

**Final report
of the
Director of Corporate Enforcement
covering the period
1 January 2022 to 6 July 2022**

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STATUTORY BASIS

This final report of the Director of Corporate Enforcement is submitted to the Minister for Enterprise, Trade and Employment in accordance with the provisions of section 944Y of the Companies Act 2014.

Chapter 1

OVERVIEW OF THE ODCE

STATUTORY MANDATE COMPANIES ACT 2014

All references to statute in this Report are to the Companies Act 2014 (“the Act”) unless otherwise indicated. The Act has been amended by subsequent legislation and an unofficial consolidated version of the Act is available on the Law Reform Commission’s website¹.

OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT

The position of Director of Corporate Enforcement (“Director”) is provided for in Part 15, Chapter 3 of the Act. The Director, who is appointed by the Minister for Enterprise, Trade & Employment (“the Minister”), is assisted in the furtherance of his statutory mandate by:

- staff assigned by the Minister; and
- members of An Garda Síochána seconded pursuant to Government Decision.

Collectively, the foregoing make up the Office of the Director of Corporate Enforcement (“ODCE” or “the Office”).

PRINCIPAL FUNCTIONS OF THE DIRECTOR

The Director’s principal functions are set out in section 949 of the Act. They include:

- encouraging compliance with the Act;
- investigating instances of suspected offences under the Act;
- enforcing the Act, including by the prosecution of offences by way of summary proceedings²;
- referring cases, at his discretion, to the Director of Public Prosecutions (“DPP”) where the Director has reasonable grounds for believing that an indictable offence³ under the Act has been committed; and
- exercising, insofar as he feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Act.

INDEPENDENCE OF THE DIRECTOR

The Act⁴ provides that the Director shall be independent in the performance of his functions.

¹ <https://revisedacts.lawreform.ie/eli/2014/act/38/revised/en/pdf?annotations=true>

² i.e., before the District Court

³ An indictable offence is an offence capable of being tried on indictment, i.e., before a jury in the Circuit Court

⁴ Section 949(3) Companies Act, 2014

HIGH LEVEL GOALS

Based on the principal statutory functions as set out above, the ODCE's high level goals during the period under review were to:

- i. promote a greater understanding of affected parties' rights and duties under company law;
- ii. confront unlawful and irresponsible behaviour insofar as it relates to company law;
- iii. provide a quality customer service to internal and external stakeholders.

The strategies and activities pursued and undertaken respectively to achieve these goals during the period under review are elaborated upon in the remainder of this Report.

RESOURCES, ORGANISATIONAL STRUCTURE AND GOVERNANCE ARRANGEMENTS

HUMAN RESOURCES

The ODCE's actual (i.e., as opposed to approved) staff complement at the beginning and end of the period respectively are detailed in Table 1 below.

Table 1 - ODCE staff complement

Staff Numbers (WTE)	6 July 2022	1 January 2022
Actual Complement in place	45	44.6

The composition of the Office's staff complement as of 6 July 2022:

Table 2 - Analysis of actual staff complement (WTEs)

Grade	6 July 2022
Director	1
Heads of Function	6
Enforcement Lawyers	1
Forensic Accountants	6
Assistant Principal Officers	2
Higher Executive Officers	6
Executive Officers	5
Clerical Officers	8
Detective Gardaí / Detective Inspector	0
Detective Sergeants/Sergeants	2
Detective Gardaí	8
Total	45

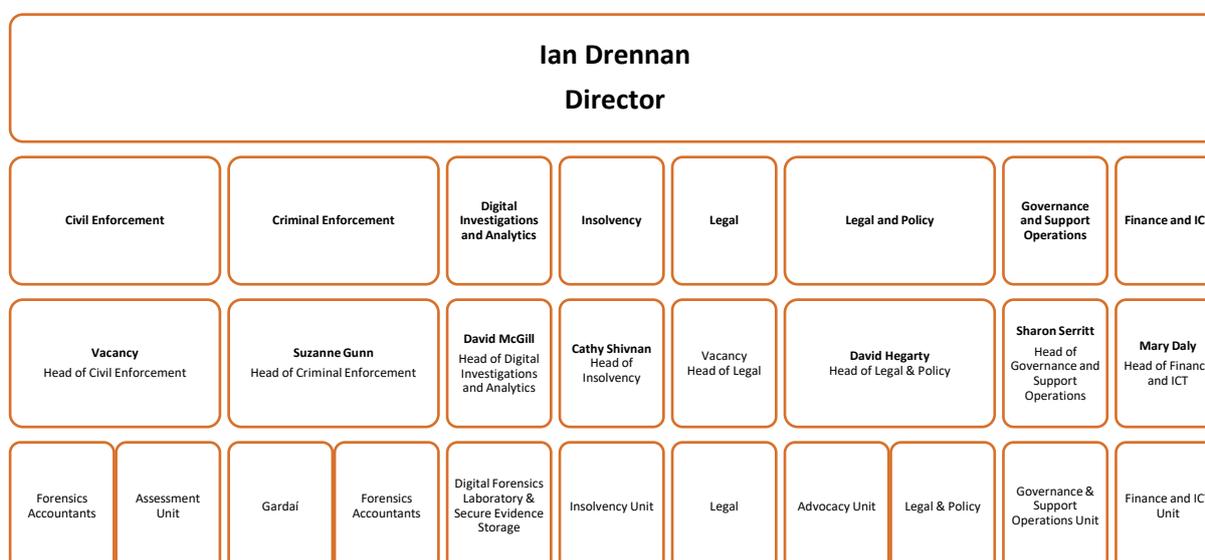
FINANCIAL RESOURCES

The Office is funded via the Department of Enterprise, Trade & Employment's ("the Department") Vote (Vote 32). Table 3 below sets out details of the Office's 2022 allocation and expenditure respectively.

Table 3 – 2022 allocation and expenditure

	Allocation € 000's	Expenditure € 000's	% of allocation incurred
Pay	2,024	1,255	62%
Non Pay	1,947	985	51%
Exceptional legal costs (contingency provision)	26	0	0
Total	3,997	2,240	56%

ORGANISATIONAL STRUCTURE



PRINCIPAL WORKSTREAMS

The nature of the Office's principal workstreams is such that most of them require a multi-disciplinary approach involving ongoing interaction between functions and/or the active collaboration of functions with a view to achieving corporate objectives. Accordingly, effective communication between functions, and that each function take an organisation-wide perspective when performing its role, is a critical success factor. Accordingly, this is an approach that is both encouraged and facilitated by the Office's leadership team.

ENCOURAGING COMPLIANCE WITH COMPANY LAW

Responsibility for encouraging compliance with the Act resides in the first instance with the Advocacy function. However, it liaises with other relevant functions with a view to monitoring trends and identifying areas meriting focused advocacy initiatives.

ADVOCATING LEGISLATIVE AND POLICY ENHANCEMENTS

Depending upon the nature of the subject matter, the development of ODCE submissions is assigned to one or more functions. Ordinarily, the development of submissions is coordinated through the Advocacy function.

REVIEWING AND ADJUDICATING UPON LIQUIDATORS' REPORTS

Liquidators' reports are reviewed, examined and adjudicated upon by the Insolvency function. Decisions as to whether to grant relief in respect of directors of companies on foot of liquidator recommendations are made by experienced insolvency case officers, with input as necessary from forensic accountants and legal advisors, where appropriate.

EXAMINATION OF DISSOLVED INSOLVENT COMPANIES

The Insolvency function also implements a policy of examining insolvent companies that have been struck off the register while having significant liabilities and makes decisions as to whether the disqualification of the relevant directors should be pursued.

IMPLEMENTATION OF THE UNDERTAKINGS FRAMEWORK

This workstream forms an integral and vital element of the Insolvency function and encompasses additional administrative procedures relating to the Undertakings Regime for the restriction and disqualification of company directors. This results in very significant cost savings and a more efficient and effective implementation of the Act, as it applies to insolvent companies.

EXAMINATION OF COMPLAINTS AND STATUTORY REPORTS

The examination of complaints and statutory reports (such as, for example, auditors' indictable offence reports) is the responsibility of the Enforcement function. Dependent upon the nature of the issues arising, the Enforcement function may:

- address the issues itself, e.g., by way of voluntary rectification/remediation or through the use of certain of the Director's statutory powers;
- designate the matter as being one warranting further investigation;
- refer the matter to the Insolvency function, e.g., where the issues in question relate to an insolvent company;
- refer the matter to a third party, for example, another regulatory or enforcement body.

CIVIL ENFORCEMENT LITIGATION

For the most part, civil enforcement litigation is managed by the Enforcement function in conjunction with the Legal function.

Civil litigation, such as seeking the disqualification of directors of companies that have been struck off the Register of Companies whilst having undischarged debts, is managed jointly by the Insolvency and Enforcement functions, again in conjunction with the Legal function.

CRIMINAL INVESTIGATION AND PROSECUTION

The investigation of possible criminal breaches of company law is undertaken by the Enforcement function, with support, as necessary, from the Digital Forensics and Legal functions.

Once a decision has been taken to initiate summary criminal proceedings, the prosecution becomes a collaborative exercise between the Enforcement and Legal functions.

In circumstances where, having reviewed an investigation file as submitted by the Office, a decision is taken by the DPP to initiate a prosecution on indictment, the provision of subsequent support to the Office of the DPP (for example, regarding disclosure to the defence), is primarily the responsibility of the Enforcement function.

SUPERVISION OF LIQUIDATORS' BEHAVIOUR

Actions taken to supervise liquidators' behaviour (such as, for example, reviewing liquidators' books and records) is collaborative, involving both the Insolvency and the Enforcement functions.

PROVISION OF SUPPORT SERVICES

The provision of support services to other areas of the Office is the primary responsibility of the Corporate Services function. All functions have a responsibility to assist the Corporate Services function in ensuring that the ODCE's obligations as a publicly funded Office (e.g., in the areas of procurement, tax clearance procedures etc.) are fully complied with.

RELATIONSHIP MANAGEMENT AND DEVELOPMENT

Whilst certain functions, by virtue of the nature of their principal operations, have a greater degree of interaction with certain external stakeholders than others, the interlinked nature of the organisation is such that all functions have a role in ongoing relationship management and development.

Chapter 2

PROMOTING A GREATER UNDERSTANDING OF AFFECTED PARTIES' RIGHTS AND DUTIES UNDER COMPANY LAW

INTRODUCTION

This Chapter provides details of the principal strategies pursued, and activities undertaken, by the Office during the period under review in the furtherance of the above stated goal. In summary, those strategies and activities included:

- the development of publications and other guidance material;
- engaging in a range of outreach activities including the delivery of presentations, attendance at seminars and exhibitions (where Covid-19 restrictions did not preclude this), and dealing with company law enquiries on a range of issues from members of the public;
- advocating legislative and policy enhancements; and
- managing and developing relationships with external stakeholders.

PUBLICATIONS AND OUTREACH ACTIVITIES

PUBLICATIONS

During the period under review 1,428 physical copies of the various ODCE publications, principally Information Books and Quick Guides, were issued to interested parties.

SEMINARS AND EXHIBITIONS

A key element of the Office's advocacy strategy is its outreach programme. This consists of, amongst other things, the delivery of presentations and speeches to stakeholder groups, as well as attendance at exhibitions and events where the audience is likely to include one or more subsets of the Office's target audience. The Office has identified certain constituencies as being its target audience, including:

- persons considering incorporation or persons that have recently incorporated companies;
- public bodies, Offices and Agencies;
- professionals engaged in the provision of advice to companies and company directors, who are, by virtue of those activities, well placed to relay the ODCE's compliance message to clients and so considerably expand the Office's reach;
- students currently enrolled in business programmes at undergraduate and postgraduate level, many of whom will ultimately become directors of companies or professional advisors themselves; and
- the community and voluntary sectors, who by their nature tend, as a general proposition, to have a less well-developed knowledge of company law and, as a result, tend to need guidance on company law and associated corporate governance matters.

During the period under review, Office staff delivered 5 presentations and attended 4 events. Many of these presentations dealt specifically with topics such as the role and duties of company directors and the advocacy, insolvency and enforcement functions of the ODCE. The ODCE programme of events continued to be significantly impacted by the restrictions introduced in March 2020 as part of the public health response to Covid-19 and consequently the ODCE participated in remote events in the furtherance of its advocacy mandate.

MANAGING AND DEVELOPING RELATIONSHIPS WITH EXTERNAL STAKEHOLDERS

In furtherance of its statutory objectives and associated goals, the Office seeks to develop and maintain strong and effective relationships with a range of key stakeholders. In addition to the public, the Office's key stakeholders include the Oireachtas, the Minister for Enterprise, Trade and Employment, the Department of Enterprise, Trade and Employment, other statutory/regulatory bodies and those providing professional services (e.g., accounting, audit, legal) to companies and company directors and officers. The Office's interactions during the period under review with certain of its key stakeholders are summarised below.

MEMBERS OF THE OIREACHTAS

The Office, from time to time, receives communications and representations from members of the Oireachtas and/or from Committees established by the Oireachtas. Typically, these communications constitute expressions of concern as to whether company law is being breached, relate to cases under review, and/or comprise of requests for certain actions to be taken *vis-à-vis* certain persons/entities. Whilst all such communications and representations are carefully considered – and to the extent practicable, every assistance is provided to Deputies and Senators - the ODCE is independent of the political system. As such, any actions taken by the ODCE are by reference to the underlying facts and circumstances as opposed to by reference to the source of the complaint.

DEPARTMENT OF ENTERPRISE, TRADE & EMPLOYMENT

Office staff continued to liaise with colleagues in the Department throughout the period under review on matters of mutual interest.

COMPANIES REGISTRATION OFFICE (“CRO”)

As the public repository of information on companies and company officers, the CRO plays a critically important role in supporting the Office in its work. In addition to meeting on matters of mutual interest, CRO staff regularly supply evidence in ODCE proceedings and, where identified, of *prima facie* breaches of company law.

OFFICE OF THE REVENUE COMMISSIONERS

The Revenue Commissioners are an important partner of the Office in the furtherance of its work, particularly in respect of insolvency-related matters. The ODCE and the Revenue Commissioners have in place a Memorandum of Understanding (‘MoU’) which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other’s remit.

EUROPEAN COMMISSION

The ODCE again participated in the European Commission’s preparation of its Annual Rule of Law Report by attending a bi-lateral meeting discussing the role of the ODCE.

IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY (“IAASA”)

In accordance with the provisions of the Act, the Director is a member of IAASA and has the consequential right to nominate a member to its Board of Directors. Mr. David Hegarty is a member of IAASA’s Board of Directors as well as a member of the Board’s Audit & Risk Committee. In addition to this statutory relationship as outlined above, the Office engages regularly with IAASA on matters of mutual interest.

COMPANY LAW REVIEW GROUP (“CLRG”)

The CLRG⁵ is a statutorily established advisory body to the Minister on matters relating to company law. The Director is a member of the CLRG and the ODCE is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit. For the period in review:

⁵ www.clrg.org

- **Corporate Insolvency**

Mr. Conor O'Mahony and Mr. David Hegarty were both members of the CLRG's Corporate Insolvency Committee, which has been tasked with reviewing legislation relating to the winding up of companies.

- **Corporate Governance**

Mr. O'Mahony was also a member of the Corporate Governance Committee, which has been tasked with reviewing legislation relating to corporate governance issues.

- **Compliance & Enforcement**

The Director was Chairman of the Compliance & Enforcement Committee, which has been charged with examining compliance and enforcement aspects of company law.

CENTRAL BANK OF IRELAND

The ODCE and the Central Bank have in place a Memorandum of Understanding ("MoU") which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other's remit.

ACCOUNTANCY PROFESSION

The accountancy profession plays an important role in assisting the work of the Office, through both auditors' reporting obligations (which are elaborated upon in the next Chapter) and the profession's wider support for, and communication of, the Office's compliance message. As such, the Office seeks to work closely with the professional accountancy bodies to support them in ensuring that their members are fully informed of their statutory reporting obligations and to apprise them of the assistance that the Office can be to those of their members' clients that occupy positions as company directors and officers.

INTERNATIONAL ASSOCIATION OF INSOLVENCY REGULATORS ("IAIR")

The IAIR is an international body that brings together the collective experiences and expertise of national insolvency regulators from 26 jurisdictions around the world. The IAIR is a valuable forum for the promotion of liaison and co-operation between its members, and for sharing information on areas of common interest and best practice.

DIGITAL FORENSICS COMMUNITY IN LAW ENFORCEMENT

The Office's Digital Forensics Specialist regularly engages with his peers through membership of a network of digital forensics professionals working in the regulatory/law enforcement field.

MEDIA

The Office typically deals with a substantial volume of media queries annually. Whilst the Office is mindful of the important role that the media can play in informing the debate on company law and on compliance and governance issues generally, and while it strives where possible to assist the media in dealing with general queries, the Office must equally take great care in how it does so, given its statutory duty of confidentiality. In addition, the Office is mindful of the rights of individuals and other persons coming before the Courts, and, as such, it does not issue progress reports or any other information on its enforcement activity if to do so could potentially prejudice any future legal actions.

Chapter 3

COMPLIANCE AND ENFORCEMENT ACTIVITIES

STRUCTURE OF THIS CHAPTER

In the following three Parts of this Chapter, the Office's inputs, throughputs, and outputs respectively are detailed.

PART A: INPUTS

External Inputs

The Office's activities in confronting unlawful and irresponsible behaviour are driven to a substantial extent, both directly and indirectly, by inputs received from external sources. This is a function by the fact that:

- a number of parties, including liquidators, auditors, examiners, and certain professional bodies, have statutory reporting obligations to the Office;
- the Office forms part of a broader statutory framework that provides for the referral of, otherwise confidential, information between regulatory and enforcement bodies where such information is considered to be relevant to those other entities' functions; and
- the Office receives a substantial number of complaints from members of the public annually.

In that context, the principal inputs received from external sources during the period were as follows:

Table 4 – Inputs from external sources

	1 January 2022 to 6 July 2022	%
Statutory Reports		
Liquidators' reports (initial) (s682)	177	
Liquidators' report (subsequent) (s682)	146	
Total liquidators' reports (s682)	323	68%
Auditors' indictable offence reports (s393)	43	9%
Examiners' reports (s534)	8	2%
Referrals		
Referrals from external parties	12	3%
Complaints		
Complaints from members of the public	77	16%
Other		
Disclosures under the Protected Disclosures Act ⁶	7	1%
Applications seeking change to accounting year end ⁷	7	1%

⁶ The information that requires to be published by the Office pursuant to section 22 of the Protected Disclosures Act 2014 is set out later in this Chapter under the heading of Outputs

⁷ Section 288(10)(c)

	1 January 2022 to 6 July 2022	%
Total inputs from external sources	477	100%

LIQUIDATORS' SECTION 682 REPORTS

Introduction – overview of the liquidator reporting regime

In summary, liquidators of companies that are in insolvent⁸ liquidation are required by law⁹ to report to the Office on the circumstances giving rise to the company's failure and on the conduct of any person who was a director of the company during the twelve months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction¹⁰ of each of the directors, unless relieved of that obligation by the Office¹¹.

The essential aims of this statutory reporting regime are to:

- afford the public a degree of protection by ensuring that persons who have been determined by the High Court as not having acted honestly and/or responsibly in the period prior to a company's entering insolvent liquidation may, in respect of the mandatory five-year period of restriction, only act as directors of other companies that meet minimum capitalisation requirements; and
- ensure that persons who, in the period prior to a company's entering insolvent liquidation, have been judged to have acted honestly and responsibly can continue to engage in entrepreneurial activity through the medium of limited liability companies without sanction or penalty.

The Office considers granting relief where a liquidator advances an evidence-based justification in support of a claim that a director has acted honestly and responsibly in conducting the company's affairs. In making its decisions, the Office is keen to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated honest and responsible behaviour in the conduct of the affairs of the failed enterprise. In practice, the Office removes the need for consideration by the High Court of those cases which do not appear to warrant its attention.

It is important to note, however, that ODCE decisions of '*no relief*' or '*partial relief*' do not constitute a finding of dishonesty or irresponsibility in respect of the directors concerned, and it would be inappropriate for any such inference or imputation to be drawn. It is solely a matter for the High Court (having heard the submissions of the liquidator and the director(s) respectively) to determine if a Restriction Declaration should be made in respect of any particular company director.

⁸ A company is insolvent when it is unable to pay its debts as they fall due.

⁹ Section 682 Companies Act 2014

¹⁰ Where an individual is restricted under section 819 of the Companies Act 2014, s/he may only act as the director or secretary of a company for a period of five years thereafter provided that the company concerned meets certain minimum capitalisation requirements. In the case of a public limited company a minimum called up share capital of €500,000 is required. In the case of any other company, the corresponding figure is €100,000.

¹¹ The process and scope of liquidator reporting are outlined in three main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1 and Information Notice I/2009/1.

LIQUIDATORS' S682 REPORTS RECEIVED – 1 JANUARY 2022 TO 6 JULY 2022

A total of 323 liquidators' section 682 reports were received during the period, of which 177 were initial reports and 146 were subsequent reports

Sectoral analysis of liquidators' initial section 682 reports received – 1 January 2022 to 6 July 2022

The Table below provides details of the sectoral distribution of companies in respect of which liquidators' initial reports were received during the period under review.

Table 5 – Sectoral analysis of liquidators' initial section 682 reports received

Sector	2022	%
Wholesale & Retail	34	19
Construction	21	12
Community, Social & Other	23	13
Manufacturing & Printing	8	5
Hotels, Bars & Catering	12	7
Marketing & Promotion	0	0
Real Estate & Renting	11	6
Technology & Telecommunications	21	12
Financial & Leasing	36	20
Transport & Distribution	7	4
Agriculture, Mining & Marine	4	2
Recruitment & Security Services	0	0
Total	177	100%

RESTRICTION AND DISQUALIFICATION UNDERTAKINGS

Individuals who might otherwise face the prospect of court proceedings can avoid having to attend court by voluntarily agreeing to a restriction or disqualification, as applicable (i.e., by providing a legally binding Undertaking to that effect) (the "Undertaking").

The Act provides the ODCE with discretion as to whether to offer an Undertaking. The offer of an Undertaking must be made on the prescribed form, the layout and content of which is stipulated by Statutory Instrument and is referred to as a "Notice". The Notice must set out, *inter alia*, an outline of the circumstances, facts and allegations establishing the grounds for a restriction or disqualification together with details of the legal effects of an Undertaking for the person concerned.

There is no obligation on the recipient of a Notice to accept the offer (i.e. to provide the Undertaking). However, where the recipient intends to accept the offer, they must do so within 21 days (or within such longer period as may be allowed by the ODCE). During this offer period, neither the ODCE nor any other person who is aware of the issuing of the Notice may initiate proceedings for the restriction or disqualification of the recipient of the Notice on foot of the circumstances, facts and allegations as set out in the Notice.

Where a recipient of a Notice decides to accept the offer and to return a duly signed Undertaking Acceptance Form, they will be subject to a Restriction or Disqualification Declaration/Order on the same basis as if a restriction or disqualification had been imposed by the High Court. Therefore, any

subsequent breach of the terms of the restriction or disqualification will constitute a criminal offence¹² and will be the same as a breach of a Court-imposed restriction or disqualification.

Notwithstanding that company directors or other persons may have voluntarily provided Undertakings, they can, nevertheless, still apply to the court – at any time during the currency of the restriction or disqualification – seeking to be relieved, in whole or in part, from the terms of the restriction or disqualification. Whilst any such applications will be considered by the ODCE on a case-by-case basis in the context of the particular facts and circumstances, having regard to the need to uphold the integrity of the process, the ODCE will, as a general policy position, in most instances oppose such applications.

With reference to disqualification, the legislation provides that the maximum duration of disqualification that the ODCE can offer by way of Undertaking is five years. Therefore, in circumstances where the ODCE forms the view that a period of disqualification in excess of five years is warranted (a determination that is made by reference to the particular facts and circumstances of each case, previous comparable cases, and any relevant case law), an offer will not be made. Rather, the matter will be dealt with by way of an application to the High Court.

The undertakings framework ensures that company directors, who are found to be in breach of the Act and who are facing restriction or disqualification proceedings, are dealt with in an efficient and effective administrative manner without the need for the involvement of the Courts. Following the implementation of the undertakings process by the ODCE, a total of 662¹³ undertakings for restrictions and disqualifications had been accepted up to 6 July 2022. While there is a significant additional administrative burden on the ODCE arising from this process, it has resulted in substantial cost and time savings for the liquidators and company directors concerned, as well as for the Courts system.

Complaints

The Office receives a substantial number of complaints annually from members of the public. During the period under review a total of 77 complaints were received which accounted for 16% of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

Table 6 - Complaints received (analysed by character of primary reported default)

Complaint issue	2022	%
Annual/Extraordinary General Meeting related	12	15
Directors' conduct (responsibilities & filing)	6	8
Allegations of reckless/fraudulent/insolvent trading	16	21
Allegations of forgery/furnishing of false information/falsified documents	10	13
Relating to the issue of unpaid debts	10	13
Access to accounting records/minutes of meetings	5	6
Register of members related	4	5
Audit/auditor related	3	4
Receivership related	2	3
Issues relating to addresses	2	3
General shareholder rights issues	2	3
Acting as a director while a bankrupt/restricted/disqualified	0	
Companies trading whilst struck off the Register/dissolved	1	1
Relating to improper use of the word "Limited"	0	

¹² Sections 855 and 859 of the Companies Act 2014

¹³ Comprises of 535 Restriction Undertakings, 34 Disqualification Undertakings and 93 Disqualification Undertakings entered into by directors of dissolved insolvent companies.

Liquidation/phoenix activity	0	
Other	4	5
Total	77	100

AUDITORS' INDICTABLE OFFENCE REPORTS

Section 393(1) of the Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act may have been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the ODCE.

During the period under review, a total of 43 indictable offence reports were received from auditors. It should be noted that the number of reports received does not strictly accord with the number of suspected offences reported as, in a number of instances, reports received included reference to more than one suspected offence.

EXAMINERS' REPORTS

Pursuant to section 534(6) of the Act, where an examiner is appointed to a company, s/he shall, as soon as may be after it is prepared, supply a copy of the report to the ODCE. During the period under review, eight such reports were received.

REFERRALS

As alluded to earlier in this Chapter, the Office forms part of a broader statutory framework that permits the exchange of confidential information between regulatory, enforcement and other relevant bodies, subject to safeguards and appropriate limitations. In that context, the Office receives referrals from other statutory bodies and entities from time to time. During the period under review, the Office received 12 such referrals.

PROFESSIONAL BODIES' INDICTABLE OFFENCE REPORTS

Recognised Accountancy Bodies ("RABs")

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Act may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office.

Prescribed Professional Bodies ("PPBs")

Where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting an examinership or receivership has not maintained appropriate records or has reasonable grounds for believing that the member has committed an indictable offence under the Act during the course of an examinership or receivership, the PPB concerned is required to report the matter to the Office. Prescribed accountancy bodies are so deemed by virtue of IAASA's recognition of them as such as per Part 15 of the Act.

'*Prescribed professional body*' in relation to sections 448, 558, and 688 refers to a Disciplinary Committee or a Tribunal of a Prescribed professional body associated within section 633 (setting qualifications for appointment of examiners and receivers).

The bodies are:

- ACCA - Association of Chartered Certified Accountants
- AIA - Association of International Accountants
- CIMA - Chartered Institute of Management Accountants
- CIPFA - Chartered Institute of Public Finance and Accountancy
- ICAI - Institute of Chartered Accountants in Ireland
- ICPAI - Institute of Certified Public Accountants in Ireland
- Law Society of Ireland

S.I. No. 570 / 2018 Companies Act 2014 (Prescribed Professional Bodies) Regulations 2018 prescribes professional bodies pursuant to sections 448 and 558 of the Companies Act 2014. The regulations

cover the reporting obligations of professional bodies where they detect misconduct by their members while acting as Receivers or Examiners. No reports of this nature were received from PPBs during the period under review.

LIQUIDATORS' REPORTS REGARDING POSSIBLE CRIMINALITY

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e., both Members' and Creditors' Voluntary liquidations and court liquidations) alike. No such report was received by the Office during the period.

DISCLOSURES UNDER THE PROTECTED DISCLOSURES ACT 2014¹⁴

Section 22 of the Protected Disclosures Act 2014 provides that every public body shall prepare and publish, not later than 30 June each year, a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved. The abovementioned report is required to specify:

- i. the number of protected disclosures made to the public body;
- ii. the action (if any) taken in response to those protected disclosures; and
- iii. such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time.

Reports received during the period

During the period 1 January 2022 to 6 July 2022, the ODCE received seven protected disclosures.

Action (if any) taken in response to the protected disclosures received

On examination it was determined that six of the seven protected disclosures received fell outside the remit of the Office.

Such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time

Not applicable.

¹⁴ The Protected Disclosures Act 2014 is available at Revised Acts (lawreform.ie)

INTERNAL INPUTS

INTRODUCTION

Most case files opened within the Office are opened in response to what are termed “external inputs”, e.g., auditors’ reports, liquidators’ reports, complaints from members of the public, etc. Alongside those external inputs, the Office also generates what are termed “internal inputs” through a proactive approach to enforcement of the Act.

The nature and composition of internal inputs varies from year to year having regard to a number of relevant considerations, including:

- the Office’s particular compliance and/or enforcement objectives in that particular year or over a particular cycle;
- thematic and/or once-off issues arising; and
- other relevant facts and circumstances.

Internal inputs can, therefore, range across a variety of enforcement headings. Illustrative examples include:

- actions focussing on particular cohorts of persons, e.g., persons who are undischarged bankrupts, restricted or disqualified;
- civil or criminal enquiries commenced on own initiative;
- actions in respect of dissolved insolvent companies; and
- actions relating to liquidator performance/behaviour.

ACTIONS FOCUSING ON PARTICULAR COHORTS OF PERSONS

During the course of the period under review, enquiries were initiated in a number of instances in which suspicions arose that persons who were undischarged bankrupts, disqualified or restricted may have been acting as company directors or in other specified roles (e.g., such as auditors) while not permitted to do so (or, in the case of restricted persons, only subject to certain conditionality).

INVESTIGATIONS COMMENCED ON OWN INITIATIVE

As indicated above, the Office initiates civil and criminal enquiries and investigations on its own initiative where this is considered necessary or otherwise appropriate having regard to the underlying facts and circumstances. The triggers for such actions can include, for example:

- issues referred internally (i.e., between Units);
- issues identified on foot of a review of material filed with the CRO or other relevant documentation;
- issues identified through monitoring of litigation; and
- issues identified through a review of press reportage, the internet, social media etc.

Depending upon the nature of the underlying circumstances, these enquiries and investigations may be furthered through the use of:

- the Director’s civil investigative powers;
- the Director’s criminal investigative powers; and/or
- the powers vested in the Gardaí seconded to the Office by virtue of those officers being members of An Garda Síochána.

DISSOLVED INSOLVENT COMPANIES

The Office characterises as “*dissolved insolvent companies*” those companies that:

- are struck off the Register for failure to file their annual returns; and which
- at the date of strike off, had liabilities, whether actual, contingent, or prospective.

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies¹⁵. However, company law also provides¹⁶ that the Court cannot disqualify a person who demonstrates to the Court that the company had no liabilities at the time of strike off or that those liabilities had been discharged before the initiation of the disqualification application. In considering the sanction to be imposed, the Court may instead restrict¹⁷ the director(s) where it adjudges that disqualification is not warranted under the particular circumstances¹⁸.

Where there is evidence to suggest that a company was insolvent at the date upon which it was struck off the Register, it is the Office’s policy to consider seeking the disqualification of the company’s directors. This is because, by allowing the company to be struck off the Register, the directors avoid bringing the company’s existence to a conclusion in the appropriate manner, i.e., through the appointment of a liquidator. By not appointing a liquidator, the company’s directors also avoid the scrutiny of their behaviour as provided for by section 682 of the Act.

Where it appears to the Office that a director is liable to be disqualified in these circumstances, it may offer the individual concerned the opportunity to voluntarily submit to a Disqualification Undertaking. In the context of the foregoing, also worthy of note is the fact that, where a company is struck off the Register, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954.

During this period, the office identified and examined 11 companies involving directors of companies which were struck off the Register while having significant outstanding liabilities. As a result of the examination of these companies, together with the examination of a further 39 related companies, 5 directors were disqualified on foot of Disqualification Undertakings given pursuant to section 851 of the Act. Additionally, one company was restored to the Register with a view to discharging any relevant outstanding debts.

ACTIONS RELATING TO LIQUIDATOR PERFORMANCE/BEHAVIOUR

One of the statutory functions of the Director is to:

“...exercise, insofar as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act”¹⁹.

Whilst the section 682 liquidators report process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of a liquidator’s work, from time to time the Office considers it appropriate, or otherwise necessary, to engage in more direct supervision of a liquidator’s work. This, more direct, supervision is effected through the exercise of the powers conferred by section 653 of the Act²⁰.

¹⁵ Section 842(h) of the Companies Act 2014

¹⁶ Section 843(3) of the Companies Act 2014

¹⁷ Section 819 of the Companies Act 2014

¹⁸ Section 845(3) of the Companies Act 2014

¹⁹ Section 949(1) of the Companies Act 2014

²⁰ Section 446 of the Act includes a similar provision relating to receivers

Section 653 of the Act provides that the Director may:

- either on his own initiative or on foot of a complaint from a member, contributory or creditor of a company, request production of a liquidator's books for examination – either in relation to a particular liquidation process, or to all liquidations undertaken by the liquidator; and
- seek the liquidator's answers to any questions concerning the content of such books, and all such assistance in the matter as the liquidator is reasonably able to give.

The powers conferred upon the Director by section 653 are accompanied by certain safeguards and limitations, i.e.:

- the Office must inform the respondent liquidator of the reason(s) as to why the request is being made; and
- a request may not be made in respect of books relating to a liquidation that has concluded more than six years prior to the request.

PART B: THROUGHPUTS

Generally speaking, inputs irrespective of whether from internal or external sources, result in the opening of a case file. In the case of liquidators' section 682 reports, cases generally conclude when a decision has been taken as to whether or not to relieve the liquidator of the obligation to seek the company's directors' restriction/disqualification and, where relief is granted, the file is usually closed.

Where relief is not granted, or only partially granted (i.e., granted in respect of some, but not all of the directors), the Office will usually invite the relevant director(s) to enter into a restriction (or disqualification, if applicable) undertaking. If the offer of an undertaking is not accepted (or if the case is not one in which, in the Office's assessment, an undertaking offer is appropriate), a court application will require to be made by the liquidator. The Office monitors the progress through the Courts of the relevant restriction or disqualification proceedings and the outcome is recorded once the proceedings have been determined. However, the Office also reviews cases from time to time where concerns come to its attention regarding, for example:

- credible suggestions of excessive liquidators' fees;
- apparent failures to distribute assets on a timely basis; and
- apparent failures to conclude a liquidation within a reasonable timeframe.

In the case of other inputs, such as, for example, auditors' reports, public complaints, protected disclosures, referrals etc., a file is opened and the subject matter is examined to determine, in the first instance, whether the matter is one that comes within the Office's remit. Thereafter, cases are progressed on the basis deemed most appropriate to their individual circumstances, with methods of progression including, for example:

- exercising civil powers, such as, for example, issuing demands to:
 - companies and their directors to produce the minutes of meetings and statutory registers;
 - companies and their directors to produce the company's books and documents;
 - liquidators to produce their books and documents, i.e., the liquidator's own books and documents as distinct from those of the company in liquidation (which may, in parallel, be sought);
 - auditors requiring the provision of supplementary information regarding an indictable offence report received;
 - persons acting, or purporting to act, as auditors to produce evidence of their qualifications;

- bankrupts who are acting as company directors and secretaries, seeking sworn statements relating to their insolvency status; and
- liquidators requiring that they file outstanding section 682 reports;
- exercising criminal powers, such as, for example, executing search warrants obtained from the Courts, exercising the powers of arrest and detention etc.;
- liaising with other statutory authorities potentially being in a position to assist the Office's enquiries, for example through the sharing of relevant information.

Upon completion of the Office's enquiries, a decision is made as to the most appropriate course of action to be taken. This can include, for example:

- the decision to take no further action (for example, where enquiries suggest that there has been no breach of company law or where the breach is minor in nature and enforcement action would, consequently, be disproportionate);
- a decision not to take enforcement action on this occasion but, rather, to issue a warning that any recurrence will precipitate enforcement action (for example, where the breach has been rectified and/or remediated and rectification/remediation has been evidenced to the ODCE's satisfaction);
- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the issuing of civil directions, e.g., directions to companies and/or their directors requiring the remedying of stated defaults within prescribed timeframes;
- the initiation of civil proceedings, i.e., court applications for the purpose of seeking specified remedies;
- the initiation of summary criminal proceedings or referral of the matter to the DPP for consideration as to whether charges should be directed on indictment.

Set out in the following Tables are details of the various caseloads progressed by the Office during the period under review. Details of the outputs that flow from the processing of the Office's various caseloads are detailed in the next section of this Chapter.

Table 7 - Throughput of liquidators' section 682 reports – 1 January 2022 to 6 July 2022

Section 682 reports on hand at 1 January 2022		185
All reports received during period	323	
Less: Reports the subject of determinations during period	368	
Section 682 reports on hand at 6 July 2022		140

Table 8 - Other cases on hand – 1 January 2022 to 6 July 2022

Section 682 reports on hand at 1 January 2022		229
New cases opened during period	171	
Less: Cases concluded during period	165	
Other cases on hand at 6 July 2022		235

PART C: OUTPUTS

Insolvency related enforcement measures and outputs arising from section 682 liquidation reports and examination of dissolved insolvent companies

During this period under review, a total of 323 Reports were received from liquidators under Section 682 of the Companies Act, of which 177 were First Reports and 146 were Further Reports.

OUTPUTS FROM SECTION 682 PROCESS (I.E., LIQUIDATOR REPORTING)

The Office made definitive decisions (i.e., decisions other than to grant “Relief at this time”) on 227 liquidators’ reports during the period with a further 141 decisions made to grant “Relief at this time”.

Of the 227 definitive decisions taken during the period, a total of 210 were “Full Relief” decisions and 17 were “No Relief” or “Partial Relief” decisions.

Table 9 - Analysis of decisions taken in respect of all liquidators’ section 682 reports

Decision type	2022	%
Full relief	210	57
No relief	13	4
Partial relief	4	1
Relief at this time	141	38
Total	368	100

RESTRICTION AND DISQUALIFICATION UNDERTAKINGS

The ODCE operates a statutory regime whereby those directors, in respect of whom it is determined that the liquidator should not be relieved of the obligation to apply to the High Court for their Restriction may be invited to voluntarily submit to a Restriction (or Disqualification, if applicable) Undertaking.

Total number of company directors restricted and disqualified during the period 1 January 2022 to 6 July 2022

Arising from liquidators’ section 682 reports and the Office’s decisions not to grant relief to the liquidator, a total of 59 directors were restricted or disqualified during the period.

Of this number, 17 directors were restricted by way of voluntary Undertakings and a further 29 directors were restricted by order of the High Court; 4 directors were disqualified by way of voluntary Undertakings with a further 9 directors disqualified by order of the High Court.

An additional 5 directors of Dissolved Insolvent Companies consented to disqualification by way of voluntary Undertakings. One company was restored to the register in March 2022 as a result of engagement with this Office.

The Table below sets out the number of Undertaking offers issued in relation to Insolvent Liquidations during the period 1 January 2022 to 6 July 2022 together with details of the number of offers accepted and not accepted or outstanding by the end of that period.

Table 10 - number of Undertaking offers issued in relation to Insolvent Liquidations during the period 1 January 2022 to 6 July 2022

	2022
	Directors
Restrictions:	
Number of offers issued	26
Number of offers accepted	17
Number of offers not accepted or outstanding	9

Disqualifications:	
Number of offers issued	5
Number of offers accepted	4
Number of offers not accepted or outstanding	1

LIQUIDATORS' COURT APPLICATIONS

Where liquidators are not granted relief by the Office and where invitations to submit to Undertakings are not offered or not accepted, the liquidators concerned are required to apply to the High Court seeking the restriction or disqualification of relevant company directors.

The Table below sets out details of the results of liquidators' applications to the High Court during this period.

Table 11 - Results of liquidators' Court applications – 1 January 2022 to 6 July 2022

Results of liquidators' Court applications – 1 January 2022 – 6 July 2022	Directors
Restriction Declarations granted	29
Disqualification Orders granted	9
Declarations or Orders not granted	0

OTHER (NON-INSOLVENCY RELATED) ENFORCEMENT MEASURES & OUTPUTS

Outputs from enforcement work

The Office's enforcement work takes a variety of forms, including:

- engaging with company directors and other interested parties with a view to securing the voluntary rectification/remediation of instances of non-compliance;
- exercising the Director's powers to secure compliance and/or to progress enquiries and investigations;
- exercising the Director's functions to permit/facilitate compliance;
- seeking civil remedies in the High Court in response to indications of non-compliance;
- taking summary criminal proceedings before the District Court;
- where, having conducted an investigation and concluded on the basis of same that the indications of suspected criminality are such that trial on indictment may be warranted, referring investigation files to the DPP for consideration as to whether the matters therein warrant criminal prosecution before the Circuit Court; and
- referring indications of possible breaches of regulatory provisions other than those relating to company law to other relevant regulatory or enforcement Agencies (incorporating also the referral of relevant matters to professional bodies).

The principal outputs associated with the Office's enforcement activities are detailed below.

Securing voluntary rectification/remediation

Directors' loans infringements

In 8 cases in the period under review where suspected directors' loan infringements had been reported by auditors, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €1.9m. Such rectifications are in the interests of affected companies' members and creditors.

Failure to comply with accounting standards

Section 291(3) of the Act requires companies to prepare their financial statements, *inter alia*, in accordance with applicable accounting standards. Section 291(9) provides that failure to comply with that requirement is a Category 2 offence on the part of the company and any officer in default. In the period under review, 43 instances of companies' failure to comply with accounting standards were reported to the Office by way of auditors' indictable offence reports. The underlying nature of the issues involved (for example, differing interpretations of an accounting standard) are such that most of such matters are capable of being resolved to the ODCE's satisfaction by way of voluntary rectification.

Persons acting as company directors while not permitted to do so

During the period under review, the Office undertook a review of the register of disqualified and restricted persons as maintained by the Registrar of Companies and Iris Oifgiul to identify undischarged bankrupts. Arising from the review, 10 persons appeared to be in contravention of such orders and undertakings. Following ODCE intervention, the individuals' positions were regularised.

Securing compliance and progressing enquiries and investigations through the exercise of the Director's statutory powers

A broad range of legislative provisions were utilised during the course of the period under review in order to both secure compliance with company law and to progress enquiries and investigations respectively. Statutory powers exercised, and other investigative measures, included:

- the serving of 3 statutory requirements to produce minutes of general meetings under section 199 of the Act;

- 29 court orders or requirements were obtained (pursuant to both s. 52 Criminal Justice (Theft & Fraud Offences) Act 2001 and s. 63 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010;
- the execution of 10 search warrants;
- the arrest of 3 persons;
- meeting 5 persons by arrangement having volunteered to provide statements under caution;
- the issuance of 5 applications for Mutual Legal Assistance;
- the making of 40 data protection requests pursuant to s. 41(b) of the Data Protection Act 2018; and
- the serving of 3 statutory requests on auditors for information under section 393 of the Act.

Criminal proceedings

Following from its strategic objectives of confronting indications of wrongdoing at the more serious end of the spectrum, the Office's criminal investigative resources tend to be concentrated on larger, more complex investigations that, typically, result in files being submitted to the DPP for consideration as to whether charges should be directed on indictment. However, the Director does also, depending upon the underlying facts and circumstances, direct the summary prosecution of alleged offences as and when considered appropriate. Set out hereunder is a summary of criminal enforcement activity over the year under review.

During the period under review:

- i. two persons were convicted or facts found proved of 10 offences;²¹
- ii. three arrests were made and five voluntary cautioned interviews were conducted, in furtherance of criminal investigations;
- iii. 29 court Orders or Requirements;
- iv. five Mutual Legal Assistance Treaty requests were obtained/issued, and 40 data protection requests were made pursuant to s. 41(b) of the Data Protection Act 2018 in furtherance of criminal investigations;
- v. files were submitted to the DPP in respect of one investigation;
- vi. files were submitted to the Director of Corporate Enforcement in respect of four investigations;
- vii. directions were received from the DPP to charge, or otherwise, in respect of one investigation;
- viii. in aggregate, arising from (iv) and (v) above, a total of 23 criminal charges were preferred against two separate individuals, i.e., in respect of alleged offences in the nature of:
 - o providing false information contrary to section 876 Companies Act 2014;
 - o fraudulently removing property from a company contrary to s. 717(b) of the Companies Act 2014; and
 - o theft contrary to section 4 of the Criminal Justice (Theft & Fraud Offences) Act 2001.
- ix. two individuals prosecuted in the Circuit Court (i.e., on indictment) for alleged breaches of company and criminal justice legislation.

²¹ Including instances where section 1(1) of the Probation of Offenders Act 1907 was applied. In this instance the facts are found to have been proved by the court of trial but it does not proceed to conviction taking into account certain circumstances outlined in the section.

Chapter 4

Compliance with obligations on foot of law, regulation and by virtue of the Office's status as a public sector entity established by statute

Compliance with obligations on foot of law, regulation and by virtue of the Office's status as a public sector entity established by statute

Parliamentary Questions ("PQ")

The Office is regularly requested to provide information/material to the Department to assist it in preparing Ministers' responses to Deputies' PQs. In addition, the Office is sometimes itself the subject of Deputies' PQs. During the year, the Office provided material in response to two PQs.

Prompt Payment of Accounts Act 1997

The Prompt Payment of Accounts Act provides for the payment of interest to suppliers whose invoices are unpaid at a prescribed date (usually 30 days after receipt of the invoice). Despite the Office's policy of settling all invoices within prescribed timeframes, there were three invoices paid outside of the time allowed and as a result Prompt Payment Interest of €134 was incurred, together with €180 in penalties.

Risk Management Action Plan

During the year, the ODCE reviewed and updated the Office's risk management plan in consultation with the Department.

Freedom of Information (FOI)

Most records of the Office (i.e., all records other than records concerning its general administration) are exempt from the FOI Act. During the period under review, six requests were made under the Freedom of Information Act.

Of the requests received, two were either partially granted or granted in full while the remainder were for records that did not exist, were not held by the ODCE and therefore had to be refused or did not fall within the scope of the Act.

As required under the FOI Act, the Office's FOI Publication Scheme is published on its website, as well as a log of FOI Requests and the decisions on such requests.

Data Protection and the General Data Protection Regulation

On 25 May 2018 the General Data Protection Regulation ("GDPR") became enforceable. This legislation gives a broad level of protection to citizens regarding the privacy and use of their personal data, and grants rights of access to personal data held or processed by a data controller.

The Office has put significant effort into ensuring compliance with the General Data Protection Regulation and the Data Protection Act 2018, as well as holding information sessions so that all staff are aware of the new obligations.

During the period under review, one request for information was made to the Office under the Data Protection Act 2018. The request was considered and, where applicable, the relevant information was provided to the data subject insofar as the rights to such information were not restricted to the extent necessary to protect the functions of the Director and where such restriction was proportionate.

Official Languages Act 2003

The Office drafted a second Scheme under the Act in 2011 and awaits agreement with the Coimisinéir Teanga on that Scheme. In the interim, the previous Scheme remains in force, as well as the statutory requirements of the Act. The ODCE, therefore, continued during the year under review to monitor its compliance with that legislation and with its Scheme.

Implementing the Public Sector Equality and Human Rights Duty

During 2021, the Office updated the statement of its intention to comply with the Public Sector Duty under the Irish Human Rights and Equality Commission Act 2019 published on its website. This duty places a statutory obligation on public bodies to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work.

In its day-to-day work and particularly in its dealings with stakeholders the Office ensures that no member of the public or other stakeholder suffers discrimination in interactions with the Office under any of the protected grounds of gender, civil status, family status, sexual orientation, disability, age, race, religion and membership of the Traveller community.

The Office extends the same equality of treatment to its staff.