

Understanding WRC Inspections and Process

CMG

TerriSue Cosgrove

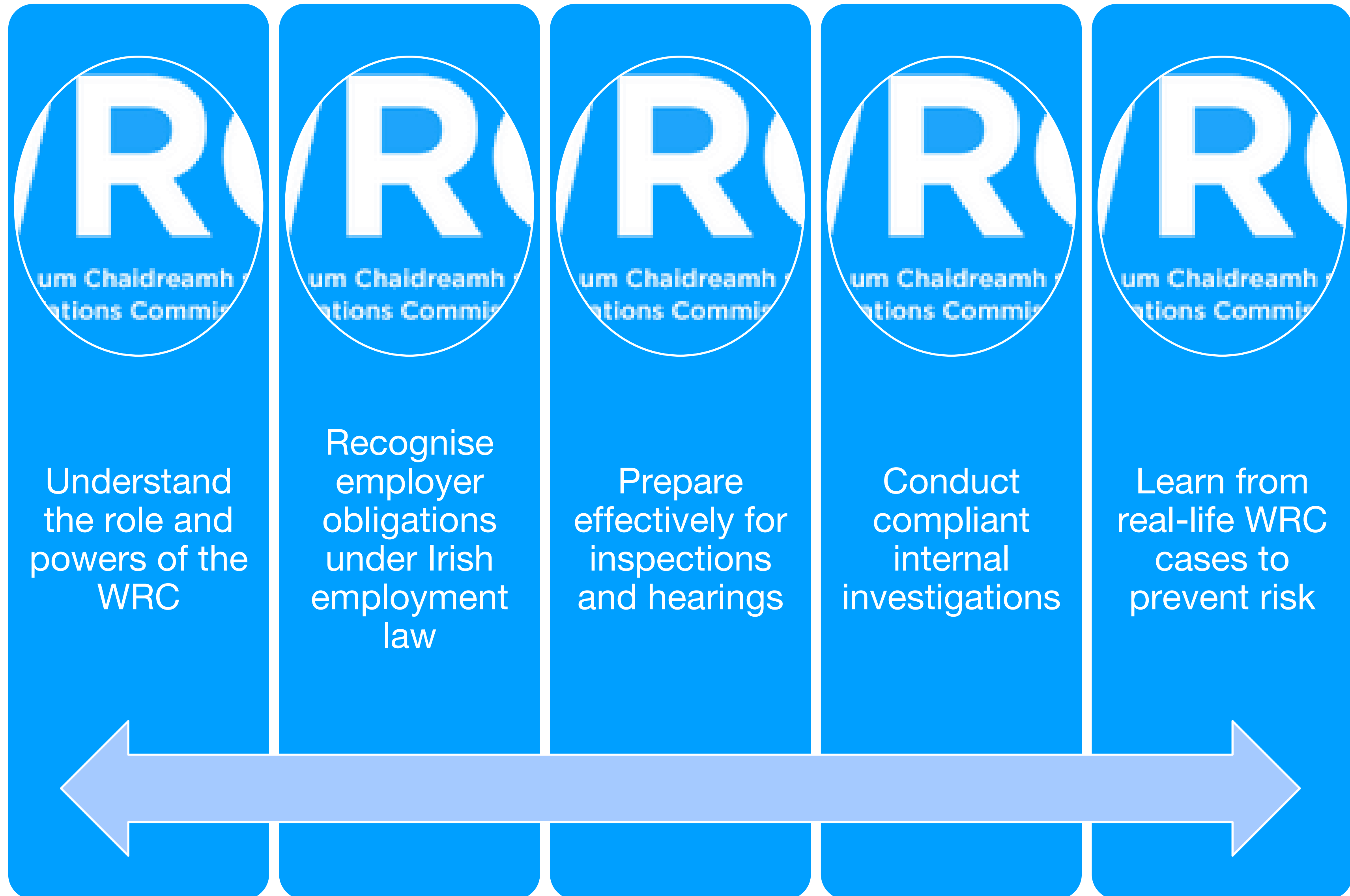
HR & Employment Law Specialist

The HR Head Ltd

Objectives



CMG Training
The Irish Institute of Professional Education



What we will cover today

Your participation is important for collaborative learning and sharing

Topic	Duration
Introduction to the WRC and its role	9:30 - 10:15
Understanding the WRC process	10:15 - 11:00
COFFEE BREAK	11:00 - 11:15
Preparing for a WRC inspection	11:15 - 12:00
Conducting an internal workplace investigation	12:00 - 12:45
LUNCH	13:00- 14:00
WRC hearings and what to expect	14:00 - 14:45
Post-inspection actions and case studies	14:45 - 15:30
Q&A Wrap and Close	



Participant pack includes



CMG Training
The Irish Institute of Professional Education

- Today's presentation (pre-reading material)
- Exercises for use during the programme
- All training materials and guides for participant use during the programme
- Industrial Relations (Amendment) Act, 2015
- Workplace Relations Act, 2015

Let's get started

Module 1 – Introduction to the WRC and its role

Module 1



CMG Training
The Irish Institute of Professional Education

The role of the WRC:

Workplace Relations Act 2015 (No. 16 of 2015), established the WRC as an Independent statutory body established in October 2015 assuming the role of the:

- National Employment Rights Authority (NERA)
- Equality Tribunal (ET)
- Labour Relations Commission (LRC)
- Rights Commissioners Service (RCS), and the
- Employment Appeals Tribunal (EAT) in the first instance.

Core services include:

- ✓ the inspection of employment rights compliance
- ✓ the provision of information
- ✓ the processing of employment agency and protection of young persons (employment) licences, and
- ✓ the provision of mediation, conciliation, facilitation and advisory services.

Module 1



CMG Training
The Irish Institute of Professional Education

Employment Rights and Information:

- Information and Customer Service (ICS)
- Adjudication Services
- Enforcement Services
- Licensing
- Inspection Services

Module 1



CMG Training
The Irish Institute of Professional Education

Compliance Landscape:

Supportive

working with employers to address contraventions and, where necessary, issue notices to employers, bring legal proceedings to enforce compliance

Module 1

Legislation included in inspection services:

Legislation	Relevant Provisions enforced by Inspectors
Organisation of Working Time Act, 1997	Rest breaks, Rest periods, notification of start and finish times, annual leave, public holiday and Sunday work entitlements, working time records,
National Minimum Wage Act 2000	Entitlement to statutory minimum hourly rate of pay, records to demonstrate compliance with Act, Statement of average hourly rate of pay,
Employment Permits Acts 2003, 2006 & 2024	Permissions for non-EEA nationals to work in the State, records of employment permits and permit holders,
Payment of Wages Act, 1991	Methods/modes of payment, Statements of wages and deductions, Underpayments, Unauthorised deductions, Tips and Gratuities Notices, Statements of Tips and Gratuities distributed, Treatment of Service Charges
Terms of Employment (Information) Act, 1994	Statement of terms of employment, Statement of core terms of employment ('Day 5' Statement), Statement of terms of employment (outside State), Notification of changes to terms of employment
Protection of Young Persons (Employment) Act, 1996	Employment of children and young persons, rest breaks and rest periods, proof of age, parental/guardian consent, Protection of Young Persons Register, Records to show compliance with 1996 Act, Display of abstract of 1996 Act,
Industrial Relations Act, 1946	Records to show compliance with Employment Regulation Orders (EROs),
Industrial Relations (Amendment) Act, 2015	Records to show compliance with Sectoral Employment Orders (EROs),
Employment Agency Act, 1971	Requirement to hold employment agency licence,
Carer's Leave Act, 2001	Leave during first 13 weeks of carer's leave,
Maternity Protection Act, 1994	Health and safety leave, Certificates of health and safety leave, Prescribed payments for first 21 days of health and safety leave,
Paternity Leave and Benefit Act, 2016	Records of paternity leave,
Sick Leave Act, 2022	Records of statutory sick leave,
Protection of Employees (Temporary Agency Work) Act, 2012	Treatment of agency workers

Module 2 - Understanding the WRC Process

Module 2



Understanding the WRC inspection process

Sources/Reasons for Inspections:

- ☐ Complaints by employees, employers, citizens and others
- ☐ Referrals from other enforcement agencies
- ☐ Targeted sectoral campaigns (e.g., seasonal workers, construction, commercial sea fishing, etc.)
- ☐ EU initiatives
- ☐ Employment Permit verification checks and referrals (Department of Enterprise, Tourism & Employment)
- ☐ Risk assessments
- ☐ Routine checks

Module 2



CMG Training
The Irish Institute of Professional Education

WRC inspector powers

Inspectors visit workplaces and carry out investigations/enquiries to determine compliance with employment legislation, for example:

- ❖ working time
- ❖ payment of wages
- ❖ minimum wage
- ❖ terms of employment, and

check that non-EEA nationals working in the State have valid permission to work.

Module 2

WRC Inspectors may:

- enter at all reasonable times any place or work
- require the production of such books, records or documents as may reasonably be required
- inspect and take copies, of any books, documents or records
- remove any such books, documents or records and retain them for such period as is necessary
- require any person to give such information or assistance as is required
- interview employers and employees, and
- issue Directions, Compliance Notices and Fixed Payment Notices in certain circumstances.

What records should be made available to the WRC Inspector

Records to be available at Inspections
Completed Employee Details Form or an alternative listing containing the required information
Copies of Employment Permits/Permission to work for Non-EEA Nationals, or evidence that a permit or permission to work is not required (Passport & immigration Stamp/IRP Card)
Timesheets showing start and finish times, Sunday work and overtime.
Holiday and public holiday entitlements taken by each employee.
Rest and intervals at work.
Payslips & payroll details (Gross to net, rate per hour, Overtime, Deductions, Shift and other Premiums and Allowances, Commissions and Bonuses, Service Charges, etc.)
Copy of Terms of Employment, including procedures for Bullying/Harassment, Grievance and Discipline and procedures for Dismissal.
Register of employees under 18 years of age.

What the Inspector will do as part of their inspection

Inspectors will:

- interview the employer or employer representative
- Interview a sample of employees,
- review employment records and
- make any enquiries as necessary to determine compliance.

Copies of records may be taken or, where this is not possible, the original records may be removed and returned to the employer following examination.

Contravention Notice (post-inspection)

Schedule to Contravention Notice

Employer:

WRC Reference:

Date of Inspection:

Contravention	Grounds/Evidence/Proof	Action Required by Employer or Other Responsible Person	Possible further action

Where contraventions are identified, the employer will be advised and a *Contravention Notice* will be issued setting out:

- details of the contravention
- the grounds for the Inspector's determination that a contravention has taken place
- the actions required to be taken within a stated deadline, c. 21 days
- payment of any unpaid wages arising from the contraventions.

If there are no contraventions, a *Closing Letter* will be issued to the employer by the Inspector.

The Inspector will work with the employer to achieve compliance

Compliance Notice

Workplace Relations Act 2015, (Section 28) – issued to the employer in respect of specified contraventions of employment legislation where employers do not engage with the Inspector, or do not demonstrate compliance, following the issue of a Contravention Notice.

A Compliance Notice will:

- state the grounds on which the inspector is satisfied that a contravention of legislation has taken place
- require the employer to do or refrain from doing such act(s) as/are specified in the notice, and by such date as is specified
- contain information regarding right of appeal against the notice, including how an appeal may be brought

20 contraventions specified for Compliance Notices

Enactment	Provision	Contravention
Payment of Wages Act 1991	Section 5	Unauthorised deductions and under-payments
Maternity Protection Act 1994	Section 18	Failure to grant leave on health and safety grounds
Organisation of Working Time Act 1997	Section 6(2)	Failure to give compensatory rest periods where employee is not entitled to rest period or break under sections 11, 12 or 13 of 1997 Act
	Section 11	Failure to give daily rest period (11 consecutive hours in each 24 hour period)
	Section 12	Failure to give rest breaks at work (15 minutes every 4 hours and 30 minutes after 6 hours)
	Section 13	Failure to give weekly rest (24 consecutive hours in each period of 7 days)
	Section 14(1)	Failure to give compensation for Sunday working (allowance, increased pay, paid time off or combination)
	Section 15(1)	Permitting an employee to work more than an average of 48 hours in each period of 7 days.
	Section 16(2)	Permitting a night worker to work more than 8 hours in each period of 24 hours
	Section 17	Failure to provide information in advance on start and finish times
	Section 18	Failure to apply compensation to employees on zero-hour contracts
	Section 19(1)	Failure to give annual leave entitlement
	Section 19(1A)	Failure to deem a certified absence due to illness as a day of work for the purposes annual leave calculation
	Section 21	Failure to give public holiday entitlement
	Section 22	Failure to apply the correct rate of pay for the paid day off or additional day's pay for public holidays
	Section 23(1)	Failure to pay compensation for loss of annual leave on cessation of employment
	Section 23(2)	Failure to pay compensation for loss of public holiday entitlement on cessation of employment
Carer's Leave Act 2001	Section 13(2)	Failure to apply the annual leave provisions of Section 19 of the Organisation of Working Time Act 1997 to the first 13 weeks of absence on carer's leave
Protection of Employees (Temporary Agency Work) Act 2012	Section 14	Failure to treat an agency worker no less favourable than an employee in relation to access to facilities and amenities at work
Protected Disclosures Act 2014	Section 6(3)	Failure to establish, maintain and operate internal reporting channels and procedures for the making of disclosure reports and for follow-up

8 offences specified for the purpose of Fixed Payment Notices

Enactment	Provision	Contravention
Protection of Employment Act 1977	Section 11	Failure to initiate consultations in relation to collective redundancies
Payment of Wages Act 1991	Section 4(4)	Failure to issue a statement of wages and deductions (payslip)
	Section 4(B)(8)	Failure to provide a tips and gratuities statement
	Section 4(D)(2)	Failure to treat service charges as tips and gratuities
	Section 4(E)(3)	Failure to post a tips and gratuities notice-employees
	Section 4(F)(3)	Failure to post a tips and gratuities notice-contract workers
National Minimum Wage Act 2000	Section 23	Failure to issue a statement of the hourly rate of pay
Terms of Employment (Information) Act 1994	Section 6(B)	Failure to provide a core ('Day 5') statement of terms of employment

A Fixed Payment Notice will state:

- the person is alleged to have committed a specified offence
- the person may, within 42 days from the date of the notice, make payment of the prescribed amount, which should be accompanied by the notice, to the WRC
- the person is not obliged to make the specified payment
- a prosecution in respect of the alleged offence(s) will not be initiated if the payment is made during the 42-day period.

Coffee Break



Module 3 - Preparing for a WRC Inspection

Module 3



CMG Training
The Irish Institute of Professional Education

What you need for the inspection

- the first step to receiving a letter from the WRC confirming the inspection (where announced), date/time and records to make available.
- Complete the Employee Details Form in advance of the inspection and have available on the day for the Inspector.
- Ensure you have the employer or employer representative available on the day. If an employer representative, ensure to complete the Authorisation Form confirming the details of the appointed employer representative.
- If you have been advised by the Inspector that payment of unpaid wages is required - use the Unpaid Wages Form as proof of payment.

Module 4 - Conducting an Internal Workplace Investigation

Module 4



CMG Training
The Irish Institute of Professional Education

Different Company policies and procedures an investigation can be triggered:

- Grievance Policy and Procedure
- Dignity at Work Policy and Procedure
- Disciplinary Policy and Procedure

Where no Company policy and procedure exists then rely on the Codes issued by the WRC

- Policies and Procedures can be contained in the contract of employment and/or the Company Staff/Employee Handbook
- Best practice = have written policies in place, issued to all employees and updated on a 'regular' basis.

Module 4



Important steps to follow before, during and after a workplace complaint is received:

- Preliminary review/investigation – are there grounds to proceed to a full investigation
- Confirm what the complainant wants to do, i.e., informal or formal investigation
- Confirm receipt of the complaint in writing to the complainant
- Confirm receipt of the complaint in writing to the respondent and set out their rights
- Confirm the name of the party appointed to carry out an investigation
- Issue Terms of Reference to both the complainant and the respondent
- Investigator schedule interviews with:
 - the complainant – issue notes for review and agreement before issuing to the respondent
 - the respondent – issue notes for review and agreement before issuing to the complainant
 - any witnesses – issue notes for review and agreement before issuing to the parties
 - examine any documents, files, CCTV, etc., deemed relevant to the investigation
- Issue draft findings to the complainant and respondent for comment
- Issue final report with findings (and recommendations if included) to the Company representative (usually HR), for their consideration and any action the Company deems appropriate
- Conduct the investigation in a timely manner
- Adhere to rules of natural justice and fair procedures

Where no Company policy and procedure exists then rely on the Codes issued by the WRC

- Policies and Procedures can be contained in the contract of employment and/or the Company Staff/Employee Handbook
- Best practice = have written policies in place, issued to all employees and updated on a 'regular' basis.

Module 4



CMG Training
The Irish Institute of Professional Education

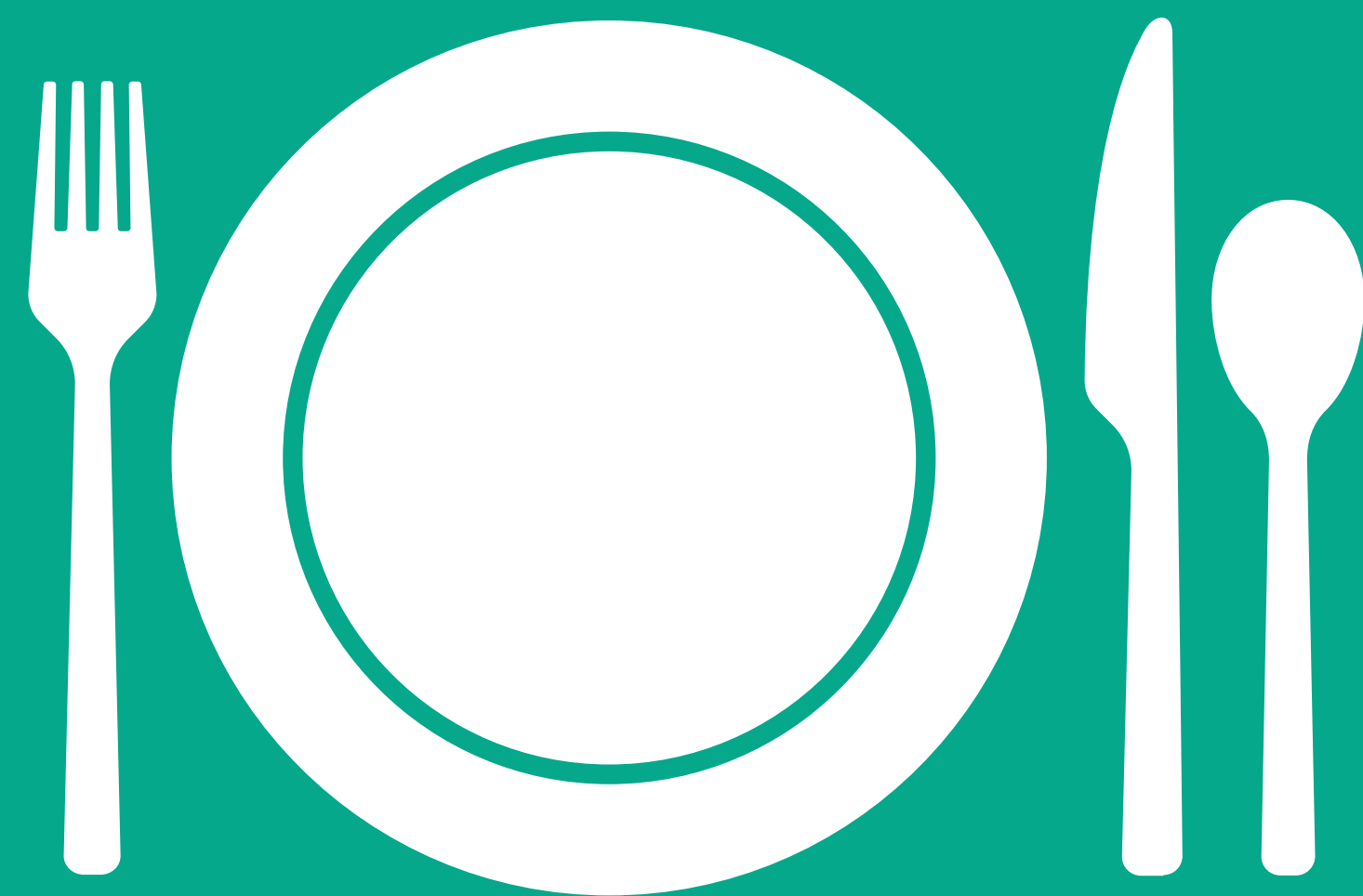
Important points to remember when conducting a workplace investigation:

- Avoid bias
- Justice delayed is justice denied
- Avoid inserting opinion
- Treat each point raised/issue separately
- State clearly if the complaint is upheld, not upheld, partially upheld with the reason for the decision
- Balance of probability (civil)
- Maintain confidentiality throughout

**Participant pack – sample correspondence, terms of reference,
investigation report with findings**

Let's review these together

Lunch



Module 5 - WRC Hearings, What to Expect

Module 5



CMG Training
The Irish Institute of Professional Education

Resolution Option/Service	Details
<u>Adjudication Officer</u>	Where a complaint is made, or a dispute presented, to the Workplace Relations Commission and the issue does not fall to be investigated by an inspector, the Director General of the Workplace Relations Commission will normally refer the complaint/dispute to an Adjudication Officer for decision.
<u>Mediation Officer</u>	The Director General of the Workplace Relations Commission may, where he or she is of the opinion that a complaint or dispute is capable of being resolved without being referred to an Adjudication Officer, refer the complaint/dispute for mediation by a Mediation Officer. However, the complaint/dispute may only be referred for mediation where both parties so consent.
<u>Inspector</u>	Certain complaints/disputes fall to be investigated by means of an inspection and associated enquiries. In such cases the complaint/dispute will be referred to an inspector of the Workplace Relations Commission.

Adjudication: it is very important that both sides submit all documentation which they intend to rely on as early as possible but no later than 15 working days before the scheduled date of the hearing. This new rule applies to all cases (employment and equality complaints and disputes).

Parties must also copy their documentation to the other parties in the case.

How the hearing is conducted

- The Adjudication Officer will welcome the parties and introduce themselves as the person appointed by the Director General to investigate the claims being heard that day. They will advise everyone present as to how they will conduct the hearing.
- The Adjudication Officer will clarify the claim(s) before them and verify appropriate data, depending on the type of claim.
- The hearing is conducted in public unless the Adjudication Officer decides, due to the existence of special circumstances, the proceedings should be conducted in private.
- No recording of the hearing is permitted. Refusal to adhere to this rule may result in the hearing being terminated.

How the hearing is conducted

- Excepting cases under the Industrial Relations Act, hearings will be conducted in accordance with the following guidelines:
- The Adjudication Officer may take evidence on oath or affirmation as per the WRC Guidelines for Witnesses issued in July 2021. The Adjudication Officer will explain to the witness (and interpreter, where appropriate) that by swearing an oath or making an affirmation, the witness is promising to tell the truth.
- The Adjudication Officer will ask if any preliminary issues need to be addressed. In most cases the Adjudication Officer will take evidence in relation to preliminary points raised from both parties and then proceed to hear the substantive claim(s).
- Both parties will be asked to give a concise outline of their position in relation to the complaints made (the type of case will determine which side starts first).

How the hearing is conducted

- The Adjudication Officer will take direct evidence from both parties/relevant witnesses. If a party is unrepresented the Adjudication Officer may lead the questions, otherwise this will be done through their representative.
- The Adjudication Officer will ask if any preliminary issues need to be addressed. In most cases the Adjudication Officer will take evidence in relation to preliminary points raised from both parties and then proceed to hear the substantive claim(s).
- Both parties will be asked to give a concise outline of their position in relation to the complaints made (the type of case will determine which side starts first).
- The Adjudication Officer will take direct evidence from both parties/relevant witnesses. If a party is unrepresented the Adjudication Officer may lead the questions, otherwise this will be done through their representative.

How the hearing is conducted

- The other party will be given the opportunity to question the parties and witnesses.
- When all evidence has been taken, both parties are given the opportunity to present a summing up of the case, firstly by the party on whom the burden of proof rests, including submission of legal points and introduction of relevant case law.
- A written decision will be issued to the parties.
- All parties and their representatives need to be respectful, of both others at the hearing and of the role of the Adjudication Officer.

Module 5



Written statements are asked to be “short and concise” and should include:

- a summary of the factual background to the complaint
- a summary of the evidence to be presented by, or on behalf of the parties
- a summary of any legal arguments that may be relied upon during the hearing, appending case law where appropriate
- where relevant, the number and details/names of witnesses that it is proposed to call at the hearing.
- Documents included as appendices should only include content that is relevant to the complaint.
- Where written statements have been requested but not received by the WRC within a reasonable timeframe, the complaint will proceed and be scheduled for hearing.

Module 6 - Post-Inspection Actions & Case Studies

Module 6



CMG Training
The Irish Institute of Professional Education

Appealing Adjudication Officer's decision

- **Labour Court** hears all appeals of WRC Adjudication Officer's decisions in all disputes arising under industrial relations and employment rights enactments.
- **Circuit Court** hears appeals of all decisions by Adjudication Officers under the Equal Status Acts. It also hears appeals from determinations made by the Employment Appeals Tribunal of complaints made under the Unfair Dismissals Act lodged before the 1st of October 2015.
- **High Court** hears appeals on a point of law of determinations made by the Labour Court under the various industrial relations and employment rights enactments.

Module 6



CMG Training
The Irish Institute of Professional Education

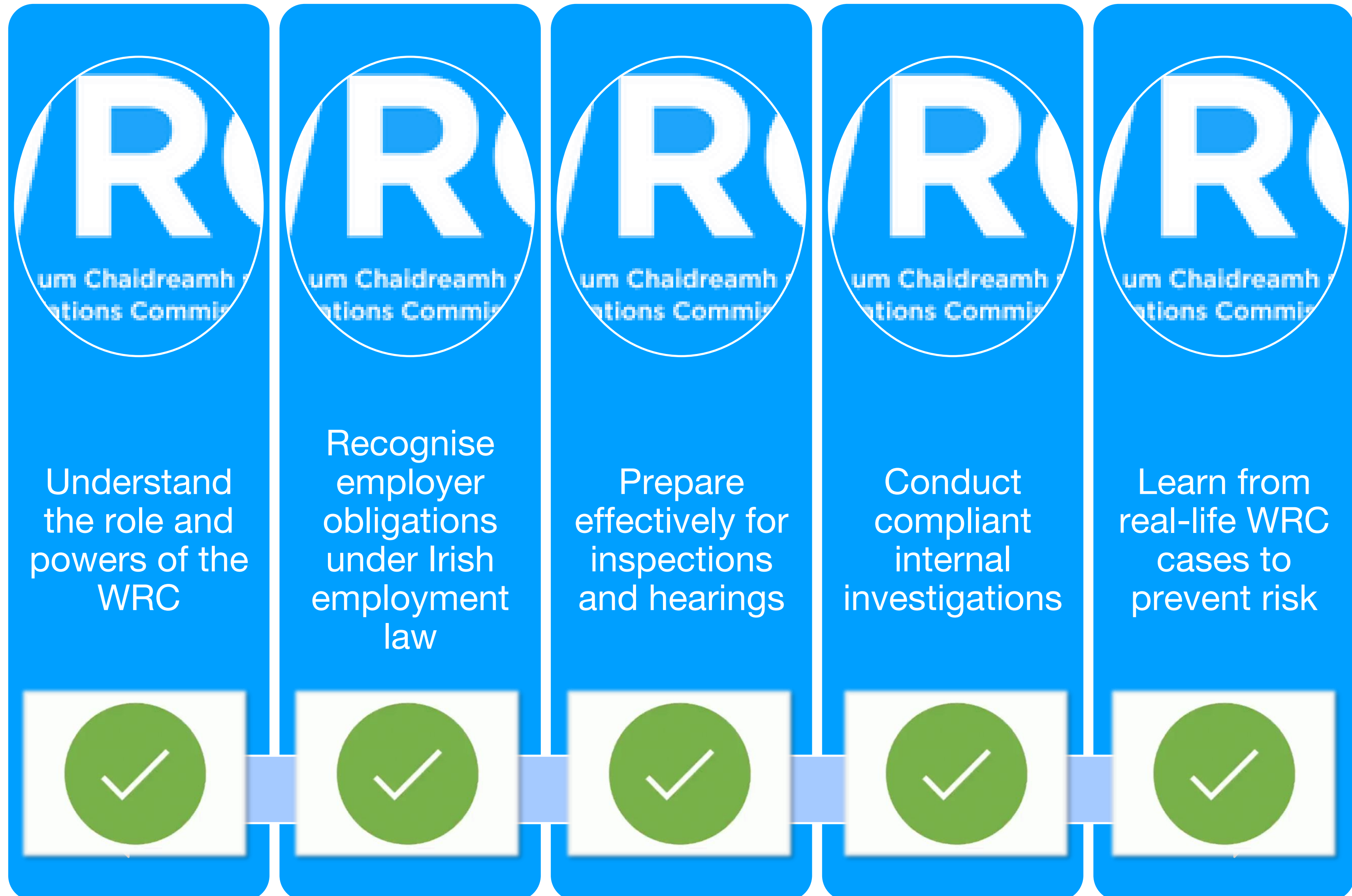
**Exercise – review three case studies –
what are the key lessons?**

- **Case study: Organisation of Work Time Act, 1997 & Payment of Wages Act 1991**

Objectives



CMG Training
The Irish Institute of Professional Education





Thank you

Contact Details:

Terrisue@thehrhead.com

Mobile 083 0 333 333