

# WRC

An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

**WRC – Services - Equal Status - HAP**

**James Kelly**

**Adjudication Officer & Mediator**

# My presentation will focus on....

- **An Introduction to the Workplace Relations Commission & Services**
- **The WRC - Adjudication Service**
- **The Equal Status Acts 2000 - 2015**
- **The Housing Assistance Payment Ground (HAP)**



# The Workplace Relations Commission

- WRC came into existence on 1 October 2015, its the 1<sup>st</sup> tier in a new two tier Workplace Relations Structure. Labour Court being the 2<sup>nd</sup> Tier.
- It was the merger of, **the National Employment Rights Authority**, **Labour Relations Commission**, **Employment Appeals Tribunal**, **Equality Tribunal** and Labour Court (1<sup>st</sup> instance functions).
- Deliver a world-class workplace relations service and employment rights framework that serves the needs of employers and employees. (Minister Richard Bruton TD)



# WRC - Role and Function

- Role:
- WRC is “primarily concerned with facilitating and assisting workplace change, creating an environment of equity and fairness across enterprises and employment, which, in turn, contribute significantly to the architecture of economic and social growth”
- WRC will “play a vital role in contributing towards industrial peace, public service reform, maintaining and sustaining enterprise efficiency and productivity and engaging with employers and trade unions on issues of employee pay and rewards.”

(Kieran Mulvey, WRC Annual Report 2015)



# WRC - Role and Function

- **Functions :**
- **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 Business, Enterprise and Innovation in relation to the application of, and compliance with, relevant legislation,**
- **Provide information to the public in relation to employment legislation.**

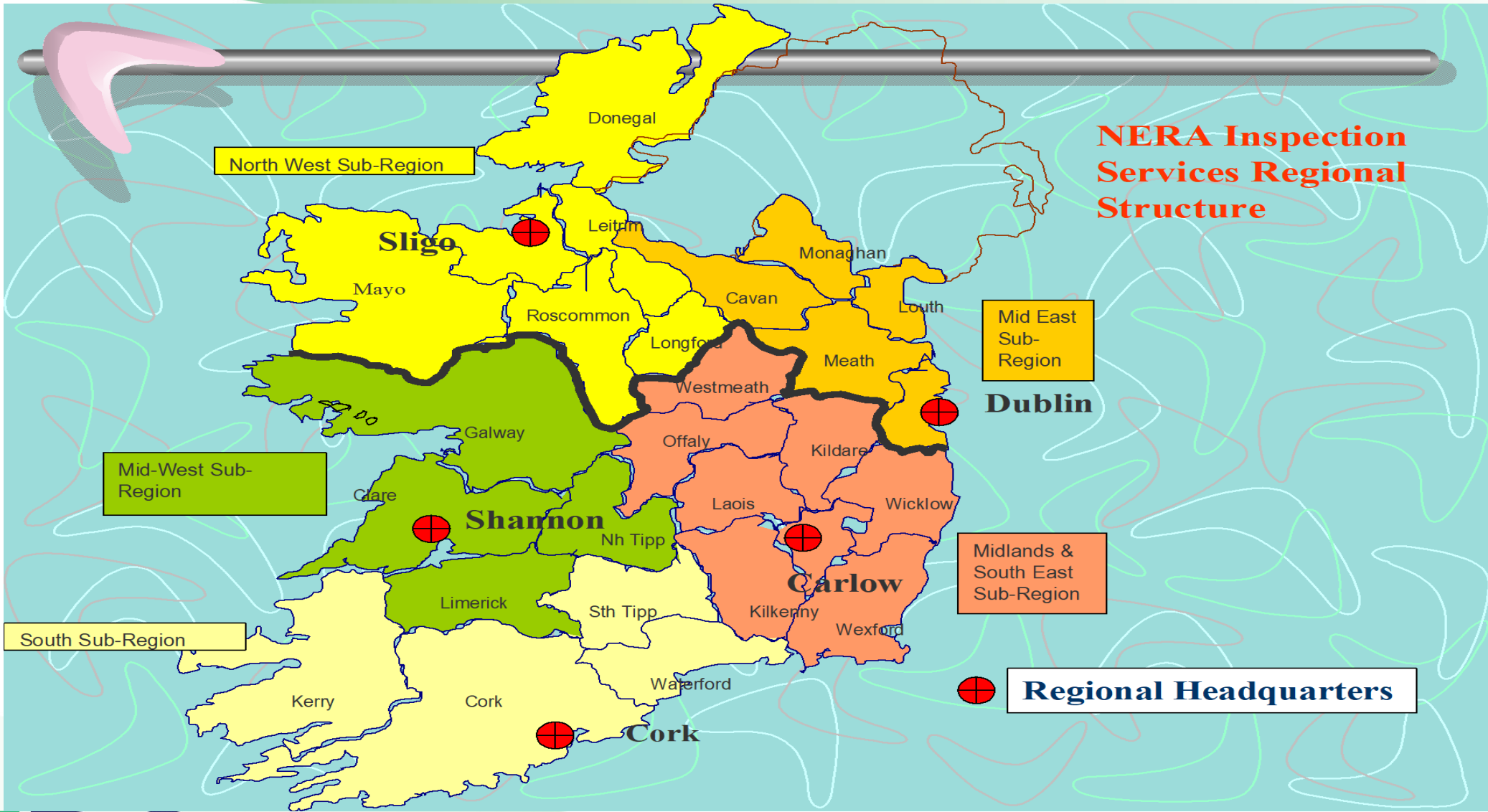


# WRC Head Office - Lansdowne House, Lansdowne Road, Dublin 4

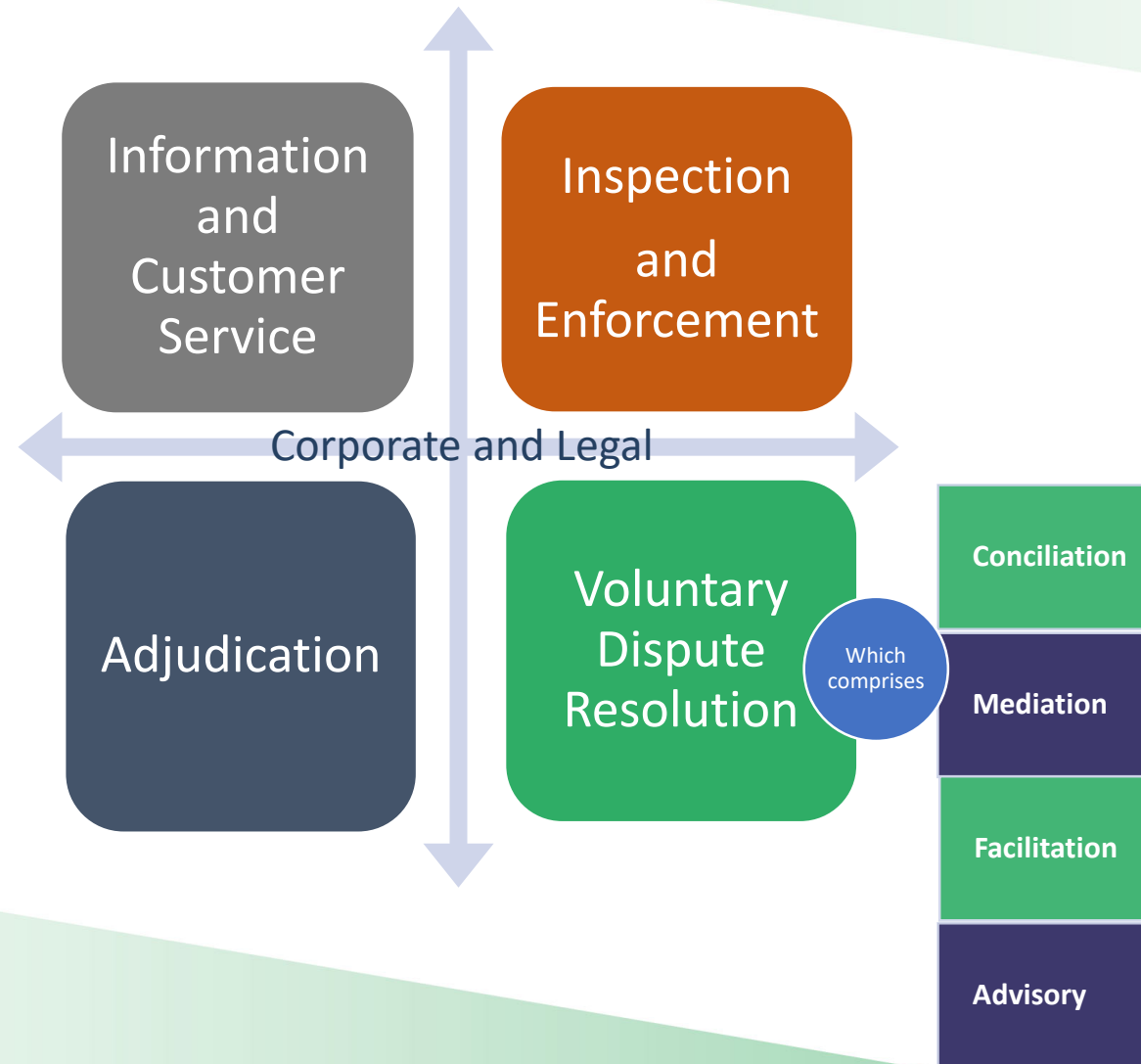


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# WRC Structure and Services





# WRC Activity Time Series: 1 October 2015 to end-December 2018

	2015	2016	2017	2018 (est.)	TOTAL
<b>Conciliation</b>					
Conferences	393	1348	1239	1300	4280
Facilitation	79	423	995	600	2097
<b>Mediation</b>					
Telephone	210	662	419	400	1691
Complaint	-	69	164	300	533
<b>Adjudication</b>					
Complaints	3212	14004	14001	15500	46717
Complaint Files	1690	6863	7317	8000	23870
Decisions (Current)	-	1232	2247	2500	5979
Legacy (On Hands)	3965	1628	295	60	-3905
<b>Advisory</b>					
New Projects	22	64	68	70	224
<b>Inspection</b>					
Concluded	1650	4830	4747	5000	16227
Wages Recovered	€0.51m.	€1.5m	€1.77m	€3m	€6.77m
Prosecutions	20	136	125	150	431
<b>Information</b>					
Calls Answered	17275	59459	52001	55000	183735
Web Visits	0.35m.	2.2m.	2.33m.	2.5m	7.38m



# Adjudication Service

- Where an employee/worker or a service user, trying to access a service, has made a complaint or raised a grievance that has not been settled satisfactorily, a complaint is lodged with the WRC.
- If the case is not settled through mediation, the case will ultimately be investigated by an Adjudication Officer for Decision (legally binding) or a Recommendation in IR (not legally binding).
- Adjudication Officers are statutorily independent in their functions and decision making duties once a complaint has been referred to them by the Director General.

# Adjudication Service

- The Adjudication Officer's role is to hold a hearing and manage that hearing, where both parties are given a fair opportunity to present their case and any evidence relevant to the complaint, including any witnesses or documentation.
- Hearings are held in private. No recording of the proceedings are permitted.
- Parties may be accompanied and represented -a trade union official, a practicing barrister or practicing solicitor or any other person, if the Adjudication Officer so permits.
- Although its not a Court of law, it will follow the normal Court procedures gathering evidence, it will allow for cross examination of witnesses and the making of legal statements.

# Adjudication Service – Decisions

- The Adjudication Officer will then decide the matter and give a written decision in relation to the complaint. The decision will be communicated to both parties and published on the WRC website.
- It will declare whether the complaint was or was not well founded.
- If well founded, it may require the employer/service provider to comply with the relevant provision(s) of the legislation,
- require the employer to make such redress as is just and equitable in the circumstances including an award of compensation.
- A party to a complaint may appeal a decision/recommendation to the Labour Court or the Circuit Court for decision under the Equal Status Acts.
- The redress that may be granted by an Adjudication Officer in a case is set down in the Individual Statute.

# What happens in real terms...

- **PRE-HEARING**
- **Complaint(s) received and checked**
- **Respondent notified of the complaint(s)**
- **Parties may be invited to Mediation**
- **Parties will be asked to send in Submissions in advance**
- **The Hearing scheduled 7+ weeks in advance**
- **Postponements will be limited**

# Conduct of Hearings and Post Hearing.

- All hearings will be conducted in accordance with the following guidelines:
- The Adjudication Officer will consider any preliminary issues and then proceed to hear the substantive claim(s).
- Both parties will, in turn, be asked to give a concise outline of their position in relation to the claims made (the type of case will determine which side starts first).
- The Adjudicator will take direct evidence from both parties and all other witnesses.
- The other party, or their representative, will be given the opportunity to question the Comp. / Resp. and other witnesses regarding the evidence they have given.
- Both parties are given the opportunity to present a summing up of the case, including submission of legal points and introduction of relevant case law.
- The Adjudicator may allow further information to be submitted after the hearing.
- Final Decision/Recommendation will issue. (6+ weeks)

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

<ul style="list-style-type: none"> <li>• Organisation of Working Time Act 1997</li> <li>• Unfair Dismissal Acts</li> <li>• Industrial Relations Acts</li> <li>• Payment of Wages Act 1991</li> <li>• Terms of Employment (Information) Act 1994</li> <li>• Redundancy Payments Acts</li> <li>• Employment Equality Acts</li> <li>• Minimum Notice and Terms of Employment Act 1973</li> <li>• European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 ( S.I. No. 131 of 2003) (other than Regulation 4(4) (a))</li> <li>• Equal Status Acts</li> <li>• Protection of Employees (Fixed-Term Work) Act 2003</li> <li>• National Minimum Wage Act 2000</li> <li>• 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)</li> <li>• Safety, Health and Welfare at Work Act 2005</li> <li>• Regulation 39(1) of the European Communities (Cross-Border Mergers) Regulations 2008 ( S.I. No. 157 of 2008)</li> <li>• An employment regulation order under section 42C (inserted by section 12 of the sectoral employment order within the meaning of Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015</li> </ul>	<ul style="list-style-type: none"> <li>• Maternity Protection Act 1994</li> <li>• Parental Leave Act 1998</li> <li>• Protection of Employees (Part-Time Work) Act 2001</li> <li>• Protection of Employees (Temporary Agency Work) Act 2012</li> <li>• European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 ( S.I. No. 507 of 2006)</li> <li>• Regulation 6 of European Communities (Protection of Employment) Regulations</li> <li>• Protected Disclosures Act 2014</li> <li>• European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (S.I. No. 494 of 2004)</li> <li>• 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)</li> <li>• Employment Permits Act 2006</li> <li>• Consumer Protection Act 2007</li> <li>• Pensions Acts</li> <li>• Health Act 2004</li> <li>• Protection of Employment Act 1977</li> <li>• Transnational Information and Consultation of Employees Act 1996</li> <li>• Inland Fisheries Act 2010</li> <li>• Protection of Young Persons (Employment) Act 1996</li> <li>• Property Services (Regulation) Act 2011</li> <li>• Adoptive Leave Act 1995</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal Justice Act 2011</li> <li>• Regulation 9(4) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007 (S.I. No. 285 of 2007)</li> <li>• Competition Act 2002</li> <li>• Carer's Leave Act 2001</li> <li>• Protections for Persons Reporting Child Abuse Act 1998</li> <li>• Protection of Employees (Employers' Insolvency) Act, 1984)</li> <li>• National Asset Management Agency Act 2009</li> <li>• Chemicals Act 2008</li> <li>• Regulation 19 of the European Communities (European Public Limited - Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)</li> <li>• Regulation 20(1) of the European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)</li> <li>• Charities Act 2009</li> <li>• Prevention of Corruption (Amendment) Act 2001</li> <li>• Paternity Leave and Benefit Act 2016</li> <li>• Employees (Provision of Information and Consultation) Act 2006</li> <li>• Central Bank (Supervision and Enforcement) Act 2013</li> <li>• Registered employment agreement within the meaning of Chapter 2 of Part 2 of the Industrial Relations (Amendment) Act 2015</li> </ul>
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# SPECIFIC COMPLAINTS RECEIVED IN 2017: LEGISLATIVE BASIS (Total No. of complaints received = 14,001)

Legislation	No. of Complaints -	% of total received
• Organisation of Working Time Act	2525	18
• Unfair Dismissal Acts	1768	12.6
• Industrial Relations Acts	1728	12.3
• Payment of Wages	1707	12.2
• Redundancy Payment Act	587	4.2
• Employment Equality Act	719	5.1
• Equal Status Act	705	5



# Adjudication Service

## Processing Times



**6 months**

**Median time to Hearing: 5 months**

**Median Time to Decision: 8-9 months**

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# Adjudication Service - Issues Impacting on processing times

## Insufficient detail on complaint form

- No date of dismissal given
- Respondent address is not listed

## Mediation

- Complainant Seeks Mediation
  - 10 Days to allow for Employer to respond
  - 6 weeks for process

## No Show/Withdrawal/Settlement Rate

- Accounts for 15% of time slots

## Submissions

- Not received in 30% of cases until the morning/night before
  - adjournment adds a minimum of 7 weeks to process

## Postponement Requests:

- 40% of dates offered subject to postponement request (2/3rds granted) – 75% of which received less than four weeks to hearing
- When granted they add a further 7 weeks minimum to processing



# Adjudication Service - Achievements

- We have eliminated a lot of process issues.
- 17% more hearings took place from January to end October 2018 than in same period in 2017
- Hearing notifications mostly 7 wks in advance/ previously 3-4 wks
- Significant reduction in Legacy Cases – on more Rights Commissioner legacy cases and only 2 legacy Equality cases to be assigned
- Guide to Hearings published on website
- Dublin, Gorey, **Kilkenny**, Thurles, Navan, **Monaghan**, Cork, **Tralee**, Limerick, Galway, **Castlebar**, Sligo, **Letterkenny**, Longford, Mullingar

# Adjudication Decisions up to the end of June 2018

- Decisions 1040\*
- Complaints 2050
- 26 Acts                      Top Five Acts      Success
  - 1. OWT                      22%                      29%
  - 2. UD                      15%                      37%
  - 3. IR                      12%                      50%
  - 4. POW                      11%                      48%
  - 5. TEA                      11%                      39%

Note: 98 (one-fifth) of OWT related to one lay representative

- Representation
  - Complainant                      2/3
  - Respondent                      1/2

Complainant Success Rate      4 in 10

\* a decision may combine multiple complaint decisions in a single decision document



# Adjudication Decisions up to the end of June 2018

## Equal Status

Decisions	110 (45 (41%) taken by one person - none succeeded)
One Ground Cited	
• Race	30%
• Membership of the Travelling Community	25%
• Disability	9%

**Success** **20%**

## Employment Equality

Decisions	96
One Ground Cited	
• Disability	27%
• Age	24%
• Gender	23%

**Success** **22%**

## Unfair Dismissal

Decisions	255
Success Rate	42%
Constructive Dismissal	52

**Success** **21%**

## Industrial Relations

Recommendations	215
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**Success** **50%**



# Adjudication Decisions up to the end of June 2018

## Awards

<b>Total</b>	<b>€2.3m</b>
<€1000	30% - TEA/OWT/POW
<€5,000	43% - UD/POW/IR/ES/TEA/OWT
>€5000	27% - UD/EE/TEA(Min Not)/Harassment
Average	€4,960
Highest	€74,688

# MEDIATIONS



# Equal Status Acts 2000 to 2015

- Prohibit discrimination in the provision of goods and services
- 10 Protected grounds (plus 1)
- The Equality (Miscellaneous Provisions) Act 2015 has inserted a tenth ground in the provision of accommodation only; the “housing assistance” ground
- Outlaw discrimination in all services that are generally available to the public
- These include facilities for refreshment, entertainment, banking, insurance, grants, credit facilities, transport and travel services. The disposal of premises, provision of accommodation, admission to, access to and conditions of participation in educational courses or establishments are also prohibited subject to some exemptions.



# Grounds

- The grounds on which discrimination is outlawed by the Equal Status Acts are as follows:
- ‘the gender ground’
- ‘the civil status ground’ (formerly marital status)
- ‘the family status ground’
- ‘the sexual orientation ground’
- ‘the religion ground’
- ‘the age ground’
- ‘the disability ground’
- ‘the ground of race’ (includes ‘race, colour, nationality or ethnic or national origins’)
- ‘the Traveller community’ ground
- ‘the housing assistance’ ground (only in the provision of accommodation)
- ‘the Victimisation ground’

# What is discrimination

- **“unlawful treatment”**
- Discrimination means being treated less well than someone else because of one of the grounds.
- Discrimination is always a comparative term. Your claim cannot succeed if you do not show that someone else was or would have been treated better than you because of one of the above grounds.
- **What kinds of discrimination are unlawful?**
- **Direct discrimination** means that you are treated less well than someone else because of one of the grounds.
- **Indirect discrimination** means that there are conditions in place which appear neutral but which impact more strongly on you because of your inclusion in one of the grounds.
- **Harassment** means you have been treated in a demeaning way because of one of the grounds.
- **Victimisation** is a technical term which means you have been treated badly because you have taken action to oppose discrimination. It is not the same as being treated as a victim.
- **Discrimination by association** means you have been treated badly because of your connection with someone covered by the grounds.
- Failure to provide **“reasonable accommodation”** for a disability means the service provider has not made efforts to enable you, as a person with a disability, to get access to the goods or services.

# The Equal Status Process

- Perceived discrimination or unlawful treatment
- Notification in writing to the respondent within 2 months
- May use the Equal Status Form ES1
- Respondent is not obliged to respond to this notification, but may use Form ES2 if you do – RECOMMENDED THAT YOU DO!
- Complainant sends form to the WRC within 6 months
- Time limits may be extended if there is 'reasonable cause'

# The Equal Status Process

- On receipt of a valid complaint, a copy is sent to the respondent.
- The case file will then be allocated to an Adjudication Officer,
- Adjudication Hearing will be arranged; the time, date and venue of which will be notified to the parties involved.
- The adjudication officer will inquire into the complaint and will provide the parties with an opportunity to be heard by him/her, and to present any relevant evidence.
- He or she will then make a decision in relation to the complaint, in accordance with the legislation, and will give each party a copy of that decision in writing.

# Equal Status Acts - HAP

- The Equal Status Acts 2000-2015, prohibit discrimination in the provision of goods and services, the provision of accommodation and access to education, on any of the grounds.
- The Equality (Miscellaneous Provisions) Act 2015 inserted a new ground in the provision of accommodation only; the “housing assistance” ground.

# HAP – you cannot discriminate

- “unlawful treatment”
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# HAP – Headlines in the media

- “Family awarded €14K in HAP Discrimination case” Irish Examiner
- “‘Humiliated, belittled, embarrassed’: Woman awarded €4.2k over HAP discrimination” The Journal
- “Landlord ordered to pay more than €42,000 to three tenants” Irish Times
- “Landlord ordered to pay couple €6K after refusing HAP allowance to pay rent” The Journal

# HAP - Decisions

- ADJ-00004705 / ADJ-00004705 / ADJ-00004705
- Tenant v A Landlord
- The Adjudication Officer considered what was a ‘remedial social statutes’ adopted by the Superior Courts. She referred to *G -v- The Department for Social Protection*, where Ms Justice O’Malley referred to the Equal Status Act 2000 as being a ‘remedial social statute’ requiring liberal interpretation. as follows: “... *the Act is intended to cover a broad range of human life and activity, and that its overall purpose is to reduce the social wrong of discrimination based on improper considerations. Having regard to the principles applicable to remedial statutes, it should be construed widely and liberally.*”.





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**Thank You  
Questions?**