 and 2006	Union Hall, Cork, Co. Cork	Union Hall, Cork, Co. Cork
Nazish Kanawal t/a Lasani	Wholesale & Retail	Employment Permits Acts 2003 and 2006	Unit 11 Belhavel, Golden Island, Athlone, Co. Westmeath	Unit 11 Belhavel, Golden Island, Athlone, Co. Westmeath
Shu Yi Sun t/a Apache Peking	Food & Drink	Employment Permits Acts 2003 and 2006	Lower Main Street, Moate, Westmeath	Lower Main Street, Moate, Westmeath
Mccarthy Fishing Limited t/a Fishing Vessel Excel	Fisheries	Workplace Relations Act, 2015	31 Laoi na Mara, Coxtown, Dunmore East, Co Waterford	31 Laoi na Mara, Coxtown, Dunmore East, Co Waterford

## Convictions 2018

Employer	Sector	Legislation of which Conviction Relates	Legal Entity Address	Trading Address
Immovale Limited t/a Peony Court Chinese Restaurant	Food & Drink	Employment Permits Acts 2003 and 2006	Punches Cross, Limerick	Punches Cross, Limerick
Panag & Sons Ltd t/a King Kebab	Food & Drink	Employment Permits Acts 2003 and 2006	River Street, Clara, Co Offaly	River Street, Clara, Co Offaly
Mr Qinwen Yu t/a The Great Wall	Food & Drink	Organisation of Working Time Act, 1997  National Minimum Wage Act, 2000  Employment Permits Acts 2003 and 2006	Main St, Clogherhead, Co. Louth	Main St, Clogherhead, Co. Louth
Llk Street Food Limited t/a LANA Street Food	Food & Drink	Employment Permits Acts 2003 and 2006	16 O'Connell St., Ennis, Co. Clare	16 O'Connell St., Ennis, Co. Clare
Adrian Keatley t/a Adrian Keatley Racing	Equine	Employment Permits Acts 2003 and 2006	Rossmore Cottage Stables, Friarstown, The Curragh, Co. Kildare	Rossmore Cottage Stables, Friarstown, The Curragh, Co. Kildare
Walsh & Sheehan Limited t/a Walsh & Sheehan Limited	Manufacturing	Workplace Relations Act, 2015	Unit 25 Westside Business Park, Old Kilmeaden Road, Waterford	Unit 25 Westside Business Park, Old Kilmeaden Road, Waterford
Shazia Rasheed t/a Big Bites	Food & Drink	Employment Permits Acts 2003 and 2006	27 Oakleigh, Longwood, Co Meath	3 O'Connell Square, Edenderry, Co Offaly
Tz Lin & Xu Ltd t/a Shannon Palace	Food & Drink	Employment Permits Acts 2003 and 2006	26 Fearnog, Shannon, Co. Clare	26 Fearnog, Shannon, Co. Clare

## Convictions 2018

Employer	Sector	Legislation of which Conviction Relates	Legal Entity Address	Trading Address
Zoe Coffee t/a Chinatown Express	Food & Drink	Employment Permits Acts 2003 and 2006	Unit 4, Downes & Howard Forecourt, Mill Road, Ennis, Co. Clare	Unit 4, Downes & Howard Forecourt, Mill Road, Ennis, Co. Clare
Buch-Anderson Moore Associates Limited t/a Michel Patisserie/Brasserie	Food & Drink	Organisation of Working Time Act, 1997	13 Brighton Hall, Foxrock, Dublin 18	13 Brighton Hall, Foxrock, Dublin 18
Victoria George W Limited t/a Victoria Chiinese Restaurant	Food & Drink	Employment Permits Acts 2003 and 2006	4 Main Street, Clondalkin, Dublin 22	4 Main Street, Clondalkin, Dublin 22
Peking Inn Limited t/a Peking Inn Kingscourt	Food & Drink	Employment Permits Acts 2003 and 2006	12 Funa Rua, Kingscourt, Co. Cavan	12 Funa Rua, Kingscourt, Co. Cavan
Linkat Ltd t/a Peking	Food & Drink	Employment Permits Acts 2003 and 2006	Peking, Main Street, Virginia, Co. Cavan	Peking, Main Street, Virginia, Co. Cavan
Mcpartland Oils Limited t/a McPartland Fuels	Wholesale & Retail	Workplace Relations Act, 2015	Cherrybrook, Manorhamilton, Co Leitrim	Deepwater Quay, Sligo
Ming Jin Yu (Director) t/a Peking Inn Limited	Food & Drink	Employment Permits Acts 2003 and 2006		Main St, Kingscourt, Co. Cavan / Main St, Bailieborough, Co. Cavan
Damascus Gate Limited t/a Damascus Gate	Food & Drink	Organisation of Working Time Act, 1997	10 Upper Camden Street, Dublin 2	10 Upper Camden Street, Dublin 2
Hilan Korean Restaurants Limited t/a	Food & Drink	Employment Permits Acts 2003 and 2006	65 Dame Street, Dublin 2	
Hailan Japanese Restaurants Limited t/a	Food & Drink	Organisation of Working Time Act, 1997	No 2 Mahers Terrace, Main Street, Dundrum, Dublin 14	

## Convictions 2018

Employer	Sector	Legislation of which Conviction Relates	Legal Entity Address	Trading Address
Hilan Restaurants Limited t/a	Food & Drink	Employment Permits Acts 2003 and 2006	45 Capel Street, Dublin 1	
Counter Culture Limited t/a Counter Culture	Food & Drink	Employment Permits Acts 2003 and 2006	C/o Francis J Wood & Co, Balbriggan Business Campus, Balbriggan, Co. Dublin	3 Mercer Street, Dublin 2
Mr Ronan Ryan Director Counter Culture Limited t/a Counter Culture	Food & Drink	Employment Permits Acts 2003 and 2006	C/o Francis J Wood & Co, Balbriggan Business Campus, Balbriggan, Co. Dublin	3 Mercer Street, Dublin 2
Far East Restaurant Limited t/a Far East Restaurant	Food & Drink	Employment Permits Acts 2003 and 2006	18 Mount Andrew Avenue, Lucan, Co Dublin,	339 Ballyfermot Road, Dublin 10
Ms Candy Chu t/a Yangs Restaurant	Food & Drink	Employment Permits Acts 2003 and 2006	Glebe St, Ballinrobe, Co. Mayo	Glebe St, Ballinrobe, Co. Mayo
Phan Chan Duong t/a Yangs Chinese	Food & Drink	Employment Permits Acts 2003 and 2006	Glebe St, Ballinrobe, Co. Mayo	Glebe St, Ballinrobe, Co. Mayo
Yangs Ltd t/a Yangs Chinese Restaurant	Food & Drink	Employment Permits Acts 2003 and 2006	Glebe St, Ballinrobe, Co. Mayo	Glebe St, Ballinrobe, Co. Mayo



# APPENDIX 4

## Key Court and Adjudication Judgements

### **Court of Justice of European Union in Case C-378/17**

#### **Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission and Ronan Boyle & Others**

This case arose when three persons applied to become members of An Garda Síochána but their applications were rejected on the basis that they were older than the maximum recruitment age prescribed by the Garda Síochána (Admissions and Appointments) Regulations 1988. The individuals made a complaint against An Garda Síochána under the Employment Equality Act to the Equality Tribunal. At the opening of the hearing before the Tribunal, the Respondent challenged the jurisdiction of the Equality Officer to investigate the complaints under the Employment Equality Act given the legislation in place. The Equality Officer accepted jurisdiction but in so doing indicated it may be necessary to consider if the Garda Regulations were compatible with Directive 2000/78/EC. The Respondent applied to the High Court by way of judicial review, to prevent the Equality Tribunal from proceeding with the case. The High Court granted the order sought. The Equality Tribunal (now the Workplace Relations Commission) appealed this decision to the Supreme Court. The Supreme Court then referred a request for a preliminary ruling on the matter to the Court of Justice of the European Union. On 4 December 2018, the Court of Justice of the European Union ruled on the basis of primary of EU law that the Workplace Relations Commission, the statutory body established for the resolution of employment related disputes in Ireland, has the authority to disapply a rule of national law that is contrary to EU law where it is necessary to give full effect to EU law.

## Notable WRC Adjudication Decisions

### **Retirement Age and Compulsory Retirement**

#### **Valerie Cox v RTE, ADJ-00006972, 16 March 2018**

***Complainant alleged discrimination on the age ground. The Adjudication Officer found the complaint was well founded as the Respondent has failed to objectively justify the termination of the employment at age 65 years.***

The Complainant was employed by the Respondent company on two separate contracts of employment for two separate defined positions. She lodged two complaints for age discrimination, one in respect of each contract. She referred a complaint alleging discrimination on the grounds of age in relation to the termination of her full-time contract of employment, which commenced in 2004 but which was terminated when the Complainant reached the age of 65 in March 2016. She also referred a complaint alleging discrimination on the age ground in relation to dismissal from her employment in respect of her contract of casual/irregular employment, which commenced in 2003 and for which she was paid a daily rate for work carried out. The claim of age discrimination in relation to her full-time contract failed on the basis that it was out of time as the Complainant had failed to present the claim within the 6 month time limit within the Employment Equality Acts. However, her claim in relation to her casual/irregular contract was successful. The claim was deemed to be within the 6 month period on the basis that Ms Cox did not become aware of the fact that she would not be placed on a roster again until December 2016.

The Respondent argued the retirement age was clearly set out in the staff handbook and the Complainant was invited to participate in a retirement course notified to her in October 2015. The Respondent argued they had operated a compulsory retirement age of 65, which was designed to encourage a high retention rate by creating opportunities for promotion.

The Adjudication Officer found there was no reference to a compulsory retirement age in either the Complainant's contract of employment for casual/irregular work or in the staff manual. Evidence was confirmed by the Respondent that there were two other people over the age of 65 years working on the same roster as that covered by the Complainant's casual contract. The difference being the Complainant was an employee on a contract of service whereas the other two people were independent contractors on contracts for service. The Adjudication Officer found the complaint was well founded in that the Respondent had failed to objectively justify the retirement age, and the Complainant had been discriminated against on the ground of her age in relation to the termination of her casual/irregular contract of employment. The Complainant was awarded **€50,000**.

**John O'Brien v Ppi Adhesive Plastics,  
ADJ-00009914, 10 August 2018**

***The Adjudication Officer found there was confusion around the company retirement policy and the Complainant was dismissed by reason of his age. Adjudication Officer found the dismissal was an act of discrimination within the meaning of the Employment Equality Acts.***

The Complainant was employed as an Assistant Production Manager with the Respondent. The Complainant argued that he was not allowed to remain in his employment because of his age and felt he was discriminated against on the age ground under the Employment Equality Acts. The Complainant submitted that he had an expectation of working beyond the age of 66 and submitted details of comparators who had been afforded that opportunity. The Respondent claimed that the retirement age in the company was normally when an employee reached the age of 65 and it was objectively and reasonably justified by a legitimate aim and it claimed that the means of achieving that aim to be appropriate and necessary.

The Adjudication Officer found there was confusion around the company's retirement policy. From the totality of the evidence adduced the Adjudication Officer was not satisfied the Respondent operated a universally applied compulsory retirement age or that the policy of applying a mandatory retirement age satisfied a legitimate aim.

The Adjudication Officer found the Complainant was the subject of discriminatory treatment on grounds of age. The complainant was awarded **€35,000** by way of compensation for the breaches of the Employment Equality Acts, which equated to 6 months' pay.

### **Workplace Investigations and Fair Procedures**

**A Banker v A Bank, ADJ-00001266, 26 March 2018**

***A Complainant dismissed for gross misconduct. The Adjudication Officer found the dismissal was unfair and ordered reinstatement.***

The Complainant was summarily dismissed in December 2015 for gross misconduct, namely for applying a higher than market interest rate to his parents' deposit account, which the Bank alleged was fraudulent and dishonest. The Complainant submitted that his line manager knew of the familial relationship, and as such there was no breach of the Bank's conflicts of interest policy. However, the Adjudication Officer highlighted procedural flaws in the Bank's investigation process, including: deficiencies in how discussions with witnesses were approached; a failure to keep minutes of informal meetings held with witnesses; and a failure to produce reports from the IT system, which would have corroborated the Complainant's assertions that line managers were aware of a practice of above-market interest rates. On the evidence, the Adjudication Officer did not consider the application of an above-market interest rate as misconduct. The Adjudication Officer stated the Bank had not demonstrated that anyone was deceived or that the complaint had breached any policy or mandate. While the Complainant sought reinstatement to his role, the Bank expressed fear that reinstatement would lead to "future friction, disharmony and possibly

an acrimonious relationship”. However, no direct evidence was presented of any basis for such fear. The Adjudication Officer found that in the circumstances the evidence suggested the Complainant’s reinstatement would not lead to friction, disharmony or acrimony.

The Adjudication Officer ordered the reinstatement of the Complainant in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the reinstatement shall be deemed to have commenced on the day of the dismissal.

This case is notable as it demonstrates that reinstatement may be ordered in cases where the Adjudication Officer finds a dismissal is unfair, including dismissals for what the employer perceives as gross misconduct. An employer will not be able to avoid an order for reinstatement simply by arguing that trust and confidence has broken down from its perspective.

#### **Bank Official v A Bank, ADJ-00014020, 26 October 2018**

***The Complainant disclosed he may have advised a customer to sign her ex-husband’s name on the back of a cheque. The dismissal was found to be substantially and procedurally unfair, however the Adjudication Officer found the Complainant contributed substantially to his dismissal.***

The Complainant was deemed to be in a control function under the Central Bank fitness and probity requirements. On 27 September 2017 the Complainant disclosed to his manager that on 25 September 2017 he advised a customer to sign her ex-husband’s name on the back of the cheque to facilitate lodging the cheque to her account. This matter was then investigated in accordance with the bank’s own internal procedures. The investigation found the Complainant had a case to answer. A disciplinary hearing took place on 7 December 2017. On 2 January 2018 the Complainant was advised the decision was made to dismiss him with immediate effect on the basis of advising a customer

to commit a fraudulent act of forging a signature which amounted to gross misconduct. He appealed the outcome on 2 February 2018. On 20 February the Bank upheld the decision to dismiss. The Adjudication Officer found the dismissal was both substantively and procedurally unfair. However, the Complainant had contributed substantially to his dismissal and this was reflected in the quantum of the award. The Adjudication Officer found the Respondent should pay the Complainant **€10,000** in compensation for the unfair dismissal.

#### **Reasonable Accommodation**

##### **A Solicitor v A Legal Service, ADJ-00011821, 7 September 2018**

***A claim brought under the Employment Equality Act. The Complainant was a solicitor who sought to work from home. She suffered from epilepsy and had worked for the Respondent for many years. The Adjudication Officer found the Respondent failed to provide the Complainant with reasonable accommodation.***

The Complainant had been employed as a solicitor by the Respondent since March 2001. She suffered from epilepsy and sought the option to work from home. Her disability was not in dispute. She had suffered from acute attacks and had made six requests between March 2015 and February 2017 to work from home, all were refused. The Complainant stated colleagues had been accommodated in such a manner.

The Complainant cited Marie Daly v Nano Nagle School [2018] IECA 11 (Court of Appeal, January 31st, 2018) where the Court of Appeal confirmed the decision of an Equality Officer:

“The point is a simple one; the statutory obligation is objectively concerned with whether the employer complied with the obligation to make reasonable accommodation... ‘At a minimum, it requires the employer to fully and properly assess all of the available medical evidence and, where necessary, to obtain further medical advice where the available evidence is not conclusive.”

The Respondent refused to facilitate the Complainant on the basis that it had received a medical report that permitting her to do so would make only 'a minimal reduction' in her stress and having regard to the nature of her 'frontline' duties as a solicitor. The Respondent sought to rely on *A Health and Fitness Club v A Worker* (EED037): "Secondly if it is apparent that the employee is not fully capable Section 16(3) of the Act requires the employer to consider what if any special treatment or facilities may be available by which the employee can become fully capable". The employer argued they had facilitated the claimant's disability previously by providing the claimant with a shorter working week.

The Complainant stated the Respondent failed to make any bona fide and informed decision before reaching its conclusions by failing to engage in any meaningful way as to how the proposed arrangement might actually work and/or how the Complainant's tasks might have been arranged to make it work notwithstanding the fact that the Complainant had undertaken to attend at whatever location the essentials of her role required her to attend on her 'home day'.

The Adjudication Officer stated the question here was whether a 'minimal' contribution might make the difference in avoiding the sort of potentially catastrophic outcome which the complainant had previously experienced and it appeared that the Respondent either did not consider or did not regard this as a significant factor. The Adjudication Officer stated that making a minimal impact on the possibility of avoiding a life-threatening event was a reasonable accommodation. The Adjudication Officer found that the failure of the Respondent to take this into account was a breach of its obligations.

The Adjudication Officer awarded **€30,000** to the Complainant under the Employment Equality Acts.

## **Sexual Harassment - Employment Equality Acts**

**A Receptionist v A Car Parts Company, ADJ-00009794, 7 March 2018**

***The Adjudication Officer found the Complainant was sexually harassed and dismissed for discriminatory reasons. She was awarded compensation and the Adjudication Officer found the maximum award was applicable.***

The Complainant was employed by the Respondent from 6 October 2016 until 13 April 2017. She claimed she was sexually harassed by the owner of the company and that she was dismissed for rejecting the owner's sexual advances towards her. The first incidence of sexual harassment occurred at the work Christmas party and continued until she was dismissed. On the morning of 13 April, the Complainant decided to ask the Managing Director about a pay rise. She had been there for over 6 months and at the interview she was told she could ask for a pay rise after 3 months. She felt she deserved an increase in her weekly salary, especially since she now had the extra travel time and costs associated with travelling to the new branch. The Managing Director told her he would think about it. He called her in to the office later that day and told her he was not giving her a pay rise and that he had decided to let her go. The Complainant said that she was shocked. She asked for the reason and he told her that it was because the owner said he could not talk to her anymore. The Adjudication Officer found that the Complainant was sexually harassed and dismissed for discriminatory reasons within the meaning of the Act. The Adjudication Officer found that the maximum award was applicable, given the completely inappropriate behaviour, and the fact the Complainant lost her job because of the rejection of the behaviour.

In accordance with Section 82 of the Employment Equality Act, the Adjudication Officer ordered the Respondent pay the Complainant **€46,000** in compensation for the distress and the effects caused by the discriminatory treatment, sexual harassment and the discriminatory dismissal. The Adjudication Officer also ordered the employer to put in place a

code of practice on harassment and have all staff fully acquaint themselves with the code.

**A Technical Support Agent -v- A Contact Centre Company, ADJ-00008084, 31 May 2018**

***The Complainant claimed harassment and sexual harassment in the workplace she was subjected to discrimination on the grounds of gender in relation to her conditions of employment and that she was subjected to victimisation. The Complainant also claimed that she was constructively dismissed from her employment. These complaints were upheld.***

In this case the Complainant claimed she was subjected to harassment and sexual harassment in the workplace contrary to Section 14A of the Employment Equality Acts, 1998 - 2015. The Complainant also claimed she was subjected to discrimination on the grounds of gender in relation to her conditions of employment contrary to Section 8 of the Employment Equality Acts. The Complainant claims she was subjected to victimisation contrary to Section 74(2) of the Employment Equality Acts and she was constructively dismissed from her employment. The Complainant had worked for the Respondent at its contact centre from 2014 until early 2017, when she resigned over the conditions she faced in her work environment. She outlined nine instances of sexual harassment she experienced from her then team leader/supervisor, both verbal and physical. The Adjudication Officer found the Complainant was subjected to “a particularly offensive and humiliating work environment for a number of months and this behaviour was perpetrated by her Team Leader, who was her immediate line manager.”

The Adjudication Officer found there were critical shortcomings and fundamental failings in terms of the manner the investigation into the allegations of harassment was conducted and the conclusions which were reached following the conclusion of the process. The Adjudication Officer also found that the Respondent failed to take appropriate action or put sufficient measures in place following the investigation to reverse the effects of the treatment on the Complainant and to prevent further harassment and

sexual harassment from reoccurring. The Adjudication Officer found the Respondent could not avail of the defence provided by Section 14(A)(2) of the Acts and it was therefore liable for the harassment and sexual harassment suffered by the Complainant.

After the investigation concluded, the Respondent issued the Complainant with a letter stating her “absence has a negative impact on your colleagues and the performance of the business and this is not acceptable” and that “a significant and sustained improvement is immediately required”, before suggesting she could face disciplinary action. The Adjudication Officer held that this was “totally unwarranted and unjustified”. This, along with two other acts, the Adjudication Officer found to have constituted victimisation. One of these other acts of victimisation involved Mr A manufacturing a fake Facebook message that suggested intimidation by the Complainant towards him, after she complained about his behaviour. The Complainant strenuously denied she was responsible for this message. The Adjudication Officer found her to be a very credible witness.

The Adjudication Officer found the Respondent’s failure to deal effectively and appropriately with the harassment and sexual harassment was further compounded and exacerbated by management’s actions and inactions following the conclusion of the investigation process. In the circumstances, the Adjudication Officer held the Respondent’s conduct amounted to an undermining of the relationship of trust and confidence between the parties, was unreasonable in the circumstances and entitled the Complainant to claim that she was constructively dismissed.

The Respondent was ordered by the Adjudication Officer to pay its former employee **€35,000** for the distress she suffered and the effects of discrimination, harassment and discriminatory constructive dismissal, and a further **€10,000** for victimisation.

## **Redundancy & Paternity Leave**

**A Horticulturist v A Garden Centre, ADJ-00008251, 9 May 2018**

***Dismissal while on paternity leave is automatically unfair by reason of the Paternity Leave and Benefit Act 2016. At issue was a dismissal under the cloak of redundancy.***

The Complainant had been employed by the Respondent since 2014 on a weekly wage of €615.38 as a Plant Area manager and buyer.

The Respondent made the decision to make the Complainant redundant in October 2016 because of a reorganisation of his business and the closure of one of its outlets. The Complainant's employment was terminated on 1 January 2017. The Complainant received a text message on 11 January 2017 while he was on paternity leave following a period of sick leave asking if he could attend a meeting the following day. The Complainant was informed by the Respondent at the meeting that a new position of 'Assistant Manager' was being created and that his role was being made redundant.

The Complainant asked whether there were any other roles open to him and he was told that there were not and to clear out his desk and leave immediately. The Adjudication Officer distinguished two issues that arose. The first being under the Paternity Leave and Benefit Act 2016, which was straightforward in this case as it was agreed by both parties the Complainant was on paternity leave when informed that his position was to be made redundant. A dismissal while absent from employment on paternity leave is automatically unfair by reason of section 20 of the Paternity Leave and Benefit Act, 2016.

The second issue was whether a genuine redundancy existed in this situation and, if so, were the correct procedures followed. The Adjudication Officer stated that there was a clear lack of consideration of alternatives. The Complainant relied on the dicta of Mr Justice Peter Charleton in the leading case of *JVC Europe Ltd v Panisi* [2012] 23 E.L.R 70 [IEHC] 279,

where the judge referred to a termination under 'the cloak of redundancy' as being not a redundancy at all, but a dismissal. The Adjudication Officer found that the Complainant was unfairly dismissed. However, as the Complainant had very limited actual loss as he had obtained employment on a higher wage three weeks after being dismissed by the Respondent, the Adjudication Officer awarded four weeks compensation in the amount of **€2,461.52**.

## **National Minimum Wage Act 2000**

**A Driver v. A Furniture Business, ADJ-00010961, 21 March 2018**

***The Adjudication Officer found where a worker earns distinctly more than the national minimum wage, an employer is not obliged to provide certain information under the National Minimum Wage Act and is entitled to refer the worker to his payslips.***

The Complainant's representative accepted that his client earned well above the minimum wage but argued that Section 23 of the National Minimum Wage Act, 2000, obliged an employer to provide an employee with a statement of the employee's hourly rate of pay. It was therefore argued that regardless of the Complainant's actual pay rate, the Respondent was in technical breach of the Act. The Complainant's representative stated that his client applied for such a statement, but that it was not provided. The Complainant's representative deemed the Respondent's response to the request, which was that the Complainant was provided with pay slips and that these should suffice, to be inadequate and in breach of the statute.

The Adjudication Officer found the obligation of an employer to provide a statement pursuant to Section 23 is not absolute, the Complainant was in receipt of proper payslips, and the parties were agreed that the Complainant earned above the national minimum wage. Accordingly, no decision could change or improve the situation between the parties. The Adjudication Officer found that bringing the complaint was frivolous and vexatious and it was dismissed.

## **Constructive Unfair Dismissal**

**A Financial Manager v. A Utility Company,  
ADJ-00013862, 12 December 2018**

***The Complainant succeeded in her complaint of constructive unfair dismissal on the ground of breach of contract being established. The Adjudication Officer found it is part of the implied term of trust and confidence a worker is entitled to from their employer, that familial bonds have no bearing on how matters are conducted in the workplace.***

The Complainant commenced work for the Respondent in 2011 and loved her job. The Complainant was praised for her work. In January 2017, Mr A. was appointed as the Complainant's manager. Mr A. had a brother, a nephew, and a brother-in-law who were all employed by the Respondent. He was the brother of the manager who had previously praised her. Initially, the Complainant worked well with Mr A. However, by 13 January, Mr A. told the Complainant that whilst her job was safe, other jobs were at risk. On 25 January, he told the Complainant to accept either redundancy or a lesser position within the organisation. On 3 February, Mr A. told a full room of the Complainant's colleagues that the Complainant was no longer a manager. The Complainant was subsequently left out of managerial meetings. According to the Complainant, Mr A. veered in their personal meetings between assuring the Complainant that her job was safe, and indicating that it was not safe.

The Complainant succeeded in her complaint of constructive unfair dismissal on the ground of breach of contract because the Adjudication Officer found that it is part of the implied term of trust and confidence a worker is entitled to from their employer, that familial bonds have no bearing on how matters are conducted in the workplace.

The Adjudication Officer found that the Complainant was entitled to be compensated for her financial loss. The Adjudication Officer considered the Complainant's blamelessness in the events which led to her dismissal, the serious and long-term impact on her health and well-being, and the fact that the Adjudication Officer found the Respondent to have been in breach of its contractual obligations vis-à-vis the Complainant rather than "merely" behaving unreasonably. The Adjudication Officer considered it just and equitable in all the circumstances and pursuant to the provisions of S. 7(1)(c)(ii) of the Unfair Dismissals Acts, to award the Complainant compensation in the sum of **€35,000**, which was equivalent to one year's remuneration.

## Discrimination and Harassment

**A Staff member v A Retailer, ADJ-00010962,  
25 June 2018**

*A case under the Employment Equality Acts where the Complainant alleged harassment on the grounds of race as he was racially harassed by a work colleague.*

This case was taken on the race ground under the Employment Equality Acts. It involved a Kenyan man who was racially harassed by a work colleague. He was regularly subject to name calling by a colleague. One of the incidents cited involved a “prank” being played on the Complainant where he was called to the customer service desk by a work colleague posing as an immigration official and told that he had to immediately report to immigration services as his documentation was thought to be illegal. He lodged a grievance with his employer following the incident and the Adjudication Officer found that the procedures followed were completely inadequate. The Adjudication Officer found that the Complainant was harassed on the grounds of race contrary to section 14 A of the Employment Equality Acts, 1998 to 2015 and the Adjudication Officer found that the Respondent (a large retailer) in this case once notified of the harassment failed to take reasonably practicable steps to prevent the harassment (of the Complainant) and to reverse its effects”. The Complainant was awarded **€10,000**.

**Jonathon Brennan v Beulah Print - DEC-S2018-20, 9  
November 2018**

*This case was taken under the Equal Status Acts 2000-2015. At issue was whether the complainant was discriminated against when he was refused a service by the Respondent due to his sexual orientation.*

This case involved a claim on behalf of the Complainant that he was discriminated against and harassed by the Respondent, on the grounds of sexual orientation and religion when the Respondent, a provider of a printing service, refused to print invitations in respect of the Complainant’s civil partnership. The claim was taken under the Equal Status Acts which prohibits discrimination in the provision of goods and services on the ground of sexual orientation. The case involved a gay man who wanted invitations printed for his civil partnership and was refused access to the service by the print company. The Complainant had done business with the Respondent company prior to this and had never had a problem with them. The Adjudication Officer was satisfied from the totality of the evidence adduced that the Respondent refused to print the invitations requested by the Complainant once it became aware that the invitations were for a ceremony involving the Complainant’s proposed union with his same sex partner and that this amounted to discrimination on the ground of sexual orientation.

The Adjudication Officer found that the Complainant was discriminated against by the Respondent on grounds of sexual orientation contrary to Section 3 of the Equal Status Acts, 2000 - 2015. The Adjudication Officer ordered the Respondent to pay the Complainant **€2,500** in compensation. The Adjudication Officer found that the Complainant was not discriminated against by the Respondent on grounds of religion and was not harassed by the Respondent on grounds of religion contrary to Section 11 Equal Status Acts.



## **Correct Respondent**

**A Trainee Assistant Film Director v X Productions DAC, ADJ-00005397, 20 August 2018**

*Where incorrect Respondent cited, once satisfied that Complainant's employer was fully on notice of the complaints and the dispute was afforded every opportunity to be heard, the Adjudication Officer found that the name could be amended on the paperwork to reflect its correct legal title.*

The Complainant was employed by 'X Productions DAC' on an intended specified purpose contract as a Trainee Assistant Director for a film production due to run from 20 September - 25 November 2016. She earned €700 gross per week. She contended that she was summarily dismissed some two weeks into the contract and not having the requisite 12 months' service for a complaint under the Unfair Dismissals Act 1977, sought compensation under Section 13 of the Industrial Relations Act 1969. She also sought compensation for the Respondent's alleged failure to provide her with a written statement containing the particulars of her employment contrary to Section 3 of the Terms of Employment (Information) Act 1994 and for requiring her to work excessive weekly hours contrary to Section 15 of the Organisation of Working Time Act 1997, and for not affording her statutory breaks contrary to Section 12 of the Organisation of Working Time Act 1997.

The Adjudication Officer was satisfied that the Complainant's employer was fully on notice of the complaints and the dispute and was afforded every opportunity to be heard.

The Adjudication Officer found that as with any amendment to the parties' details, the Respondent's name could simply be amended on the paperwork to reflect its correct legal title. However, as an extra precaution, the Adjudication Officer offered the Respondent's Representative an adjournment to ensure that all its relevant witnesses could be present and any working time records to meet the complaints could be submitted. This was declined in circumstances where it was conceded that no other witnesses or documentary evidence could further the defense.

## **Protected Disclosure and Unfair Dismissal**

**A Bus Driver v A Former Employer trading as a bus hire company, ADJ- 00008479, 20 June 2018**

*A complaint of unfair dismissal arose in circumstances where the Complainant contended he was dismissed for making a protected disclosure. The Adjudication Officer examined the provisions in relation to unfair dismissal and protected disclosures. She found while a protected disclosure was made, the decision to dismiss did not arise wholly or mainly from the disclosure.*

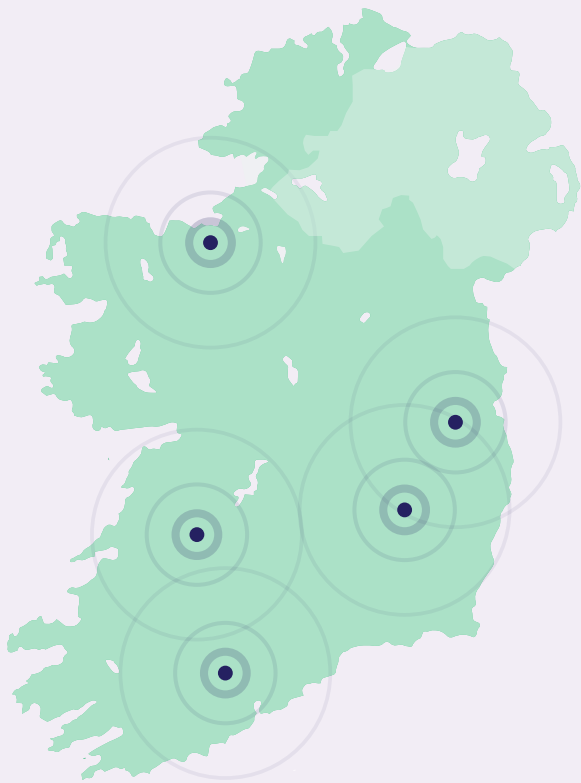
The Complainant referred a complaint of Unfair Dismissal against the Respondent, an individual trading as a Bus Hire Company under Section 8 of the Unfair Dismissals Acts 1977-2015. He subsequently referred complaints under Section 7 of the Terms of Employment (Information) Act 1994 and Section 11 of the Minimum Notice & Terms of Employment Act 1973.

One of the issues in this case was whether the Complainant was dismissed for making a protected disclosure. The Adjudication Officer found that the WRC's jurisdiction to entertain the complaint, given there was less than 12 months' service was predicated upon the making of a protected disclosure within the meaning of the Protected Disclosures Act 2014, and it was necessary for the Adjudication Officer to determine that issue first. The Adjudication Officer stated that Section 5(8) of the Protected Disclosures Act 2014 provided that in proceedings involving an issue as to whether a disclosure is a protected disclosure, there is a presumption that it is until the contrary is shown. However, the Adjudication Officer still had to be satisfied on the balance of probabilities that the Complainant had made a protected disclosure within the meaning of the 2014 Act, and it was a matter for the Complainant to establish. If the making of a protected disclosure within the meaning of the 2014 Act was not established, then the complaint must fail. The Adjudication Officer stated that where the making of a protected disclosure had been established, it was necessary to consider whether the dismissal arose 'wholly or mainly' from the making of that disclosure. The dismissal was presumed to be unfair unless the employer could show that it was

not 'wholly or mainly' from the employee making the protected disclosure in question. The Adjudication Officer distinguished complaints of penalisation under the Protected Disclosures Act 2014, where in Aidan and Henrietta McGrath Partnership -v- Monaghan PDD162, the Labour Court deemed the 'but for' test to be the applicable test. However, the Adjudication Officer stated that the relevant complaint was one of unfair dismissal (not penalisation) under Section 6(2) of the Unfair Dismissals Act 1977 as amended by the Protected Disclosures Act 2014, where it provided that dismissal of an employee shall be deemed unfair if it results 'wholly or mainly' from having made a protected disclosure.

In this case the Adjudication Officer found that the Complainant had made a protected disclosure within the meaning of the Act. She then had to ascertain whether his dismissal resulted 'wholly or mainly' from the making of that disclosure. The Adjudication Officer found the Respondent rebutted the burden of proof and the Complainant's dismissal did not result 'wholly or mainly' from his making a protected disclosure. The Adjudication Officer was satisfied that the decision to dismiss the Complainant, was wholly motivated by protecting the Respondents' contracts with the Transport Service and was not a result of the Complainant's protected disclosure. The Adjudication Officer found the complaint for unfair dismissal was unfounded and it was dismissed. In relation to the other complaints, the Respondent was ordered to pay **€600** compensation comprising **€480** under the Terms of Employment (Information) Act 1994 and **€120** under the Minimum Notice & Terms of Employment Act 1973.





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