



An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission



# Workplace Relations Commission

Annual Report 2022





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Workplace Relations Commission

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2022 Annual Report

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

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# 1

## Director General's Report



Liam Kelly  
Director General

I have pleasure in submitting to the Minister the Annual Report of the Workplace Relations Commission (WRC) in respect of its activities in 2022: a year which saw the WRC return more and more to its pre-Covid 19 service delivery model in terms of face-to-face engagements - a return very much welcomed by our stakeholders.

The WRC is staffed by over 210 civil servants of the Department of Enterprise, Trade and Employment and the work of the WRC is supplemented by a further 42 Adjudication Officers, contracted by the Minister to assist the WRC in disposing of employment, industrial relations, equality and equal status matters on a case-to-case basis.

The WRC plays an enormously important role in Irish society. It interacts with people and businesses in many ways; assisting individuals or groups of workers settle differences with their employer, adjudicates disputes in workplaces and social settings where parties cannot agree an outcome, monitors and enforces compliance with employment standards, and promotes good workplace relations and raises awareness of people's rights and responsibilities across all these activities.

The year in review provides a clear illustration of the WRC's importance as a statutory institution:

- Almost 60,000 callers were helped by our staff when looking for information on employment, equality, or industrial relations matters – up by 7 per cent on 2021 - and visits to our website increased by one-fifth to just under four and a quarter million,
- Almost 6,000 employment rights inspection visits took place with the Inspectorate placing a strong emphasis on the hospitality, road transport, household services and fishers' sectors. Indeed, almost 700 visits alone took place in December in ensuring that employers and employees were aware of what needed to be done and could be done under the Tips and Gratuities Act which commenced on the first of that month,
- The number of hearings held, and decisions issued by the WRC Adjudication Service each increased by almost 30% and the impacts on case scheduling of Covid 19 and the Supreme Court judgment in 2021 abated significantly during 2022,
- The WRC broadened its mediation service model to include unfair dismissals being heard in-person in all cases, and, in certain circumstances, late requests for mediation – both initiatives welcomed by stakeholders – and in this respect, the number of parties willing to engage in mediation increased by 30 per cent as did the number of settlements,
- The WRC's Conciliation Service, which is central to maintaining good workplace relations in Ireland and the effective resolution of disputes, resolved almost 90 per cent of such disputes on which it conciliated during 2022, most of which were dealt with away from the public space, but some were in the public domain and settlement proposals of the WRC were accepted by the parties in employments such as Ryanair, Aer Lingus, Bus Eireann, Bausch and Lomb, Zenith Oil, Themo King, School Secretaries, and the extension of the "Building Momentum" agreement for the public service.

These examples provide just a brief sense of the importance of the WRC, not only in workplaces but across the economy and society in general. The skill sets and knowledge required within such an organisation to deliver these outcomes cannot be overstated. Ireland has come through a very challenging period – where workplace relations have remained stable and with very little disruption in terms of industrial peace. The WRC played a key role in that regard and, as the global economy faces other challenges over the coming year, will continue to do so.

The Minister for Enterprise, Trade and Employment and the Department have consistently supported the WRC in helping us make this contribution both in terms of staffing and other resources. This support is fully appreciated, and it is necessary if the WRC is to carry out its statutory functions to the full.

The unstinting dedication of the staff over the past number of years has been critical. And it continues. In terms of hybrid working, other than field staff who work away from the office much of the time, WRC staff attend their offices a minimum of three days a week and in many instances four and five days a week. This attendance pattern is required to support fully the strategic and operational needs of the WRC and to ensure that new staff are quickly provided with the skill sets required and, very importantly, connect on a personal level with their colleagues within the WRC.

Finally, I would like to thank again the Minister and the Department for their support and to acknowledge and thank the Chair and the Board for their advice and support also – it underpins the work of the WRC and is central to its success.

Liam Kelly  
Director General

# 2 Key Indicators





# 3

## Workplace Relations Commission

### Functions of the WRC

The main functions of the WRC are to:

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

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

## Board of the Commission

The WRC has an advisory board responsible for the setting of the WRC's Strategy and annual Work Programmes. The Work Programme is submitted to the Minister for approval by 1 December every year and the most recent Strategy Statement was submitted to the Minister in 2021.

The Board comprises the Chairperson Dr David Begg, and eight ordinary members appointed by the Minister for Enterprise, Trade and Employment as provided for in the Workplace Relations Act 2015. The Board has two statutory functions, which are:

- to prepare, in consultation with the Director General of the WRC, an annual work programme for the forthcoming year for the approval of the Minister.
- in consultation with the Director General, to prepare and submit a three-year strategy statement to the Minister setting out the WRC's planned strategy for the next three years.

The Board met on four occasions in 2022.



Dr. David Begg  
Chairperson



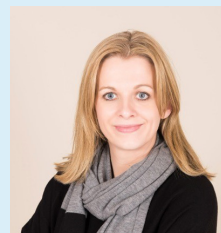
Ms Ethel Buckley



Mr Stephen Driver



Ms Judith Fitzgerald



Ms Sinead Gogan



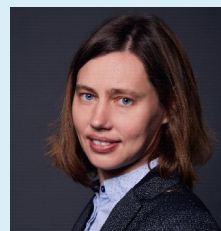
Mr George Maybury



Mr Brendan McGinty



Mr Barry O'Brien



Ms Virginija Petrauskaitė

## Fees/Ethics in Public Office

All Board members, Adjudicators, Rights Commissioners and relevant Officers of the Commission were advised of their obligations and/or completed the appropriate returns under the Ethics in Public Office Acts, as required. The Chairperson and members of the Board are not in receipt of any fee in connection with the performance of their duties as Board members.

## Management Committee

The Management Committee comprises the Director General and the WRC Divisional Directors:

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

## Budget and Staffing

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

The WRC's budget for 2022 totalled €15,696,000.

|                  |                   |
|------------------|-------------------|
| Pay (€)          | 13,082,000        |
| Non-Pay (€)      | 2,614,000         |
| <b>Total (€)</b> | <b>15,696,000</b> |

At end-2022, the staff allocation stood at 213 permanent employees who are full time civil servants and part of the overall staffing of the Department of Enterprise, Trade and Employment. The staffing is supplemented by a further 42 Adjudication Officers who are contracted to assist the Adjudication Service on a case-by-case basis.

### WRC Staffing: End December 2022

| Grade            | Total FTE's   |
|------------------|---------------|
| Director General | 1             |
| Registrar        | 1             |
| Director         | 5             |
| Solicitor        | 1.8           |
| AP/AO            | 28.2          |
| HEO              | 27.3          |
| EO               | 82.13         |
| CO               | 60            |
| <b>Total</b>     | <b>206.43</b> |

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

# 4



## Service Reports

### 4.1 | Information, Inspection and Enforcement

#### Information and Customer Service

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

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

Information on employment rights, employment permits, equality and other workplace legislation is provided through:

- › An Infoline operated by experienced Information Officers (0818 80 80 90)
- › The WRC website ([www.workplacerelations.ie](http://www.workplacerelations.ie))
- › Tailored outreach presentations to stakeholders
- › General and targeted outreach
- › The Infoline also provides status updates to parties on complaints referred for Adjudication and to Employment Permit applicants awaiting a permit.

In 2022, with the introduction of hybrid working under the Blended Working Policy Framework for the Civil Service, Information and Customer Service Unit staff adapted to hybrid working practices (alternating between working on site and working from home) while continuing to maintain the highest standards of service to customers.

The Information and Customer Service Unit witnessed a significant upturn in its activities in 2022 compared with 2021 (see Table 1). Website pageviews increased by over one-fifth, while telephone calls dealt with increased by 7%. Separately, Employment Agency and Child Employment licences processed and issued by the Unit increased significantly (14% and 32% respectively), while outreach activities grew noticeably as pandemic-related restrictions eased.

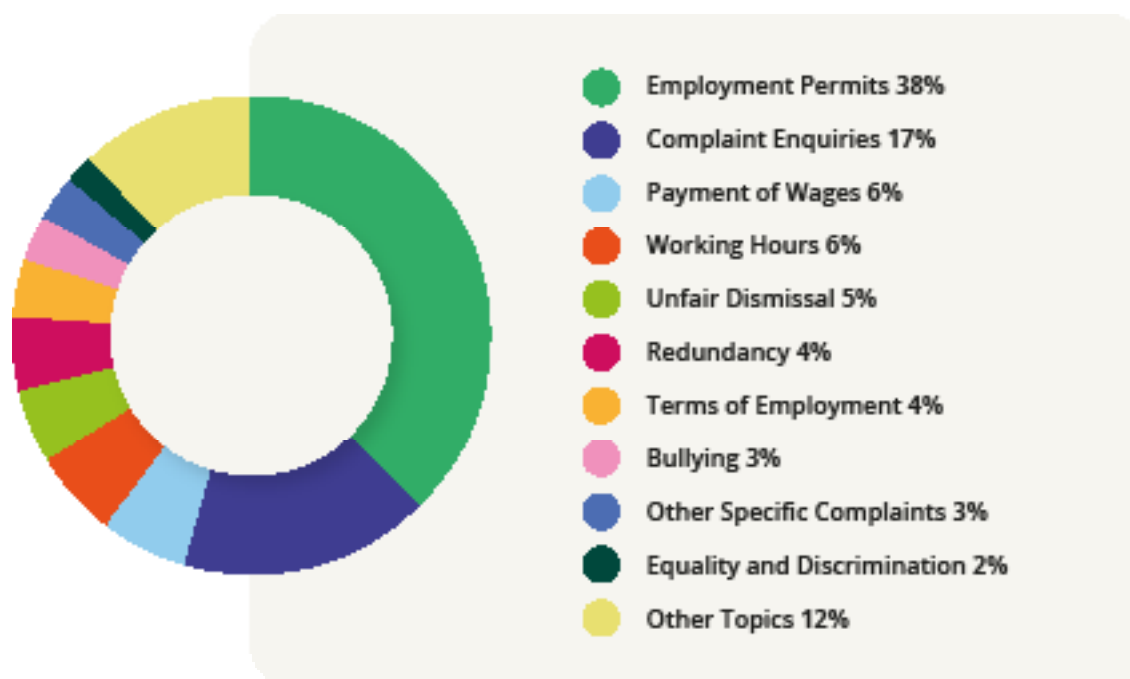
Table 1: Information and Customer Service Activity: 2022

| Activity                               | 2022      | 2021      |
|----------------------------------------|-----------|-----------|
| Phone calls dealt with                 | 59,700    | 55,800    |
| Web views                              | 4,200,000 | 3,400,000 |
| Complaints Applications Processed      | 6,200     | 6,000     |
| Outreach Activities <sup>1</sup>       | 34        | 4         |
| Employment Agency Licences issued      | 936       | 820       |
| Child Employment Licences issued       | 722       | 544       |
| No. of children employed under licence | 1,655     | 1,202     |

## Calls to Information and Customer Service

As in 2021, the number of telephone calls to the Infoline continues to increase – as have all the activities of the Information and Customer Service. Table 1 above illustrates the 11% increase in calls dealt with in 2022.

Figure 1: Infoline Topic Trends: 2022

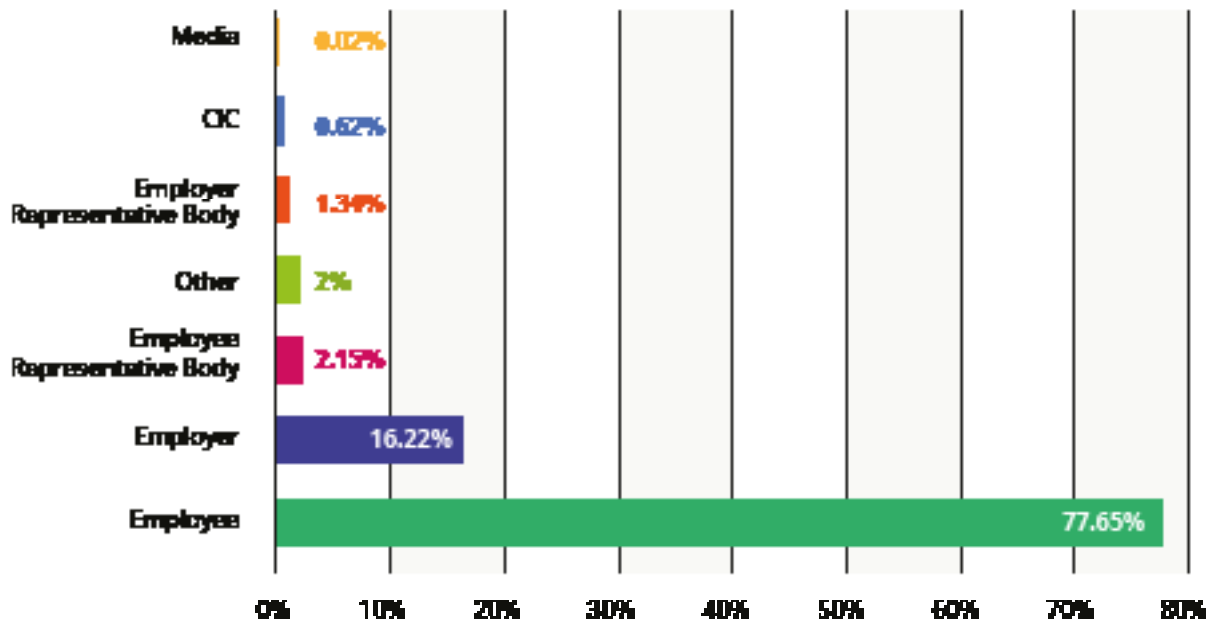


<sup>1</sup> Including activities such as presentations, briefings, conferences, and events.

Figure 1 illustrates the topics on which the Infoline provided information to callers in 2022. Information on Employment Permits was provided to 38% of callers, a decline from 41% in 2021. Other common topics dealt with during the year were the status of complaints submitted to the WRC (17%), queries on working hours (including leave, breaks, night and Sunday work) and queries relating to wages, both accounted for 6% each.

The caller type dealt with in 2022 is set out in Figure 2. Employees comprise over three-quarters of all callers. Employer callers account for 16% of calls, while calls from representative bodies (employees and employers) accounts for 3% of calls dealt with.

Figure 2: Infoline Caller Type





## Outreach and Campaigns

The Information and Customer Service Unit plays an integral role in the overall Outreach Programme of the WRC. This is achieved through presentations on employment legislation, information exhibitions, design and production of information booklets, leaflets and other literature, social media, videos and management of the website. Examples of outreach campaigns, include the 'Road to Fair Transport' campaign (which involved both the Information and Customer Service Unit and the WRC Labour Inspectorate) and a bespoke campaign aimed at highlighting the obligations of employers and the rights of workers in service industries impacted by the new legislation on Tips and Gratuities.

Separately, social media plays an increasingly significant role in WRC outreach activities and helps drive queries to the WRC website. In 2022, the website had 5,544 referrals from Twitter, which is an increase of 93% from 2021 (2,875 referrals). While a further 3,474 referrals were referred to the WRC website from LinkedIn - an increase of 78% from 2021 (1,947 referrals).

### Support to Ukrainian Refugees

In response to the Ukrainian crisis and to those seeking refuge in Ireland, the WRC published an information resource on employment rights for Ukrainian refugees arriving in Ireland in collaboration with the Department of Justice, this resource was distributed at points of entry. In addition, all employment rights, employment permits and equality information on the WRC website is available in Ukrainian.

### Campaign: Road to Fair Transport

Late in 2022, the WRC participated in an EU-wide campaign 'Road to Fair Transport'. The campaign was launched in October and was an initiative of the European Labour Authority (ELA) to support fair and safe working conditions for transport workers employed across EU countries. The campaign was active across social media channels and featured different activities by ELA units on road transport.

The campaign:

- raised awareness of employment rights and entitlements of transport workers, both domestic and cross border,
- promoted awareness of statutory obligations of employers, and
- highlighted the availability of assistance and support.

The WRC actively participated in the campaign and delivered a range of key information messages across social media. The campaign was supported by WRC Inspectors who carried out targeted employer inspections in support of the campaign.



Examples of WRC Social Media Postings for #Road2fairtransport Campaign



Campaign: Tips and Gratuities – Operation Salarium

During December, the Workplace Relations Commission ran a campaign (Operation Salarium) involving both the Information and Customer Service Unit and the Inspectorate, which was aimed at highlighting the changes in relation to tips and gratuities under the newly enacted Payment of Wages (Amendment) (Tips and Gratuities) Act 2022.

Targeting both employers and employees in industries commonly associated with tips and gratuities (including hospitality, tourism, hairdressing, taxi, delivery services), the aim of the campaign was to inform employers of their obligations and employees of their rights under the new legislation. During the month, the WRC carried out over 700 site visits as part of the campaign.

Campaign: Tips and Gratuities - Operation Salarium





## Licensing

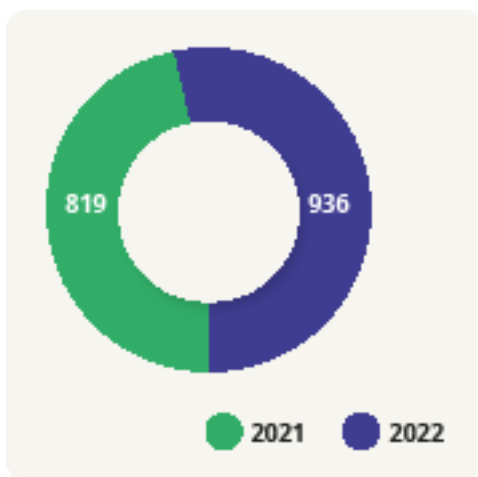
### Licensing of Employment Agencies and employment of Children

The WRC processes applications for employment agency licences on behalf of the Department of Enterprise, Trade and Employment.

#### Employment Agency Licences Issued 2021 and 2022

An Employment Agency operating in the State must hold a licence to carry on its business. Licences are renewable on an annual basis. Some 936 Employment Agency licences were issued in 2022.

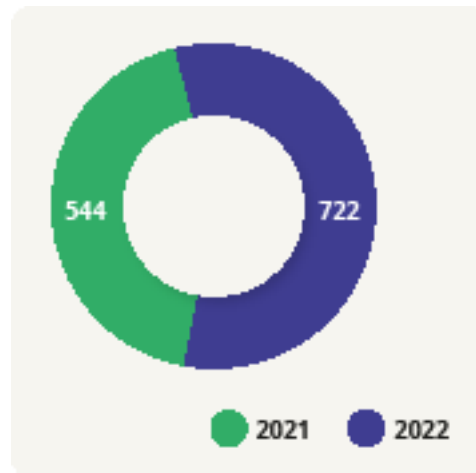
Figure 3: Agency Licences Issued 2021 and 2022



#### Child Licences Issued 2021 and 2022

In addition, the WRC, on behalf of the Department of Enterprise, Trade and Employment, issues licences authorising the employment of children by employers engaged in cultural, artistic, sports or advertising work. Licences for the employment of children set out conditions under which the children may be employed, governing general conditions of employment, parental consent, child supervision, education arrangements, and the maximum working times and minimum breaks appropriate to each child or group of children employed. In 2022, 722 licences were issued authorising the employment of 1,655 such children.

Figure 4: Child Licences Issued 2021 and 2022



## Inspection and Enforcement Service

Table 3: Inspection and Enforcement Service 2022 Activity

|                                                   |            |
|---------------------------------------------------|------------|
| Employers Inspected                               | 3,943      |
| Employers in breach of employment law obligations | 1,763      |
| Unpaid Wages Recovered (€)                        | €1,405,126 |
| Number of Specific Complaints Received            | 708        |
| Total Number of Workplace Inspections             | 5,820      |

The Inspection and Enforcement Services of the WRC conducts workplace inspections of employment records to ensure employers' compliance with employment law in the State. Part of the inspection process involves inspectors visiting places of employment, these visits may be either announced or unannounced. Inspectors are legally entitled to enter any workplace to carry out their work and obstruction or providing misleading information to an inspector is a criminal offence.

The inspection process initially involves the following steps:

- Examination of an employer's employment-related books and records
- Interviewing the employer or employer representative
- Interviewing employees

Inspectors will continue to engage with the employer throughout the inspection process and their objective is to verify employer compliance with the relevant employment law and if necessary, to enforce compliance with the law.

Compliance may include redress for the employees concerned in the form of payment of any unpaid wages arising from contraventions of legislation.

Inspections may also take place in tandem with other regulatory bodies such as officers of the Department of Social Protection and the Revenue Commissioners.

## Inspections in 2022

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

A total of 3,943 inspection cases were closed in 2022, involving 5,820 individual workplace inspection visits. In the course of these inspection visits over 5,700 specific contraventions of legislation were detected.

The Inspection and Enforcement Services of the WRC operates on a compliance model. This means that the focus of inspections is to bring non-compliant employers into compliance with their legal obligations. In 2022, some 1,763 employers were found to have contraventions. However, the majority of employers co-operated with the WRC and became compliant, resulting in eighty-nine prosecutions being undertaken. Of the eighty-nine prosecutions that were taken in 2022, sixty-nine resulted in successful outcomes.<sup>2</sup>

Other enforcement options available to WRC inspectors are Fixed Penalty Notices (six issued in 2022) and Compliance Notices (fifteen issued in 2022).

Table 4: Enforcement Outcomes 2022

|                           |    |
|---------------------------|----|
| Convicted                 | 24 |
| Probation Act             | 38 |
| Charitable Donations      | 7  |
| Withdrawn                 | 8  |
| Dismissed                 | 2  |
| Struck Out                | 2  |
| Decision not to Prosecute | 4  |
| Unable to prosecute       | 4  |

## Civil Enforcement of Adjudication Awards

Under Section 43 of the Workplace Relations Act 2015, an employee, or the Commission, on behalf of an employee, may apply to the District Court seeking an order directing an employer to comply with a decision of an Adjudication Officer. In 2022, some 74 civil enforcement cases were dealt with by the Civil Enforcement section of the WRC. In 30 cases, the employer, following intervention by WRC enforcement staff, paid the adjudication award before the application for a court order had to be taken. This resulted in recovery of awards amounting to €208,044 for employees.

An employer who fails to comply with an order of the District Court in relation to a decision of an Adjudication Officer may face prosecution under Section 51 of the Act. In 2022, two such employers were convicted and fined €500 and €250 respectively, as well as having costs awarded against them.

Some 42 applications submitted for civil enforcement were not successful due to a number of factors. These included applications received where the employer was no longer trading, inability to contact the employer or where the employer demonstrated inability to pay. A number of applications submitted were not legally enforceable (i.e., investigations carried out under S.13 of the 1969 Industrial Relations Act).

<sup>2</sup> Successful outcomes include successful prosecution, Probation and Charitable Donations.

## Joint Inspections

The WRC Inspectorate has wide ranging powers to exchange information with other State bodies and carries out inspections with other State enforcement bodies where such joint operations would enhance the effectiveness of the participating bodies.

In 2022, some 103 inspections were carried out with An Garda Síochána (including Garda National Immigration Bureau and Garda National Protective Service).

WRC inspectors also carried out 113 joint inspections with officers of the Department of Social Protection and 57 joint inspections with officers of the Revenue Commissioners.

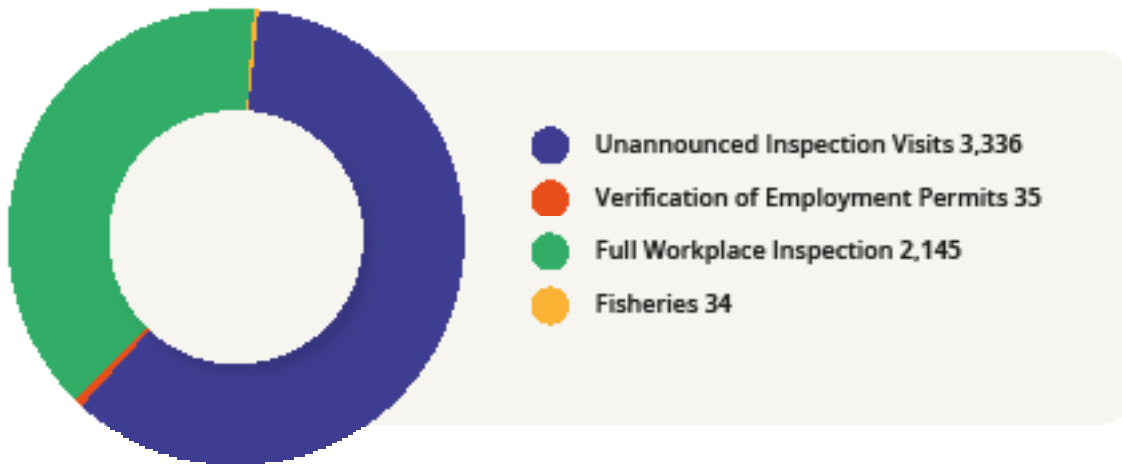
## 2022 Inspection Activity and Outcomes by Employment Sector

The details of inspection activity in 2022 are set out in Table 5. It should be noted that the incidence of breaches of employment law reflects non-compliance detected for the employers inspected and may not be representative of the relevant sector.

Table 5: Inspection Activity and Outcomes by Employment Sector: 2022

| Sector                                     | Employers Inspected | No. in Breach | Incidence of Breach % | Employees      | Unpaid Wages Recovered |
|--------------------------------------------|---------------------|---------------|-----------------------|----------------|------------------------|
| Accounting & Financial Services            | 17                  | 5             | 29%                   | 1,318          | €3,653                 |
| Activities of Households as Employers      | 32                  | 19            | 59%                   | 66             | €223                   |
| Administration & Support                   | 17                  | 7             | 41%                   | 7,535          | €5,299                 |
| Advertising & Marketing                    | 1                   | 0             | 0%                    | 3              | €0                     |
| Agriculture                                | 49                  | 23            | 47%                   | 1,343          | €14,416                |
| Arts, Entertainment & Recreation           | 52                  | 19            | 37%                   | 638            | €7,381                 |
| Beverage Service Activities                | 156                 | 76            | 49%                   | 2,131          | €94,698                |
| Construction                               | 83                  | 29            | 35%                   | 1,918          | €60,337                |
| Contract Cleaning                          | 19                  | 12            | 63%                   | 4,717          | €14,411                |
| Education                                  | 23                  | 7             | 30%                   | 1,620          | €14,920                |
| Electrical Contracting                     | 5                   | 2             | 40%                   | 2,086          | €0                     |
| Employment Placement Agencies              | 18                  | 9             | 50%                   | 4,236          | €3,167                 |
| Equine Activities                          | 4                   | 4             | 100%                  | 16             | €261                   |
| Fishing                                    | 18                  | 9             | 50%                   | 51             | €2,030                 |
| Food Service Activities                    | 1,390               | 636           | 46%                   | 15,905         | €492,754               |
| Hair & Beauty                              | 280                 | 132           | 47%                   | 1,104          | €48,577                |
| Hotels                                     | 89                  | 27            | 30%                   | 5,413          | €95,027                |
| Human Health & Social Work                 | 59                  | 20            | 34%                   | 2,034          | €34,558                |
| Information & Communications               | 22                  | 6             | 27%                   | 73             | €130                   |
| Legal Services                             | 6                   | 1             | 17%                   | 28             | €0                     |
| Manufacturing                              | 58                  | 32            | 55%                   | 6,488          | €53,903                |
| Meat Processing                            | 20                  | 15            | 75%                   | 3,008          | €6,079                 |
| Mechanical Eng. Building Services          | 8                   | 2             | 25%                   | 644            | €576                   |
| Other Accommodation                        | 12                  | 7             | 58%                   | 72             | €5,882                 |
| Other Service Activities                   | 174                 | 74            | 43%                   | 2,462          | €46,928                |
| Postal & Courier Services                  | 4                   | 3             | 75%                   | 38             | €1,163                 |
| Professional Services                      | 26                  | 10            | 38%                   | 403            | €965                   |
| Public Administration                      | 5                   | 0             | 0%                    | 539            | €0                     |
| Real Estate Activities                     | 6                   | 2             | 33%                   | 19             | €525                   |
| Security                                   | 15                  | 6             | 40%                   | 13,284         | €4,119                 |
| Transport                                  | 49                  | 30            | 61%                   | 1,147          | €29,899                |
| Travel & Tour Operators                    | 4                   | 2             | 50%                   | 32             | €0                     |
| Veterinary & Animal Health Services        | 7                   | 2             | 29%                   | 83             | €232                   |
| Warehousing & Support Activities           | 1                   | 0             | 0%                    | 350            | €0                     |
| Water Supply, Sewerage & Waste Remediation | 2                   | 0             | 0%                    | 4              | €0                     |
| Wholesale & Retail Trade                   | 1,212               | 535           | 44%                   | 42,490         | €363,013               |
| <b>TOTAL</b>                               | <b>3,943</b>        | <b>1,763</b>  | <b>45%</b>            | <b>123,298</b> | <b>€1,405,126</b>      |

Figure 5: Inspection Visit Profile

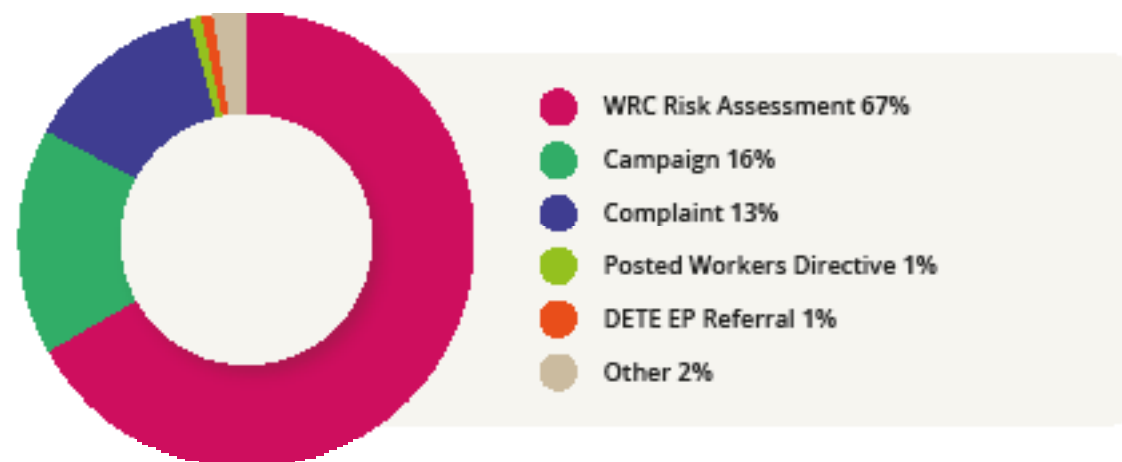


The nature of inspection visits carried out in 2022 is illustrated in Figure 5. Unannounced visits generally involve a profiling exercise to ascertain the likelihood of compliance of the employer and where non-compliance is detected or suspected a full inspection case is then opened. In 2022, 3,336 such inspections were carried out. Inspection visits as part of full inspection cases numbered 2,145 in 2022 and separately, some 34 inspection visits in respect of inspections of the fishing sector were carried out. The WRC also carried out 35 visits to verify the information supplied in applications for employment permits.

## Sources of Inspections

Figure 6 below illustrates the main prompts for WRC inspections carried out in 2022. The majority of cases (2,638) were based on risk assessments carried out by the WRC. Various sectoral campaigns involved 638 cases and 518 resulted from complaints to the inspectorate. Other sources include referrals from partners such as An Garda Síochána, the Revenue Commissioners, Department of Social Protection and other public bodies.

Figure 6: Sources of Inspections 2022



## Sectors of Specific Interest

### Fishing Sector

Some 15 inspectors, led by a Regional Manager, are trained and available for deployment on fisheries compliance operations. This represents a 50% increase in dedicated WRC Inspectors compared with 2021.

In 2022 the WRC continued to contribute to multi-agency efforts to enforce the Atypical Worker Permission Scheme for Non-EEA Fishers employed in the whitefish fleet. Over the course of the year, 34 inspections of whitefish vessels were conducted in 2022 while 18 investigations were completed, bringing to 533 the number of inspections undertaken by the WRC and to 253 the number of investigations completed, since the rollout of the Scheme in February 2016.

During 2022, 11 individual contraventions of employment legislation were detected in the fisheries sector, bringing to almost 400 the number detected since the launch of the Scheme while a further two prosecutions were brought during the year in addition to the 20 initiated since 2016.

Two specific targeted operations in the fisheries sector, involving unannounced inspections, were conducted in 2022 at fishery harbours and other landing places, Operation Pontus in March, and Operation Sirens in October. Ten such operations have now been carried out by the WRC since 2016.

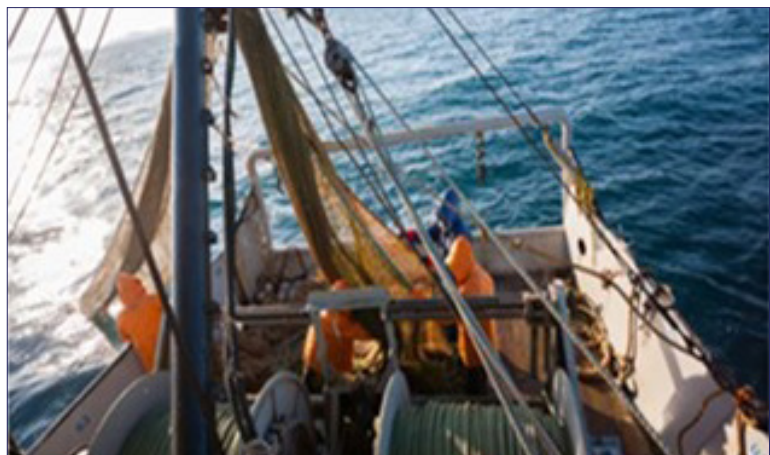
Currently, there are open investigations by WRC Inspectors in 52 cases, in 5 of which legal proceedings have been issued while Contravention Notices have issued in 9 of those cases. Investigations are on-going in the remaining 38 cases.

Many WRC investigations include Detailed Compliance Assessments (DCA) involving a forensic review over a 6-month reference period of fishers' entitlements. While such assessments are resource-intensive and cannot be undertaken in all investigations, it is the WRC's objective that all relevant fishing vessel owners would have one DCA every two years at least.

In addition to enforcement activity, a number of information and awareness measures have been introduced by the WRC since 2016 to enhance employment rights awareness and compliance in the fishing industry.

In December 2021 the WRC consulted with 16 relevant stakeholders who were requested to make written submissions in relation to, among other matters, possible additional outreach measures for fishing vessel owners and migrant fishers. Submissions were received subsequently from five stakeholders.

The WRC's February 2022 report on the outcomes of these consultation sets out actions/roadmaps including some 23 measures and initiatives in terms of information provision, awareness and promotion, direct engagement with both fishers and vessel owners and representative organisations, training and use of communication and social media channels.





Two of these initiatives, the publication of a Fishing Vessel Owners Employers Guide and attendance by the WRC as an Exhibitor at the annual Skipper Expo, have already been actioned. Other measures include the delivery by the WRC of employment law training to vessel owners and fishers at courses held by Bord Iascaigh Mhara, the delivery of webinars, the use of WhatsApp and Facebook for communications with fishers, enhanced content of the WRC’s website, the holding of clinics for fishers at Citizens Information Centres (CICs), the design of a leaflet on Fisher Entitlements, the development of a multi-agency, coordinated approach to the promotion of awareness amongst vessel owners and fishers of requirements and obligations under the AWS and arranging a pilot town-hall type event for migrant fishers.

### Services in Households

The September 2021 Report by the European Labour Authority ‘Tackling Undeclared Work in the Personal and Household Services Sector’ (PHS) concluded that this sector has undergone long-term transformations arising from the rising demand for PHS work.

The WRC carried out a pilot inspection operation in this sector during 2022. The objective was to identify best practice for inspections in this sector and compliance patterns generally in order to inform planning for a future campaign. As part of this initiative some 33 announced inspections were undertaken and 44 contraventions were detected.

Table 6: Household Service Contraventions 2022

| Contravention         | Instances |
|-----------------------|-----------|
| Annual Leave          | 1         |
| National Minimum Wage | 1         |
| Payslips              | 2         |
| Public Holidays       | 2         |
| Terms of Employment   | 12        |
| Working Time Records  | 26        |
| <b>Total</b>          | <b>44</b> |



Of the contraventions noted, some 60% and 27% of contraventions related to failure to keep working time records and failure to issue, or to incorporate the correct particulars in, terms of employment. The WRC intends to follow up with specific awareness initiatives in these areas.

During the pilot, some 37 investigation cases were opened under this pilot campaign. 35 cases were closed in 2022 in 20 (57%) of which contraventions were detected. The remaining 2 cases, in one of which contraventions were to date detected, are being progressed.



### Wild Atlantic Way

The WRC carried out inspection operations from June to September 2022 along the northwest and southern portions of the Wild Atlantic Way tourism trail. The objective was to check compliance in seasonal and tourism related enterprises which would not regularly feature in WRC targeted campaigns.

In terms of activity, 157 inspections were undertaken, 100 in the northwest mainly in Donegal, Sligo and Mayo and 57 in the south, in Cork and Kerry.

Table 7: Wild Atlantic Way Campaign Contraventions

| Contravention                            | Instances |
|------------------------------------------|-----------|
| Working Time Records                     | 36        |
| Terms of Employment                      | 33        |
| Public Holidays                          | 21        |
| Protection of Young Persons (Employment) | 22        |
| Annual Leave                             | 13        |
| Sunday Entitlements                      | 10        |
| Person employed without permission       | 5         |
| Payslips                                 | 4         |
| Pay Records                              | 3         |
| National Minimum Wage                    | 2         |
| Total                                    | 44        |

Over the course of the campaign, some 115 investigation cases were opened under this campaign. 73 cases were closed in 2022 in 18 (25%) of which contraventions were detected. The remaining 42 cases are being progressed.

### Meat Processing Sector

The WRC continues to be active in the meat sector. Following the completion of a consultation process with operators in the meat processing sector during 2021 to raise awareness in relation to compliance with employment legislation, the WRC maintained its ongoing campaign of inspections of operators within the meat sector during 2022.

A total of 23 inspections (both announced and unannounced) were carried out during 2022 and 18 (78%) of employers selected for inspection were found to be in breach of employment law. In this regard, €6,078 in outstanding wages was recovered arising from these inspections.



## EMPACT

EMPACT (European Multidisciplinary Platform Against Criminal Threats) is a security initiative driven by EU Member States to identify, prioritise and address threats posed by organised and serious international crime. The WRC participates in EMPACT joint days of action focused on labour exploitation and human trafficking, which involves labour inspectorates and police forces across Europe. Two campaigns were carried out in 2022 as part of this initiative, targeting Labour Exploitation and Labour Exploitation in the Agriculture sector.

The 2022 EMPACT Labour Exploitation campaign consisted of five Joint Days of Action during the week of 15-21 June 2022. In total, some 172 inspections were carried out by the WRC during the campaign and 171 contraventions of legislation were detected. Other issues detected outside of the remit of the WRC were referred to the relevant State agencies.

The EMPACT 2022 Joint Action Days against labour exploitation in the Agriculture Sector took place during the week of 14-21 September 2022, WRC Inspectors carried out inspections throughout Ireland on employers operating within the agricultural sector including forestry, fruit and vegetable farms, livestock farms (animals and poultry). Overall, a total of 28 unannounced inspections were undertaken, and 17 contraventions of employment legislation were detected.

## Road Transport

The WRC Inspectorate carried out a short campaign focused on road transport activities, particularly transport companies, coach operators and couriers in July 2022, during which 12 employers were inspected comprising 594 employees. Contraventions detected at inspection were in the main, related to employment records, with a small number of contraventions related to terms and conditions of employment.

Overall, during 2022 almost 70 employers in the industry were inspected, covering waste transport companies and taxi firms as well as road transport per se. Contraventions of employment law were detected in forty employers and €32,149 arrears of wages were repaid to employees. Details are outlined in table 8 below.

Table 8: Road Transport Contraventions 2022

| Contravention                            | Instances |
|------------------------------------------|-----------|
| Working Time Records                     | 34        |
| Terms of Employment                      | 17        |
| Public Holidays                          | 5         |
| Protection of Young Persons (Employment) | 0         |
| Annual Leave                             | 8         |
| Sunday Entitlements                      | 1         |
| Person employed without permission       | 2         |
| Payslips                                 | 1         |
| Pay Records                              | 2         |
| National Minimum Wage                    | 1         |
| Unauthorised Deduction                   | 3         |
| Non-compliance with an Inspector         | 1         |
| <b>Total</b>                             | <b>75</b> |

## Overseas Activities

During 2022, the WRC participated in seminars, meetings and workshops organised by the European Labour Authority (ELA). The ELA continues to support Labour Inspectorates in Member States with capacity building in the field of inspection for compliance in the areas where labour mobility is prevalent and detecting and tackling undeclared work generally. Some of the activities included:

- The WRC Inspectorate hosted a delegation from Cyprus on 27/28 September 2022. The purpose of the event was to exchange information, experience and best practice between the WRC and colleagues from Cyprus in relation to Ireland's labour inspection and social security frameworks.



L to R: Leonard Carrigan, WRC; Danny Losty, ELA Irish National Liaison Officer; Finnian Gallagher, DSP; Anna Katsexou, Labour Inspectorate, Cyprus; Tonia Antoniou, Labour Relation Inspectorate, Cyprus & Nicholas Artemis, Sen. Social Security Officer, Cyprus.

- A WRC Inspector and colleagues from the Road Safety Authority participated in a two-day operation, coordinated by the ELA, to Roscoff in October of this year. This objective was to observe the operations of the French Transport and Labour Inspectors, to exchange expertise and experience, to build capacity in the road transport sector and network with other enforcement bodies across Europe.

- WRC Inspectors visited the Netherlands Labour Authority as part of the European Undeclared Work Programme for 2021-2022.

- WRC Inspectors also participated in an international operation with other inspectorates in Spain on 15 June 2023 involving the Irish Road Safety Authority, Spanish Labour Inspectors and Social Security Inspectors, Transport Malta and the Guardia Civil. The purpose of the operation was to ensure that EU rules on labour mobility and social security coordination are enforced in a fair, simple and effective way.



Officials of the Road Safety Authority, WRC Inspectorate (Inspector Bernie Shelly and Inspection Team Leader Paula Coogan are third and fourth from the left), Spanish Labour Inspectors and Social Security Inspectors, Transport Malta and the Guardia Civil at the Ministry of Transport, Mobility and Urban Agenda (MITMA) in Madrid.

- The WRC hosted a delegation of Heads of Units from the European Labour Authority on 13 October 2022. The meeting, which also involved officials from the Road Safety Authority, discussed current issues which the WRC and RSA are encountering as well as the supports which ELA can extend to national inspectorates.



Meeting of ELA Heads of Units, Road Safety Authority and Workplace Relations Commission Top L to R: Irene Mandl, Slavka Eley, Pedro Assares and Malcolm Scicluna (All ELA). Bottom L to R: Danny Losty (ELA Irish National Liaison Officer), Mary Flynn (WRC), Fran Power, (WRC) Justin Martin (RSA), John Kelly (WRC).

## 4.2 | Adjudication

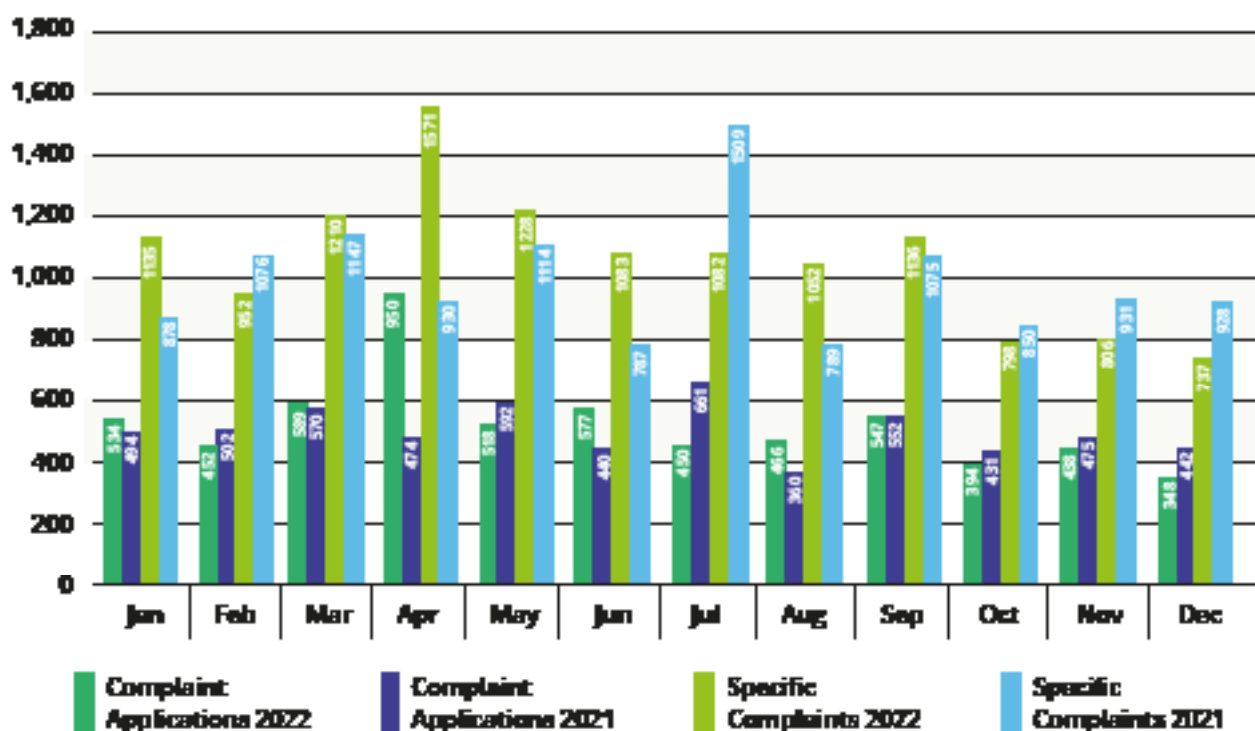
The Adjudication Service investigates disputes, grievances and claims made by individuals and groups under employment, equality and equal status legislation. The legislation under which complaints may be made is set out in Appendix 5.

All Decisions and Recommendations of the Service are published on the WRC website. In most instances the parties are named with the exception of industrial relations disputes or where the Adjudication Officer is of the view that “special circumstances” exist that require the parties to remain anonymous.

### Complaints Received 2022

Over the course of 2022, some 6,263 complaint applications were received that comprised of 12,790 individual complaints - an average of two specific (individual) complaints per complaint application. This represented an increase of 4.5% and 6.5% respectively for complaint applications and individual complaints compared with 2021.

Figure 7: Complaint Applications and Specific Complaints by Month

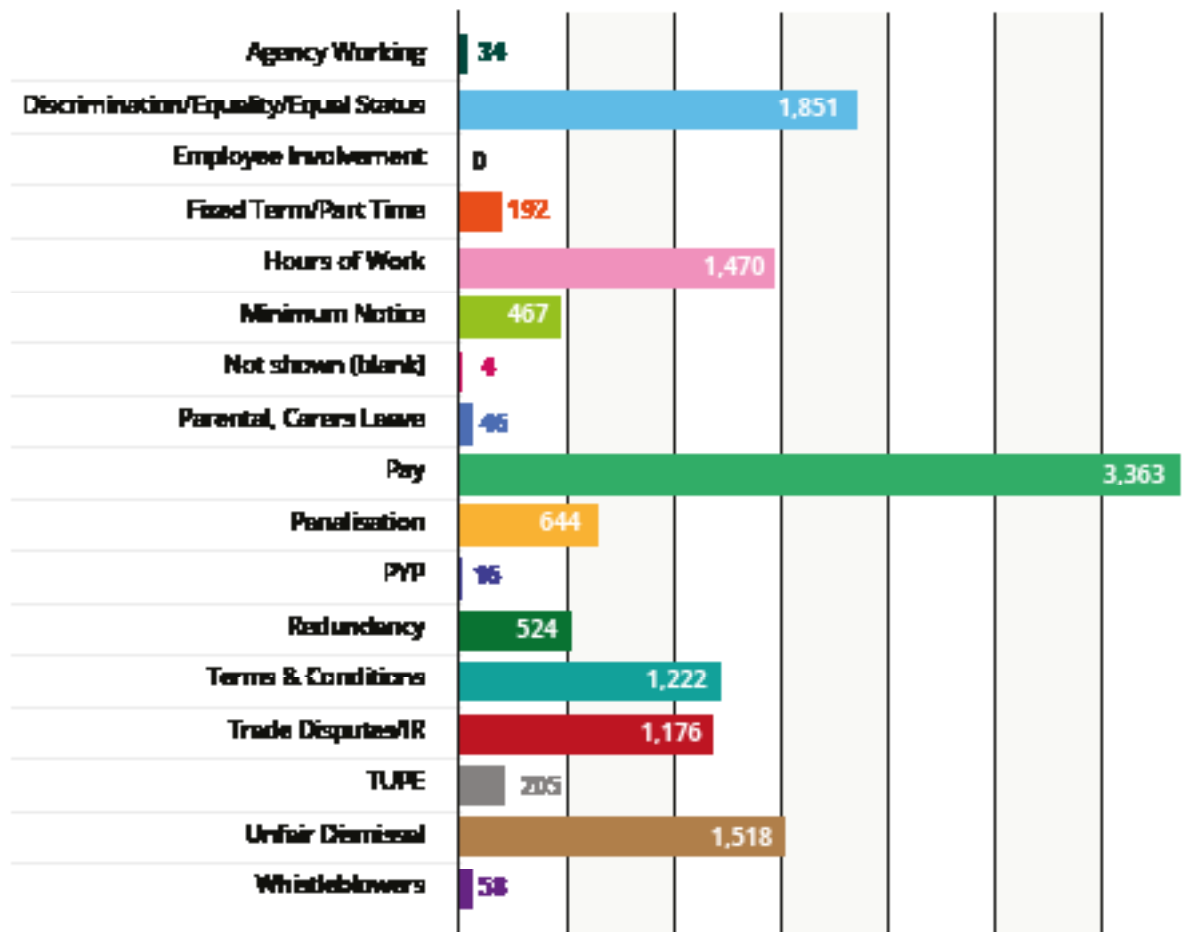


## Complaint Breakdown

### Specific Complaints by Complaint Type

Of the 12,780 specific complaints received, some 3,363 (26%) related to Pay, 1,851 (14%) related to Discrimination, Equality & Equal Status - an increase of 16% compared to 2021, 1,518 (12%) related to Unfair Dismissal - a decrease of 10% compared to 2021, while Terms & Conditions of Employment accounted for 1,222 (10%) of complaints - an increase of 26% on 2021.

Figure 8: Specific Complaints by Complaint Type



## Multiples

The Adjudication Division continues to receive groups of complaints (multiples) where the same respondent has been cited. Of the 6,263 complaint applications received between 1 January and 31 December 2022, almost a fifth (1,163) related to multiples. Indeed, such is their prevalence, that they account for 45% of current "live" complaint applications.

To progress these complaints in an orderly and efficient fashion, the WRC, working with the parties, often identifies key "test" cases, the outcomes of which, may be applied to all other relevant complaints received.

At present, a significant number of these "test" cases are with higher Courts in terms of appeals and/or points of law and, as such, these cases and their associated "multiples" cannot be progressed further by the WRC at this stage.

As the lodgment of manual multiple complaint forms creates a significant amount of administrative work for the WRC, the use of the electronic online complaint form is strongly encouraged.

## Hearings

### Hearings Scheduled

The WRC conducts hearings in person and remotely with an average of 70% being in-person and 30% conducted remotely.

Hearings scheduled or offered to parties increased by over a fifth (22%) compared with 2021. In this regard, some 7,542 complaint files (i.e., single or bundled complaints from an individual) were offered a hearing in 2022 - an average of 150 per week. Of this total, some 1,638 (22%) were postponed and a further 1,287 (17%) were withdrawn prior to the hearing date. Others were cancelled by the WRC due to particular factors, such as the late unavailability of parties or settlement on the day of the hearing.

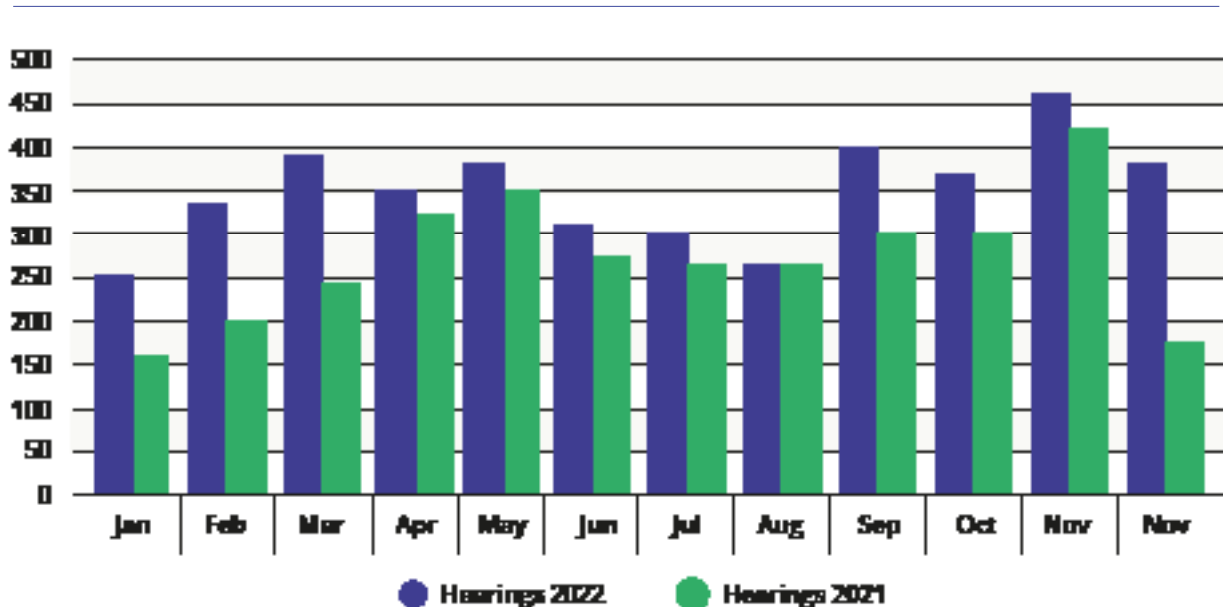
### Hearings Held

A total of 4,253 adjudication hearings were held in the period 1 January to 31 December 2022 - an increase of 933 (28%) on the 3,320 hearings held in 2021.

Other than the multiple cases referred to earlier or those complaints which cannot be progressed pending clarification of a particular point of law in a higher Court, all complaints received prior to 2022 have been scheduled or offered a hearing while some 20% of complaints received in 2022 were closed by year-end.

It is worth noting that, following the judgment of the Supreme Court in *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* (2021), the experience of all parties is that hearings are taking longer than would be anticipated given the requirement for the affirmation of evidence on oath, cross-examination, and adjournments. This impacts somewhat on the availability of Adjudication Officers across any given hearing day in terms of the number of hearings that can be completed and/or complaints that may be disposed of.

Figure 9: Hearings Held by Month



## Postponement Requests

In particular circumstances, it may become necessary for a party to request that the scheduled hearing of a complaint be postponed. Such postponements may impact the other party and on the efficient and effective use of the resources of the WRC. As such, the WRC considers all applications for postponements carefully with due regard to the rights of the parties to fair procedures and reasonable expedition in having a scheduled complaint heard.

Some 2,595 postponement requests or objections to remote hearings were received from the parties during 2022, which represented an increase of 2,216 (17%) compared with 2021. Of the postponements sought, some 63% (1,638) were granted.

The primary reason advanced by parties related to Covid-19 and other related illness accounted for 27% of such applications followed by 17% requiring additional preparation time, the remainder related to witness unavailability or pre-booked holidays.

### Postponement Process

The WRC Postponement Policy provides for automatic postponements in circumstances where applications are received within five working days from the date of the hearing notification letter where such application is accompanied by the written consent of the other party. Such applications allow the WRC utilise that date and the Adjudication Officer in relation to other cases. However, such early requests account for less than 10% of applications for postponement.

Processing the remainder requires the WRC to obtain information and documentation from parties, the making of decisions on the applications and often results in the loss of an otherwise available hearing day where the request is received too late to “backfill” the slot. Separately, it is not reasonable to expect parties to be available for what can often be complex hearings, the preparation of submissions and the briefing of representatives with less than four weeks’ notification. As such, late postponement requests cause considerable delay and inconvenience for all parties.

## Decisions

Almost 2,000 (1,968) Decisions/ Recommendations issued in 2022, an increase of 419 (27%) compared with 2021.

Some notable WRC decisions are set out in Appendix 4.

Of the 12,790 individual complaints received in 2022 some 2,596 (20%) had been closed by year-end. Of these half were closed following interaction with the WRC, i.e., decision issued, dismissed, settlement reached on the day of hearing, mediated by the WRC or withdrawn during/post-adjudication or mediation. A sizeable proportion (48%) were withdrawn before adjudication (either settled by the parties, or the complainant withdrew the case) while the remainder await a hearing date or a decision.

## Referrals Under the Equal Status Acts 2000-2015

The year witnessed a decline in complaint referrals under the Equal Status Acts 2000-2015 in that some 506 referrals were made under the Acts during 2022, relating to 748 specific grounds compared to 572 referrals in 2021 relating to 810 specific grounds – a reduction of just under 12% when compared with 2021.

Within the overall referrals, increases were witnessed in five of the ten grounds provided for in the legislation. The most sizable increases were in Membership of the Traveller Community (+146%) with 150 referrals, and (+56%) in Race. While referrals under Disability recorded the overall highest referral under the statutory grounds provided, with 157 referrals it represented a 57% decrease on referrals made in 2021.

| Equal Status Grounds                  | 2021 | 2022 | Difference (%) |
|---------------------------------------|------|------|----------------|
| Age                                   | 54   | 35   | -35%           |
| Civil Status                          | 38   | 37   | -3%            |
| Disability                            | 362  | 157  | -57%           |
| Family Status                         | 44   | 53   | +20%           |
| Gender                                | 71   | 49   | -31%           |
| Membership of the Traveller Community | 61   | 150  | +146%          |
| Race                                  | 85   | 133  | +56%           |
| Religion                              | 29   | 25   | -14%           |
| Sexual Orientation                    | 8    | 12   | +50%           |
| Accommodation                         | 58   | 97   | +67%           |
| Total                                 | 810  | 748* | -8%            |

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



## Referrals Under the Employment Equality Act, 1998-2015

In 2022, 1,275 complaints were referred under the Employment Equality legislation citing 1,677 specific grounds of discrimination. This is a sizable increase of 37% of referrals under the legislation compared to 2021 (932) when 1,347 specific grounds were cited.

Within the overall referrals, the highest increase was under the grounds related to Age (514) a significant increase of 176% compared to 2021. This was followed by Disability (349) an increase of 8% compared to 2021. While ranking third in overall referrals, the Gender ground fell by 8% year-on-year.

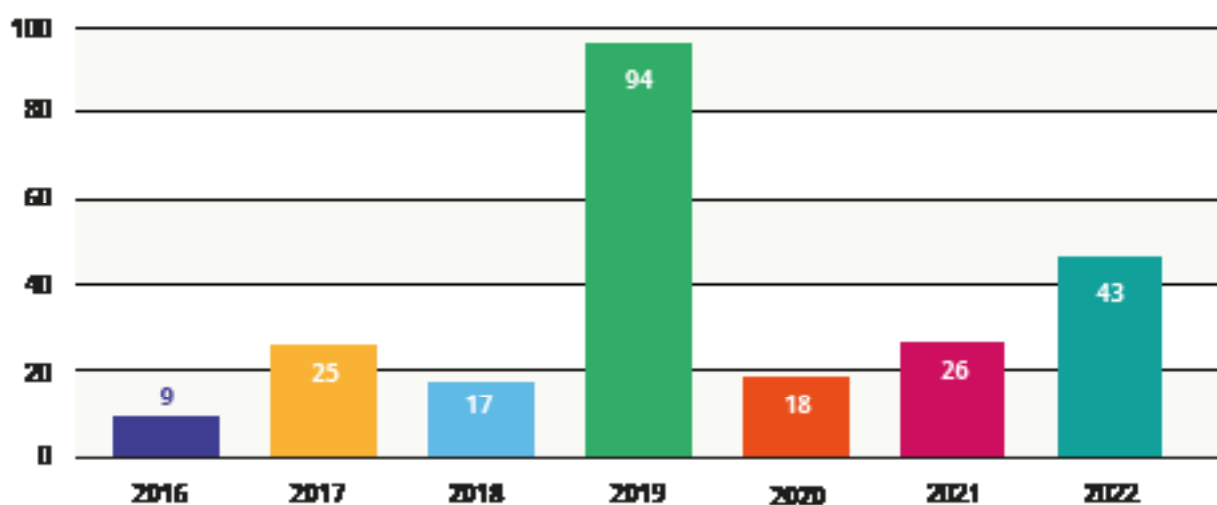
| Breakdown specific complaints by ground | 2021 | 2022  | Difference (%) |
|-----------------------------------------|------|-------|----------------|
| Age                                     | 186  | 514   | 176%           |
| Civil Status                            | 42   | 65    | 55%            |
| Disability                              | 323  | 349   | 8%             |
| Family Status                           | 202  | 183   | -9%            |
| Gender                                  | 316  | 286   | -9%            |
| Membership of the Traveller Community   | 20   | 26    | 30%            |
| Race                                    | 181  | 166   | -8%            |
| Religion                                | 41   | 65    | 58%            |
| Sexual Orientation                      | 36   | 23    | -36%           |
| Total                                   | 1347 | 1677* | 24%            |

\* Note: While 1,275 referrals were received under the Employment Equality Acts, 1,677 grounds were cited, as complainants can choose more than one ground when making a specific complaint.

## Referrals Received under the Pensions Act, 1990

In 2022, some 43 referrals were received under the Pensions Act, 1990: an increase of 65% on 2021.

Figure 10: Referrals Received under the Pensions Act, 1990

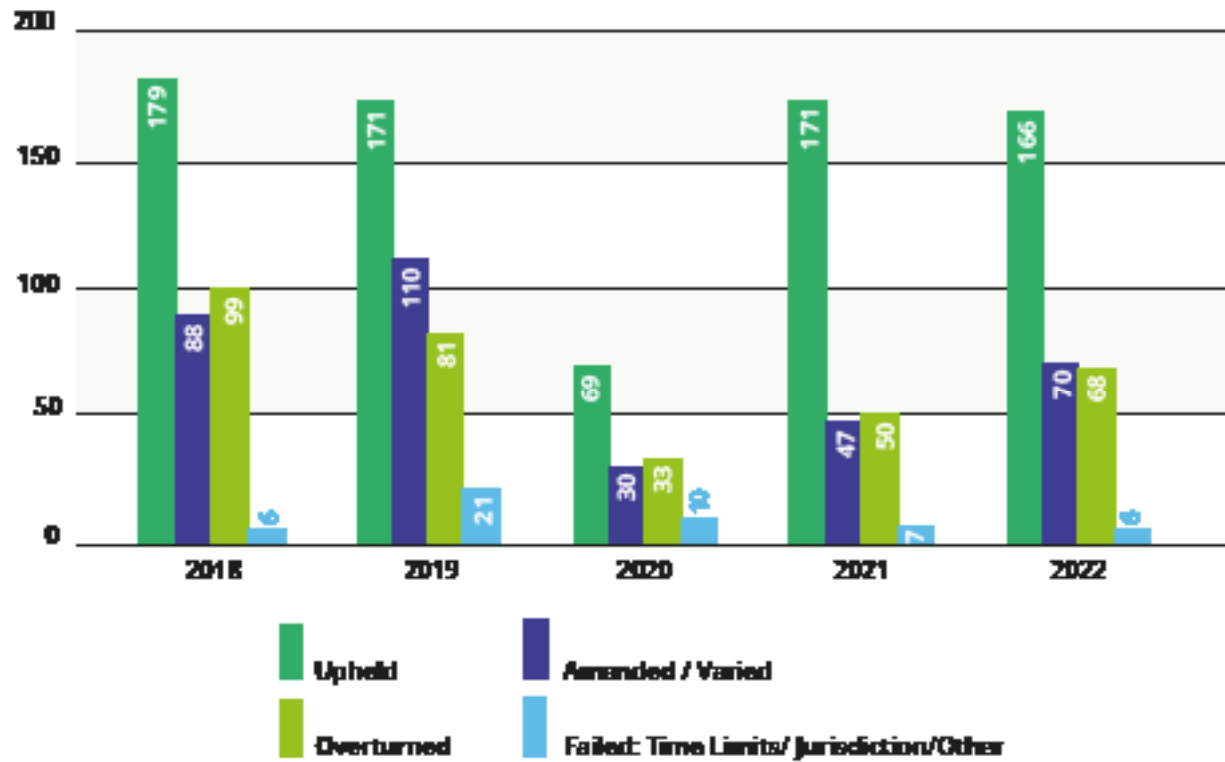


## Labour Court Decisions on WRC Appeals

The WRC was notified of 310 decisions issued by the Labour Court in 2022 relating to appeals of the WRC Adjudication Officers' Decisions and/or Recommendations.

Of these, some 166 (53%) were upheld, 70 (23%) were Amended/Varied, 68 (22%) were overturned while the remainder failed to be considered. These outcomes are broadly in line with previous years.

Figure 11: Referrals Received under the Pensions Act, 1990



| Labour Court Outcomes                   | 2018 | %   | 2019 | %   | 2020 | %   | 2021 | %   | 2022 | %   |
|-----------------------------------------|------|-----|------|-----|------|-----|------|-----|------|-----|
| Decisions issued                        | 372  |     | 383  |     | 142  |     | 275  |     | 310  |     |
| Upheld                                  | 179  | 48% | 171  | 45% | 69   | 49% | 171  | 62% | 166  | 53% |
| Amended / Varied                        | 88   | 24% | 110  | 29% | 30   | 21% | 47   | 17% | 70   | 23% |
| Overturned                              | 99   | 26% | 81   | 21% | 33   | 23% | 50   | 18% | 68   | 22% |
| Failed: Time Limits/ Jurisdiction/Other | 6    | 2%  | 21   | 5%  | 10   | 7%  | 7    | 3%  | 6    | 2%  |



## 4.3 | Conciliation, Advisory and Mediation Services

The Conciliation, Advisory and Mediation (CAM) Division of the WRC enhances the Irish industrial relations environment by working at national, sectoral and enterprise level with private enterprises, trade unions, employer organisations, government departments/state agencies and employees to promote and develop progressive industrial relations and human resource management practices and processes. The Division provides an impartial, timely and effective suite of Conciliation, Advisory and Mediation Services including educational awareness and training programmes across a range of work-related topics to service users.

### Conciliation

It is the WRC's view that face-to-face interaction is the most effective and efficient method of achieving resolution for parties involved in disputes. Full interpersonal engagement between the parties themselves with the assistance of the Division's team of conciliators best serves the confidential nature of the conciliation process and creates the space for parties to develop jointly their own solutions to disputes. To this end, the Division largely moved away from the on-screen 'gallery view' of virtual engagement and returned to face-to-face engagement following the lifting of Covid-19 restrictions in early-2022.

The issues of pay, organisational structure and industrial relations generally continued to represent the core of matters referred for conciliation. Inflationary pressures led to claims for higher increases in pay negotiations while a 9% increase in referrals occurred relating to organisational structure – possibly as a consequence of the impact of the pandemic on organisations.

Separately, the Conciliation Division successfully facilitated critical discussions between the Government and the Public Service trade unions in term of the pay terms and extension of the 'Building Momentum' public service agreement.

The Commission received 555 requests for conciliation in 2022 which required some 744 conciliation conferences to be held. A resolution rate of 88% was achieved.

### Issues at Conciliation

Requests for conciliation reflected a broadly similar range of issues to those referred in 2021. Referrals received in 2022 covered:

- > Pay Issues (44%),
- > Organisation Structure such as shift work, staffing, restructuring, rosters, hours of work, change in work practices, redeployment, and recruitment (28%),
- > Industrial relations issues such as changes to terms and conditions of employment, new technologies, union/management agreements, grading, productivity, outsourcing etc (19%),
- > Redundancy (2%),
- > Pension Related (3%),
- > Types of Leave (3%),
- > Benefits such as bonuses, profit sharing, service pay, sick pay, staff incentives, expenses etc. (1%).

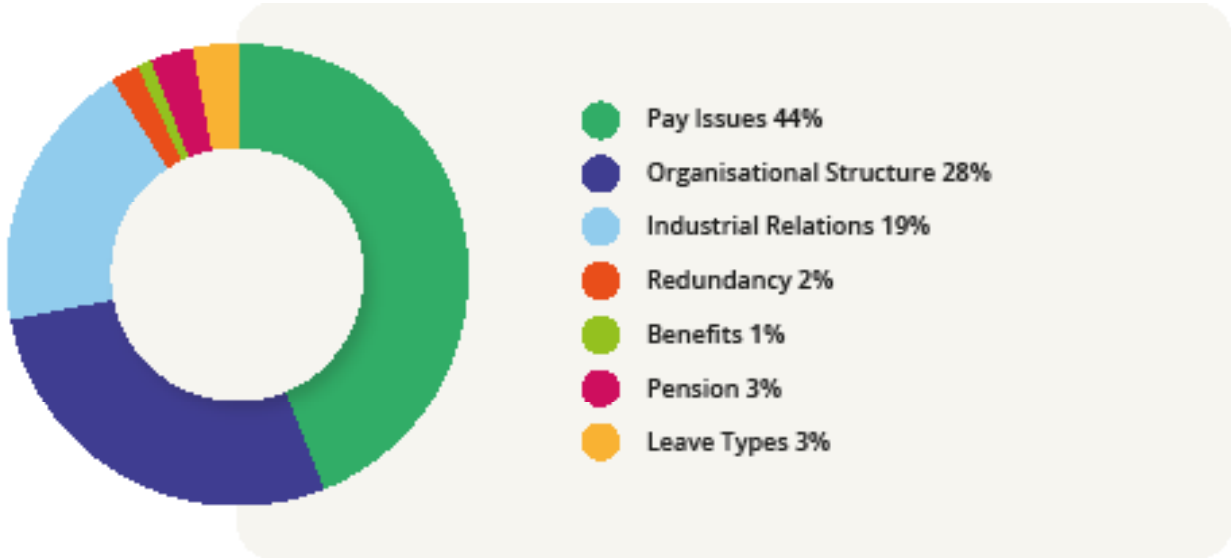
### Sectors at Conciliation

The Commission brokered agreements across a range of sectors in the economy, many of which are already in the public domain such as Aer Lingus, Ryanair, Bausch and Lomb, and Bus Eireann. The Service also provided a significant contribution to the public and healthcare sectors including engagements which led to the extension of the Building Momentum public service agreement and the resolution of a longstanding dispute involving medical laboratory scientists.

### Referrals to the Labour Court

A total of 61 cases were referred to the Labour Court for a recommendation under Section 26(1) of the Industrial Relations Act 1990 where a resolution was not possible at conciliation. In most cases, the conciliation process at the WRC played a significant part in reducing the differences between the parties and refined the matter requiring a definitive Labour Court recommendation to resolve the dispute.

Figure 12: Types of Disputes at Conciliation in 2022



## Advisory

### Industrial Relations Reviews

WRC reviews of industrial relations within an organisation involve an in-depth assessment of workplaces to identify industrial relations or workplace issues. A review may involve the entire organisation or a discrete element of the organisation where the difficulties being experienced arise only in respect of a particular group. Once completed, the outcome of the review may contain bespoke recommendations about how practices and procedures may be improved and contribute to the resolution of the issue and often, the WRC will continue to work with the organisation concerned to implement those recommendations. A typical review might include information gathering exercises such as individual interviews, questionnaires or focus groups to help accurately identify any problems and work with the parties to develop effective remedies.

The year witnessed a return to more face-to-face engagement for the Advisory Service as Covid related restrictions receded. In 2022, the WRC received six new requests for assistance from the Advisory Service and these – together with the eight already in process comprised the majority of Advisory output during the year. In all, by year-end, 9 reviews had been completed and the remainder resolved or still in progress.

The Advisory Service also continues to be engaged in longer-term assistance in those organisations already the subject of a review prior to 2022.

## Mediation

The WRC provides two distinct forms of mediation; pre-adjudication mediation (face-to-face and by telephone) to assist the resolution of specific complaints referred to the WRC and workplace mediation to resolve ongoing interpersonal issues between persons or groups of persons.

### Pre-Adjudication Mediation

Pre-Adjudication Mediation is provided for under Section 39 of the Workplace Relations Act 2015 and is available for almost all rights-based complaints referred to the Adjudication Service where both parties agree to participate and where the Director General is of the opinion that the matter is capable of being resolved through mediation.

The advantage in offering mediation prior to proceeding to adjudication is that it minimises the time and expense to the parties and their representatives in preparing and proceeding to a full adjudication hearing, as well as having a positive impact on WRC resources and the effective use of tax-payer funding. It also gives the parties an opportunity to mutually agree on a resolution that suits their needs in a confidential and legally binding way.

In early 2022, the Commission conducted a comprehensive review of the pre-adjudication mediation service with a view to identifying opportunities to develop the service and meet the following objectives:

- Increase participation in mediation
- Contribute to reducing the number of complaints proceeding to full adjudication
- Contribute to reducing the number of postponements of adjudication hearings

Following this analysis, Mediation Services introduced two significant changes to how mediation services are delivered by the WRC:

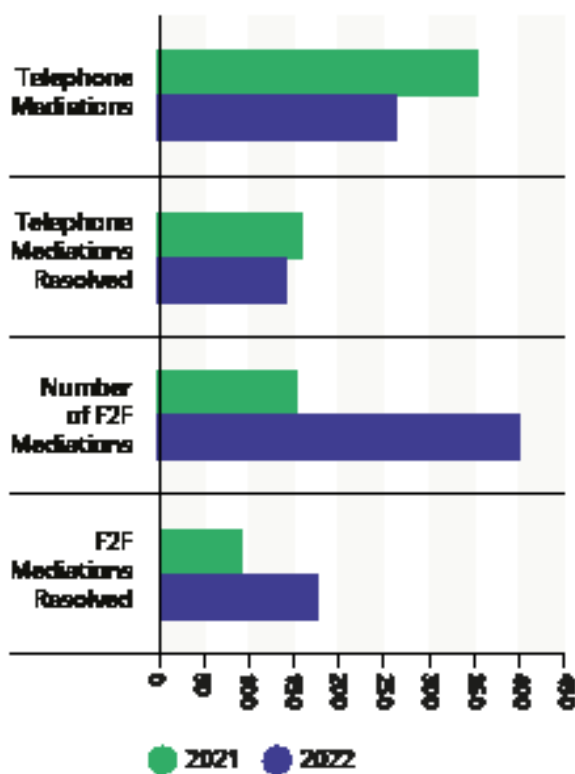
- (1) a change in the delivery of mediations for unfair dismissal complaints, and
- (2) the introduction of a six-month Late Request Mediation Service pilot project.

## Unfair Dismissal Mediations

Since the establishment of the WRC in October 2015, all equality rights mediation cases have been delivered in a face-to-face format whereas the practice has been to carry out all employment rights mediations either by correspondence or via telephone.

The Mediation Service review identified a potential for an increase in both participation rates and settlement rates in cases involving unfair dismissal complaints in circumstances where mediation could be delivered face-to-face.

Figure 13: Telephone & Face-to-Face (F2F) Mediations



Since June 2022, all mediations that include an unfair dismissal specific complaint are delivered in person by default and when parties are invited to participate, they are now informed that the mediation will take place in-person.

## Late Request Mediation

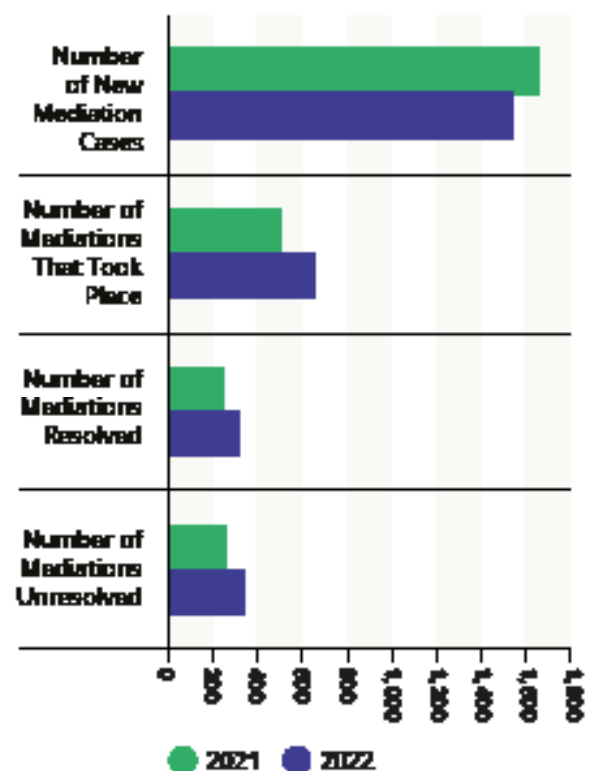
In September 2022, the Commission began a 6-month pilot project to provide a “late request” mediation service. Following receipt of an adjudication hearing date, should either party contact the WRC seeking to participate in mediation, the Commission will endeavour to facilitate mediation in advance of the scheduled hearing date if both parties are agreeable while holding in place the assigned date for the adjudication hearing.

In practice, this means that should mediation be unsuccessful, the adjudication hearing will go ahead as scheduled. This minimises the time and resource impact on the Commission in terms of postponing and rescheduling a new hearing date, as well as providing a timely service to both parties rather than further delaying the process.

Limitations to the service include the proximity of the request for mediation to the hearing date, the availability of the parties and the availability of a mediator in circumstances where there is significant demand for mediation in other cases.

A review of the operation and outcomes of the new Late Request Mediation pilot will be conducted in early-2023. Initial data would suggest that 25% of the cases which requested LRM were resolved before the adjudication hearing.

Figure 14: Mediations Increased by 31% in 2022



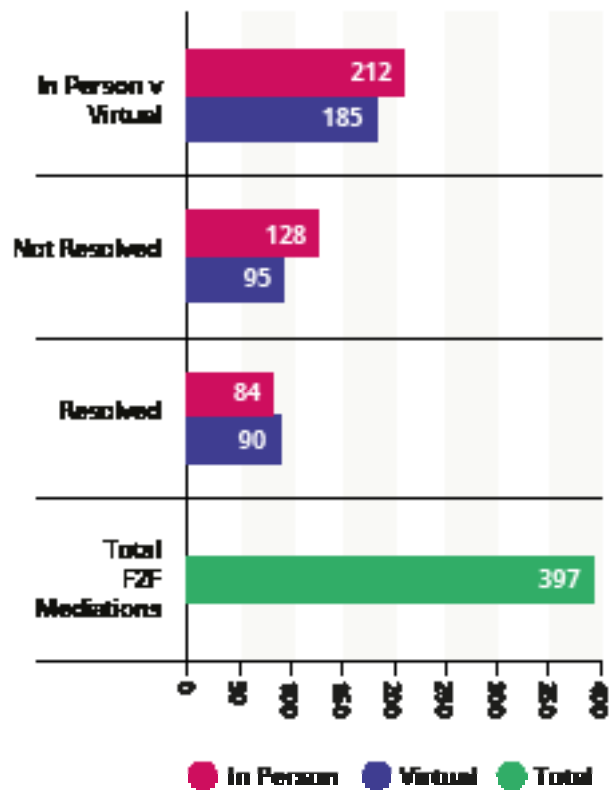


The WRC provides two distinct forms of mediation; pre-adjudication mediation (face-to-face and by telephone) to assist the resolution of specific complaints referred to the WRC and workplace mediation to resolve ongoing interpersonal issues between persons or groups of persons.

In total, some 1,546 cases were selected for mediation in 2022. Of these, a total of 658 mediations took place where both parties agreed to participate. This represents an increase in participation in mediation of 31% compared to 2021 and the number of cases resolved by mediation also increased by 30% in 2022.

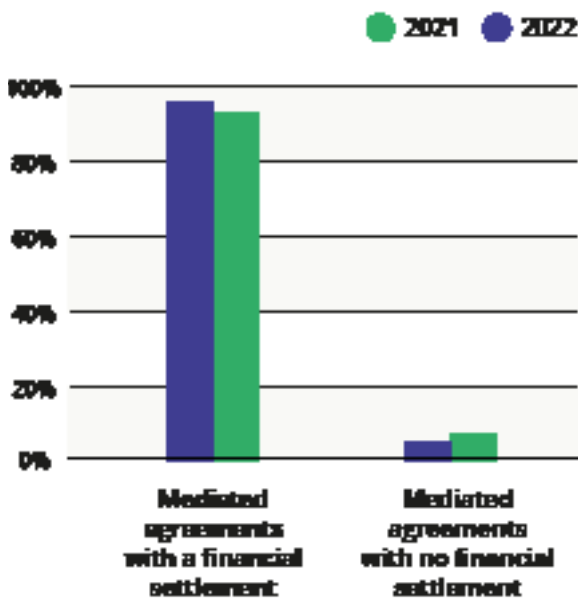
While telephone mediations decreased from 350 in 2021 to 261 in 2022 (25% decrease), face to face mediations increased by 263% from 151 to 397. The number of mediations successfully resolved in a face-to-face mediation also increased by 276%.

Figure 15: Face-to-Face (F2F) Mediations 2022



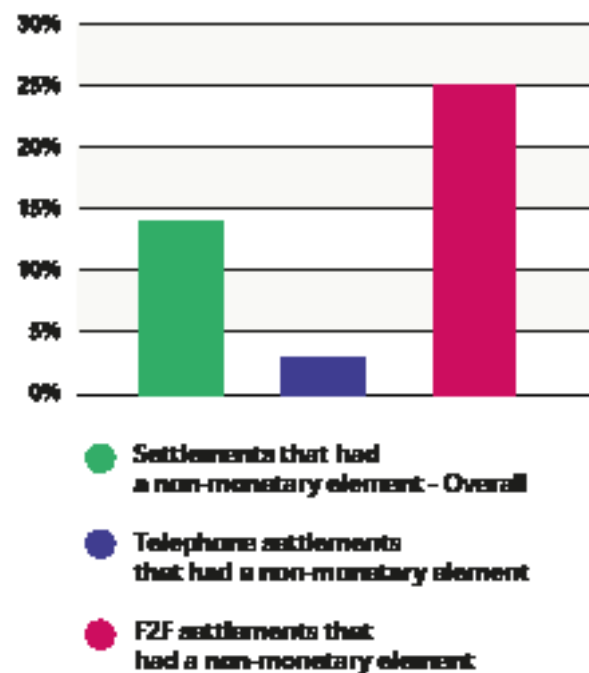
The year in review is the first year that the Commission has data on the breakdown between the outcomes of telephone, in-person and virtual mediation. Some 261 telephone mediations took place throughout the year with a success rate of 53%, 185 in-person mediations took place in 2022 with a success rate of 49%, while 212 virtual mediations took place in 2022 with a success rate of 40%.

Figure 16: Mediation Settlements with No Monetary Element



In 2022, 7% of agreements did not include any kind of financial settlement, an increase of 2.5% from last year. However, of these, 83% were equality rights agreements compared to 50% last year. Only 14% of settlements included a non-monetary element as part of the agreement compared to 28% last year. These changes can likely be attributed to the significant increase in the resolution of unfair dismissal complaints at mediation where a financial settlement is the most likely outcome.

Figure 17: Mediation Settlements with Non-Monetary Element



## Workplace Mediation

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

A total of 89 workplace mediation requests were received during 2022. Following assessment and engagement with the individuals requesting the mediation, some cases were deemed unsuitable for workplace mediation and in many cases the requests were redirected to other more appropriate services in the WRC. Nonetheless, some 40 requests did proceed to workplace mediation and following engagement with the parties 30 are now closed while the remainder remain in process.



## Facilitation

The Division played an active role outside of its traditional conciliation, advisory and mediation work and throughout 2022, facilitated discussions in 219 such engagements.

In this regard

- The Commission continued to chair a range of other negotiations fora such as the Health Service National Joint Council, National Negotiating Forum for Technological Universities, the Construction Industry NJIC, the Teachers' Conciliation Council, the State Industrial NJIC, the Local Authority NJIC, the Garda Conciliation Council, Irish Prison Service National Monitoring and Review group and Joint Labour Committees (JLCs) – the Early Years JLC.
- Officers of the Commission also played a role within the Education and Training Board (ETB) structure in their role as Appeals Officers with the ETB Appeals Procedures where its grievance, disciplinary or bullying and harassment procedures have been initiated as well as, in the Community and Comprehensive Schools grievance and procedures structure. In addition, the Service chaired the Bórd na Móna Joint Industrial Council, the Irish Rail Joint Industrial Relations Council, and oversight bodies established under the Building Momentum public service agreement.

## Knowledge Development and Outreach

The delivery of education awareness workshops remains central to the Division's outreach services. Their key focus is maintaining and improving best practice in industrial relations and driving positive working relationships within the workplace.

The year witnessed a considerable increase in requests for Outreach Workshops increasing from 11 in 2021 to 44 in 2022 and the Service delivered 20 Workshops, 17 in-person and 3 remotely. Topics included Dignity in the Workplace, Conciliation, Adjudication, and the Services of the WRC.

In 2023, the Service will continue to offer general and bespoke workshops in all areas of the working relationship. In addition, the service is enhancing and broadening its function will be producing a series of short information videos on the services of the WRC along with various subject matter relating to the workplace and the working relationship.



## 4.4 | Corporate, Strategy and Digital Services Division

### Governance

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

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

### Human Resources

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

Over the year, the WRC added an additional eight staff to its overall complement and witnessed a significant staff churn in terms of retirements, transfers and promotions; in all some 8 additional staff were recruited and, in all, 38 new staff joined the WRC during the year - a turnover of almost 20%.

In addition to upgrading staff skills to reflect the changing legal and operational environment, inspector recruitment and associated training took place in terms of the adjudication and inspection services in 2022.

During 2022, a new formalised blended working arrangement was rolled-out across the WRC in conjunction with the Department of Enterprise, Trade and Employment. The particular blended working patterns adopted by the WRC aligned to the requirement to fully support the strategic and operational needs of the Commission.

Staff capacity, succession planning, and staff engagement were also advanced in 2022. In March 2022, the WRC held a Staff Conference that brought staff together from all WRC offices for the first time since Covid-19 in 2020. The publication of the in-house staff magazine, regular meetings and anchor days and the introduction of the blended working policy all assisted in maintaining a sense of community across the WRC.

## Information Communications and Technology

Throughout 2022, the WRC continued to build upon the progress previously made in developing and deploying web-based, user-friendly ICT solutions.

A new case management system for the WRC's Conciliation service was designed and rolled-out in 2022. Separately, the WRC initiated scoping work around its e-Complaint Form and Self-Service Portal project, the first phase of which will go live in 2023. This will provide an improved user experience for submitting complaint applications and will be followed by a customer portal for tracking applications.

In late 2022, the WRC developed a new ICT Strategy 2022-2024 for the WRC that lays the foundations for medium-term digital advancement within the WRC and which will focus on delivering "Digital First" solutions in line with the Public Service ICT Strategy. Automation and efficiencies are the main drivers behind the Strategy and to provide innovative and user-friendly solutions and platforms for people interacting with the WRC at all levels.

## Robotic Process Automation

In line with the "Digital First" pillar of the Public Service ICT Strategy, the WRC became the first organisation in the Department to implement an RPA platform which will process automatically the first administrative step in the handling of complaint applications. When embedded fully, the RPA will register and process almost all applications received quickly and efficiently and will identify any issues with applications that require clarification or further engagement with a party or parties.

This technology will be reviewed during 2023 in terms of its potential broader application across the WRC.

## Communications and Outreach

### Website

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

In 2022, the WRC website handled over four million pageviews, a 23% increase on the previous year, mainly through interest generated by targeted campaigns for new legislation such as the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 and a campaign centred around the introduction of a new public holiday introduced in 2022. (In this regard, the Public Holiday webpage was the most viewed individual webpage on the WRC website in 2022).

Since the launch of the revised website in May 2019, the site has been regularly reviewed to ensure that it complies fully with all web standards in terms of the structure, layout and content and that it follows web standards laid out by the World Wide Web Consortium (W3C) and the Irish National Disability Authority. Furthermore, in 2022 the WRC website was routinely audited by the Irish National Disability Authority and the WRC Webmaster worked in liaison with the Irish National Disability Authority's audit results to implement any further accessibility suggestions identified from the audit.

## Social Media

Throughout 2022, the WRC social media channels shared employment and equality related information and legislative updates with the public. The reach of these platforms increased throughout 2022 and currently the WRC\_IE Twitter account has more than 2,700 followers and the WRC LinkedIn account more than 9,200: an increase over the year of 29% and 51% respectively.

During 2022, the WRC ran several social media campaigns which drove some 5,544 referrals to the website from Twitter - an increase of 93% from 2021 (2,875 referrals) and 3,474 referrals to the WRC website from LinkedIn - an increase of 78% from 2021 (1,947 referrals).

## Information Videos

A suite of short animated informational videos to assist users of WRC services was scripted and developed across 2022. These videos will be available in a number of languages and will be rolled-out in early 2023. The topics covered in the animations include:

- How to Make a Complaint to the WRC and What to Expect at an Adjudication Hearing
- Dignity in the Workplace
- Pre-Adjudication Mediation and
- Advisory Information.

## WRC Office Premises

In October 2022, the then Minister for Business, Employment and Retail, Damien English TD, officially opened the new WRC Southern Region office, centrally located in Cork city. This represented the culmination of the WRC ambition to be in a position to deliver its full suite of services regionally.



(L-R) Mr Liam Kelly, Director General, WRC, Minister for Business, Employment and Retail, Damien English TD at the official opening of the WRC Southern Region Office and Dr David Begg, Chairperson WRC Board.

## Public Sector Equality and Human Rights Duty

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

In line with established principles and Section 42 of the Irish Human Rights and Equality Act 2014, the WRC places a strong emphasis on the right to fair procedures, the right to privacy, equal access and equal treatment in all aspects of the services provided. The WRC continues to work to ensure the dignity and welfare of all staff is protected and a culture of participation and respect is encouraged. The human rights and equality issues affecting staff include the right to fair procedures, the right to privacy, equal access, equal treatment and dignity in the workplace.

All internal policies are kept under review to ensure compliance with best practice in those areas.

Following a meeting between the WRC's equality and human rights subcommittee with Human Rights and Equality Commission's (IHREC) Public Sector Duty team to discuss key areas to focus on for development in the year, IHREC gave a presentation to staff at the WRC Staff Conference in May to raise awareness of human rights and equality issues.

Separately, training was organised for WRC staff which included awareness raising in relation to autism, ageing, ADHD, LGBT+ rights and all new joiners were provided with an induction video on Equality, Diversity and Inclusion.

The Information and Customer Service Unit also plays an integral role in the overall Outreach Programme of the WRC. During the year, the Unit engaged with the Migrant Rights Council of Ireland, the Romanian Community, and a regional Traveller Group to provide information on the various services of the WRC.

The WRC worked with the National Disability Authority to ensure that the WRC website is fully compliant with accessibility requirements. Information on the website is provided in several languages and interpretation services are available to WRC clients for case hearings and engagements with WRC inspectors.

## Protected Disclosures Act 2014

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

Further to this requirement, the WRC confirms that one external report was received in accordance with the provisions of the Protected Disclosures Act, 2014 during 2022. The report was deemed not to be a protected disclosure following investigation. The outcome was communicated to the individual. No internal reports were received by the WRC.

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

## 4.5 | Legal Division

### Legal Division

#### Functions

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

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

#### New Legislation

The Division was involved in supporting the WRC prepare for a range of new legal rights coming into force including those under the Payment of Wages (Tips and Gratuities) Act 2022, the Gender Pay Gap Information Regulations 2022, the Sick Leave Act 2022, and Protected Disclosures (Amendment) Act 2022, European Union (Transparent and Predictable Working Conditions) Regulations 2022, Maritime Area Planning Act 2021 and new Employment Regulation Orders in relation to childcare and early years sectors.

The Division also advised on the legislation transposing the EU Work-Life Balance Directive 2019/1158, the right to request remote working, new employment permits legislation, and the Courts and Civil Law (Miscellaneous Provisions) Bill 2022 which prohibits recording of remote hearings. Training and guidance on the new law was provided to Adjudication Officers and staff. The Division also supported colleagues with a range of reforms to the complaint form, policy and related processes to ensure readiness for the new legislation.

#### Protected Disclosures Acts 2014-2022

In relation to the Protected Disclosures Acts 2014-2022 the Division led a cross-team working group to devise new policies and procedures to ensure readiness for the amended Act, and compliance with the heightened obligations on public bodies from 1 January 2023. A new external channel was established to ensure effective access for reporting persons to the Director General as a 'Prescribed Person' under the Acts. A Designated Person was appointed, and training provided across the organisation. The WRC engaged with stakeholders and liaised with relevant departments and the newly established Office of Protected Disclosures Commission to ensure a consistent approach.



## Administration of Justice

The Division continues to support the Adjudication Division as it strives to ensure that fair procedures are applied in the over 4,000 hearings annually post-Zalewski<sup>3</sup> whilst balancing the need for the WRC to continue to be an accessible forum for the majority unrepresented litigants who seek an effective remedy in their employment or equality disputes.

In February 2022, Simons J handed down a judgment for costs in the matter of Ammi Burke v. An Adjudication Officer, Workplace Relations Commission and Ors. [2022] IEHC 45 following the dismissal of the underlying judicial review JR/561/2021 in November 2021, in which the WRC policy post-Zalewski and the AO's decision was upheld as lawful.

The Division contributed to the Adjudication Certificate accredited training and onboarding of the new Adjudication Officers who were warranted in 2022.

## Litigation

2022 was another busy year for the Legal Division in terms of litigation. The Division represented the WRC in 14 High Court matters, three Circuit Court challenges and other matters throughout the year. The WRC was successful in the majority of judicial reviews.

## Enhancing Accessibility

Using Artificial Intelligence (AI) the Division analysed 1,800 cases following the commencement of the post-Zalewski ameliorating legislation, the Workplace Relations (Miscellaneous Provisions) Act 2021, in order to identify circumstances in which cases were heard in private or decisions anonymised. The snapshot revealed that if one removed industrial relations disputes (which must be heard in private), just 13% of cases involved special circumstances<sup>4</sup> such that the parties names were anonymised in the published decision; the vast majority of these cases were equality law challenges.

In October 2022 the Division published a "Summary of Key Judgments of the Irish Courts and the Court of Justice of the European Union Relating to Decisions of the Workplace Relations Commission" analysing trends in litigation involving the WRC from its establishment in 2015 to 2022<sup>5</sup>. The WRC hopes that this publication and the trends it maps will be useful to legal practitioners and those interested in the work of the WRC.

Separately, WRC Adjudication Officers are provided with summaries of relevant jurisprudence on a regular basis to enhance the quality of the WRC's decision-making.

Also, using AI the Division, during 2022, reviewed 10,000 of the most commonly cited precedents before the WRC and having consulted internally and with the Law Society, the WRC will publish an accessible authorities list in early 2023 which is designed to save parties from filing multiple copies of well-known authorities – albeit in their submissions, parties will still be required to cite the relevant aspect of an authority.

The Division's Data Protection Liaison Officer (DPLO) continues to support the WRC on information law and provides training and support to staff across the Divisions. The DPLO also keeps WRC policies under review in light of new jurisprudence and liaises with the Department Data Protection Officer to ensure compliance.

## External Engagements

Externally, the Registrar spoke to the Employment Lawyers Association of Ireland ('ELA'), SIPTU Advocates, and on the Law Society's Judicial Skills' Diploma, and engaged with EU colleagues as well as a number of domestic stakeholders in the area of human rights, equality and employment law.

3 Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General (2021)

4 WRC policy on 'special circumstances' and open justice per the Workplace Relations (Miscellaneous Provisions) Act 2021

5 wrc-litigation-report-2015-2022.pdf (workplacelrelations.ie)



# Appendices



# Appendix

# 1

## Work Programme 2022: Outcomes

### Conciliation, Advisory and Mediation Services

| Work Programme Objectives                                                                                                         | Action/Tasks                                                                                                                                                                                                                                                  | Delivery Timeframe                              | Key Performance Indicators                                                                                                             | Outcomes                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Provide timely, effective and efficient conciliation service and ensure demand is met whilst maintaining delivery of all services | Provide in-person and virtual conciliation in an appropriate timeframe to facilitate resolution of industrial relations disputes. Proactively engage with service users to support and provide assistance in the maintenance of positive industrial relations | As and when required by clients throughout 2022 | Maintenance of high success rate in the resolution of industrial relations disputes                                                    | 88% of disputes referred resolved                                                                               |
| Work to expand client usage of relevant mediation services of WRC                                                                 | Maintain and increase – where possible – in-person and virtual pre-adjudication mediation and regionally where required                                                                                                                                       | Throughout 2022                                 | Increase in cases successfully mediated to bring about a reduction in numbers advancing to adjudication process in rights-based claims | New mediation model: 30% increase in both parties agreeing to mediation and 30% increase in settlements reached |

| Work Programme Objectives                                                                                            | Action/Tasks                                                                                                                                                     | Delivery Timeframe       | Key Performance Indicators                                                                                                                      | Outcomes                                                                                      |
|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 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 deal with all issues in accordance with procedures and operations as set in agreed terms of reference | Throughout 2022          | Effective delivery, operation and conclusion of all issues raised in accordance with protocols and procedures with the agreement of all parties | All requests for assistance fully delivered                                                   |
| Ensure effective two-way communication with primary clients                                                          | Maintain effective dialogue with key clients in all regions and nationally                                                                                       | At all times during 2022 | Effective operation of communication channels maintained                                                                                        | Dialogue maintained throughout 2022                                                           |
| 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   | Throughout 2022          | Effective, tailored programme delivery, high service user satisfaction, improved workplace relations                                            | Assistance supplied as needed: 9 interventions completed and 6 further requested              |
| Provide workplace knowledge sharing                                                                                  | Develop and deliver information on positive industrial relations principles and working relationships through facilitative workshops                             | Throughout 2022          | Broader and better understanding of issues and improved workplace relations                                                                     | Significant increase in workshops provided and best practice and information videos developed |
| Implement mediation case management system                                                                           | Work with relevant personnel to bring about smooth transition to new process                                                                                     | Q1-22                    | System fully operational                                                                                                                        | Implemented and fully operational                                                             |

## Adjudication Service

| Work Programme Objectives                                                    | Action/Tasks                                                                                                                                                                                                       | Delivery Timeframe | Key Performance Indicators                                                                                                                                     | Outcomes                                                                                                                                      |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Continue to process complaints as quickly as possible                        | Provide Adjudication Officers with full administrative support and oversight to achieve the goal                                                                                                                   | Throughout 2022    | Complaints processed without delay - mindful of Covid impact                                                                                                   | Adjudication: hearings +28% decisions issued +27%                                                                                             |
| Deal with Covid related accumulation of cases in transparent and fair manner | Maintain appropriate administrative resourcing and adjudicator capacity<br><br>Work with stakeholders to dispose of cases quickly<br><br>Monitor impact of Covid on hearing scheduling and revise plan if required | Throughout 2022    | All pre-2020 cases disposed of (where not delayed by external factors), 2021 cases heard/scheduled, 2022 cases being scheduled with minimum delay <sup>6</sup> | All complaints received prior to 2022 (where not delayed by external factors) offered a hearing in 2022. 20% of cases received in 2022 closed |
| Dispose of "multiple" referrals                                              | Work with parties to identify how best to deal with "multiple" referrals in efficient manner                                                                                                                       | Throughout 2022    | "Multiple" cases disposed of.                                                                                                                                  | Body of multiples closed and significant progress made with assistance of parties                                                             |
| Monitor the adjudication "delivery mix"                                      | Monitor and assess most cost-efficient and efficacious manner of disposing of cases                                                                                                                                | Q3-22              | Cost-efficient and efficacious case mix in operation                                                                                                           | Hearing Mix: 70% in-person 30% virtual                                                                                                        |
| Timely receipt of concise submissions                                        | Work with stakeholders to obtain co-operation with new non-statutory WRC Guidelines                                                                                                                                | Throughout 2022    | Submissions received in accordance with Guidelines                                                                                                             | Not all submissions received in as timely manner as set out in guidance - matter under review                                                 |

6 Some cases "on hands" pre-2020 may not proceed due to parties' long-term unavailability, jurisprudence awaited from superior Courts, etc.

| Work Programme Objectives           | Action/Tasks                                                                                                                                                                                                           | Delivery Timeframe | Key Performance Indicators                                                                                                                                          | Outcomes                                                                                                                                                                                  |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Produce high quality decisions      | Internal Quality Control Review Group will review decisions to identify learning points, to ensure consistency of decisions in common areas, to improve the service provided to customers of the Adjudication Service. | Throughout 2022    | High quality decisions issue in a timely manner, subject to available resources<br><br>Internally and externally recognised and delivered WRC adjudication standard | Decisions issued accepted in 84% of cases<br><br>Of decisions appelaed to Labour Court 53% upheld and less than 25% overturned<br><br>Positive stakeholder feedback on process and output |
| "Onboard" new Adjudication Officers | New Adjudication Officers certified, trained and operational                                                                                                                                                           | Q3-22 onwards      | New Adjudications Officers hearing complaints and issuing high quality decisions                                                                                    | New AOs onboarded and fully functional                                                                                                                                                    |

## Inspection and Enforcement Services

| Work Programme Objectives                                                                                     | Action/Tasks                                                                                                                                                                                                        | Delivery Timeframe | Key Performance Indicators                                                         | Outcomes                                                                 |
|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Promote and enforce compliance with employment law                                                            | Risk-based inspections, complaint-based inspections, with other State bodies where appropriate                                                                                                                      | Throughout 2022    | 4500 workplace investigations completed                                            | 5,800 inspection visits and unpaid wages recovered increased by 45%      |
|                                                                                                               | Prosecute, as appropriate, offences under employment legislation                                                                                                                                                    | Throughout 2022    | A 90% successful prosecution rate                                                  | 70% of employers successfully prosecuted                                 |
|                                                                                                               | Issuing and processing of Compliance (as applicable) <sup>7</sup> and Fixed Payment notices and defend appeals to Compliance Notices                                                                                | Throughout 2022    | Notices issued appropriately and having effect.<br>Appeals defended                | 6 Fixed Payment and 15 Compliance Notices issued                         |
| Focused targeting of non-compliant employers, sectors, regions                                                | Risk selection arrangements for inspection to be used for case selection                                                                                                                                            | Throughout 2022    | 50% of inspections will be focused on high-risk employers and sectors of interest  | 67% of inspections based on risk assessment                              |
| Enforce awards arising from decisions of Adjudication and Labour Court proceedings                            | Pursue civil enforcement of decisions and awards arising from decisions of Adjudication Officers and Labour Court in relation to adjudication and inspection activity and escalate to prosecution where appropriate | Throughout 2022    | Decisions and awards pursued in manner that maximises efficiency and effectiveness | 74 cases closed                                                          |
| 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 2022    | Applications processed within 21 days of receipt                                   | 936 Employment Agency Licences and 722 Child Licences processed speedily |

<sup>7</sup> See Labour Court decision (CNN194), Boots Retail (Ireland) Ltd.

| Work Programme Objectives                                                    | Action/Tasks                                                                                                                                                                                           | Delivery Timeframe | Key Performance Indicators                                                                                                    | Outcomes                                                                            |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Co-operate with other enforcement agencies                                   | Facilitate training, staff exchanges, joint inspections and sharing of appropriate data, review MoUs to ensure they are current, valid and in compliance with GDPR requirements                        | Throughout 2022    | Successful activities underpinned by legislation and appropriate MoUs. Review and renew, if appropriate, all existing MoUs    | 273 joint inspections carried out with other State agencies                         |
| Carry out targeted campaigns in the identified sectors                       | Campaigns involving both inspection and information carried out effectively and efficiently                                                                                                            | Throughout 2022    | Positively impact compliance and create/enhance awareness of relevant rights and duties                                       | Targeted campaigns in Hospitality Fishers Road Transport Household Services Sectors |
| Support information and education activities to improve compliance generally | Work with Information and Customer Services and other WRC Divisions                                                                                                                                    | Throughout 2022    | Provide staff, briefing and guidance material, and relevant expertise                                                         | Appropriate guidance and skills-sets provided                                       |
| Cooperate with International agencies on areas of mutual interest            | Work with agencies, platforms and authorities with similar objectives such as the International Labour Organisation, the European Labour Authority, the European Platform for Undeclared work, EUROPOL | Throughout 2022    | Attend all plenary sessions where designated as Irish member/delegate/expert and provide appropriate assistance to programmes | Overseas best practice workshops attended, and operational activities undertaken    |



## Information and Customer Services

| Work Programme Objectives                                                                                                                          | Action/Tasks                                                                                                                                                            | Delivery Timeframe | Key Performance Indicators                                                                                                                                                                                                                                                                                                               | Outcomes                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Provide non-directive information on WRC activities generally, employment legislation and redress mechanisms through a variety of delivery formats | Provide a high quality accessible, customer-focused and user-friendly response to telephone, email, posted mail and other employment rights enquiries                   | Throughout 2022    | 90% of queries dealt with at initial query                                                                                                                                                                                                                                                                                               | 60,000 calls dealt with promptly and efficiently                                                                                                                                                                                                                                                     |
|                                                                                                                                                    | Co-ordinate the targeted participation of the WRC at employment law seminars, presentations, exhibitions, roadshows, webinars, etc.                                     | Throughout 2022    | Key events identified, targeted message delivered effectively and efficiently                                                                                                                                                                                                                                                            | “Road to Fair Transport”, Tips and Gratuities, and Ukraine refugees campaigns supported amongst others                                                                                                                                                                                               |
|                                                                                                                                                    | Use WRC social media platforms to raise awareness of employment legislation, relevant decisions, WRC activities/ remit and promote WRC redress mechanisms to the public | Throughout 2022    | <p>Increased awareness of the WRC and its remit/services using social media accounts</p> <p>Key events, days, campaigns. research and data identified and effectively publicised on social media</p> <p>10% y.o.y increase in following on WRC social media platforms</p> <p>Evidentiary links between posts and referrals/ contacts</p> | <p>Web visits (+20%) increased significantly, Twitter and LinkedIn followers increased by 30% and 50% respectively</p> <p>All campaigns, e.g., legislative changes, public holidays, etc., publicised via platforms</p> <p>Referrals to website from WRC social media platforms increased by 80%</p> |

| Work Programme Objectives                                      | Action/Tasks                                                                                                                                 | Delivery Timeframe | Key Performance Indicators                                                                                                                                            | Outcomes                                                                                  |
|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| 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 2022    | All current complaints processed efficiently with 90% of files created within 10 working days and respondent put on notice                                            | 12,800 (+7%) specific complaints processed and RPA introduced to shorten processing times |
| Deliver Outreach and Communications Strategy                   | Identify WRC activities (including web-based and remote outreach) which can be used to enhance efficiency and effectiveness of WRC generally | Throughout 2022    | Increased awareness and understanding of the WRC, its identity, role and functions, across industrial relations, employment rights, equality and equal status matters | Five outreach programmes delivered                                                        |
|                                                                | Initiate and deliver campaigns focussed on identified groups and issues (e.g., equal status and other relevant areas)                        | End-2022           | Increased awareness of WRC role in this area and rise in relevant referrals to WRC                                                                                    | WRC engaged with IHREC, MRCI, Traveller and Romanian groups amongst others                |
|                                                                | Prepare bespoke targeted printed guides and templates for employees and employers                                                            | Throughout 2022    | Guides and templates launched and being used and accessed                                                                                                             | Information booklets published and information videos produced                            |

## Legal Affairs

| Work Programme Objectives                                                                                        | Action/Tasks                                                                                                                                                             | Delivery Timeframe | Key Performance Indicators                                                                                                                                                                     | Outcomes                                                                                                                |
|------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Provide timely, effective and robust legal advice on all aspects of legal matters before, and involving, the WRC | Provide advice to DG and all Divisions of the WRC so that they are supported                                                                                             | Throughout 2022    | Robust legal services provided to WRC                                                                                                                                                          | Advice provided                                                                                                         |
| WRC legal service operating cost effectively and efficiently                                                     | Legal service to be provided with all internal structures, procedures, and business processes operating efficiently<br><br>Information flows to and from Legal Division  | Throughout 2022    | Legal service fully functional                                                                                                                                                                 | Legal services effectively and efficiently delivered                                                                    |
| Provide appropriate legal training to staff and Adjudication Officers                                            | Identify training needs and deliver to AOs and staff<br><br>Legal Division staff keep abreast of all new legal developments and comply with professional CPD obligations | Throughout 2022    | Training delivered and AOs up to date on legal framework and jurisprudence underpinning complaints and support staff have solid understanding of legal basis on which services to be delivered | Training delivered throughout 2022 and AOs and staff kept abreast of legal and jurisprudential developments across 2022 |
| Ensure new AOs and staff in Adjudication Division appropriately supported                                        | Assist with onboarding of new AOs and staff in 2022                                                                                                                      | Throughout 2022    | New AOs inducted and clear understanding of role and resources available to them                                                                                                               | New AOs and staff onboarded                                                                                             |
| WRC Adjudication Diploma 2022                                                                                    | Assist with content and design and deliver training                                                                                                                      | Q122               | Diploma runs successfully to H222                                                                                                                                                              | Diploma Course completed successfully                                                                                   |

| Work Programme Objectives                                                              | Action/Tasks                                                                                                                                                                                                                                                                                                                                                                                                        | Delivery Timeframe | Key Performance Indicators                                                                         | Outcomes                                                                                             |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Assist Adjudication Division ensure quality and consistency of output                  | Facilitate regular quality assurance reviewing issues arising, making recommendations and providing guidance                                                                                                                                                                                                                                                                                                        | Throughout 2022    | Quality enhanced in line with Workplace Relations (Miscellaneous Provisions) Act 2021 and Zalewski | Information and guidance provided throughout 2022                                                    |
| Assist Adjudication Division applying administration of justice standards              | Ensure that policies and practice reflective of new Zalewski 'administration of justice' standards                                                                                                                                                                                                                                                                                                                  | Throughout 2022    | Administration of Justice standards embedded in WRC adjudications                                  | Standards supported and stakeholder feedback positive                                                |
| Work with DETE to identify legal issues impacting on delivery of WRC's statutory remit | Identify key legislative priorities and assist progression where possible and liaise with DETE in context of consequences of Supreme Court constitutional challenge and other legislative reforms anticipated in 2022 eg around procedural reform, the right to request remote working, paid sick leave, tips, whistleblowing, gender pay gap reporting framework and transparent working conditions amongst others | Throughout 2022    | Issues identified with Department and progressed as appropriate                                    | Key issues identified and discussed with regard to relevant area of Government legislative programme |
| Assist with reforms of website and complaint form                                      | Contribute to improvement of WRC complaint form system and website structure                                                                                                                                                                                                                                                                                                                                        | Throughout 2022    | Revised WRC complaint form in place and website rationalised and content updated                   | Assistance provided with website review and consequent update                                        |

| Work Programme Objectives                                                                                                      | Action/Tasks                                                                                                                                                                                                                                  | Delivery Timeframe | Key Performance Indicators                                                                                                                                                                                                                                                                                                          | Outcomes                                                                |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Maintain a specialised database and library facility for Adjudication Officers and WRC staff generally                         | Ensure appropriate access to relevant external databases and virtual and physical library kept up to date                                                                                                                                     | Throughout 2022    | Databases and library in place and fully utilised and AO manual updated in line with new legislation and procedures                                                                                                                                                                                                                 | Achieved                                                                |
| Contribute to keeping stakeholders informed of trends in complaints and decisions                                              | Publish analyses of WRC decisions with particular regard to equality and equal status cases and emerging trends                                                                                                                               | Throughout 2022    | Commentaries published and Legal Division training provided to external stakeholders                                                                                                                                                                                                                                                | Summary of key Courts judgments that relate to WRC published            |
| Deepen stakeholder networks domestically, at EU and international level to share best practice                                 | Stakeholder engagement                                                                                                                                                                                                                        | Throughout 2022    | Strong domestic and international networks established to share best practice and stay abreast of emerging legal trends in employment and equality law, and fair procedure for quasi-judicial decision-makers administering justice per the Zalewski ruling                                                                         | Strengthened and managed appropriately                                  |
| Adjudication Division supported in relation to remote hearings, hybrid hearings, and Covid-related adjustments to WRC services | Advise WRC in relation to new procedures and policies around Covid-19, remote and hybrid hearings and other adjustments required to ensure continuity of service, effective remedies, fair procedures and equality law obligations adhered to | Throughout 2022    | Robust, efficient systems in place to ensure WRC can pivot to deal with lockdowns and any new modalities required in light of evolving public health guidelines, providing a safe environment for service users and staff whilst ensuring continuity of service<br><br>Due regard had to public sector duty per s.42 IHREC Act 2014 | Quality advice provided and new models of service delivery working well |

## Corporate, Strategy and Digital Services

| Work Programme Objectives                                                                                    | Action/Tasks                                                                                                                                                                                                                                      | Delivery Timeframe | Key Performance Indicators                                                             | Outcomes                                                 |
|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------|
| Maintain robust corporate governance framework in WRC                                                        | Oversee and monitor internal standards/policies/procedures                                                                                                                                                                                        | Throughout 2022    | Corporate governance in WRC in line with best practice                                 | Robust corporate governance in place throughout 2022     |
| Ensure WRC carries out statutory functions within budget                                                     | Oversee efficient and effective expenditure, monitor service demand and activity levels and liaise regularly with DETE in this regard                                                                                                             | Throughout 2022    | Work programme achieved consistent with proper utilisation of budget allocation        | Work Programme achieved within overall budget allocation |
| WRC has functional flexibility                                                                               | Ensure that the WRC can respond quickly to shifting demand and resource patterns across the full range of its activities                                                                                                                          | Throughout 2022    | WRC able to respond quickly to Divisional demand spikes and shifting resource patterns | WRC responded agilely to fluctuation demands across 2022 |
| Manage the WRC risk-based strategic, business planning performance culture at all levels of the organisation | Assist in implementation of, Board strategy and Work Programme and roll out via Corporate, Divisional, Unit and personal business plans, measure and take remedial action against risks and report on progress to MC and Board on a regular basis | Throughout 2022    | WRC operating within coherent strategic and business plan framework                    | Risk and Business Process frameworks fully operational   |
| Enhance and inform the policy debate on workplace relations developments                                     | In consultation with other Divisions identify areas of policy concern and input to policy formulation                                                                                                                                             | Throughout 2022    | Input provided and understood                                                          | Input provided as required                               |

| Work Programme Objectives                                                                          | Action/Tasks                                                                                                                                                                                       | Delivery Timeframe | Key Performance Indicators                                                             | Outcomes                                                                |
|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Maintain and enhance the WRC offices                                                               | Work with OPW to ensure that all WRC regional offices can facilitate the delivery of all WRC services by Q2                                                                                        | Throughout 2022    | Offices fully operational                                                              | All offices fully operational                                           |
| Human Resources Resourcing                                                                         | Work with DE TE HR on staff capacity, succession planning, staff training, staff flexibility and the impact of remote working to ensure appropriate WRC staffing levels with the relevant skillset | Throughout 2022    | WRC staffing properly resourced. Business needs and career development needs supported | WRC worked with DE TE in assessing and addressing staffing requirements |
| Employee Development                                                                               | Work with DE TE HR and other bodies to develop bespoke training for WRC staff                                                                                                                      | Ongoing            | New training needs identified and commencement of tendering process for a provider     | Successfully completed                                                  |
| Deliver Certificate in Workplace Adjudication Training                                             | Certificate in Workplace Adjudication Training programme to be rolled-out                                                                                                                          | Q1/Q2-22           | Programme Delivered                                                                    | Delivered                                                               |
| ICT Maximise the use of ICT                                                                        | Develop a WRC ICT Strategy 2022-2024                                                                                                                                                               | Q3 2022            | Strategy developed for 2022-2024                                                       | Strategy developed                                                      |
| Monitor ICT systems to ensure they facilitate the delivery of efficient and effective WRC services | Review quarterly and update where needed (within budgetary constraints)                                                                                                                            | Throughout 2022    | Easy to use ICT systems working efficiently and effectively                            | Systems monitored and improved as required                              |



| Work Programme Objectives                                                                   | Action/Tasks                                                                                                                                         | Delivery Timeframe | Key Performance Indicators                                                                                                         | Outcomes                                                             |
|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| Finalise the build/testing of Industrial Relations Information System (IRIS)                | Continue work with DETE, Codec and internal partners to complete user-friendly case management system for Conciliation                               | Q2 2022            | System operational                                                                                                                 | System operational                                                   |
| e-Complaint form                                                                            | Develop an e-complaint form                                                                                                                          | Q2 2022            | e-Complaint form rolled out                                                                                                        | Enhanced security needs impacted delivery date: Q223                 |
| Build Portal                                                                                | Build and design of portal                                                                                                                           | Q3 2023            | Fully functional portal operational with facility to check status of case                                                          | Enhanced security requirements impacted: delivery date under review  |
| Maximise technology to improve efficiencies and use of resources                            | WRC will continue the work with DETE and Consultants to explore the potential uses of process automation in early-stage complaint receipt processing | During 2022        | Potential uses identified and VFM business case assessed, with a view to developing a medium-term strategy and early pilot in 2023 | Initial RPA introduced successfully Q422 and further scoping ongoing |
| Data Analytics: Use of data analytics solutions to better inform management decision making | Develop further dashboards for Adjudication Service                                                                                                  | During 2022        | Analytics fully utilised in decision making                                                                                        | Improved data analytics available and utilised                       |
|                                                                                             | Work with Inspection Risk Modelling Project to assist build of risk IT evaluation system as required                                                 | During 2022        | Risk Model operational                                                                                                             | Operational                                                          |

| Work Programme Objectives | Action/Tasks                                                                                                                                                                                  | Delivery Timeframe | Key Performance Indicators                                                                | Outcomes                                                           |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Communications            | Develop a Communications Strategy to support the business objectives of the WRC                                                                                                               | Q1 2022            | Strategy developed and approved<br>Strategy supports the business objectives of Divisions | Developed and introduced                                           |
|                           | In consultation with the relevant Divisions proactively plan, deliver and measure WRC Communications content and campaigns<br><br>We will identify and deliver a number of priority campaigns | Throughout 2022    | WRC content is preplanned, published and measured                                         | Ongoing: Key campaigns in 2022 were synched accordingly            |
|                           | Collaborate with DETE and other Government Comms Units                                                                                                                                        | Throughout 2022    | Participate in GIS Communications Network                                                 | Ongoing                                                            |
| Digital Media             | Utilize Social Media Channels<br>• Twitter<br>• LinkedIn<br>• WRC.ie                                                                                                                          | Throughout 2022    | Twitter, LinkedIn and WRC website all regularly and used to support business plans        | Followers/Visits:<br>Twitter +30%<br>Linkedin +50%<br>Website +20% |
|                           | Work with stakeholders to evaluate effectiveness of the website and amend as necessary                                                                                                        | Throughout 2022    | Website current, relevant and used                                                        | Key stakeholders consulted and website upgraded as advised         |
| Customer Service          | Initiate Customer Service Survey in Q4 for early 2023                                                                                                                                         | Q4 2022            | Customer Service Survey to be carried out in early 2023                                   | Project deferred to Q123                                           |

# Appendix

# 2

## Convictions 2022

| Employer                | Trading As                   | Sector                   | Address                               | Legislation of which Conviction Relates |
|-------------------------|------------------------------|--------------------------|---------------------------------------|-----------------------------------------|
| Injamamul Haque         | Ali Baba Turkish Kebab House | Food Service Activities  | 23/23a Washington Street, Cork        | Employment Permits Acts 2003 and 2006   |
| XYZ Retail Ltd          | Spar                         | Wholesale & Retail Trade | Terryland, Galway                     | Employment Permits Acts 2003 and 2006   |
| Palace Ventures Limited | Chef Kebab                   | Food Service Activities  | Pound St, Edgeworthstown, Co Longford | Employment Permits Acts 2003 and 2006   |
|                         |                              |                          |                                       | Organisation of Working Time Act 1997   |
|                         |                              |                          |                                       | Protection of Young Persons Act 1996    |
|                         |                              |                          |                                       | Protection of Young Persons Act 1996    |
| Linkat Limited          | Peking Apache                | Food Service Activities  | Main St, Virginia, Co Cavan           | Employment Permits Acts 2003 and 2006   |

| Employer                             | Trading As                 | Sector                           | Address                                                | Legislation of which Conviction Relates     |
|--------------------------------------|----------------------------|----------------------------------|--------------------------------------------------------|---------------------------------------------|
| Jiya Enterprise Limited              | Apache Pizza               | Food Service Activities          | Lower Main Street, Manorhamilton, Co Leitrim           | Employment Permits Acts 2003 and 2006       |
| Pin Fang Ou                          | H Phone                    | Wholesale & Retail Trade         | 9a Duke Street, Athy, Co Kildare                       | Employment Permits Acts 2003 and 2006       |
| Xuemei Lin                           | Royal Inn Chinese Takeaway | Food Service Activities          | Unit 1 Killigland Shopping Centre, Ashbourne, Co Meath | Employment Permits Acts 2003 and 2006       |
| Pawan & Manish Ventures Limited      | Apache Pizza               | Food Service Activities          | 74 Market Street, Cootehill, Co Cavan                  | Employment Permits Acts 2003 and 2006       |
|                                      |                            |                                  |                                                        | Organisation of Working Time Act 1997       |
|                                      |                            |                                  |                                                        | National Minimum Wage Act 2000 (as amended) |
| Galley Marine Enterprises Limited    |                            | Fishing                          | Orchard Hill, Sandycove, Kinsale, Co Cork              | Employment Permits Acts 2003 and 2006       |
| Majid Hussain, Dzszenifer Csik       | Sam's Local Shop           | Wholesale & Retail Trade         | The Wilderness, Clonmel, Co Tipperary                  | Employment Permits Acts 2003 and 2006       |
|                                      |                            |                                  |                                                        | Organisation of Working Time Act 1997       |
| Lan Decran Limited                   | Macau Sporting Club        | Arts, Entertainment & Recreation | 16 St Patricks Quay, Cork T23 ER5F                     | Employment Permits Acts 2003 and 2006       |
| Ealga C Fishing Limited              |                            | Fishing                          | Helvic, Ring, Co Waterford                             | Employment Permits Acts 2003 and 2006       |
| Donatello's Venture Holdings Limited | Donatello's Pizza          | Food Service Activities          | Unit 11-13 Exchange Business Park, Cork                | Employment Permits Acts 2003 and 2006       |
| Nightlife Exclusive Ltd              | After Dark                 | Wholesale & Retail Trade         | Market Square, Portarlinton, Co Laois                  | Workplace Relations Act 2015                |

| Employer                  | Trading As                   | Sector                   | Address                                                     | Legislation of which Conviction Relates     |
|---------------------------|------------------------------|--------------------------|-------------------------------------------------------------|---------------------------------------------|
| Bilal Fazal               | Tasty Bites                  | Food Service Activities  | Main Stret, Borris-in-Ossory, Co Laois                      | Organisation of Working Time Act 1997       |
|                           |                              |                          |                                                             | Organisation of Working Time Act 1997       |
| Milos Muntean             | Car Wash                     | Other Service Activities | Donegal Road, Ballybofey, Co Donegal                        | National Minimum Wage Act 2000 (as amended) |
|                           |                              |                          |                                                             | Organisation of Working Time Act 1997       |
| FQM Alway Limited         | Gala Supermarket Shanagolden | Wholesale & Retail Trade | Shanagolden, Co Limerick                                    | Employment Permits Acts 2003 and 2006       |
| Lemon Hand & Foot Spa Ltd | Lemon Hand & Foot Spa        | Hair & Beauty            | 4 Egan Business Centre, Upper Dargle Road, Bray, Co Wicklow | Workplace Relations Act 2015                |
| Golen Food Ltd            | Apache Pizza                 | Food Service Activities  | An Túr, Magheraclogher, Bunbeg, Co Donegal                  | Employment Permits Acts 2003 and 2006       |
| Jia Yin Chen              | Jade Palace                  | Food Service Activities  | 2 Douglas St, Cork                                          | Employment Permits Acts 2003 and 2006       |
| Baili Catering Limited    | Apache Pizza                 | Food Service Activities  | Main Street, Bailieboro, Co Cavan                           | Employment Permits Acts 2003 and 2006       |
| Tony Mullins Racing       | Watree Stud                  | Equine Activities        | 11/13 Barrack Street, Goresbridge, Co Kilkenny              | Employment Permits Acts 2003 and 2006       |
|                           |                              |                          |                                                             | Organisation of Working Time Act 1997       |
| Fedly Takeaway Limited    | Regen Chinese                | Food Service Activities  | Regen, Kilkenny Road, Gowran, Co Kilkenny                   | Employment Permits Acts 2003 and 2006       |
| Charles Robinson          | Eclipze Hair Design          | Hair & Beauty            | Eclipse, Aldercourt, Ferns, Co Wexford                      | Organisation of Working Time Act 1997       |

# Appendix

# 3

## Notable WRC Adjudication Decisions 2022 Annual Report Case Summaries

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## Overview

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The following case summary Appendix provides an overview of some of the key legal issues arising in the decisions issued by the Workplace Relations Commission (“WRC”) during 2022. It is published as part of the WRC’s overall policy of transparency and accessibility. It seeks to give a convenient and informative overview of the wide range of legal issues considered in 2022. Decisions referred to here may have been subsequently overturned on appeal. No warranty, undertaking or guarantee is given as to their legal status.

As regards the 2022 WRC decisions, the criterion for inclusion has been whether the issue is likely to be relevant and of interest to parties involved in cases before the WRC. However, it should be noted that they merely represent a snapshot of the decisions published in 2022.

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

## Employment Status – Part-time Work

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Marie Wilgaard Kelly v. Design & Crafts Council Ireland, ADJ-00033791

### Keywords

Independent contractor, contract of indefinite duration, mutuality of obligation, Karshan (Midlands) Ltd t/a Domino’s Pizza v. The Revenue Commissioners [2022] IECA 124, substitution, integration, successive fixed-term contracts, Unfair Dismissals Acts 1977 to 2015, Protection of Employees (Part-Time Work) Act 2001.

### Background

After completing a tendering process and signing an independent contractor agreement, the Complainant started working for the Respondent in 2015 as a jewellery and ceramic technician. The contract was renewed in 2016 and she successfully re-tendered for the position in 2018 for another two years. On 12 May 2021, the Respondent informed the Complainant that the programme would not be running after the end of the contract but the tender process may open again in 2022.

She submitted that she was in fact an employee and complained that she had been unfairly dismissed, contrary to the Unfair Dismissals Acts 1977 to 2015 (“UDA”). The contract required her to perform a training/demonstrator role and the Respondent was obliged to provide her with work during the college terms. She reported to a manager and worked fixed hours, receiving a set payment like a salary. While she could take up other work this was limited.

The Respondent argued that there was no mutuality of obligation. Prior to entering into the business contract to provide services, she had sought independent legal advice. Furthermore, she could substitute and place another technician in the role and could work for other parties.

## Findings

The AO first considered whether the correct status of the Complainant was of an independent contractor or an employee. The AO relied on the Court of Appeal decision in *Karshan (Midlands) Ltd t/a Domino's Pizza v. The Revenue Commissioners* [2022] IECA 124 (unreported, Court of Appeal, 31 May 2022) which held that a contract of service must always have mutuality of obligation. This requires "an ongoing reciprocal commitment to provide and perform work on the part of the employer and the employee respectively."

Having examined the 2015 contract, the AO held that the Respondent's position that there was no mutuality of obligation was "not credible based on the nature of the contract between the parties ... and the reality of any third party observing this relationship." The Complainant had constant hours: 17 hours per week for 46 weeks of the year. She had to report to a manager and was responsible for her students, prepared teaching materials and assessments, managed a classroom and had health and safety responsibilities.

The AO noted clauses in the contract stating that the Complainant could not assign or sub-contract without the prior agreement of the Chief Executive and any additional work could not impede her work with the Respondent. The AO considered that these clauses were very restrictive and gave a high level of control to the Respondent.

Finally, the Respondent emphasised the importance of the intentions of the parties and the fact that the Complainant had had the benefit of independent legal advice. The AO reiterated that the factual matrix in this case was one of a contract of service and that the power balance in any relationship must be considered. In reality, the Complainant had no choice but to accept the terms as set out in the contract.

Having determined that the Complainant was an employee, the AO next considered whether the UDA applied since an employee must have a minimum of one year's continuous service prior to dismissal before they are entitled to rely on its provisions. The AO noted that the Complainant had been engaged by the Respondent on several contracts since 2015 with breaks in service during the summer periods. However, s.2(2A) provides that where a fixed-term contract expires and the employee is re-employed within three months, and the AO is of the opinion that the entry by the employer into the subsequent contract was wholly or partly to avoid liability under the UDA, the dismissal of the employee falls within the scope of the UDA, even if the employee had less than one year's continuous service under the subsequent contract. The AO determined that these successive contracts were provided to avoid liability. Therefore, the Complainant's dismissal did fall within the Act.

The AO noted that s.6(1) provides that a dismissal is unfair unless there are substantial grounds to justify it. Section 6(7) allows an AO to have regard to the reasonableness of the employer in relation to the dismissal.

Having found that the Respondent was using successive contracts to evade their responsibilities under the UDA, the AO held that the Respondent's conduct was "both unreasonable and a fundamental breach of contract rights." The Respondent did not give any evidence of reviewing alternatives or engaging in any form of consultation with the Complainant prior to its decision to dismiss her and accordingly, the Complainant was unfairly dismissed.

On the facts of the case, and the fact that the Respondent envisaged a potential resumption of training in September 2022, the AO determined that compensation would not be appropriate and ordered that the Complainant be re-engaged by the Respondent on terms specified in the decision.

## Frustration of Contract

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Muiris Flynn v. Iarnrod Eireann,  
ADJ-00030195

### Keywords

Frustration, consultation, imprisonment.

### Background

The Complainant had been employed as a full-time, permanent electrician with the Respondent. In September 2017, he was involved in a serious road traffic accident where he was over the legal alcohol limit. He kept his supervisor updated as to developments, including the likelihood of a custodial sentence being imposed. He pleaded guilty to dangerous driving causing harm and, in October 2019, was sentenced to four years' imprisonment, with the final thirty months suspended. At no stage did the Respondent commence a disciplinary investigation. However, on 8 March 2020, the Complainant received a letter of dismissal from the Respondent asserting that the contract of employment was frustrated as a result of his imprisonment and that the dismissal would take effect on 25 March 2020.

The Complainant submitted that the Respondent had not demonstrated that the contract had been frustrated. The fact that the Respondent continued to treat the contract as being in existence following the alleged frustrating event fundamentally undermined its position. The Respondent had been in a position to continue its operations and, furthermore, it had made no effort to consult with the Complainant in relation to the alleged frustration.

The Respondent submitted that following a lengthy period of consideration by management, it had determined that the custodial sentence had frustrated the contract. An employee serving a custodial sentence cannot carry out any work and therefore the mutuality of obligation between the parties is severed. The nature of the complainant's employment, coupled with the duration of the sentence, served to frustrate the contract. The Respondent was required to employ an additional electrician as a result of the ongoing absence. Since the contract had been frustrated, the Unfair Dismissals Acts 1977 to 2015 ("UDA") did not apply.

### Findings

The AO referred to the description of 'frustration' in Cox, Corbett & Ryan, *Employment Law in Ireland* (Clarus Press: 2009): "A contract of employment will be terminated by frustration where performance of the contract becomes impossible to perform due to an unforeseen event outside the control of either party." The unforeseen event must be completely unexpected and neither hardship nor inconvenience is sufficient.

The AO also considered the decisions of the Court of Appeal of England and Wales in *Hare v. Murphy Bros* [1974] 3 All ER 940 and the Employment Appeals Tribunal in *Donegal County Council v. Langan* UD 143/89 which set out factors that must be considered in determining whether a contract of employment has been frustrated. These include "the length of time the employee had been employed, the position which he held, the length of time which is likely to be away from his work and unable to perform it and the importance of getting somebody else to do his job in the meantime." The Employment Appeals Tribunal also emphasised the lack of consultation with the employee as a material factor in deciding whether the dismissal was unfair.

The AO noted that the date of alleged frustration was the date on which the Complainant was imprisoned and considered the Respondent's position to be contradictory. It had maintained the Complainant's employment for four months following imprisonment and also allowed a period of notice of termination. However, if the contract was terminated upon imprisonment, there would have been no requirement to give notice. The provision of notice was indicative of the contractual relationship surviving the event. Furthermore, during this period the activities of the Respondent continued without noticeable disruption. While the Complainant's absence was undoubtedly a hardship and an inconvenience, it did not result in the requirement for the employment to be terminated.

With regard to the factors that must be considered by an employer, the AO noted that the Respondent was on notice of the likelihood of a custodial sentence being imposed in advance of same but that it made no attempt to consult with the Complainant. The Respondent did not provide any evidence of an examination of the criteria set out in *Hare*.

In such circumstances, the AO held that the contract of employment was not frustrated and, accordingly, the Complainant was unfairly dismissed. With regard to compensation, the AO considered the Complainant's attempts to mitigate his losses. The Complainant did secure alternative employment but it was not permanent and was at a lower rate of pay. However, his difficulties in maintaining employment were mainly due to difficulties regarding transport and could not be attributed to the dismissal. Finally, the AO considered s.7(2)(f) UDA which requires him, in determining compensation, to consider the extent to which the conduct of the employee contributed to the dismissal. The AO held that the Complainant's conduct was a significant contributing factor to the dismissal and, in *Electrician v. A Transport Provider*, ADJ-0007578, which involved similar facts, an 85% contribution to dismissal was found. In those circumstances, the AO awarded €4,000 in compensation.

## Dismissal/Fixed-term Contract

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Kathryn O'Boyle v. Temperature Controlled Pharmaceuticals Limited, ADJ-00032667

### Keywords

Dismissal, redundancy, fixed-term contract, fair procedures, failure to mitigate loss, s.7(2) Unfair Dismissals Acts 1977 to 2015.

### Background

The Complainant claimed that she had been unfairly dismissed. The fact of a dismissal was not in dispute, but the Respondent claimed that there had been a legitimate redundancy and also raised an issue with the Complainant's efforts to mitigate her loss.

The Complainant commenced employment with the Respondent in April 2019 as a Client Relationship Manager. She was employed part-time and on successive written fixed-term contracts. Her final written contract, from 1 June 2020 to 29 August 2020, was for a full-time position. This was to cover the work of another person while the Respondent recruited a replacement. After the expiry of this contract, the Complainant continued to work and, on 2 October 2020, she was contacted by the Respondent and told that she would revert to part-time working from 2 November, as per the understanding between them. However, on 13 October, the Complainant was informed that her employment would be terminated on 30 October. The following day, she received an email confirming the decision which was made on the basis that her role would be performed in future by a person with a nursing qualification. The email referred to the Complainant's fixed-term work status meaning that she would not be covered by the Unfair Dismissals Acts 1977 to 2015 ("UDA"). The Complainant was informed that she was not being made redundant.

The Respondent acknowledged that the reason given for dismissal at the time, i.e. relying on the fact that the Complainant was on a fixed-term contract, was incorrect. It argued that this was a case of redundancy and relied on s.7(2)(e) of the Redundancy Payments Acts 1967 to 2022 which provides for a legitimate redundancy where an employer decides that the work in future should be done by a person who is capable of doing other work for which the employee is not sufficiently qualified. The Complainant was replaced by a qualified nurse.

An issue also arose in respect of the Complainant's efforts to mitigate her losses. The Respondent argued that the Complainant had confined herself to only one type of employment when looking for work. The Complainant secured full-time employment in December 2021. Prior to that she had signed on as a job seeker and applied for positions related to her area of experience and training. The Complainant noted that at the time of her dismissal, Ireland was in a level-5 lockdown and customer-facing roles were in short supply. She also started her own business as an acupuncturist in June 2021 but, due to Covid-19, this too struggled.

## Findings

The AO held that the reason for the dismissal given by the Respondent at the time was on the basis that the Complainant's fixed-term contract was due to expire. The ground relied on at the hearing, redundancy, was never put to the Complainant, and was specifically denied to her at the time. In those circumstances, the AO held that she did not need to determine whether or not it was a true redundancy. On the fixed-term contract ground, the AO held that the Complainant had a verbal contract of employment after the full-time post was filled. The contract had no end date, no reason for termination and it was not described as a fixed-term contract. Therefore, it was not a fixed-term contract and references to the related legislation and case law were not relevant. Accordingly, the Complainant was unfairly dismissed by the Respondent.

On the issue of mitigation of loss, the AO noted that in determining compensation under s.7(2)(c) UDA, the obligation of the employee to mitigate her loss was one of six tests in that section and it was no more primary than any other. Neither the extent to which the financial loss was attributable to the employer or employee nor the extent to which the conduct of the employee contributed to the dismissal applied in this case. But the Respondent had failed to provide the Complainant with a procedure for dismissal and failed to comply with fair procedures in relation to the dismissal. In those circumstances, the AO held that it would be "wholly unjustified" to only penalise the Complainant on the basis that she did not make a sufficient effort to mitigate her losses where the balance of unfairness and the failure to comply with s.7 as a whole lay with the Respondent. While the Respondent could not be held fully accountable for the Complainant's choice to confine herself to her areas of expertise, Covid was clearly a factor when searching for work.

Having regard to all of this, and the fact that the Complainant was on a salary of €30,000 with a benefit-in-kind of €8,000, the AO awarded compensation in the sum of €15,000 to the Complainant.

## Unfair Dismissal

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Allessandra Quinn v. Embassy of Brazil,  
ADJ-00035802

### Keywords

Unfair dismissal, grounds for dismissal, fair procedures, Unfair Dismissals Acts 1977 to 2015.

### Background

The Complainant complained that she had been unfairly dismissed. She commenced employment as a housekeeper with the Respondent in November 2001. She moved to Ireland as part of the ambassador's household and, as such, her employment contract included a 'room and board' clause. In November 2020, the Complainant was informed that, due to budgetary concerns, the Respondent had terminated its lease agreement for the Embassy and would be moving to smaller premises. Accordingly, the Complainant would no longer be provided with a room. This occurred in March 2021. As the new residence did not have enough space to house employees, the Respondent proposed updating the Complainant's contract with the removal of the room clause but with an increase in salary, or a friendly termination of the contract. The Complainant did not accept the Respondent's offers and accordingly her contract was terminated on 27 July 2021.

### Findings

The AO noted that this was an "unfortunate situation" as it was clear that the Complainant was a highly respected employee and the Respondent did not want her to leave employment. The AO also held that after the decision to move, the Respondent did put forward good faith proposals to address the Complainant's concerns. However, the Unfair Dismissals Acts 1977 to 2015 ("UDA") provides that every dismissal of an employee will be presumed to be unfair unless the employer can show substantial grounds justifying the dismissal.

To justify a dismissal, an employer must show that it resulted from one of the following causes, or that there were other substantial grounds for the dismissal:

- (a) The capability, competence or qualifications of the employee for performing the work which he was employed to do;
- (b) The employee's conduct;
- (c) Redundancy;
- (d) The fact that the continuation of the employment would contravene a statutory instrument.

In this case, the AO held that nothing put forward by the Respondent justified the dismissal of the Complainant. Furthermore, an employer must also show that they followed fair and proper procedures before dismissal. There was a near absence of procedures in this case. The dismissal was therefore unfair both as a result of there being no reason for the dismissal and being procedurally unfair.

Taking into account the fact that the Complainant found alternative work seven months' after her dismissal, the AO awarded €21,793, amounting to seven months' pay.

James Spencer v. Heavey Technology –  
Quality Labels, ADJ-00031133

### Keywords

Dismissal, age, parallel claim, mandatory retirement age, protection of vulnerable employees, Covid-19, Unfair Dismissals Acts 1977 to 2015.

### Background

The Complainant claimed that he was unfairly dismissed on the ground of age, under s.8 Unfair Dismissals Acts 1977 to 2015 "UDA". He also claimed that he had been discriminated against on the ground of age, under s.6 Employment Equality Acts 1998 to 2021 "EEA".



The Complainant commenced employment with the Respondent in March 2010. At the date of dismissal, on 3 July 2020, the Complainant was 68 years old. The Respondent issued an employment contract in 2015 which set out a retirement age linked to eligibility for a state pension; however, the Complainant never signed the contract. Furthermore, the Respondent had a flexible approach to the retirement age; it allowed the Complainant to work past the age of 66 and had allowed another employee to work into his 72nd year. However, the Respondent changed this policy during the Covid-19 pandemic. On 19 June 2020, the Sales Director wrote to the Complainant stating that they were now requiring employees to retire in line with the state pension age and this was now an official company policy. The Sales Director explained that this policy change was needed given the national developments and health pandemic. The Respondent argued that it had invoked the retirement age stated in the employment contract due to public health guidelines that indicated older people were more vulnerable to the virus.

## Findings

In this case, the AO held that there was no mandatory age of retirement and the practice of the Respondent had been to facilitate employees to continue to work past a notional age for retirement. The manager had made a unilateral change without the right to do so and furthermore the change was not reasonable. There was no public health guidance requiring an employer to retire employees over the age of 66 on the basis that they were more vulnerable than younger employees. The manager who decided to change the policy was not medically qualified. If the decision had been based on independent medical advice it might have been reasonable; however, it was not. There was no evidence in this case that the Complainant was unfit to work.

The AO held that the Complainant was unfairly dismissed based on the ground of age and awarded compensation of €31,558, calculated on the basis that it was highly probable that the Complainant would have worked a further 78 weeks. The AO noted that due to the Complainant's age, it was highly unlikely that he would be re-employed.

The Complainant's claim under the EEA was held to be not well-founded on the basis the claim was the same as that determined under the UDA and that an employee cannot rely on the same facts to obtain redress under more than one head of liability.

Ray Walsh v. Econocom Digital Finance Ltd, ADJ-00029093

## Keywords

Unfair dismissal, redundancy, consultation, unfair procedures, authority to dismiss, Unfair Dismissals Acts 1977 to 2015, Redundancy Payments Acts 1967 to 2022.

## Background

The Complainant was made redundant on 31 July 2020 as a result, according to the Respondent, an international provider of IT and financial services, of the closure of its sales operation in the Dublin office. The Complainant claimed that his dismissal due to redundancy was a sham.

The Complainant commenced employment with the Respondent in November 2004. By April 2020, he was an account manager on an annual salary of just over €120,000. On 27 April 2020, he was invited to a Microsoft Teams' meeting with the Managing Director and the HR Director. The meeting lasted around ten minutes and the Complainant was told that his job was redundant.

The Complainant challenged the basis for the redundancy and claimed that the procedure had been unfair: there was no meaningful consultation, no consideration of the possibility of alternative roles and no appeal of the decision.

The Respondent submitted that the sales operation in Ireland closed due to its high costs and the decline in profit since 2017 and therefore the termination of the Complainant's job, and that of his manager, were genuine redundancies. Although it accepted that the consultation process was truncated, there were no suitable alternative jobs available as the Complainant was not qualified to work on the risk and compliance team. Therefore, discussions regarding alternatives would have been futile.

After limited engagement regarding the terms of the redundancy, the Complainant went on garden leave and his employment was terminated on 31 July 2020. He received a statutory redundancy of €19,152. The Complainant started a new role in August 2021 at a salary of €60,000.

## Findings

The AO first noted that s.6(1) of the Unfair Dismissals Acts 1977 to 2015 (“UDA”) provides that a dismissal is unfair unless the employer proves that there are substantial grounds to justify it. Section 6(4)(c) provides that a dismissal resulting “wholly or mainly from the redundancy of the employee” will not be unfair and legitimate reasons for redundancy, including if the dismissal is attributable to the fact that the employer has ceased to carry out the business for which the employee was employed, are set out in s.7(2) Redundancy Payments Acts 1967 to 2022 (“RPA”).

Section 6(7) UDA also provides that in determining whether a dismissal is unfair, the AO may consider the reasonableness of the employer’s conduct. The AO noted that in the absence of an agreed procedure, the Respondent is required to ensure that fair procedures are afforded, including: “the right to notice, the right to be represented at meetings, the right of the employee to respond to the employer’s decision to make his job redundant and the right of appeal.”

The AO first considered whether the dismissal was a genuine redundancy. She noted that the Respondent closed down the sales operation because it decided it was not generating enough profit and was too costly to run. The jobs of the Complainant and his manager were not replaced. While the Complainant questioned the rationale behind this decision, the AO held that “an employer is entitled to close down all or any part of its business, and this happens all the time, sometimes even in profitable companies.” The Respondent’s explanation fell clearly within the definition of redundancy in s.7(2) RPA.

Next, the AO considered whether fair procedures were applied. The AO noted that ‘reasonableness’ in the context of a redundancy means “treating the employee with respect and fairness in the circumstances that prevail.” The AO held that inviting the Complainant to a meeting with no forewarning of the subject-matter was “disrespectful”. On the issue of consultation, the AO held that no credible explanation was offered for the decision not to engage with the Complainant to identify a suitable alternative role or to extend his notice period so he could find another job. The Respondent relied on the cases of *Nigrell v. Sandra Graham* UD 690/2013 and *Mugford v. Midland Bank Plc* [1997] ICR 399, [1997] IRLR 208, to justify a truncated consultation. The AO distinguished these cases on their facts: the Respondent has a presence in many countries and employs people with a complex variety of skills and expertise. The Complainant, with skills in sales and languages, and fifteen years’ experience working in the company, could have been assigned to an alternative job.

Furthermore, the AO noted that where there is no possibility of an alternative job, the process of consultation usually addresses the terms on offer, holding that engagement with the employee is the “cornerstone of reasonable treatment.” Here, there was limited engagement. The AO concluded that “the Respondent departed from the standard of reasonableness that a reasonable employer would have shown when dealing with an employee in similar circumstances.”

The AO awarded the Complainant €120,000 in compensation, equivalent to one year’s gross pay.



## Redundancy Payments Acts 1967 to 2022

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Sarah Sheehan v. Redundancy and Insolvency Payments Section, ADJ-00031194

### Keywords

Redundancy, statutory redundancy payment, 104 weeks' continuous employment, lay-off, reckonable service, continuity of service, Redundancy Payments Acts 1967 to 2022.

### Background

The Complainant complained that she had not received her statutory redundancy from the Respondent, a section of the Department of Social Protection. Statutory redundancy is provided where redundancy cannot be provided from the former employer. The dispute centred around interpretation of the Redundancy Payments Acts 1967 to 2022 ("RPA") and whether periods of lay-off should be included in calculating the period of continuous employment.

The Complainant commenced employment in Debenhams on 26 April 2018. Due to the Covid-19 pandemic and the company going into administration, the Complainant was placed on lay-off from 1 April 2020, during which time she was in receipt of the Pandemic Unemployment Payment. Her employment ended on 20 May 2020.

The Respondent denied the Complainant's claim for statutory redundancy on the basis that the Complainant had fewer than 104 weeks' continuous employment, as required by s.7 RPA, as her period of lay-off could not be treated as reckonable service.

### Findings

The AO noted that s.7 RPA provides that an employee who is dismissed by their employer by reason of redundancy is entitled to a redundancy payment provided, amongst other criteria, the employee has been continuously employed for 104 weeks. 'Continuous service' is defined in Schedule 3 to the RPA, which provides that where an employee's period of service has been interrupted by any period of lay-off, continuity of employment shall not be broken by such interruption. Section 11 provides that where an employee's employment "ceases by reason of his employer's being unable to provide the work for which the employee was employed to do" and it is not expected to be permanent, the cessation shall be regarded as lay-off. Therefore, the Complainant's lay-off did not break her continuity of employment.

Although a period of lay-off does not break a period of continuous employment, the main issue in this case was whether the period of lay-off was to be included in the calculation of how many weeks' 'continuous employment' the employee had. The AO accepted that in calculating the amount of lump sum redundancy payment to which an employee is entitled, the employee's 'reckonable service' must be determined, in accordance with para. 1 of Schedule 3. Pursuant to para. 8 of Schedule 3, the AO accepted that an absence by reason of lay-off cannot constitute 'reckonable service'. However, the AO held that the Respondent was conflating 'reckonable service' and 'continuity of service'. 'Reckonable service' should only be a factor in calculating the amount of any award. Section 7, setting out the right to a redundancy payment, does not contain any reference to 'reckonable service'; only continuous service is referred to and lay-off does not break this continuity.

The AO concluded that the Complainant had attained the 104 weeks' continuous service but it was for the Respondent to determine the amount of the redundancy payment taking into account the Complainant's reckonable service.

Fionnuala O'Donnell v. Bridie Flannery and Maura McSharry trading as Simones of Sligo, ADJ-00034930

## Keywords

Redundancy, calculation of redundancy payment, reduced working week, normal weekly remuneration, Schedule 3, para.13, para.20, Redundancy Payments Acts 1967 to 2022.

## Background

The Complainant complained about the calculation of her redundancy payment. The case concerned whether a reduction of hours prior to redundancy should be used to calculate the payment in circumstances where the employee had always objected to this reduction.

The Complainant commenced work in a sales and administrative role with the Respondent, a wedding outfit retail business, in 2008. Until 2018, the Complainant worked a five-day week. In October 2018, due to a down-turn in the Respondent's business, the Respondent reduced the working hours of its staff and the Complainant started working a three-day week. The Complainant informed the Respondent that her acceptance of this reduced week was given on a temporary basis and that she wished to be put back onto full hours as soon as possible. Subsequently, each time the Complainant was put on a three- or four-day week she objected. During the pandemic, the Complainant was placed on temporary lay-off. When the shop reopened in May 2021, the Complainant was placed on a four-day week. She asked to be treated as having been made redundant on the basis that there was no indication that the job would ever return to a full-time post. She was made redundant on 7 September 2021.

The Respondent submitted that they were advised that the calculation of the redundancy payment should be based on the average hours the Complainant worked over the previous 52 weeks. On this basis, the Respondent calculated her redundancy payment on a four-day week.

The Complainant believed that her redundancy payment should have been based on a five-day week because at all times she had objected to the reduction of her hours.

## Findings

In considering whether the calculation applied by the Respondent was correct, the AO noted that the calculation of a redundancy payment is based firstly on the employee's 'normal weekly remuneration'. For workers who have a fixed salary or hours of work, para.13 of Schedule 3 to the Redundancy Payments Acts 1967 to 2022 ("RPA") provides that 'normal weekly remuneration' shall be taken to be earnings for normal weekly working hours "as at the date on which he was declared redundant." For employees who have no normal working hours, para.20 to the Schedule provides that 'normal weekly remuneration' shall be taken to be the average weekly remuneration received by the employee over a period of 52 weeks, during which the employee was working, immediately prior to the date of redundancy. The Respondent had based its calculation according to para.20.

The AO noted that the Complainant had not identified the statutory basis for asserting that she was entitled to a redundancy payment based on a five-day week because she had not agreed to the reduction. The AO noted that advice published on the Department of Social Protection and Citizens Information websites provides that in calculating a redundancy payment where hours have been reduced but the employee has not agreed to this reduction, and this reduction had continued in excess of a year, the calculation of redundancy payment should be based on the contracted pre-reduction salary. However, the AO held that there was no statutory basis for this advice.

In considering the RPA, the AO held that the issue was whether the Complainant's hours were fixed or variable at the date of redundancy and whether the Complainant should have been assessed under para.13 or para.20 of Schedule 3. The AO held that 'normal weekly working hours' could not be interpreted as the hours which the Complainant had originally contracted to work as this would make redundant the inclusion of the phrase "as at the date on which he was declared redundant". The Complainant had not worked her contracted hours for three years prior to her redundancy.

In this case, para.20 was the correct provision to apply since the Complainant's hours had varied. The Respondent lawfully used a four-day week to calculate the redundancy payment which gave the Complainant a redundancy payment in excess of her entitlement. In the absence of a statutory basis for the Complainant's contention that the reduced hours should not be considered because she had objected to the reduction, the AO held that he was confined to apply the ordinary meaning of the RPA which does not make any specific provision for this circumstance. For these reasons, the AO held that the complaint was not well founded.

## Employment Equality Acts 1998 to 2021 - Discrimination

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David McDonagh v. Harmony Catering Services Limited, ADJ-00028368

### Keywords

Discriminatory dismissal, membership of the Traveller community, Employment Equality Acts 1998 to 2021.

### Background

The Complainant alleged that his dismissal by the Respondent was discriminatory as it was based on the fact that he was a member of the Traveller community.

The Complainant commenced employment with the Respondent as a commis chef on 31 January 2020. His employment was terminated on 10 February 2020, eleven days later. The Complainant stated that his first day was a 'trial day' to assess his suitability for the role. The head chef was happy with the Complainant's performance and intended to speak to the Managing Director to confirm the Complainant's employment. On 4 February 2020, the Complainant met the Managing Director and during their conversation the Managing Director became aware of the Complainant's membership of the Traveller community. On 10 February, the head chef contacted him saying that he had spoken with the Managing Director and they believed that the Complainant's lack of skill rendered him unsuitable for the role. The Complainant submitted at the hearing that no issue had been taken with his performance and that he was dismissed only after the Managing Director recognised him as a member of the Traveller community.

The Respondent denied that the dismissal was discriminatory. The Complainant's employment was dependent on successful completion of a trial period. While the Complainant had initially performed well on the first day, on 4 February, which was a busier day, the Complainant did not perform to a satisfactory standard. Accordingly, both the head chef and the Managing Director agreed that the Complainant was not suitable for the role and had not passed the trial period.

### Findings

The AO noted that s.6 of the Employment Equality Acts 1998 to 2021 ("EEA") defines discriminatory treatment as occurring where a person is treated differently to another on the basis of a discriminatory ground. Membership of the Traveller community is a discriminatory ground. The test in discrimination cases, as provided for in s.85A EEA is well-established: the Complainant must first prove primary facts in order to raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden of proving that the treatment was not discriminatory is passed to the Respondent. Having regard to the fact that no issues had been raised in relation to the Complainant's performance prior to the Managing Director becoming aware of the Complainant's membership of the Traveller community, the AO held that the Complainant had proven primary facts which were of sufficient significance to raise a presumption of discrimination.

The AO preferred the Complainant's evidence that the trial period was for one day and that he had successfully completed it. He further noted that the evidence regarding the dismissal was not clear and the Complainant did not receive any correspondence outlining the reasoning and rationale for the dismissal. Taking these factors into account, the AO held that the Respondent had not discharged the burden of proving that the dismissal was not discriminatory. The Complainant was awarded €4,160 in compensation, on the basis of a weekly salary of €160.

Ieva Bukauskaite v. Laurel Lodge Nursing Home Housekeeping Assistant, ADJ-00036423

### Keywords

Discrimination, discriminatory treatment, grounds of religion or belief, Covid-19 vaccination, Employment Equality Acts 1998 to 2021.

### Background

The Complainant applied for the position of housekeeper at the Respondent, a nursing home, but was refused an interview because she was not vaccinated against Covid-19. The Complainant submitted that she had been discriminated against on the basis of her belief.

On 9 December 2021, the Complainant attended for an interview at the Respondent's premises but disclosed that she was not vaccinated. She was informed by the Respondent that in line with public health guidelines, a vaccine was required to enter a healthcare setting and that they would be happy to arrange an interview when the guidelines changed. The Complainant stated that she had a valid EU Covid certificate showing that she had recovered from Covid-19 but this was not accepted. Furthermore, it was not mandatory to be vaccinated. She submitted that her complaint was not on grounds of religion but on her belief that the Covid certificate had the same status or value as a vaccine.

### Findings

The AO noted that the Respondent's policy, in following public health guidelines, was to require vaccination for employees, or a medical exemption from vaccination. The Respondent did not view the Covid certificate as having the same status. However, s.6(2)(e) of the Employment Equality Acts 1998 to 2021 provides that discrimination on the religion ground is established where a person is treated less favourably than another where "one has a different religious belief from the other, or that one has a religious belief and the other has not". The words 'religion' and 'belief' are "inextricably linked". Any alleged discrimination must be "directly related to a religious belief". The Complainant had accepted that there was no religious issue here, only one of belief. The AO held that this did not qualify for consideration as an act of discrimination and accordingly the complaint was not well founded.

## Employment Equality Acts 1998 to 2021 - Harassment/sexual harassment

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An Administrator v. A Golf Club, ADJ-00028647

### Keywords

Harassment, sexual harassment, Employment Equality Acts 1998 to 2021.

### Background

The Complainant worked as an administrator at a golf club since September 2016. She claimed that she was exposed to consistent unwelcome comments, jokes, gestures and contact of a sexual and private nature by the General Manager that caused her offence and humiliation. The Complainant brought complaints that she had been subjected to harassment and sexual harassment in her workplace. Her evidence was corroborated by two co-workers.

The Complainant gave evidence that she had complained about the behaviour to the General Manager himself and other staff. The Respondent's Bullying and Harassment Policy made reference to making a complaint to the Management committee but the Complainant stated that she had not heard of the committee.

In November 2019, following the receipt of an anonymous letter alleging sexual harassment in the office and the Complainant, along with her co-worker, submitting formal letters of complaint, the Respondent engaged an external HR firm to investigate. Out of 23 incidents reported by the Complainant, three were upheld but these were described as inappropriate behaviour and not sexual harassment.

In March 2020, the Complainant appealed the findings of the report but the appeal was dismissed in June 2020. No steps were taken against the General Manager and the Respondent requested the Complainant to return to work with the General Manager.

The Respondent submitted that it only became aware of the complaints following the receipt of the anonymous letter, in November 2019. At this point, it acted expeditiously by appointing an independent expert who conducted a thorough investigation which fully complied with fair procedures. The investigator presented a comprehensive report which reached findings which were objectively sustainable and in compliance with the law. The General Manager gave evidence that nothing in his interactions with the Complainant led him to believe that the relationship was uncomfortable for the Complainant. The investigator also gave evidence of her belief that there was a higher standard of proof in sexual harassment cases.

## Findings

The AO considered s.14A Employment Equality Acts 1998 to 2021 (“EEA”) which defines sexual harassment as unwanted verbal, non-verbal or physical conduct which is of a sexual nature. She also noted that s.15 provides that an employer is vicariously liable for any acts of harassment or sexual harassment, whether or not the employer knew about them, unless they can prove that they took steps which were reasonably practicable to prevent any harassment. In accordance with the Code of Practice on Sexual Harassment and Harassment at Work, the intention of the perpetrator is irrelevant. The AO must consider the effect of the behaviour on the employee. Finally, in accordance with s.85A, the Complainant must first prove primary facts that raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden of proving that the treatment was not discriminatory shifts to the Respondent.

The AO held that based on the evidence given a number of the incidents reported by the Complainant were of a sexual nature and did fall within the definition of sexual harassment. Considering the consistent and corroborating evidence of the witnesses, the AO found that the Complainant’s case was credible that she was the recipient of offensive and unwelcome comments by the General Manager. Accordingly, the Complainant had established a prima facie case of sexual harassment.

In considering whether the Respondent had a policy to prevent sexual harassment in the workplace, the AO noted that it was clear that none of the Respondent’s employees were familiar with the bullying and harassment policy. Furthermore, none of the people to whom the Complainant raised the behaviour of the General Manager were sufficiently trained to recognise the behaviour as falling under the policy and were not aware of the steps that needed to be taken. While a Staff Handbook was given to employees with their contract, the Respondent did not provide any explanation or training on the various policies. The AO held that this was unacceptable and concluded that the Respondent had not established a ‘reasonably practicable’ defence.

The AO also accepted the criticisms of the investigation, holding that the investigator was overly cautious and structured in her methodology and gave too little weight to the Complainant’s account. The AO held that the investigator’s belief that in complaints of a sexual nature the burden of proof was the balance of possibilities but to a higher degree of probability was not correct.

The AO awarded compensation of €25,000, taking into account the fact that the EEA requires employers to adopt, implement and monitor a comprehensive, effective and accessible policy on sexual harassment and harassment, which did not occur here, and the fact that the Complainant did make a complaint within the terms of the Respondent’s policy but nobody knew what to do about it. The AO held that the comments the Complainant had to endure were on the mid-scale of such behaviour and totally unacceptable in the modern workplace.



## Employment Equality Acts 1998 to 2021 - Disability and reasonable accommodation

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Caroline O'Connor v. Irish Prison Service, ADJ-00037941

### Keywords

Discrimination, disability, reasonable accommodation, obligation to engage, Employment Equality Acts 1998 to 2021.

### Background

The Complainant worked as a Higher Executive Officer with the Respondent in Cork Prison but had been out on sick leave since February 2020. She complained that the Respondent had discriminated against her by failing to provide reasonable accommodation by permitting her to work from home.

In 2019, the Complainant was diagnosed with a heart condition and, in February 2020, she suffered an acute cardiac event at work. She subsequently commenced paid sick leave. Her surgery, scheduled for March 2020, was postponed due to the Covid-19 pandemic. The Complainant made several requests to work from home but these were refused on the basis that prison-based staff could not work from home. The Complainant submitted a list of tasks and duties to support her application to work from home but these were deemed unworkable by the Respondent. The Complainant submitted that she had been discriminated against as the Respondent had failed to properly engage with her or to properly investigate what reasonable accommodation could be provided.

The Respondent accepted that the Complainant had a disability but submitted that due to the nature of the Complainant's duties, including processing and dealing with sensitive files relating to prisoner issues, presence on site at Cork Prison was mandatory. The national prison service met in March 2020 to deal with the challenges presented by Covid-19 and determined that all on-site staff would be deemed essential workers and be required to attend on site. The Respondent confirmed that it had not assessed the Complainant's role in terms of the reasonable accommodation policy and had not considered the costs of allowing her to work from home.

### Findings

The AO noted that the Complainant's condition amounted to a disability within the meaning of s.2 Employment Equality Acts 1998 to 2021 ("EEA"). Sections 6 and 8 provide that a person cannot be treated less favourably on grounds of disability in relation to the conditions of employment. On a claim of discrimination it is for the Complainant to prove primary facts in order to raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden of proving that the treatment was not discriminatory shifts to the Respondent. The AO held that the refusal of the Complainant's request to work from home was made in full knowledge of her disability. This was sufficient to raise an inference of discrimination.

The key issue in this case was whether the Respondent had complied with their obligations to provide reasonable accommodation pursuant to s.16 EEA. An employer does not have to retain an employee who is not fully competent and capable of undertaking their duties. However, s.16(3)(a) obliges an employer to provide reasonable accommodation to a person with a disability so long as any measures do not impose a disproportionate burden on the employer. The AO referred the Supreme Court case of *Nano Nagle School v. Marie Daly* [2019] IESC 63, [2019] 3 IR 369, which held that the requirement to reasonably accommodate an employee with a disability is a mandatory primary duty. An employer should engage and consult with the employee in relation to reasonable accommodation.

The AO noted that the case arose with the onset of the pandemic and accepted that this placed the Respondent on high alert and on emergency mode from March to 15 June 2020, when the complaints were lodged. She noted that the claim for reasonable accommodation may have had an earlier resolution had it been channelled through the Respondent's grievance procedure. Notwithstanding, the AO held that by placing a 'blanket ban' on working from home, the Respondent failed to attempt to reasonably accommodate the Complainant. No risk assessment or evaluation of the Complainant's duties/tasks was undertaken. Suggested changes to the Complainant's role were not objectively measured, discussed, consulted on or evaluated either by trial or pilot. Whether the Respondent would ultimately have been justified in refusing the Complainant's request to work from home was not relevant; the case law emphasised that an employer is obliged to consider the request for reasonable accommodation. The AO found that there was very little corporate knowledge of reasonable accommodation in the Respondent. Furthermore, the Respondent could not rely on the defence of disproportionate burden since they did not cost the proposed changes. Accordingly, the Complainant had been discriminated against by reason of the failure to consider reasonable accommodation and the AO awarded €55,000 in compensation.

Additionally, the AO required the Respondent to immediately engage a strategic working party to engage in a social dialogue on reasonable accommodation and to formulate an operational policy. The AO also directed that a comprehensive report on this be furnished to the head of the Prison Service no later than 31 December 2022.

## Equal Status Acts 2000 to 2018 - Membership of the Traveller community

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Bridget O'Reilly v. Atlantic Troy Limited t/a Charleville Park Hotel, ADJ-00020724;

Philip O'Neill v. Atlantic Troy Limited t/a Charleville Park Hotel, ADJ-00020725; A Minor v. Atlantic Troy Limited t/a Charleville Park Hotel, ADJ-00020726; A Minor v. Atlantic Troy Limited t/a Charleville Park Hotel, ADJ-00020727

### Keywords

Discrimination, membership of the Traveller community, housing assistance ground, provision of accommodation, credit card policy, Equal Status Acts 2000 to 2018.

### Background

The Complainants (mother, father and two children) submitted that there were discriminated against by the Respondent hotel on the grounds of membership of the Traveller community and receipt of housing assistance when they sought to stay at the hotel.

On 25 September 2018, the Complainants were assessed as homeless by Cork County Council who referred them to the Department of Social Protection for emergency payment to access emergency accommodation. On 27 September, a Community Welfare Officer ("CWO"), contacted the Respondent but was advised that there was no availability for the Complainants. Bridget O'Reilly then made an online booking, using a debit card, for a room for three nights for her family. The following day, she and the CWO tried to check in and pay by cheque. The receptionist informed them that a credit card in the name of the person staying in the hotel was required.

The Respondent denied discrimination and submitted that the Complainants were refused on the basis that they could not comply with the credit card policy. The General Manager gave evidence that a credit card provided financial security for the hotel but he accepted that there were instances when a credit card was not necessary for a reservation, i.e. corporate clients or regular customers. He also stated that members of the Traveller community were members of the Leisure club at the hotel.

The Respondent also gave evidence that it had previously accommodated other persons in a similar situation to the Complainants but this experience had been disastrous. Two families from the Traveller community had been accommodated for twelve months, having been advised it would only be for a week, and during that period substantial damage was caused to the hotel. The Respondent submitted that it had imposed its credit card policy after this event.

The Complainants submitted that the credit card policy was a wholly discretionary policy which could be waived where the Respondent was happy to accept the guest. The fact that the Respondent relied on its previous negative experience revealed that the Traveller identity of the Complainants was an active consideration and informed the decision of the hotel not to permit the Complainants to stay.

## Findings

The AO noted that s.6 of the Equal Status Acts 2000 to 2018 (“ESA”) prohibits discrimination in the provision of any services related to accommodation. An individual is discriminated against where they are treated less favourably than another on the basis of their membership of the Traveller community or the fact that they are in receipt of housing assistance (s.3). In accordance with s.38A, the Complainant must first prove primary facts in order to raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden of proving that the treatment was not discriminatory shifts to the Respondent.

The AO noted that it was not disputed that the Complainants were in receipt of housing assistance and that they are members of the Traveller community, nor was it disputed that they were refused accommodation. These facts were of sufficient significance to raise a presumption of discrimination.

On the housing assistance ground, the AO noted that it was obvious that the Respondent had “already adopted a strong pre-determined position not to allow those on housing assistance to be accommodated in the hotel”. This was reinforced by the fact that the Respondent had changed its policy to require credit cards as a direct result of its previous experience. However, the AO noted that there was no clear evidence that there was a strict ‘credit card only’ policy in place, given the General Manager’s evidence that he had discretion to waive the policy. The AO concluded that the insistence on differentiating between credit and debit cards “was a device used ... to deny the Complainant and her family the right to equal treatment in the provision of accommodation.”

On the membership of the Traveller community ground, the AO stated that the provision of leisure facilities differs substantially from the provision of accommodation. On the Respondent relying on its previous negative experience, the AO held that “the Respondent seeks to portray all Traveller families in the same light and raises a serious presumption of discrimination that it does not satisfactorily rebut.”

The AO held that the Respondent had not rebutted the presumption of discrimination on either ground and noted that the result of the prohibited conduct was to deny emergency accommodation for a family who were homeless and members of a vulnerable minority at the margins of society. In those circumstances, the AO held that redress should be on the higher end of the scale and awarded €8,000 each to Bridget and Philip O’Reilly and €3,000 each to their two children. The AO also directed the Respondent to revise its requirement on credit card bookings so that the policy did not infringe its obligations under the ESA.



Megan McDonnell v. Iceland Stores Ireland Limited, ADJ-00032641;

Laura McDonnell v. Iceland Stores Ireland Limited, ADJ-00032639; Minor v. Iceland Stores Ireland Limited, ADJ-000326421; Minor v. Iceland Stores Ireland Limited, ADJ-00032719

## Keywords

Discrimination, membership of the Traveller community, vicarious liability, Equal Status Acts 2000 to 2018.

## Background

The Complainants complained that the Respondent had discriminated against them on the ground that they were members of the Traveller community when they were asked to leave the shop by the security officer and the assistant manager. They believed that on the basis of their accents, how they dressed and how they wore their hair, they were readily identified as belonging to the Traveller community. The Complainants stated that they were not given a reason for being asked to leave and CCTV showed that other young people who entered the shop around the same time were not asked to leave.

The Respondent stated that they are open for business to all customers and do not discriminate against any ground. Managers and staff are given training on the Respondent's Dignity at Work policy. It noted that the Complainants had in fact shopped at the store many times previously. Furthermore, it stated that the security officer and assistant manager were non-Irish nationals and therefore would not be able to distinguish the different accents. Finally, the Respondent submitted that the complaints arose from the actions of the security guard who was employed by a security company. Accordingly, the Respondent could not be responsible for the actions of the security guard.

## Findings

The AO first noted that the burden of proof in claims taken under the Equal Status Acts 2000 to 2018 ("ESA"), as set out in s.38A, is as follows: the Complainant must first prove primary facts in order to raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden of proving that the treatment was not discriminatory shifts to the Respondent. The AO noted that it was clear from the CCTV footage that the Complainants were escorted off the premises and other young people were not. This appeared to be different treatment.

The AO also accepted the Complainants' evidence about how a Traveller can be identified. As the Respondent did not call the assistant manager or the security guard to give evidence, very little weight could be given to assertion that they, as non-nationals, could not have identified the Complainants as members of the Traveller community. In those circumstances, the AO held that the Complainants had raised a presumption of discrimination.

On the Respondent's argument that it was not liable for the actions of the security guard, the AO considered s.42 ESA which provides for vicarious liability: a body shall be liable for the actions of an agent acting with authority. In this case, the security guard was an agent of the Respondent.

An employer, although vicariously liable for its employees, may avail of the defence, set out in s.42(3) ESA, that it took steps as were reasonably practicable to prevent an employee acting discriminately. Although the Respondent has provided the AO with its policies, which set out that staff would be trained on how to deal with discrimination, it had provided no evidence that such training occurred.

Accordingly, the AO held that the Respondent had not rebutted the presumption of discrimination. Having regard to the emotional upset and public embarrassment experienced by the Complainants, the AO awarded them €3,000 each in compensation.

Oskar Hangurbadzo v. Ladbroke (Ireland) Limited, ADJ-00030248;

Zuzana Pompova v. Ladbroke (Ireland) Limited, ADJ-00031246

## Keywords

Discrimination, race, membership of the Traveller community, burden of proof, facts that lead to the presumption or inference of discrimination, Equal Status Acts 2000 to 2018, Racial Equality Directive.

## Background

The Complainants complained that they were discriminated against by the Respondent as they were denied a service on the basis of their race and membership of the Roma community. The Respondent stated that the service was not provided because of the Complainants' behaviour.

Mr Hangurbadzo stated that he was a Slovak Roma. Ms Pompova, his fiancée, stated that she was a member of the Roma community. On 13 February 2020, around 9pm, Mr Hangurbadzo entered the Respondent's premises, a betting shop, and made his way to take a betting slip. He was told by a staff member that the place was closed. When he replied that the shop closed at 9.30pm, he heard the person behind the counter say "youse guys are always making a mess at the corner." Mr Hangurbadzo stated that this was clearly a reference to him and his Roma friends. In the meantime, two other customers entered the shop and were served. Mr Hangurbadzo gave evidence that he felt humiliated and embarrassed. Ms Pompova stated that as she approached the door to the shop she heard the interactions between her fiancé and the staff. She was upset and left the premises.

The manager for the Respondent's shop gave evidence that the roulette area had already been cleaned and that Mr Hangurbadzo had simply been asked to not dirty the area as they were closing soon. She stated that he then became irate and began pointing his finger and told her "you will do what I say and take my bet." She stated that she refused to take the bet after being spoken to like that. She also stated that she did not know where the Complainants were from although was aware that they were not Irish.

## Findings

The AO noted that the relevant discriminatory grounds in this case, as set out in s.3 ESA, were race and membership of the Traveller community. The ESA transposes the Racial Equality Directive (Directive 2000/43/EC) which includes discrimination on membership of the Roma community. A claimant must first establish that they fall within the purview of a discriminatory ground; then that they incurred less favourable treatment; and finally that that treatment was on the grounds of the discriminatory ground. The burden of proof, as set out in s.38A, requires the Complainant to prove primary facts in order to raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden of proving that the treatment was not discriminatory shifts to the Respondent. The AO noted that in deciding whether a fact is of 'such significance' to raise an inference of discrimination, he must consider first, whether the relevant facts are within the exclusive or near exclusive knowledge of the respondent. If that is the case, the burden shift to the respondent as they have the means of knowledge to dislodge the inference of discrimination.

The AO had regard to the evidence given by the witnesses and CCTV footage of the incident. He noted that there was no dispute that the Respondent was aware that the Complainants were not Irish and found on the balance of probabilities that it was aware that the Complainants were of Roma descent. On the conflict of evidence given by the witnesses, the AO held that the evidence of the Complainants was more in line with the CCTV footage. He noted that Mr Hangurbadzo entered the premises and saluted the counter staff. He took a slip to play the game and only became agitated as he was repeatedly not being served even when two other customers entered the premises and were served. This fact of other customers being served allowed a presumption of discrimination to be drawn.

The AO held that the Respondent had thereafter not rebutted the presumption of discrimination. The evidence of the Complainants was consistent and the AO did not accept that Mr Hangurbadzo was aggressive or demanded that he be served. His agitation was understandable and did not permit the Respondent to justify the denial of service or defend the claim of discrimination.

With respect to Ms Pompova, the AO held that she intended to enter the premises and accompany Mr Hangurbadzo but did not do so after observing the events. The definition of 'service' within s.2 ESA includes "access to and the use of any place". Ms Pompova did not enter the shop because of discrimination and the AO held that it was perfectly reasonable for her to think that the repeated refusal to serve Mr Hangurbadzo applied to her.

The AO awarded €7,500 in compensation to Mr Hangurbadzo and €2,500 in compensation to Ms Pompova.

## Equal Status Acts 2000 to 2018 - Disability and reasonable accommodation

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Sofiya Kalinova v. Permanent TSB Plc, ADJ-00026607

### Keywords

Discrimination, disability, reasonable accommodation, Irish Sign Language interpretation, Equal Status Acts 2000 to 2018.

### Background

In January 2020, a deaf Complainant submitted a complaint of discrimination on the grounds of disability and sought redress under s.21 of the Equal Status Acts 2000 to 2018 from the Respondent Bank. She alleged the Respondent had failed to provide her with reasonable accommodation when she tried to avail of its services. As a result of the Respondent's blanket policy, the Complainant was treated differently and placed in a "vulnerable" category which she submitted was an affront to her dignity.

The Complainant held a bank account with the Respondent. The Complainant ran into difficulties with her password when she tried to access her online banking app. She needed to contact an Agent in the Bank to resolve the matter and booked a slot with an Interpreter to do this. The Respondent then refused to speak with the account holder through a third party, classifying the Complainant as a "vulnerable" customer.

The Complainant wrote an email of complaint. On 21 August 2019, the Respondent replied stating that Online Banking Service Agents do not communicate through third parties regarding customer accounts. The Complainant was advised to come into the Branch with valid Photo I.D. The Respondent further stated that the matter had been brought to the attention of management and amendments would be made to the procedures in place. In October 2019, the Complainant attempted to repeat the process of contacting an Agent in the Respondent Bank but this again failed. The Complainant subsequently raised the issue through an ES1 pre-litigation notification Form and was not satisfied by the response she received.

Evidence was also given on behalf of the Irish Sign Language Interpreting Services outlining some of the challenges experienced by deaf customers accessing services. They gave evidence of the extensive training undertaken by ISL interpreters, and explained that their role is to accurately convey the conversation between the deaf person and the service provider.

At the hearing the Respondent gave evidence of previous fraud attempts, whereby third parties had gained access to personal data. As a result, the bank policy was that it would not communicate with third parties. The Respondent had made efforts to engage with the Irish Sign Language Interpreting Services and with different departments in the Bank since October 2019. The AO observed that the Respondent's main concern appeared to be fraud prevention rather than data protection. In approaching the issues raised by the Complainant, the Respondent bank determined that an appropriate, security-conscious consent form needed to be created and signed off on. Stakeholders were consulted in an effort to find ways of making reasonable accommodations whilst also mitigating risk.

The Complainant claimed that the Respondent Bank failed to provide her with reasonable accommodation when she attempted to avail of their services. The Respondent argued that reasonable accommodation had been offered in circumstances where she had been invited to present at the branch with valid I.D.

The Complainant further noted that even in circumstances where she may have found the time to attend the Branch, the issue of an ISL Interpreter would still arise. The only way the Complainant could communicate was through an Interpreter. Evidence was submitted by the Complainant that another Bank had first asked a few security questions then gave her access in the manner sought. In the present case, no security questions were asked.

## Findings

The AO held that the Complainant had made out a prima facie case of discrimination. The AO noted the case of *John Maughan v. The Glimmer Man Ltd* (S2001-020) where a guide dog was used by visually impaired person to avail of a service. The Complainant explained that the ISL Interpreter is an essential aid for a deaf person accessing services in the same way that a guide dog is for a blind person. The failure of the Respondent to take this on board amounted to indirect discrimination on the grounds of disability.

The AO further held that there is a legal obligation on the service provider bank to provide reasonable accommodation in certain circumstances. In particular, the Equal Status Acts recognises that a person with a disability may need “special treatment or facilities” to avail of a service. The AO noted that, at the very least, the appointment of an employee with liaison status with whom the Complainant was at liberty to communicate directly would have allowed the Complainant to have direct email contact so as to conduct her business.

The AO found that the Complainant had been greatly inconvenienced and categorised as being vulnerable. The Respondent failed in its obligation to provide reasonable accommodation. As a result, the Complainant was discriminated against on the grounds of disability. The complainant was awarded compensation of €8,500.

## An Outpatient v. A Clinic, ADJ-00032480

### Keywords

Disability, reasonable accommodation, Covid-19, mask-wearing, Equal Status Acts 2000 to 2018.

### Background

The Complainant, who has Autism, complained that the Respondent’s failure to provide reasonable accommodation for his disability was discriminatory.

The Complainant was referred to the Respondent’s clinic by his GP for a scan. During a call confirming the appointment, approximately twelve days prior, the Complainant informed the Respondent that due to his disability he would not be able to wear a face mask and the latter assured him that there would be no issues. However, when the Complainant arrived for his appointment, he was informed that the scan would not be performed as he was not wearing a face mask and he was given a letter, signed by a senior manager, confirming this. The Complainant was subsequently accommodated at another medical facility where an appointment was made at a designated quiet time so that any risk to other patients and staff could be contained.

The Respondent did not dispute the facts but submitted that there was a miscommunication between staff on the correct policy to be applied.

### Findings

In accordance with s.38A Equal Status Acts 2000 to 2018 (“ESA”), the Complainant must first prove primary facts from which a presumption of discrimination can be raised. If the facts proven are of sufficient significance to raise such a presumption, the burden shifts to the Respondent to prove that the treatment was not discriminatory. In relation to a claim of discrimination on the grounds of disability, the Complainant must prove first that he has a disability, as defined in s.2 ESA, and second, that he was subject to discriminatory treatment.

The AO noted that the Respondent did not contest that the Complainant had a disability. With regard to the alleged discriminatory treatment, the AO noted that s.4(1) ESA provides that “discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.” But it shall be reasonable for a service provider to refuse or fail to provide special treatment or facilities if this would give rise to a more than nominal cost.

The AO held that the Complainant had sought reasonable accommodation and was assured that he would be so accommodated. Although the Respondent proffered a valid excuse with regard to miscommunication, there was no attempt to facilitate the Complainant despite the Respondent having full knowledge of the Complainant’s disability. In these circumstances, the AO held that the conduct of the Respondent was discriminatory and awarded compensation of €3,000. The AO also directed the Respondent to ensure that all staff are educated with regard to the Respondent’s obligations under the ESA, with a particular emphasis on the need to reasonably accommodate patients with disabilities.

[Bernard Gilroy v. Decathlon Sports Ireland Limited, ADJ-00035357](#)

### Keywords

Discrimination, disability, Covid-19, mask-wearing, Equal Status Acts 2000 to 2018.

### Background

The Complainant complained that he was discriminated against on the grounds of his disability when the staff of the Respondent shop requested that he wear a face mask.

On 19 August 2020, the Complainant and his family visited the Respondent shop. He was not wearing a mask. The Complainant was approached by a security guard and asked to put on a mask as it was the law at the time. The Complainant responded that he was exempt from wearing a face mask due to a medical condition but refused to give any details about the medical condition. A manager again told the Complainant to wear a face mask and asked to see a medical certificate as it was the shop’s policy. The Complainant refused, stating that there was no requirement to provide one. Ultimately, the manager informed the Complainant that this was not shop policy and the Complainant was told that he was free to continue.

The Respondent submitted that the Complainant had not been discriminated against as he had been permitted to remain in the premises. The requests and enquiries by its staff into the basis for the exemption were at all times lawful.

### Findings

The AO was satisfied that the Respondent was providing a service within the meaning of the Equal Status Acts 2000 to 2018 (“ESA”). Section 3(1)(a) ESA defines discriminatory treatment as treating a person less favourably than another in respect of a discriminatory ground. Disability is a discriminatory ground, in accordance with s.3(2)(g) ESA. Pursuant to s.38A ESA, the Complainant must prove primary facts which raise a presumption of discrimination. If the facts proven are of sufficient significance to raise such a presumption, the burden then shifts to the Respondent to prove that the treatment was not discriminatory.

Based on the evidence, the AO was satisfied that while the Complainant stated that he had a disability, no medical evidence was provided to the Respondent at the time. Therefore, the Respondent was not on notice of any disability. The Complainant made an unsubstantiated assertion that he was exempt from wearing a mask. In such circumstances, the AO held that the Complainant had failed to establish a prima facie case of discrimination. Furthermore, the AO noted that the Complainant was permitted to enter the shop and remain on the premises and thus failed to provide evidence to demonstrate that he was treated less favourably by the Respondent.



A Pupil (a minor) v. Primary School,  
ADJ-00021398

## Keywords

Discrimination, disability, Down Syndrome, education, reasonable accommodation, inclusion, Equal Status Acts 2000 to 2018.

## Background

The Complainant, who has Down Syndrome, was a pupil of the Respondent school from September 2016 to April 2019 when she was removed by her parents. The Complainant's mother, acting on the Complainant's behalf, alleged that she was discriminated against when the Respondent denied her reasonable accommodation for her disability and denied her access to education.

The school established a workstation for the Complainant in a foyer area of the school, outside of the classroom. Evidence was given by the Special Needs Assistant ("SNA") that the Complainant spent an inordinate amount of time being taught by the SNA in the foyer space. The Complainant's mother stated that the school had not informed her about the foyer space.

Evidence was given by a visiting teacher and an Education Officer from Down Syndrome Ireland that it would be unusual and not normal practice to have a workstation for a child outside of the classroom. The Education Officer also gave evidence that the Principal had refused her offer of help in the case.

The Respondent submitted that the school provided the best educational service available to the Complainant considering the resources that were available to it. The Principal gave evidence that the school only had 1.83 SNA posts for all students with special needs. It was appropriate for the Complainant to be placed in the "Learning Space" as she could be very vocal, it allowed her scope to move around, and the Complainant had behaved inappropriately and aggressively. She would sometimes push and hit out at other students and it had been reported by a teacher that the Complainant had tried to strike her. However, the Principal acknowledged that he did not report such behaviour to her parents. Evidence was also given by the Special Education Teacher and the Class Teacher that they decided that the Complainant should spend more time in the "Learning Space" as movement breaks in the classroom were not working out and the Complainant was vocal and easily distracted.

## Findings

The main issue in this case was whether the Respondent's actions were a reasonable measure that accommodated the Complainant's needs and did not curtail her right to education.

The AO noted that there is a statutory presumption that a child with special needs will be educated in a mainstream setting. Section 4 of the Equal Status Acts 2000 to 2018 ("ESA") obliges a service provider, including a school, to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities. However, s.4(4) provides that where a person with a disability could cause harm to themselves or others, different treatment to the extent reasonably necessary to prevent such harm does not constitute discrimination.

Section 7 specifically provides that an educational establishment shall not discriminate in the provision of education. However, s.7(4)(b) provides an exception where compliance in relation to a student with a disability would have a seriously detrimental effect on the provision of services to other students.

The AO was satisfied that the Complainant had established a prima facie case as the Complainant spent most of her time in the "Learning Space" outside of the classroom and was thereby excluded from social interactions and learning with her fellow students.

The AO considered whether the different treatment was justified because the Complainant could cause harm to others. The AO noted that there was a significant conflict in evidence between the SNA and the Principal but preferred the evidence of the SNA as to the day-to-day behaviour of the Complainant, noting that the Principal had an administrative rather than a teaching role and gave vague, second-hand reports. The AO concluded that while the Complainant's behaviour could be classified as challenging, it was not dangerous or harmful.

The AO accepted that the school could have been more resourced with SNA teachers. However, the Respondent had an obligation to provide inclusiveness in mainstream education and, accordingly, the Complainant's learning space should have been in the classroom. The Complainant did not have access to her teacher or to her peer models and the Respondent had a defensive attitude in refusing to accept a reasonable offer of support from Down Syndrome Ireland.

The AO was satisfied that the Complainant could have been reasonably accommodated by a workstation in the classroom and should have been withdrawn only when she was tired or significantly disruptive, a measure that was cost neutral. Accordingly, the Respondent had failed to rebut the presumption of discrimination. Furthermore, the AO held that the Respondent breached its obligations to the Complainant by curtailing her opportunity to full access to education.

Where there were aggravating factors in the case, including the failure of the school to consult with the parents and the advice the school had received on the perils of exclusion, the AO awarded €12,000 in compensation.

## Equal Status Acts 2000 to 2018 - Housing assistance

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[A Tenant with Refugee Status v. A Small Landlord, ADJ-00028448](#)

### Keywords

Discrimination, housing assistance ground, non-compliance with another statute not a defence to a complaint, refusal to accept move between different types of defined housing assistance payment constitutes discrimination, statutory interpretation, remedial social statutes, ss. 3 and 6 Equal Status Acts 2000 to 2018.

### Background

The Complainant had been the Respondent's tenant since 2014, and complained that the Respondent had discriminated against her under the 'housing assistance ground' by refusing to complete/sign the form required to avail of Housing Assistance Payment ("HAP").

The Complainant was in receipt of rent supplement but from 2018 she asked her landlord to accept HAP. The Respondent refused as the form requires a landlord to certify that the accommodation complies with statutory housing standards and there was damp in the flat.

From March 2020, following a means assessment, the Complainant's rent supplement was reduced. Thereafter, she was paying more towards her rent than if she had been in receipt of HAP. In February 2021, the Complainant was awarded Carer's Allowance to care for her sick mother and her entitlement to rent supplement ceased in June 2021.

The Complainant submitted that the flexibility of HAP would have allowed her to care for her mother whilst increasing her working hours and income and without putting her accommodation in jeopardy.

The Respondent put forward two grounds of defence: 1) he could not complete the HAP form as the property did not comply with statutory housing standards; and 2) he relied on the decision of *Celine Murphy v. Michael O'Toole*, ADJ-00027797 to argue that as the Complainant had previously been in receipt of rent supplement, which he had accepted, discrimination could not arise.

## Findings

The AO first considered the relevant legislative provisions. Section 6(1) ESA provides that a person shall not discriminate in providing accommodation and s.6(2) sets out an exhaustive list of exclusions. Section 3 sets out the grounds of discrimination which includes the 'housing assistance ground'. In a complaint of discrimination, in accordance with s.38A, the Complainant must first prove primary facts that raise a presumption of discrimination. If the facts proven are of sufficient significance to raise a presumption, the burden shifts to the Respondent to prove that the treatment was not discriminatory.

The AO considered that the Complainant had established a presumption of discrimination: the Respondent's ongoing refusal to complete/sign the HAP form amounted to less favourable treatment. The AO then turned to the two defences put forward by the Respondent.

### Non-compliance with statutory housing standards

The AO noted that the Respondent had not cited any statutory basis or case law supporting his contention that compliance with statutory housing standards acts as a defence. This defence is not included in the exhaustive list of defences set out in s.6 ESA and allowing landlords to cite a breach of another statute to avoid complaints of discrimination would defeat the purpose of the legislation.

### Landlord had already accepted rent supplement

In *Celine Murphy v. Michael O'Toole*, the AO held that s. 3 ESA provides that an individual cannot be discriminated against if they are in receipt of rent supplement, housing assistance or any payment under the Social Welfare Acts but does not provide an express 'and/or' option between these three types of payments. Therefore, once a landlord has accepted one type of housing payment, there is compliance with the ESA and refusal to move to a different defined payment cannot be discriminatory.

In this case, the AO declined to follow this reasoning. The AO noted that s.5 of the Interpretation Act 2005 provides that where a literal interpretation would be absurd or fail to reflect the plain intention of the Oireachtas, the provision shall be construed to reflect the plain intention of the Oireachtas. The AO also referred to the Superior Courts' purposive approach to interpreting 'remedial social statutes'.

Accordingly, the AO held that a narrow and literal interpretation of ss.3 and 6 ESA would render it "a nullity for tenants ... who need to move from one type of housing assistance payment to another defined payment more suited to their particular needs." Therefore, s.3 ESA must be interpreted as including existing tenants who are deemed entitled to HAP, regardless of whether they currently or have previously been in receipt of any payment under the Social Welfare Acts. To interpret it otherwise would prevent existing tenants who need to move from one type of payment to another more suitable for their needs from enforcing their rights under the ESA. This would give rise to unintended adverse consequences. The AO held that no intention to discriminate needs to be established: the fact of having previously accepted rent supplement is irrelevant. It is the act of refusal and the adverse consequences that flow from that refusal that give rise to the discrimination.

The AO concluded that the Respondent had discriminated against the Complainant in refusing to complete/sign the HAP form. Taking into account the fact that the Complainant was particularly vulnerable, the AO held that the discrimination was at the more serious end of the scale and ordered the Respondent to pay €10,000.



# Appendix

# 4

## 2022 Legal Challenges to the WRC

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*Ammi Burke v. An Adjudication Officer and the Workplace Relations Commission and Arthur Cox LLP (Notice Party) [2022] IEHC 45*

### Keywords

Judicial review, costs, conduct of litigation, impecuniosity, general public importance, *Zalewski v. An Adjudication Officer [2021] IESC 24; [2021] 32 E.L.R. 213*.

### Background

The Applicant brought a claim to the WRC that she had been unfairly dismissed by the Notice Party. Her claim was part heard when the Supreme Court delivered its decision in *Zalewski v. An Adjudication Officer [2021] IESC 24; [2021] 32 E.L.R. 213* holding that the absence of any provision providing for the administration of an oath in proceedings before the WRC was unconstitutional. In light of this decision, and awaiting amending legislation, the AO assigned to hear the Applicant's claim notified the parties that the hearing would have to commence afresh before a different adjudication officer. The Applicant brought judicial review proceedings challenging this decision and seeking an order directing the AO to resume the hearing of the claim. The proceedings were dismissed in their entirety by Simons J but submissions were requested on the issue of costs.

## Findings

In determining the costs of the proceedings, Simons J considered three factors:

- (i) The conduct of the litigation;
- (ii) The asserted impecuniosity of the applicant; and
- (iii) Litigation raising points of general public importance.

With respect to the conduct of the litigation, Simons J noted that this is one of the factors to be considered in the exercise of the court's discretion as provided in s.169 of the Legal Services Regulation Act 2015. If a party, by its behaviour, has caused the other side to incur additional unnecessary costs, a court may consider it in the interests of justice to require reimbursement of those costs. Simons J held that the Applicant made a number of grave allegations against the AO and the WRC. The Respondents and the Notice Party were entitled to respond to these allegations and, accordingly, the hearing time was prolonged and increased costs were incurred.

Concerning the asserted impecuniosity of the applicant, Simons J reiterated that the fact that a litigant is of limited financial means is not a reason for not applying the ordinary rules in relation to costs. It is not one of the criteria listed in s.169. He noted that this was particularly significant in the context of a claim for unfair dismissal where a dedicated statutory regime has been established to pursue such claims without the risk of an adverse costs order. It was open to the Applicant to pursue her claim for unfair dismissal to completion in a 'no costs' environment.

On the final point, Simons J noted that the Court of Appeal has recently confirmed, in *Lee v. Revenue Commissioners* [2021] IECA 114 (unreported, 16 April 2021), that the courts retain an exceptional jurisdiction to depart from the general rule on costs where the proceedings raise issues of general public importance. One of the factors to be considered is "whether the subject-matter of the litigation is such that costs are likely to have a significant deterrent effect on the category of persons affected by the legal issues".

These judicial review proceedings were brought in the context of a statutory claim for unfair dismissal. Considering the limited compensation recoverable in an unfair dismissal claim, Simons J held that an overly rigid application of the default costs position would likely deter many claimants from instituting judicial review proceedings and, consequently, important points of law may remain unresolved. This must be balanced as against other parties' rights not to be prejudiced by unmeritorious and costly litigation.

In this case, Simons J was satisfied that the proceedings, in part, presented an issue of general public importance, namely, consideration of the practical consequences for part-heard claims in the WRC of the Supreme Court decision in *Zalewski* and the subsequent amending legislation. The principal judgment provided guidance relevant to other part-heard claims and confirmed that the approach taken by the WRC in this respect was correct. Simons J noted, however, that had the proceedings been confined to this question, he would have made no order for costs in favour of the WRC. But, the Applicant sought, inappropriately, to challenge interim procedural rulings of the AO and made serious allegations against the AO and the WRC. The fact that proceedings raise an issue of general public importance does not confer a licence to conduct litigation in an undisciplined manner.

In those circumstances, Simons J directed the Applicant to pay one-third of the WRC's measured costs and two-thirds of the Notice Party's measured costs.

# Appendix

# 5

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

Organisation of Working Time Act, 1997 Unfair Dismissal Acts

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Industrial Relations Acts Payment of Wages Act, 1991

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Terms of Employment (Information) Act, 1994 Redundancy Payments Acts

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Employment Equality Acts

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Minimum Notice and Terms of Employment Act, 1973

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European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (S.I. No. 131 of 2003) (other than Regulation 4(4)(a))

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Equal Status Acts

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Protection of Employees (Fixed-Term Work) Act, 2003

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National Minimum Wage Act, 2000

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Regulation 5, 8, 9, 10, 11 or 12 of the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations, 2012 (S.I. No. 36 of 2012)

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Safety, Health and Welfare at Work Act, 2005 Maternity Protection Act, 1994

---

Parental Leave Act, 1998

---

Protection of Employees (Part-Time Work) Act, 2001

---

Protection of Employees (Temporary Agency Work) Act, 2012

---

European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation)

---

Regulations, 2006 (S.I. No. 507 of 2006)

---

Regulation 6 of European Communities (Protection of Employment) Regulations, 2000 (S.I. No. 488 of 2000)

---

Protected Disclosures Act, 2014

---

European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations, 2004 (S.I. No. 494 of 2004)

---

European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-Border Services in the Railway Sector) Regulations, 2009 (S.I. No. 377 of 2009)

---

Employment Permits Act, 2006

---

Consumer Protection Act, 2007 Pensions Acts

---

Health Act, 2004

---

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

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

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Competition Act, 2002 Carer's Leave Act, 2001

---

Protections for Persons Reporting Child Abuse Act, 1998

---

Protection of Employees (Employers' Insolvency) Act, 1984

---

National Asset Management Agency Act, 2009 Chemicals Act, 2008

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Regulation 19 of the European Communities (European Public Limited - Liability Company) (Employee Involvement) Regulations, 2006 (S.I. No. 623 of 2006)

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Regulation 20(1) of the European Communities (European Cooperative Society)

---

(Employee Involvement) Regulations, 2007 (S.I. No. 259 of 2007)

---

Charities Act 2009

---

Regulation 39(1) of the European Communities (Cross-Border Mergers) Regulations, 2008

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(S.I. No. 157 of 2008)

---

Inland Fisheries Act 2010

---

Protection of Young Persons (Employment) Act, 1996

---

An Employment Regulation Order under S.42C (inserted by S.12 of the Industrial Relations (Amendment) Act 2012) of the Industrial Relations Act, 1946

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A sectoral employment order within the meaning of Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act, 2015

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Property Services (Regulation) Act, 2011

---

Payment of Wages (Tips and Gratuities) Act 2022

---

The Gender Pay Gap Information Regulations 2022

---

The Sick Leave Act 2022

---

Protected Disclosures (Amendment) Act 2022

---

European Union (Transparent and Predictable Working Conditions) Regulations 2022

---

Maritime Area Planning Act 2021

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Employment Regulation Orders 2022

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Adoptive Leave Act, 1995

---

Central Bank (Supervision and Enforcement) Act, 2013

---

Registered employment agreement within the meaning of Chapter 2 of Part 2 of the Industrial Relations (Amendment) Act, 2015

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Employees (Provision of Information and Consultation) Act, 2006

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Protection of Employment Act, 1977

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Transnational Information and Consultation of Employees Act, 1996

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Further Education and Training Act, 2013

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## Explanatory Note

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

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

Section 41 of the Workplace Relations Act 2015 creates a common procedure for the presentation of complaints and the referral of disputes under various pieces of employment legislation to the Director General of the WRC.

The individual employment enactments under which a person can present a complaint or refer a dispute to the Director General of the WRC in accordance with the provisions of Section 41 are listed in Schedule 5 of the Workplace Relations Act, 2015.

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

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

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

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

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

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

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

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

# Appendix

# 6

## Complaints submitted to the WRC by Legislation

| Legislation cited as redress for Adjudication                                                                                               | Total |
|---------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Complaint seeking adjudication by the Workplace Relations Commission under section 6 of the Payment of Wages Act, 1991                      | 1833  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 27 of the Organisation of Working Time Act, 1997         | 1592  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 77 of the Employment Equality Act, 1998                  | 1275  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 8 of the Unfair Dismissals Act, 1977                     | 1192  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 13 of the Industrial Relations Act, 1969                 | 1177  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 7 of the Terms of Employment (Information) Act, 1994     | 1054  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000                                | 506   |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 39 of the Redundancy Payments Act, 1967                  | 484   |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 12 of the Minimum Notice & Terms of Employment Act, 1973 | 466   |
| Request for an investigation by a Workplace Relations Commission Inspector under the Payment of Wages Act, 1991                             | 399   |
| Complaint seeking adjudication by the Workplace Relations Commission under the Industrial Relations Acts                                    | 309   |

|                                                                                                                                                                                                                                                                |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Request for an investigation by a Workplace Relations Commission Inspector under the Organisation of Working Time Act, 1997                                                                                                                                    | 271 |
| Investigation by an Inspector under the Payment of Wages Act, 1991                                                                                                                                                                                             | 233 |
| Complaint seeking adjudication by the Workplace Relations Commission under Regulation 10 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)                                             | 204 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 9 of the Industrial Relations (Miscellaneous Provisions) Act 2004                                                                                                           | 171 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 14 of the Protection of Employees (Fixed-Term Work) Act, 2003                                                                                                               | 160 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 28 of the Safety, Health & Welfare at Work Act, 2005                                                                                                                        | 152 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 45A of the Industrial Relations Act, 1946                                                                                                                                   | 115 |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 2 of the Protected Disclosures Act, 2014                                                                                                                                   | 96  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 23 of the Industrial Relations (Amendment) Act, 2015                                                                                                                        | 96  |
| Complaint seeking adjudication by the Workplace Relations Commission under 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 | 80  |
| Request for an investigation by a Workplace Relations Commission Inspector under the National Minimum Wage Act, 2000                                                                                                                                           | 72  |
| Request for an investigation by a Workplace Relations Commission under the Terms of Employment (Information) Act, 1994                                                                                                                                         | 59  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 16 of the Protection of Employees (Part-Time Work) Act, 2001                                                                                                                | 55  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 24 of the National Minimum Wage Act, 2000                                                                                                                                   | 55  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 81E of the Pensions Act, 1990 as amended by the Social Welfare (Miscellaneous Provisions) Act 2004                                                                          | 43  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 25 of the Protection of Employees (Temporary Agency Work) Act, 2012                                                                                                         | 39  |
| Complaint seeking adjudication by the Workplace Relations Commission under section 86 of the Employment Equality Act, 1998                                                                                                                                     | 36  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 18 of the Parental Leave Act 1998                                                                                                                                           | 29  |
| Request for an investigation by a Workplace Relations Commission Inspector                                                                                                                                                                                     | 26  |
| Complaint seeking adjudication by the Workplace Relations Commission under Regulation 15 of the European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 - S.I. No. 507 of 2012                                   | 23  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 30 and 31 of the Maternity Protection Act 1994                                                                                                                              | 23  |



|                                                                                                                                                                                                                                                                     |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Complaint seeking adjudication by the Workplace Relations Commission under Section 11A of the Protection of Employment Act 1977                                                                                                                                     | 22 |
| Request for an investigation by a Workplace Relations Commission Inspector under the Protection of Young Persons (Employment) Act, 1996                                                                                                                             | 16 |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 2 of the Criminal Justice Act 2011                                                                                                                                              | 14 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 18A of the Organisation of Working Time Act, 1997                                                                                                                                | 14 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 20(1) of the Industrial Relations (Amendment) Act, 2015                                                                                                                          | 13 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 62(2) of the Charities Act 2009                                                                                                                                                  | 12 |
| Complaint seeking adjudication by the Workplace Relations Commission under 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 200 | 11 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 9 of the Protection of Employees (Employers' Insolvency) Act, 1984                                                                                                               | 11 |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 6(1) of the Prevention of Corruption (Amendment) Act 2010                                                                                                                        | 10 |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 3 of the Employees (Provision of Information & Consultation) Act, 2006                                                                                                          | 9  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 24 of the National Minimum Wage Act, 2000                                                                                                                                        | 9  |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 2 of the Employment Permits Act, 2006                                                                                                                                           | 8  |
| Complaint seeking adjudication by the Workplace Relations Commission under Part 14 Section 103(55M) of the Health Act, 2007                                                                                                                                         | 7  |
| Complaint seeking adjudication by the Workplace Relations Commission 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     | 6  |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule III of the Competition Act, 2002-2010                                                                                                                                           | 6  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 67(5) of the Property Services (Regulation) Act 2011                                                                                                                             | 6  |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 6 of the Consumer Protection Act, 2007                                                                                                                                          | 5  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 19 of the Carer's Leave Act 2001                                                                                                                                                 | 5  |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 27 of the Paternity Leave and Benefit Act, 2016                                                                                                                                  | 5  |
| Complaint seeking adjudication by the Workplace Relations Commission under 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      | 5  |

|                                                                                                                                                                                                   |              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Request for an investigation by a Workplace Relations Commission Inspector under the European Communities (Protection of Employment) Regulations 2000                                             | 4            |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 18 of the Protection of Young Persons (Employment) Act, 1996                                                   | 3            |
| Complaint seeking adjudication by the Workplace Relations Commission under Part 3 Section 20 of (European Cooperate Society)(Employee Involvement) Regulations 2007                               | 2            |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 4(1) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations 2020                    | 2            |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 5 of the Central Bank (Supervision and Enforcement) Act, 2013                                                 | 2            |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 32 of the Adoptive Leave Act, 1995                                                                             | 2            |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 35 of the Further Education and Training Act 2013                                                              | 2            |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 4 of the Protection of Persons Reporting Child Abuse Act, 1998                                                 | 2            |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 2 of European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 | 1            |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 2 Section 1 of the National Asset Management Agency Act, 2009                                                 | 1            |
| Complaint seeking adjudication by the Workplace Relations Commission under Schedule 4 Section 1(2) of the Inland Fisheries Act, 2010                                                              | 1            |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 23 of the Parent's Leave and Benefit Act 2019                                                                  | 1            |
| Complaint seeking adjudication by the Workplace Relations Commission under Section 26 of the Chemicals Act, 2008                                                                                  | 1            |
| Other/Not Specified                                                                                                                                                                               | 247          |
| <b>Grand Total</b>                                                                                                                                                                                | <b>12790</b> |



The logo for the Workplace Relations Commission (WRC) features the letters 'WRC' in a bold, sans-serif font. The 'W' is dark blue, the 'R' is green, and the 'C' is dark blue.

An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission