

GD 2021/332

To the Hon Steve Rodan MLC, President of Tynwald, and the Hon Council and Keys in Tynwald assembled



MANX INDUSTRIAL RELATIONS SERVICE

ANNUAL REPORT TO TYNWALD FOR THE YEAR APRIL 2020 to MARCH 2021

EXECUTIVE SUMMARY

The Manx Industrial Relations Service (MIRS) is an independent, Government funded organisation. By promoting good industrial relations on the Isle of Man, we make a key contribution to the social and economic success of the Island.

This report highlights how the range of services we provide helps to improve working life and shows that effective employment relations practices can reap benefits to businesses, employers, employees and the Manx economy. It will evidence that the small team of Industrial Relations Officers has been able to maintain an exceptionally high level of customer service during a very difficult and busy period and how we are changing to ensure we can deliver our service in future.

Our staff dealt with over 11,000 enquiries this year from employers, employees and their representatives. We provided sound practical advice in regards to current employment law and we also helped to resolve hundreds of cases during the year where parties were in dispute over employment rights and responsibilities.

Often faced with customers in difficult and distressing circumstances, the wealth of in-house experience and practical knowledge enables us to give advice which is both appropriate and suitable to the situation. Our feedback shows that every customer who responded to our questionnaire found the member of staff they dealt with to be "very knowledgeable" and that they would all recommend our service to others.

1. WHAT WE DO

Effective relationships and good practice in the workplace enable organisations to succeed, the economy to grow and individuals to flourish. Our small team at MIRS provides expert and impartial advice about employment law in a wide variety of areas. This advice encompasses

good practice and professional support in finding solutions when relationships are deteriorating.

Our main objective is quite simply to maintain a stable industrial relations climate by promoting good employment practice amongst employers and employees on the Isle of Man.

MIRS has four Industrial Relations Officers, (IROs), who are appointed under the Trades Disputes Act 1985 and they are Julie Bradley, Nicola Batey, (Deputy), Damian Warburton, (Deputy, Equality specialist) and Natalie Christian, (Trainee).

IROs are appointed by the Governor in Council and it has always been recognised that the credibility of the service depends, amongst other things, on its independence, confidentiality and impartiality. We continually work hard to preserve this as it is essential for our effective operation. Clearly we require and have effectively established a level of detachment from Government in our operations and we work free from political input or interference which could undermine our position.

"Our Year in Numbers" can be found at **Appendix 1**.

2. HOW WE DO IT

a) Staffing

By the end of this reporting period we had four members of staff:-

- 1 Industrial Relations Officer
- 1 Deputy Industrial Relations Officer
- 1 Deputy Industrial Relations Officer, (LTA due to end Nov 2022)
- 1 Trainee Industrial Relations Officer.

We also have admin support that is provided on an ad-hoc basis and an Executive Officer who provided part time support whilst the IRO assisted the "Our People" team on the Economic Recovery Group.

b) Budget

The office had an allocated budget from Treasury of £335,309.00 for the year ending March 2021 and £338,564.00 for the year end March 2022.

3. WHAT WE ACHIEVED

a) Enquiries

In the year ending March 2021 we dealt with 11,018 enquiries which is the highest figure we have ever recorded. This figure represents the total number of phone calls, appointments and emails that we dealt with during the year and there was a fairly even split between employers and employees.

Dealing with the number of enquiries that we received is always a challenge and it is impossible to predict what causes peaks and troughs in our workflow. However at the start

of the pandemic in 2020 and when the restrictions were put in place, the nature of the enquiries totally changed almost overnight.

Both employers and employees were concerned about closures and the need to stay home for all but our key workers and how this would impact their business and their incomes. Many of these enquiries related to the financial support that would be available and the fact that Government responded quickly and provided support was a relief to many individuals and organisations.

The normal day to day enquiries that we usually dealt with reduced significantly but given the positive relationships we have developed over the years with many organisations, we quickly became a contact point for employers and employees to seek help and guidance. We worked closely with the Department for Enterprise and Treasury so that we had a sound understanding of the range of financial support.

In terms of our own staffing, we were able to adapt quickly and most staff started to work at home immediately. Our working practices had to change so that we could continue to provide our statutory conciliation service albeit by video conference or by telephone.

Separate to Covid enquiries which continued during the whole of the year, the most common enquiries related to termination/dismissal, pay, deductions and redundancy and each year these are always the most commonly asked questions.

b) Trade Disputes and Collective Conciliation

The definition of a Trade Dispute is a dispute between a group of workers and their employer, or between workers and workers, which relates wholly or mainly to one of a number of issues as detailed in the Trade Disputes Act 1985. This commonly relates to pay, terms and conditions of employment and Trade Union recognition.

Case law has decided that a Trade Dispute can exist where there is a mere difference between the employer and the employees, or between the parties but, taking a pragmatic view, not every minor difference or disagreement is a Trade Dispute and we work to try and avoid disputes arising.

Collective conciliation is the term we use where we offer parties assistance through facilitated or assisted negotiations to try to reach a mutually acceptable settlement of their collective disputes. This usually happens once the parties have exhausted all the normal internal methods of dispute resolution. Our role in collective matters is to remain independent and impartial, and often our involvement gives parties another opportunity to find a mutually agreed resolution.

In the year we dealt with 63 enquiries and five collective matters and in each case we engaged with both parties and encouraged them with our involvement, to have further talks in a constructive manner.

There were other issues raised with us of a collective nature, in which parties were able to resolve the matter with our assistance before matters escalated. The subjects covered included annual pay settlements and changes to terms and conditions of employment.

c) Strikes/Lock-Outs

In this year ending March 2021, we did not lose any days due to strike action.

A lock-out is where one particular group of workers is on strike and an employer wishes to shut down operations completely at the establishment or workplace concerned. Typically the employer may choose to close the place of employment or otherwise prevent employees from attending work for a reason related to the strike. There were no lock-outs in 2021.

d) Conciliation

Conciliation is often a misunderstood term but essentially what it means to us is that we help parties in dispute to find a solution to their issues. It is a voluntary process and we do not take sides; we stay impartial and we are non-judgemental.

By offering conciliation we try to help employers and employees to avoid or resolve disputes in the workplace that relate to employment rights. The Equality Act 2017 sets out the statutory duty for an IRO to act by offering conciliation and states that:-

“ the officer must endeavour to promote settlement of the question without recourse to the Tribunal.”

In practice this means we engage with both parties, listen to both sides of the story and we explore possible solutions and outcomes. Where agreement is reached we conclude by drafting a conciliated settlement agreement which both parties sign.

Our duty towards the employee is to explain the effect this agreement has on their legal rights and in particular their rights in regards to making a complaint to the Employment and Equality Tribunal or other Courts.

This process brings the matter to an end for both parties as these agreements settle all complaints relating to employment and specifically prevents any further action being taken.

We offer our conciliation services to parties whether there has been a complaint to the Employment Tribunal, see i) below, or if there is potential for a complaint to be made, see ii) below.

Appendix 2 details the number of conciliation cases we have dealt with over the last 5 years.

i) Employment and Equality Tribunal Complaints

Where a complaint has been submitted to the Employment and Equality Tribunal we do, under Section 104 of the Equality Act 2017, have a statutory duty to offer conciliation to the parties involved.

Statistically there was a small increase in the number of Tribunal complaints from 83 complaints in the previous report to 148 during the 12 month period of this report.

Within those 148 complaints there were 223 complaints; this is because one complaint can contain two or more complaints such as Unfair Dismissal and Unlawful Deductions from Pay. The increase was in part due to 61 complaints made by a Trade Union in regards to one common issue.

The most common complaints made to the Employment and Equality Tribunal were for:-

Unfair Dismissal	79
Unlawful Inducements	61 (in regards to the collective complaints)
Unlawful Deductions from Pay	46

There were 2 complaints filed because the employee had not received a Written Statement of Terms and Conditions and 2 complaints because employees had not received an itemised pay statement.

Employers are legally required to provide both these documents; the Written Statement within four weeks of starting work and the pay statement on the pay date. The penalty for not doing so can be up to 4 weeks' pay for each offence. These are easy matters to get right and we will always help employers to ensure they comply with their legal responsibilities.

We have for many years now been instrumental in helping employers to understand and to draft these important documents so it is encouraging to see that only 2 employees had to file complaints on this issue.

In December 2020, the Tribunal for the first time issued very clear guidance about written statements and itemised pay statements that employers will now be expected to adhere to. We have update our guidance and made significant efforts to promote this across the business community.

During 2020/2021, 82 outstanding Employment and Equality Tribunal Complaints were settled or withdrawn some of which had been lodged in previous years. On average 75% of all Employment Tribunal complaints are either withdrawn or settled by us and the remaining complaints are dealt with by way of a public hearing.

ii) Pre-complaint/potential complaints

The Equality Act 2017, Section 104 (2) allows us to act as if a complaint had been made to the Tribunal. In this situation we try to resolve any potential complaints and "nip them in the bud" at an early stage. This approach often avoids the need for employees to raise a formal complaint in a quick and confidential way, and understandably many employees and employers favour this over a very public and time consuming Tribunal Hearing.

By way of comparison, in 2010 we dealt with 178 potential pre-complaints and by 2020 that had risen to 508 cases and so in providing assistance we helped parties reach an agreement without the employee having to file a complaint. In addition there were a further 127 cases where we intervened and provided some help which then resolved the issue and required no further action on our part.

I believe that this is a very valuable part of the work we do and clearly by resolving cases in this way, we undoubtedly save both time and money for employers, employees, and the taxpayers on the Isle of Man.

e) Talks/Presentations, Factsheets, Booklets

One of our aims is to try and prevent issues and problems arising rather than focusing solely on providing a cure. Part of our strategy to achieve this and to promote good working practices is by giving talks on a wide range of employment-related subjects. Our talks and

presentations are very much designed with a practical emphasis as we appreciate that not everyone finds the provisions of the employment legislation easy and straightforward to understand.

During this reporting period, organisation and employers were unable or reluctant to host in person events and so therefore we did not deliver any face to face presentations.

Our booklets and fact sheets are popular and are all available electronically on our website and we do regularly promote these on our social media pages.

Our Facebook page has over 1,800 followers many of whom joined during the lockdowns. Our social media presence has never been so important and we have extended this with the help of an Intern who joined the team over the summer, to include LinkedIn too.

f) Training

Given the success and the huge demand for our Equality Act workshops we delivered last year, our team looked at how and indeed what we could deliver in regards to training in other employment related subjects.

We identified that that disciplinary process and disciplinary investigations were two relevant topics given that we receive on average 650 queries each year. It is also evident in many Employment and Equality Tribunal decisions that the lack of, or failure to follow, a proper process is an issue that contributes to many unfair dismissal judgements.

We advertised via social media to gauge interest and we were inundated with requests. We were able to offer video conferencing for those who preferred this and wanted the training quickly and we have arranged face to face delivery which will start in April 2021. We have accommodated every individual request and all the group requests from some larger organisations who want significant numbers of their staff to attend.

We also continue to offer training on the Equality Act 2017.

As training is something quite new for us to offer, the high level of interest was reassuring and also served as validation as to the value of us as practitioners and experts, delivering this.

We invited feedback to evaluate the benefits of this new aspect of our service:-

"Thank you very much for running this session; I thought it was an excellent workshop and I found it very interesting and worthwhile.

The content was spot on, and you made it more interesting for me by discussing 'real life' cases, and a bit of humour always goes down well too.

Well done, I look forward to the next one!"

g) Insolvencies

One of the most traumatic scenarios that we have to deal with is the sudden and unexpected closure of a business. In some cases this is because the business has become insolvent and cannot pay outstanding wages, notice and redundancy pay.

Insolvency situations happen very quickly and staff in many cases aren't aware of it until they turn up for work as normal and fairly typically when we arrive, they are still visibly "shell-shocked."

MIRS has been instrumental in developing a co-ordinated, multi-agency approach to dealing with these situations which often require immediate attention and need to be prioritised over all other work.

Over the course of 2020/21 we attended 4 employers' premises where the company had become insolvent and were unable to pay staff their legal entitlements.

Our involvement in insolvency cases is usually prompted by a call from the employer who more often than not is very distressed at the situation they are in. We believe that once we engage with the employer and explain what we can do to help the business and the staff it comes as a great relief and takes off some of the pressure. We really encourage employers to work with us and Treasury to make sure staff can be paid as quickly as possible.

We arrange to attend the employer's premises and we talk to the staff about their employment rights and advise what will happen but most importantly, we give practical help to make applications to Treasury for financial assistance that is available from the National Insurance Fund.

We invite a representative from the Job Centre to discuss the current job market and to outline what help they can provide to find a new job. We also invite Treasury to discuss Job Seekers Allowance and other benefits that people may be able to claim and we hope to further extend this to include the Office of Fair Trading, Debt Counselling Service.

Despite these extremely difficult circumstances where both the employer and the staff are upset and concerned, we receive very positive feedback and we are told that the level of joined-up support that we provide, which is not widely known or publicised, has been invaluable.

h) Mediation

Mediation is different to conciliation and we do offer this as an alternative form of dispute resolution. The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible so we don't use this option if the relationship has already ended. The focus is on how parties can work together in the future rather than determining who was right or wrong in the past.

Like conciliation, mediation is completely voluntary and confidential, and three of the Industrial Relations Officers are qualified as Workplace Mediators.

During the process we will work with two individuals or groups to try to find a solution to the matter that is acceptable and agreed by everyone. We talk to both sides, either separately or together, but we do not make judgments or determine outcomes. Whilst this is an effective mechanism to resolve disputes, it is fairly labour-intensive for us.

We undertook four Mediation cases during the year and in all, the employment relationship continued.

4. SERVICE DELIVERY

As mentioned above, we received over 11,000 enquiries by telephone, email and personal callers to the office for the second year in succession.

Wherever possible, we encourage callers to make an appointment so that we can ensure that someone is available to see them at the appointed time to deal with their enquiry. However, we do wherever possible arrange to see people who call in without an appointment too. This has now been extended to allow for video meetings and we purchased new equipment at the beginning of the first lockdown. This is a really useful addition to the way we deliver our services as many people have adapted and indeed preferred this new way of working.

5. THE EQUALITY ACT 2017

The Equality Act 2017 was implemented in two stages; the first being on 1st January 2019 and then fully from January 2020.

We have been monitoring queries and complaints in regards to Act and in addition to the statutory duty we have to offer conciliation in regard to employment complaints, we now have a similar duty in regard to the 9 Protected Characteristics contained with the Equality Act.

The cases detailed below are included in the overall statistics I have already covered within this Report but, given that this is the first full year of implementation, I thought it would be useful to provide a more detailed breakdown.

In the period of this report, we dealt with almost 600 enquiries covering all 9 Protected Characteristics with just over half of this total being accounted for by the two newest Protected Characteristics of age and disability. Of these 600 enquiries, 16 individuals indicated an intention to make a Tribunal claim about discrimination in the workplace with the issues broken down as follows:

- Sex discrimination – 5
- Disability discrimination – 9
- Age discrimination – 1
- Sexual orientation discrimination - 1

In the same period the Employment & Equality Tribunal received 14 cases where some form of discrimination formed part of the complaint. Not all of these Complainants had previously been in touch us which explains the disparity with the figures above. The claims were broken down as follows:

- Race discrimination – 6
- Sex discrimination – 3
- Disability discrimination – 3
- Gender reassignment discrimination – 1
- Religion or belief discrimination – 1

We were able through individual conciliation to settle 8 cases in relation to discrimination and 3 cases were dismissed by the Tribunal.

6. FEEDBACK

We actively seek feedback from people who use our service by sending out an anonymous questionnaire once a matter has been resolved. There is also a link on our website which anyone who has used our service can easily complete.

I am pleased to report that 97% of our questionnaires, 75 in total, stated that they found the member of staff to be very knowledgeable and that they would all recommend our service to others. 89% of those who responded rated our service as "excellent and the remaining 11% as "very good".

I believe that overall it is quite an achievement to receive as much positive feedback given the difficult situations that we work within as parties tend to be unhappy, angry and quite often distressed at the issues.

We do also invite comments on the service we provide and some of these are as follows:-

(a) Employers:-

"An amazingly professional service received from MIRS especially during Covid times

I just wanted to say how excellent "xxxx" is at her job - extremely professional, knowledgeable, helpful, has the patience of a saint and is such a genuine person - she is a real credit to your team!

Having visited as well as contacted by phone and email, I think MIRS is truly an excellent service helpful to both employers and employees"

(b) Employees:-

"Everyone was exceptionally helpful and great listeners

The staff were all professional, understanding and friendly. The standard of service was excellent

The MIRS officers were very knowledgeable about the employment legislation and provided sound advice. I was kept abreast of all negotiations"

7. THREE ISLAND CONFERENCE

Each year I arrange to meet my counterparts in both Guernsey and Jersey and this year Guernsey had been due to host the event. This was cancelled due to the restrictions but we were able to meet up via video conference.

My two counterparts from the islands and I find this to be a valuable and worthwhile meeting and gives us a chance to network and provide support to each other. This is important as our roles are unique on our respective island and this can be quite isolating. It is therefore both comforting and reassuring to have the opportunity to discuss broad issues and share knowledge with other people who do the same type of work and encounter similar types of issues.

8. HOW WE MAKE THE ISLAND BETTER

Much of what I have reported on has been taken from our own internal statistics and the feedback we have received so I also wanted to consider the broader perspective and to show that what we do has a positive effect on the Manx economy.

ACAS, our UK counterparts, commissioned an independent economic analysis which was published in October 2016. This showed that ACAS' services offer considerable value to the United Kingdom economy, with an estimated economic benefit of £13 for every £1 invested into ACAS. Applying the same analysis to MIRS and with our budget for 2020/21 being £335,308.00 this would bring our overall contribution to Manx economy to over £4,350,000.00.

Whilst we are funded entirely by the public purse we are not a Government body or office however we believe that our work should and does support many of the Government initiatives and strategies. I strongly believe that there is a direct correlation between our role, the positive feedback we receive and the findings of these Government initiatives. Collectively these highlight the significant contribution that MIRS plays in ensuring that the Island is a great place to work and to employ staff.

i) Economic Affairs

The Business Confidence survey released by Economic Affairs in December 2019 found that:-

"78.5% of all businesses surveyed said that it was easy to do business on the Isle of Man."

ii) Unemployment rate

At the end of 2020 there were 756 people registered as unemployed and the unemployment rate was 1.8%. The UK rate at that date was estimated to be 4.9%. This figure was higher than usual due to the impact of the pandemic.

2021/22 – THE YEAR AHEAD

We are expecting 2021/22 to be busy given that business are trying to recover from the effect of the pandemic and that as life and work starts to return to normal the normal queries and issues will return to the pre-Covid levels.

We forecast that new queries and complaints will arise around holiday entitlement that accrued during the pandemic, flexible working, new mitigation policies employers will seek to implement once the border restrictions are changed and most certainly around vaccinations.

It will be interesting to see how the Tribunals both here and in the UK deal with these within the confines of the existing legislation.

We will undoubtedly see complaints in regards to dismissal and workers claiming they have suffered a detriment in regards to Covid and vaccine - related issues.

CONCLUSION

I am very proud of how our small team has worked throughout what has been the most challenging 12 months for us and the island as a whole. We have quickly adapted to new ways of working from home, developed new practices, maintaining our current knowledge base and building up new information for the rapidly developing Governments financial assistance schemes that were introduced to aid business and workers.

The success of MIRS is entirely due to the dedication and commitment of my experienced team who I know can and will adapt to meet the needs of all our customers whatever may lie ahead.

We will continue to deliver and where possible enhance the practical support and advice we provide to employers and employees as we all continue to work through the normal employment issues that will always arise but at the same time to provide guidance as new case law emerges over the coming months and years.

Julie Bradley
Industrial Relations Officer

YEAR 2020/21 IN NUMBERS

Enquiries received in total

11018

5916

Enquiries from employees

5102

Enquiries from employers

£335,308



Allocated budget



148

Employment Tribunal applications received (contained 223 complaints)

635



Pre-claim conciliation cases (with no Tribunal claim lodged)

5



Trade disputes & collective cases

4



Insolvency – staff briefings

4



Industrial Relations Officers



ACTIVITY LEVELS 2016 TO 2020

Year end	Pre Complaints	EET Complaints	Enquiries/Emails
2016	279	71	9823
2017	316	80	10735
2018	328	107	10281
2019	639	83	10788
2020	635	148	11018