

# Public hearings at WRC have not led to withdrawal of claims

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**A new report from the Department of Enterprise, on the legal changes introduced to WRC hearings following the Supreme Court's Zalewski ruling, suggests that the switch to public adjudication hearings has not resulted in claims being withdrawn and that public hearings and the publishing of the names of parties has been "largely non-problematic."**

A study conducted by the Department on the enactment of the Workplace Relations (Miscellaneous Provisions) Act 2021 reveals that just two WRC adjudicators reported back that a complainant had withdrawn their complaint because s/he would be named in an adjudication decision.

The Department's own analysis of 100 complaints to the WRC that were withdrawn during 2021 concluded there "was nothing to suggest from the data available that the *Zalewski* decision and/or the Act had a material bearing on the decision to withdraw a complaint in 2021."

## *68% of media/public requests to access hearings were granted*

The Supreme Court's ruling in *Zalewski* in April 2021 found that the hitherto default private hearings of the WRC were not constitutional, as the WRC was in the administration of justice, and that adjudicators must have the power to take evidence on oath or affirmation. These changes were legislated for the following July with the 2021 Act.

Of the 100 withdrawn complaints observed by the study, 36% were 'resolved internally', 25% were 'settled', while another 32% had no reason given for the withdrawal.

While none of the 100 withdrawn complaints that were observed cited *Zalewski* or the 2021 Act as the reason for the withdrawal of a complaint, the Department acknowledges that the reasons given do not detail the motivation for settling/resolving complaints, or whether the fact hearings being public had any material bearing on their decision to withdraw their complaints.

The study notes: "Concern has been expressed that a public hearing and named decisions may deter complainants in proceeding with a complaint. However, complaints submitted from January to April 2022 show a 22% increase in the number of complaints submitted in comparison to the same period last year."

“This is a crude analysis and a further elapse of time is required to determine if a longer-term impact is being felt but, on the face of it, this would not seem to indicate that parties are hesitant to submit complaints because of public hearings”, the report adds.

## **INCREASED MEDIA ATTENTION**

The report says that it “has become quite common for WRC hearings and decisions to be reported on in the media on a weekly, if not daily, basis” and that this “is a positive development as [it] facilitates transparency.”

Between January and April 2022, there were 927 requests from media and the public to access adjudication hearings. Two-thirds of these requests were granted.

Of the requests refused, the most common reason was because access was sought to a hearing of a claim taken under the Industrial Relations Act, 1969 – such claims are still held in private as they are not ‘in the administration of justice.’

A small number (1.6%) of access requests were refused because the adjudication officer determined “special circumstances” existed for the hearing to be run in private. “Special circumstances” can include situations where a minor is involved; where a party has a disability or a medical condition which they do not wish to be revealed; cases involving issues of a sensitive nature, such as sexual harassment; cases involving a protected disclosure where there is an issue of the disclosure being made in confidence; or cases which could result in a real risk of harm to a party if the hearing is held in public or the parties are named in a decision. Some 83% of requests to access WRC hearings were from the media, with 99% of media requests coming from one journalist.

## **ADJUDICATORS’ FEEDBACK**

The Department’s report lists the following points that WRC adjudicators make regarding the change to public hearings:

- Public hearings bring important transparency to adjudications and highlight issues arising in employment law.
- Most hearings are conducted in public as required by the Act. However, the discretion to move to a private hearing is an important one as some complaints before the WRC concern highly sensitive matters such sexual harassment or a disability that a complainant is very concerned to keep private.
- Parts of a hearing may need to be conducted in private (such as a request for a private hearing and/or an anonymised decision) and a decision must then be made whether to proceed in public or private.
- It would be preferable if adjudication officers could direct that the name of a person is not disclosed i.e., where the circumstances are not such to make the hearing otherwise than in public, it would be helpful if directions could be made by the

Adjudication Officer regarding disclosure of a person's name. This is most often someone not in attendance at the hearing but whose name will feature in the evidence, for example.

- The volume of correspondence for each complaint has increased significantly and it is not uncommon to have at least 100 items of correspondence for each complaint file. This presents an additional challenge for Adjudication Officers in reading this material and preparing for the hearing in advance.

## **OATH OR AFFIRMATION**

WRC adjudicators also report the following points regarding the obligation to take evidence on oath or affirmation since 2021:

- Administering the oath or affirmation has presented no difficulties at adjudication hearings, other than the additional time required to administer same and to explain to witnesses the implications of giving false evidence. Depending on the number of witnesses in a case and where an interpreter is required, the practice of administering the oath/affirmation does add additional time to the duration of hearings. This, together with cross-examination, has extended the time it is taking to complete hearings quite significantly and a resumed hearing, which may not have been required in the past, is now common especially in complex cases such as an unfair dismissal, discrimination/equality, protected disclosures, and transfer of undertaking complaints.
- It has been beneficial to adopt the practice of administering the oath or affirmation to all witnesses at the beginning of the hearing, as it is often not apparent at the outset if there will be a conflict of evidence. This practice works well and removes the risk of unsworn evidence which subsequently transpires to conflict with the evidence of the other party.
- Those attending the WRC appear to be familiar with the WRC *Guidelines on Oaths and Affirmations – July 2021*.
- There has been an overwhelming positive acceptance and respect by witnesses of the requirement for and the role of the oath and/or affirmation.
- Parties have welcomed the choice allowed between taking an oath or an affirmation