



Record Crimes – Lessons from Ireland

By **Dónall Breen** - 31 January 2018

A director of a department store operating company in the Republic of Ireland has been found criminally liable for failure to keep adequate records under Irish employment law.

Mr Cooney was a director of the operating company that ran the retail operations in Dublin's famous Clearys Department Store. When Clearys went into liquidation in 2015, an investigation by the Workplace Relations Commission found that adequate records were not kept under Section 18 of the Protection of Employment Act. This requires employers to keep such records as may be necessary to ascertain whether the provisions of the Act are being complied with.

Although Mr Cooney was found guilty of a criminal offence, he was given the Probation Act, which means that while the facts were established, Mr Cooney will not have a criminal conviction.

Mr Cooney is not the only figure to be criminally charged under employment legislation as a result of the (now controversial) liquidation of Clearys. A director of Natirum Ltd., which purchased Clearys immediately prior to liquidation, faces three charges of failing to initiate consultation with representatives of workers facing redundancy, failing to provide them with all relevant information, and with failing to notify the government of the collective redundancies. This director is also charged with assisting Natirum to impede the work of an employment inspector.

The liquidation of Clearys, and the subsequent personal liability faced by directors as a result, is a stark reminder that despite the turbulent nature of a liquidation employers should be acutely aware of their record keeping and compliance obligations under employment law. Failure to adhere to these requirements can have criminal as well as financial consequences.

Here in the UK, employers can also be found criminally liable for failure to keep adequate records. For example, it is a criminal offence not to keep adequate records under Section 31 of the Minimum Wage Act 1998. Employers can also be found criminally liable for impeding the work of an inspector under the same legislation. Often forgotten is that there is also a statutory obligation to notify the Secretary of State of multiple redundancies. A failure to comply with this obligation also amounts to a criminal offence and can lead to criminal charges against company directors.

