

# CARANUA APPEALS

Annual Report 2016  
of the  
Appeals Officer  
Appointed under the  
Residential Institutions Statutory Fund  
Act 2012



## **Report to the Minister for Education and Skills**

I hereby submit my third and final Annual Report to the Minister of Education and Skills in accordance with section 21(5) of the Residential Institutions Statutory Fund Act 2012. This is the third Annual Report submitted in relation to the Appeals Office since it was established in February 2014.



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Patrick Whelan  
July 2017

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# Chapter 1: Caranua Appeals

## *Introduction*

I was appointed by the Minister for Education and Skills as Appeals Officer to review decisions of Caranua in relation to applications for assistance from the Residential Institutions Statutory Fund. I am independent of Caranua in the performance of my functions. This is my third and final Annual Report. I indicated to the Minister in the course of the year that due to personal commitments, I did not wish to be considered for reappointment for a further year. However, I agreed to an extension of my term up to 30 April 2017. Thus, this Annual Report covers the 15 month period from 1 February 2016 to 30 April 2017.

As in previous years, I believe that independence and informality have characterised my approach to the appeals function. I have striven to produce comprehensive and clear decisions which are objective and fair to Caranua and appellant alike and which are fully in accordance with fair procedure. I also seek to ensure that, where appropriate, my decisions highlight good administrative practice so that Caranua can apply the learning from individual appeals to the administration of the applications process, generally.

I have been assisted in my work by an official from the Department of Education and Skills, Mr Steven Darcy, who manages the Appeals Administration Unit. Steven has worked tirelessly on my behalf, sometimes in very difficult circumstances, to administer the appeals process informally, efficiently, sensitively and to the highest standards of customer service. His helpful and considerate manner with appellants is particularly noteworthy. I am very grateful to him and I thank him for his support throughout the year. Finally, I wish to thank the staff of the Residential Institutions Redress Unit of the Department for their assistance to me personally and for their support for the appeals function over the past three years.

## *Caranua and the Residential Institutions Statutory Fund*

The Residential Institutions Statutory Fund Act 2012 (the Act) established the Residential Institutions Statutory Fund Board, or Caranua, as it is more commonly known. Caranua's function is to provide support to people who, as children, experienced abuse in institutions in Ireland. The institutions were run by religious congregations and funded and regulated by the State. These religious congregations are responsible for the provision of funds to Caranua and they have pledged €110 million, of which €96 million had been received by mid 2017. The Act also provides for the creation of a Statutory Fund from which these funds are managed by Caranua. The scope of the Fund is limited to those survivors of institutional abuse who have received financial compensation through settlements, courts or the Residential Institutions Redress Board. There are an estimated 15,000 such individuals of whom almost 60% are thought to live in Ireland with the remainder living in the United Kingdom and in other parts of the world.

The role of Caranua is to manage a scheme of support for eligible survivors that addresses their current needs and improves their wellbeing. It can do this by paying for specified approved services to be provided to a survivor that are not readily available through public bodies. By the end of 2016 Caranua had expended a total of €57.4 million from the Fund. The service areas are confined to health, education and housing supports. Survivors who are dissatisfied with Caranua's decision on their application for assistance may refer their case to the independent Appeals Officer.

Caranua was formally established in 2013 and is one of a series of State initiatives designed to acknowledge and compensate for the harm caused to people who experienced institutional abuse as children. These include:

- > A State apology and the establishment of the Commission to Inquire into Child Abuse in 1999. The report of the Commission, known as the Ryan Report was published in 2009.
- > A scheme of financial compensation managed by the Residential Institutions Redress Board was established in 2002 and has made awards to over 15,000 individuals. It is now closed to new applications.
- > A scheme of grants for survivors and their family members to avail of formal and informal education and development opportunities was established in 2006 and administered by the Education Finance Board. The Board provided grants to 12,000 individuals, over 80% of whom were children and grandchildren of survivors, for a wide range of educational courses until 2011 when the Fund was exhausted.
- > A programme of assistance for women who were incarcerated in Magdalene laundries which includes provision for financial redress, social welfare pensions and access to enhanced health and medical services for those living in Ireland, and to private health insurance for those outside Ireland.
- > An investigation into the operation of Mother and Baby Homes looking into the operation of specified homes between 1922 and 1987, and hearing testimony from individuals with direct experience of them. It does not have any role in providing redress.

## ***Appeals Officer Role and Functions***

Section 21 of the Act provides for the appointment of an Appeals Officer to review decisions of Caranua in relation to applications for assistance from the Fund.

The main functions of the Appeals Officer are as follows:

To make a decision in writing determining each appeal which may be a determination to:

- confirm the decision made by Caranua which was the subject of the appeal,
- revoke the decision made by Caranua and replace it with such other decision as the Appeals Officer considers appropriate or
- refer the matter back to Caranua for reconsideration in accordance with such directions as the Appeals Officer considers appropriate.

In considering an appeal the Appeals Officer is not confined to the grounds on which the original decision was based but may decide the matter the subject of the appeal as if it were being decided for the first time.

Caranua is obliged to furnish the Appeals Officer with its observations on the appeal together with any information or document that is relevant to the appeal. The Appeals Officer may at any time require the appellant, Caranua or any other person concerned to furnish him or her with further particulars regarding the appeal.

Where the Appeals Officer is of the opinion that an appeal may properly be determined without an oral hearing, he or she may determine the appeal without such a hearing.

Decisions of the Appeals Officer may be appealed to the High Court but only on a point of law.

The Appeals Officer is required to submit an annual report to the Minister in relation to the performance of his or her functions under the Act. The Minister shall cause copies of the report to be laid before each House of the Oireachtas.

In accordance with sections 4(1) and 22(4) of the Act, the Minister made regulations prescribing procedures for the hearing and determination of appeals, the making of submissions to the Appeals Officer and requests for further information by the Appeals Officer (The Residential Institutions Statutory Fund (Appeals) Regulations 2014. (S.I. No. 21 of 2014)).

A copy of a simple guide for appellants on how to make an appeal is attached at Appendix 1. One of the notable features of the appeals process is the opportunity given to both Caranua and the appellant to comment on each other's submissions to the Appeals Officer. For instance, having received the decision of Caranua on his or her application, the appellant then submits his or her appeal to the Appeals Office. The appeal is then sent to Caranua inviting its observations on the points made in the appeal. The Appeals Office then forwards the Caranua observations to the appellant who is then invited to submit his or her comments to the Appeals Office. Any comments submitted by the appellant are then forwarded to Caranua for information or further comment to the Appeals Office, as appropriate. When the submissions of all parties have been received, the file is sent to the Appeals Officer for determination.

While the Appeals Office always stipulates time limits for replies (normally two weeks) and while these are usually adhered to by both sides, nevertheless, it can take several weeks before all the necessary submissions have been assembled. In a small number of cases, I may also find it necessary to engage in further correspondence or consultation with Caranua and/or the appellant in relation to the appeal.

Some appellants can become frustrated with the duration of the appeals process while others find it quite stressful to be asked to comment a second time on what was for them an upsetting decision in the first place. Others still, find it disconcerting that Caranua sometimes introduces new reasons for refusing the appeal which it had not relied upon in its original decision. While I can understand appellants' impatience and unease, the Appeals Regulations are designed to ensure fairness and thoroughness at all stages of the appeals process. I am obliged by the Regulations to engage each party in all stages of the consultation process and I have no discretion to curtail it in any particular case.

## ***Contacting the Appeals Office***

There is no charge for making an appeal. Further information about how to make an appeal is in the information leaflet at Appendix 1.

The Appeals Office can be contacted by email at [caranuaappeals@education.gov.ie](mailto:caranuaappeals@education.gov.ie) or by post at:

The Caranua Appeals Officer  
Appeals Administration Unit  
c/o Department of Education and Skills  
Cornamaddy  
Athlone  
Co Westmeath  
N37 X659

## Chapter 2: The Year's Work

### Overview

The 12 month period 1 February 2016 to 31 January 2017 saw a 53% increase in the number of appeals received; 155 as compared with 101 in 2015 and 47 in 2014. In the 15 month period up to 30 April 2017, the period covered by this Report, 189 appeals were received. The rapid growth in the number of appeals is hardly surprising; public awareness of Caranua has increased steadily. It approved more than 7,000 applications and expended €15.4 million from the Fund in 2016. However, as can be seen, the number of appeals received is but a tiny proportion of the overall number of applications approved by Caranua.

A notable feature of the appeals completed is that some were extremely complex, lengthy and time consuming. Some were accompanied by voluminous correspondence from the appellants which, to some extent, reflected their frustration with the manner in which they had been dealt with by Caranua. Unfortunately, this complexity, coupled with the increase in the number of appeals, resulted in longer waiting times for appellants, generally.

While roughly 55% of appellants were unsuccessful, most of the remaining 45% received varying degrees of further assistance with their application ranging up to cancellation of the Caranua decision, as a result of lodging an appeal.

Apart from providing applicants with an independent review of Caranua's decision on their case, appeals are also a useful insight into the applications process as administered by Caranua. In the course of their appeal many appellants raised issues about the manner in which their applications had been processed by Caranua.

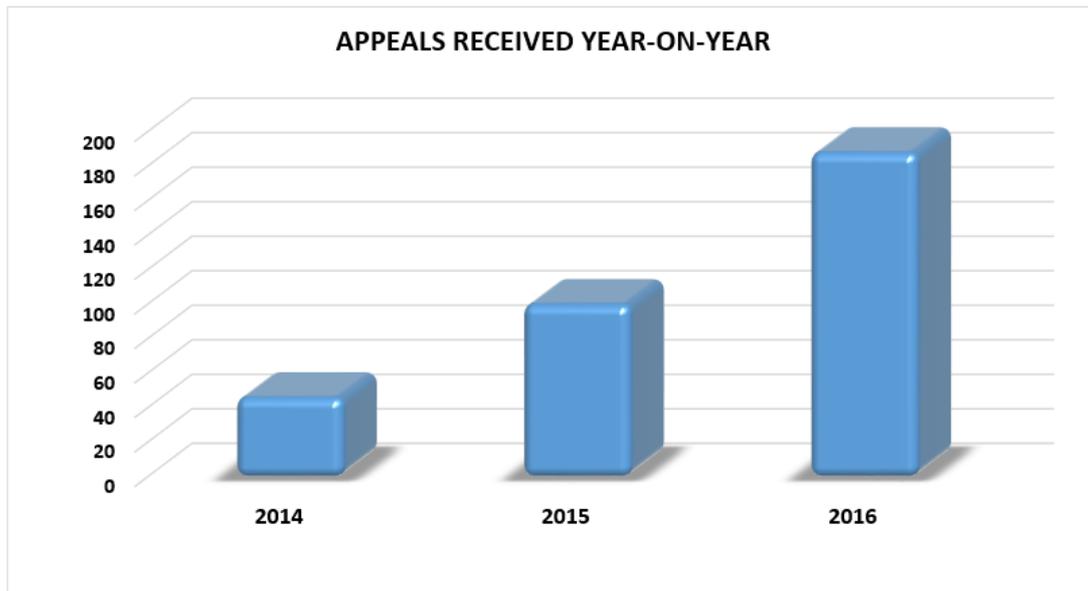
- Some appellants felt that the Caranua Guidelines booklet (May 2014 edition) and application form raised their expectations about what they could apply for and that this was not matched by their personal experience with the treatment of their individual applications. Admittedly, a revision of the scheme Guidelines and application form which came into effect in June 2016 gives a clearer picture of the conditions attaching to applications for support albeit with an upper limit of €15,000 assistance in each case.
- Others referred to difficulties in contacting Caranua to enquire about progress on their application and of high staff turnover resulting in problems with contacting and engaging with their advisor.
- Others still, complained about Caranua's policy of prioritising applications. In mid 2015 Caranua began informing applicants who had previously received support that it considered their latest application "to be completed". It said it was prioritising applications from persons who had yet to benefit from the Fund and would not be in a position to consider applications from anyone whose application had been completed.

These and other issues are discussed in more detail in Chapter 3 of this Report.

I met the CEO of Caranua, Ms Mary Higgins, a number of times throughout the year to discuss issues relating to individual appeals and matters of common interest in relation to the administration of the appeals function, generally. I am very grateful to her and her staff for their cooperation and support throughout the year and throughout the entire period of my tenure as Appeals Officer.

## ***Number of Appeals received***

A total of 189 appeals were received in the 15 month period up to 30 April 2017 (“2016” in the chart below) and 44 were carried forward from 2015 giving a total of 233 appeals for consideration as compared with 108 appeals in the previous year. A total of 93 cases were completed and 140 were carried forward to 2017 (Note: The 2015 Annual Report shows 99 appeals received in 2015 and 42 carried forward to 2016. These figures have been adjusted to 101 and 44, respectively, to reflect two cases each of which actually consisted of two separate appeals.)



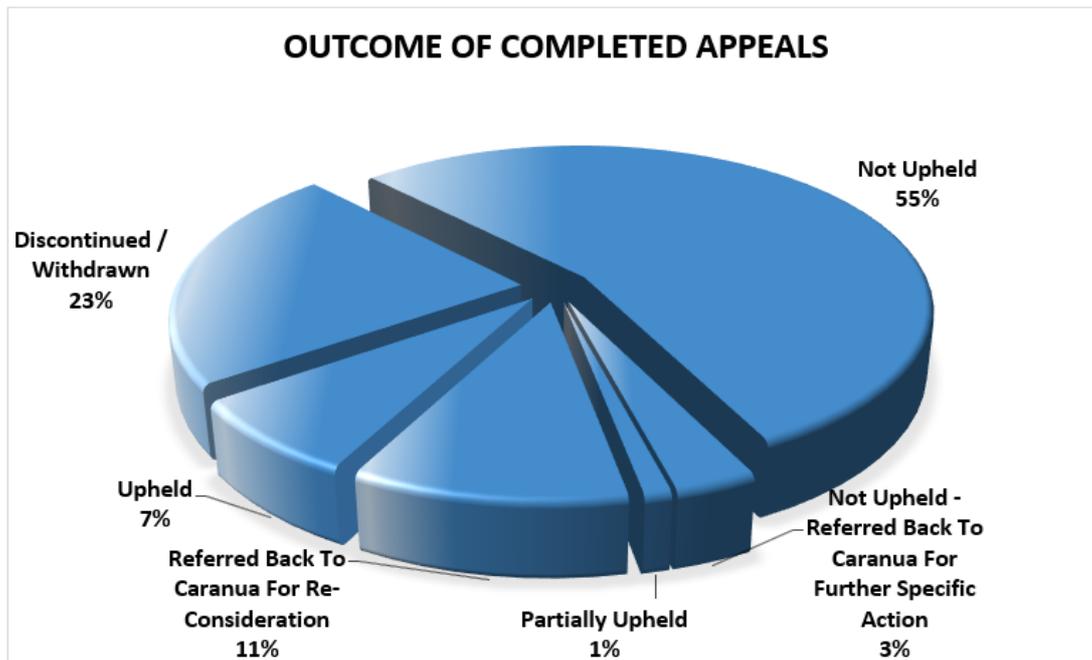
## ***Outcome of completed Appeals***

Of the 93 cases completed, seven (8%) were upheld (that is, the original decision on the application was revoked by the Appeals Officer), one (1%) was partially upheld, 10 (11%) were referred back to Caranua for reconsideration in accordance with specific directions from the Appeals Officer, 51 (55%) were not upheld (that is, the original decision was affirmed by the Appeals Officer), a further three (3%) were not upheld but referred back to Caranua for further specific action and 21 (22%) were either discontinued or withdrawn.

The 10 cases that were referred back to Caranua for reconsideration in accordance with specific directions from the Appeals Officer are cases where I was not prepared to affirm the decision of Caranua on the application but, rather, asked it to reconsider the application in the light of particular points or evidence which I considered appropriate.

The three cases that were not upheld but referred back to Caranua for further specific action are cases where I was happy to affirm the decision of Caranua, but where, in addition, I requested it to make further contact with the appellant, for example, with a view to inviting the appellant to apply for a modified version of the service for which he or she might be eligible.

Fifteen cases were discontinued as a result of Caranua offering to reconsider its decision or suggesting an alternative solution following receipt of the appellant's letter of appeal.



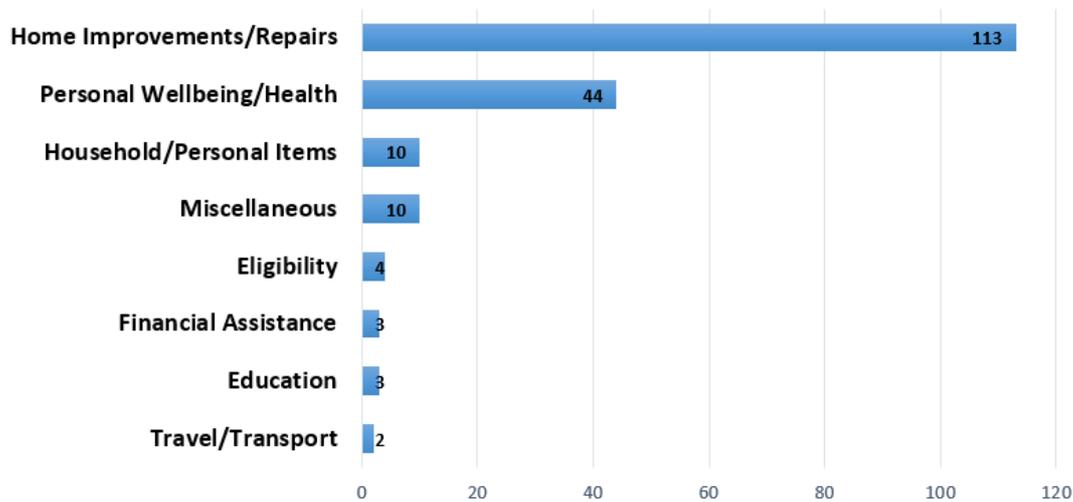
### ***Subject Matter of Appeals***

Of the 189 appeals received, 113 related to home improvements or repairs, 44 related to personal wellbeing/health matters, 10 related to household/personal items, 10 were miscellaneous items (for example, applications for more than one service), 4 related to eligibility of the applicant for assistance, 3 related to financial assistance (for example, mortgage or rent arrears), 3 related to education and 2 appeals related to travel expenses or transport.

It is no surprise that home improvements and repairs head the list of appeal subject matters. By the end of 2016 Caranua had spent €35.2 million on funding in respect of the housing category of services or just over 61% of total expenditure from the Fund.

Four of the cases received related to eligibility of the applicant for assistance, that is, applications that were refused because Caranua decided that the applicant had not been resident in a scheduled institution and had not received an award from the Redress Board or through a settlement or the courts. I mention these cases because I note that the Minister recently published draft terms of reference in relation to a proposed review of eligibility conditions for access to the Fund. Neither Caranua nor I as Appeals Officer have any discretion under the Act to deem persons eligible for assistance who do not meet the current conditions. That said, the circumstances of such individuals can be equally as harrowing as those of applicants who are eligible and, again, as I mentioned in my previous Annual Reports, it can seem particularly harsh and unfair to deny, without exception, all persons who have not received awards the opportunity to benefit from the Fund. Some of them had stated in the course of their appeals that fellow survivors who benefited from the Redress Board can now go on to secure further assistance by applying to Caranua whereas they are denied assistance, not just once but twice, because of their particular circumstances.

## SUBJECT MATTER OF APPEALS RECEIVED



### *Appeals upheld or referred back for Reconsideration*

#### **Appeals Upheld**

As already mentioned, eight appeals were upheld. The details are as follows:

- **Repairs to Shed Roof**

Caranua refused funding for repairs to a shed roof on the grounds that garden sheds are outside the scope of the scheme. The structure in question was of block construction with running water, electricity and housed the appellant's washing machine, fridge freezer and dryer and stood in the garden separate from her one bedroom bungalow. Her kitchen was too small to accommodate the appliances. I considered the structure to be more in the nature of a utility room than a garden shed which, had it been attached to the house, would most likely have been approved for funding. I revoked Caranua's decision.

- **Garden Clearance**

Caranua refused funding for garden clearance and rebuilding of a garden wall to a woman whose husband had died two years previously. Caranua arranged instead for Age Action to contact the woman but it was unable to assist her with the works. The woman then submitted a revised quotation for a reduced amount of works but Caranua told her that it was not in a position to process it as it was not covered by the Guidelines. I found Caranua's approach to the woman's appeal difficult to understand as it had sympathised with the woman and accepted that she was in need of assistance. I concluded that the works were minor and that she had demonstrated that her application was consistent with the Guidelines. I revoked Caranua's decision.

- **Personal Clothing**

Caranua refused a man's application for personal clothing on the grounds that it was outside the scope of the scheme. In its response to the man's appeal, Caranua referred to the

supplementary welfare payment system administered by the Department of Social Protection which covers once-off exceptional spending and said that it cannot replace services that already are available from a public service provider. I found that the man was not, in fact, eligible for supplementary welfare payments. Although Caranua had stated that clothing is not covered in the Guidelines, I noted that it was not specifically excluded from the Guidelines (May 2014 edition) in the way in which furniture, white goods and carpets were specifically listed as goods which Caranua is unable to fund. The Guidelines also state that applications for goods or services that are not on the list may be considered provided they improve health and wellbeing and fit with the general criteria. In the light of all the man's circumstances, I was satisfied that the provision of personal clothing was an important factor in improving his well being. Thus, I found it was unreasonable of Caranua to refuse his application and I revoked its decision.

### • **Reimbursement of Fees for Education and Training Course**

In June 2014 a woman indicated to Caranua that she wished to apply for a one year full-time education and training course commencing in September 2014 in a college of further education. Due to a long waiting list, Caranua indicated to her that there would be a delay in assigning an advisor. Meanwhile, the woman enrolled for the course and continued to press Caranua to afford priority to her application. She successfully completed the course in May 2015 and in September of that year Caranua assigned an advisor to her case. One month later she was informed that her course fee and support costs could not be approved as services received and paid for before applying to Caranua cannot be refunded. I found that Caranua's decision to refuse funding was strictly correct but unduly harsh and unfair having regard to the continuous efforts the woman had made to apprise Caranua of her intentions and its inability to respond to her needs within a reasonable timeframe. I revoked Caranua's decision.

### • **Other Appeals Upheld in brief**

- I revoked Caranua's decision to refuse funding for garden clearance to a 76 year old woman who suffered from a range of ailments including chronic obstructive airways disease and arthritis.
- Caranua refused a woman's application for a downstairs toilet on the grounds that it already had approved and funded an application for an upstairs accessible bathroom. I revoked Caranua's decision on the grounds that an occupational therapy assessment commissioned by Caranua had recommended both an accessible upstairs bathroom and a downstairs toilet, based on the woman's medical needs.
- Caranua refused funding for three language packs in French, German and Spanish to an applicant who wished to become a polyglot. I revoked Caranua's decision to fund just one language pack on a trial basis with a commitment to fund a further two packs if the first one was successful. I concluded that the most reasonable way of meeting the applicant's desire to learn more than one language simultaneously would be to fund two language packs initially and to fund the third pack at a later date by way of a follow-up application.
- I revoked a decision to refuse a man's application for a particular type of housing support for his rural dwelling on the grounds that it was outside the scope of the scheme. Unfortunately, I cannot be more specific about the precise details of the case lest it

might lead to the identification of the applicant. In the course of the appeal, Caranua disclosed that there were errors in how it had processed the man's application. While I accepted that Caranua was strictly correct in refusing the application on the grounds that it was outside the scope of the scheme, I found that the man had acted in good faith in applying to Caranua and in the light of Caranua's response to him, had an expectation that his application would be approved.

## **Appeals referred back for Reconsideration**

Ten cases were referred back to Caranua for reconsideration. As already explained, these are cases where I was not prepared to affirm the decision of Caranua on the application but, rather, asked it to reconsider the application in the light of particular points or evidence which I considered appropriate.

### **• Electrical Repairs**

A woman who lived alone received funding for roof repairs and replacement windows and doors but was refused funding for electrical repairs as part of the same application on the grounds that they were not covered by the Guidelines. Her electrician's report described the wiring as hazardous and she understood that in the event of a fire she would not be covered by insurance. She said electrical repairs were the most critical item on her application. It was evident that the state of the wiring was a cause of great stress to her as she was worried as to whether she could evacuate safely from her home in the event of an electrical fire and her sense of security and wellbeing was affected. I noted that although electrical repairs are not specifically mentioned in the Guidelines as an excluded item, there is no impediment in the Act or elsewhere to the funding of electrical repairs in any particular case provided such funding meets the general criteria and improves the health and well being of the applicant. As I did not have specific details of the nature or extent of the repairs I referred the case back to Caranua for reconsideration in the light of my comments about the woman's living conditions and wellbeing.

### **• Carpeting**

An application for carpeting from a man who lived alone in a small two storey house with bare floors was refused on the grounds that carpets were not covered in the Guidelines. As confirmed by his doctor, the man suffered from mental health issues and his advocate stressed that he was not seeking carpeting for cosmetic reasons but, rather, because of his psychological symptoms and in order to help him feel more secure in his home and to support his mental and physical wellbeing. I had some concerns that Caranua might not have had sufficient regard to the man's medical condition, but rather, might have refused his application solely because it was not covered by the Guidelines. I also took the view that although carpets are excluded from the Guidelines, this exclusion did not override Caranua's duty to assess the merits of the application and the implications for the man's health and wellbeing. I referred the case back to Caranua for reconsideration and asked it to examine the man's medical and living conditions in more detail and to assess the merits of his application for carpeting in that context.

- **Renovations to a rural Cottage**

Caranua refused a man's application for repairs and improvements to his home, a rural cottage in a very poor state of repair, on the grounds that the Fund was not designed to support renovations of entire homes but rather to assist with minor improvements that would enable an applicant to be safe, warm and secure. An occupational therapist assessment, commissioned by Caranua, confirmed that the house had multiple defects including rising damp and leaks and that the man's bedroom was not fit for habitation or storing clothing. I found that the man's living conditions were substandard and of a type which Caranua should endeavour to ameliorate. However, I did not consider that all the works in his application should be approved for funding. I noted that Clúid Housing Association had carried out a survey which recommended a more modest but still very extensive range of repairs and improvements. I referred the case back to Caranua for reconsideration. I asked it to use the Clúid report as an appropriate reference point and to agree a list of works to be carried out in consultation with the man and the Clúid surveyor and the works to include, at a minimum, damp proofing and insulation.

- **Dental Implants**

A man received funding for dental treatment involving dentures and implants. As a general rule, Caranua does not fund dental implants as it regards them as cosmetic, however, they are approved in limited circumstances, for example, where they are for front teeth or where they are necessary to hold bridges or dentures. Within weeks of the completion of this dental plan, the man's dental clinic submitted a further dental plan to Caranua involving more implants, this time to his upper jaw. Because the second plan was for implants in excess of what Caranua normally considers, it was deemed to be cosmetic and refused and sometime later Caranua issued the man with a formal completion letter. (For an explanation of "completion letter", please see "Caranua's Policy of prioritising Applications" in Chapter 3 below.) Although it appeared that the man was genuinely in need of further treatment, it was not clear to me whether there were less costly solutions, not involving implants, which might be consistent with Caranua's funding criteria. I referred the case back to Caranua. I asked it to assist the man in sourcing a second opinion to explore other treatment options and if treatment needs were identified, to consider these afresh. It also followed that I did not accept Caranua's decision to "complete" the man's application as referred to in its response to the appeal.

- **Other Appeals referred back in brief**

- Caranua approved a woman's application for an orthopaedic bed and chair. However, the bed she wished to purchase was a particular brand with a visco elastic memory foam mattress and she wished to purchase it from her local furniture store. Caranua refused funding stating that her local store was not an approved supplier and that all orthopaedic beds must be sourced from approved medical suppliers. Although her chiropractor had recommended the particular bed and mattress, it was not stocked by the approved supplier. I acknowledged that it was not unreasonable of Caranua to designate approved suppliers. As it was not clear that the particular brand favoured by the woman was the only bed suitable in her case, I asked Caranua to assess whether a suitable alternative to the desired brand, of visco elastic memory foam composition, could be sourced from an approved supplier and, if not, to supply her with the desired brand of bed.

- Caranua refused another woman's application for a chair and orthopaedic bed as there was no professional recommendation supporting the application. The woman claimed to know of several applicants who had received funding for a bed without the need for an occupational therapy assessment and was surprised that her doctor's support was not deemed to be sufficient evidence. While I found that Caranua had acted properly in refusing her application, I had some sympathy for the woman having regard to her medical condition and circumstances and I felt that to some degree she had been the author of her own misfortune. I asked Caranua to reconsider the woman's application provided she confirmed to it in writing that she accepted the conditions under which Caranua would consider funding for an orthopaedic bed and chair.
- A man's application for replacement internal doors, frames and skirtings was refused on the grounds that the works were not minor and went beyond what was recommended in a report by the man's surveyor. While I agreed generally with Caranua, I noted that the surveyor had recommended replacement of timbers in the understairs area and bathroom which had developed woodworm and wet rot, respectively. I concluded that these repairs came within the minor repairs criteria in the Guidelines. I referred the case back to Caranua to reconsider funding for these repairs.
- Caranua refused a woman's application for a new roof and gutters on the grounds that there was no evidence that the works were necessary and that they went beyond what could be considered to be minor repairs. In the course of the appeal, the woman acknowledged that not all of the roof might need replacing, however, she said the gutters were blocked and loose and causing leaks. I asked Caranua to explore with the woman the condition of the gutters and the matter of whether there were repairs to the roof which could be categorised as necessary and minor and to reassess the application in this context.
- The two other appeals that were referred back to Caranua are summarised in the section on High Court appeals (later in this Chapter) and in the section on Caranua's policy of prioritising applications (Chapter 3).

### ***Time taken to deal with Appeals***

The appeals process consists of two stages. The first stage is to gather the submissions and observations of the appellant and Caranua. The Appeals Regulations state that the appeal shall be referred to Caranua for its comments, the appellant shall then be invited to make observations on the Caranua response to the appeal and the appellant's observations must then be forward to Caranua for information or further comment, as appropriate.

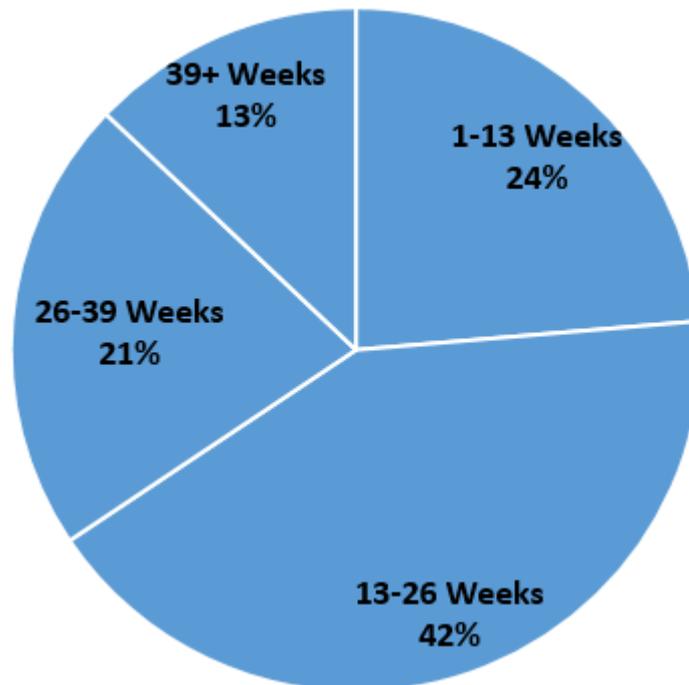
The second stage is to analyse the evidence and arguments put forward by both sides and produce a written determination. In some cases it was necessary for me to ask Caranua and/or the appellant to address specific supplementary questions about the appeal and this would have extended the time taken to complete such appeals.

Looking at the total time taken to process appeals, 22 (24%) were completed in 13 weeks or less, a further 39 (42%) were completed in 13-26 weeks, a further 20 (21%) were completed in 26-39 weeks and a further 12 (13%) were completed in 39 weeks or more.

In summary, 87% of appeals were completed in nine months or less and three appeals took just over one year to complete. These longer completion times as compared to previous

years are due to the increased complexity of some appeals together with an 87% rise in the number of appeals received during the period covered by this Report.

## PERCENTAGE OF CASES COMPLETED (WEEKS)



### *Oral Hearings*

The Appeals Regulations state that where the Appeals Officer is of the opinion that an appeal may properly be determined without an oral hearing, he or she may determine the appeal without such a hearing. I considered that all cases which came before me could be properly determined without an oral hearing.

### *Appeals to the High Court*

One of the cases completed during the year was appealed to the High Court.

The case related to a man's application for a bathroom and bedroom extension to his two storey home which Caranua refused because it did not consider that an extension was necessary to enable him to stay in his home and also on grounds of excessive cost. I upheld Caranua's decision. However, I noted Caranua's observation that the man's difficulty in using the stairs might potentially be addressed through provision of a stair lift and I suggested that he pursue this option with Caranua along with the matter of necessary appropriate modifications to his bathroom.

The man's solicitors referred my decision to the High Court "due to an error(s) of law" and sought to have it replaced by a decision of the High Court or, in the alternative, remitted to me for a fresh decision. Following a settlement ruled upon by the High Court in relation to

my decision, which decision, by agreement, was set aside, I completed a fresh review of the man's appeal.

While I found that Caranua had not properly applied the criteria relating to the man's application for an extension, neither did I have sufficient evidence to conclude that an extension was necessary, given his overall circumstances. I referred his case back to Caranua and I asked it to (a) explore with the man and his local authority the possibility of relocating him and his family to a safer and more secure neighbourhood and (b) to examine the feasibility of addressing his needs through the provision of a vertical lift and modifications to his bathroom. In the event that neither of these options proved feasible, I asked Caranua to review the application for an extension in the light of my findings about the manner in which it had applied the criteria relating to extensions. With the man's permission, Caranua has been in touch with his local authority regarding the possibility of relocation and is awaiting a response.

## **Chapter 3: Issues Arising from Appeals**

### ***The Caranua Guidelines and Applicants' Expectations***

As I mentioned in last year's Annual Report, some appellants felt that the Caranua Guidelines booklet (May 2014 edition) and application form raised their expectations about what they could apply for and that this was not matched by their personal experience with the treatment of their individual applications. This matter continued to feature in appeals received in 2016, again, particularly in relation to applications for home improvements. Typically, applicants felt they were encouraged by the Guidelines booklet to apply for such services only to find that there were very strict and specific conditions attaching to the approval of such applications. For example, applications for garden clearing and minor repairs were refused where there was no evidence of their being elderly or having mobility issues whereas it was not immediately apparent from the Guidelines that such conditions applied. Applications for house rewiring and replacement internal doors (as opposed to external doors) were also refused although they were not specifically mentioned in the Guidelines as being excluded from funding.

I had previously pointed out to Caranua that greater clarity in the Guidelines might have led to a better understanding among such applicants of the reasons why their applications had been refused and avoided the incidence of what are, in many cases, pointless and fruitless appeals. Admittedly, a revision of the scheme Guidelines and application form which came into effect in June 2016 gives a clearer picture of the conditions attaching to applications for support. Some goods and services which were previously excluded are now included (for example, household goods and funeral expenses), however, there is now an upper limit of €15,000 on the value of services that can be approved in each case. This means that, in practice, substantial works such as kitchen/bathroom extensions are no longer supported by the Fund. I acknowledge that with the management of the Fund now in its fourth year, a key concern of Caranua is to ensure that it is distributed widely among all 15,000 eligible survivors, particularly those who have not yet applied for support, and the new Guidelines are intended to assist in this regard. While I welcome the increased clarity of the new Guidelines, I have dealt with very few appeals under them and for this reason I am unable to express a view as to how they are perceived by appellants.

## ***Difficulties in contacting Caranua***

Some appellants referred to difficulties in contacting Caranua to enquire about progress on their application and of high staff turnover resulting in problems with contacting and engaging with their advisor. Specifically, there were complaints of difficulty in contacting an advisor by telephone, that voice messages were not returned and that appellants' were not informed that their advisor had left and had been replaced by a new advisor. Some appellants commented that they were informed that they no longer had an advisor assigned to them. Some of these service delivery problems seem to have originated from Caranua's policy of prioritising applications, or its "completions policy", which is discussed in the next section of this Report.

Having regard to the small number of appellants relative to the total number of applicants who engage with Caranua, I have no evidence to suggest that these complaints are symptomatic of a more widespread problem. However, I cannot overstate the deep sense of frustration and annoyance expressed by some appellants at the quality of the service they received from Caranua, which, in some cases, was supported by evidence submitted to me along with their appeal. My remit does not cover complaints about service delivery and Caranua's response, on seeing the issues raised by these appellants, was to invite them to make a complaint to it, separately from the substantive issue in their appeal, about the manner in which they were they had been treated. Thus, as I can reflect only the appellants' perspectives, I make no judgement on the veracity of these complaints.

I acknowledge that 2015, in particular, was a very busy year for Caranua with high staff turnover and that many of the issues raised by my appellants date back to that time. I also acknowledge that it was not until mid 2016 that Caranua had in place its full complement of staff. Hopefully, the additional staff resources, coupled with the learning from individual complaints, will leave appellants with less cause to complain in the future.

## ***Caranua's Policy of prioritising Applications***

### **Background**

I first referred to this issue in last year's Annual Report and, without doubt, it has been the most common and most serious source of difficulty for some unsuccessful applicants and also for the Appeals Office throughout the past year. The following extract from last year's Report explains the background to the matter.

*"In late 2015 Caranua began writing to applicants who had previously received support to advise them that it considered their latest application "to be completed". It went on to say that "for the foreseeable future we will be prioritising applications who (sic) have yet to benefit from the Fund and will not be in a position to consider applications from anyone whose application has been completed".*

*This letter was also sent to at least some appellants and caused considerable confusion as many of them assumed that the effect of the letter was to bring to an end any further consideration of their appeal. When I pointed this out to Caranua, it confirmed that the letter was not intended for applicants with live appeals and undertook to make this clear when writing to such appellants about this matter in the future.*

*More importantly, however, this policy of prioritising applications raised very serious issues for the affected applicants about their right to lodge an appeal in respect of Caranua's decision not to consider their application. An advocate wrote to me enclosing copies of letters she had sent to Caranua on behalf of applicants she represented who were affected by*

*this policy. Among the points she made was that postponing consideration of applications was a breach of the Residential Institutions Statutory Fund Act 2012 , that there was a clear statutory duty on Caranua to process applications and that in devising its prioritisation policy it was acting beyond the scope of its powers. Furthermore, she noted that the decision not to process further applications was not accompanied by information on how to lodge an appeal with the result that the applicants were left with no further remedy. For its part, Caranua has stated that its prioritisation policy accords with the provisions of the Act.*

*While I note Caranua's position on the matter, at the time of writing, I had not dealt with an appeal touching on this policy and for this reason I do not propose to comment in detail on it at this point. However, without prejudice to Caranua's position, some basic general principles are worth stating. While I can understand Caranua's desire to ensure that the Fund is distributed as widely as possible among eligible applicants, it is obliged to do this in a manner which is consistent with its statutory remit as provided for in the Residential Institutions Statutory Fund Act 2012. The essence of Caranua's statutory remit is to assess individual applications for approved services by reference to the provisions of the Act and published criteria and in the case of unsuccessful applicants, to inform them of the reasons why their application was unsuccessful and how they can go about lodging an appeal."*

I can confirm that Caranua wrote to those appellants whose appeals were already in train and who had received a "completion" letter and it confirmed to them that processing of their appeal was not affected by this letter.

Meanwhile, 14 applicants who had received a completion letter approached the Appeals Office seeking to initiate appeals in respect of the outstanding unapproved items on their applications. However, the completion letter did not state that their application had been refused nor did it advise them of their right to lodge an appeal. In order to admit an appeal, I require the unsuccessful applicant to furnish me with a copy of a decision letter from Caranua which outlines its decision in respect of the application and the reasons therefor, together with information regarding the making of an appeal. This requirement stems from section 20(8) of the Residential Institutions Statutory Fund Act 2012. I considered that the completion letter issued by Caranua did not meet the Act's requirements in this regard. I asked the would-be appellants to request a formal decision letter from Caranua and when this was not forthcoming, I wrote to Caranua on their behalf. Caranua subsequently wrote to the would-be appellants and, as a result, I was able to admit their appeals. Caranua also acknowledged that, initially, due to a misunderstanding on its part, it had not advised recipients of the completion letter of their right to appeal but that it had since rectified this and refers to the right of appeal in all letters about completion.

On 1 June 2016, Caranua implemented new Guidelines which, among other things, introduced an upper limit of €15,000 on the value of services that can be provided to each applicant. Caranua has informed me that, as time and resources permit, repeat applications continue to be considered in accordance with its completions policy but with the additional consideration of the upper financial limit now in place. Without expressing a view on the size of the financial limit, it should, at least, assist in bringing greater transparency and probity to the completions policy as it is clearly flagged and forms part of the most recently published Guidelines.

One of the consequences of the completions policy is that it makes it more difficult for applicants affected by it to continue to communicate with Caranua. It appears that, as soon as Caranua decides to complete an application, the applicant concerned no longer has an assigned advisor and thus, in the event of the applicant seeking to dispute this decision, no one in Caranua continues to have specific ownership of the case. The problem was even more severe for those applicants who were not advised in the completion letter of their right

to appeal. I already alluded to this issue in the previous section of this Report (“Difficulties in contacting Caranua”) and, indeed, it was a feature of the one appeal I dealt with where the completion policy was the core issue and which is summarised below. This case also includes my views on the completion policy itself.

## **Completion Letter Case Summary**

A woman applied to Caranua for a range of goods and services relating to health, housing and education support. Caranua approved and funded a number of these items but eight months later, it informed her that her application was “completed based on what your needs are” and stated that “if your needs change in the future you are welcome to reapply and your application shall be dealt with in the date order of it being received”. This meant that Caranua would no longer consider funding the outstanding items on her application form but neither did it formally refuse to approve them. Caranua explained that it was at that time giving priority to applicants who had yet to receive assistance in order to ensure that the Fund was managed fairly for the benefit of everyone who could apply. Among the outstanding items on her application were doors/windows/guttering, dental costs and a ground floor extension. Despite her repeated requests, save in the case of her application for an extension, Caranua did not issue her with a formal decision letter refusing the items. In her appeal she was seeking to have consideration of these items reopened and the refusal of her extension reviewed.

I did not uphold the woman’s appeal for an extension although I did revoke Caranua’s decision not to reimburse her for surveyor costs she incurred in having plans for the extension drawn up. With regard to Caranua’s policy of completing applications in this manner, I acknowledged that in the context of the limited and diminishing nature of the Fund the aims of the policy were entirely reasonable. However, in implementing the policy, I considered it important that existing applicants were also treated fairly and in a proper manner having regard to the provisions of the Act. In this context, I found that the decision to complete the woman’s application was problematic on three fronts.

First, the Caranua Guidelines and criteria under which her application was considered make no reference to the policy of completing applications. I found that in introducing this policy, Caranua was not acting in accordance with its own then current Guidelines and criteria (May 2014 edition). While I accepted that the Act would enable Caranua to introduce such a policy, the Act would also oblige Caranua to develop and publish the criteria which it would use when deciding to complete applications. While Caranua informed the woman and other applicants of this policy, it did not develop and publish relevant criteria. The Act states quite clearly that Caranua may amend or revoke criteria but it also states that the criteria shall be made available on request to any person and shall be published. Criteria attaching to completion of applications were not mentioned in the guidelines published by Caranua.

Second, while Caranua explained to the woman (and to other applicants) the reasons why it had introduced this policy, it failed to explain to her the reasons why it was suspending further consideration of specific items on her application. Crucially, it did not discuss with her its decision to complete the application in advance of communicating the decision to her. Rather, she was informed that her application was “completed based on what your needs are”. However, it was entirely unclear to the woman how Caranua concluded that she had needs in one area which it assessed as more important than needs in another area and there were no published guidelines or criteria that she could consult to assist her in this regard. The woman was also left without an assigned advisor.

Third, other than in the case of her application for an extension, Caranua did not issue her with formal refusal letters in respect of the uncompleted items on her application, nor did it advise her of her right to lodge an appeal. Last year, in separate general correspondence that I had with Caranua in relation to its completion policy, it acknowledged that due to a misunderstanding on its part, initially, it did not advise applicants receiving a completion letter of their right to appeal against the decision. It added that it had since rectified this and referred from then on to the right to appeal in all letters about completion. It was unfortunate that Caranua had not implemented this correction at the time of woman's application as it might have averted the heated exchanges that took place between her and Caranua and the voluminous correspondence (over 200 pages) which accompanied her letter of appeal.

I take the view that the essence of Caranua's statutory remit is to assess individual applications for approved services by reference to the provisions of the Act and published criteria and in the case of unsuccessful applicants, to inform them of the reasons why their application was unsuccessful and how they can go about lodging an appeal. Normally, before accepting an appeal, I require an applicant to furnish me with a refusal letter from Caranua. However, in the light of its amended position on completion letters, I took it that Caranua would accept that it should have provided the woman with a letter advising her of her right to appeal. For this reason and for the other reasons already outlined, I proceeded to determine her appeal in relation to the outstanding items on her application.

In the event, as I did not have sufficient detail about the individual items, I was unable to come to any conclusion about the merits of the application. Thus, I asked Caranua to assign an advisor to the woman and to examine the application in detail by reference to the May 2014 Guidelines. In the event that Caranua decided not to approve one or more of these items I asked it to provide the woman with a formal refusal letter in respect of each such item. Caranua has since processed the woman's invoice for surveyor costs and is awaiting documentation from her in relation to dental costs. The other outstanding items are being explored by her applications advisor.

### ***Assisting Survivors to engage with Caranua and the Appeals Process***

I am aware that, of late, Caranua has been subjected to considerable scrutiny both by the media and the Oireachtas, and in my Annual Reports I have attempted to give further insights into Caranua's approach to deciding on applications and into the administration of the appeals process. In my view, the task of administering the Fund is a particularly difficult one as the legislation under which Caranua operates contains few of the precise qualifying terms and conditions that are characteristic of other public schemes and programmes. The finite and diminishing nature of the Fund and the need to ensure fairness and equity in its distribution to eligible survivors are further challenges. And, indeed, these difficulties and challenges also form the background to the determination of individual appeals.

My experience of dealing with appeals over the past three years shows that there are wide variations in how individual survivors engage with Caranua and, subsequently, with the appeals process. Some are adept at engaging with the Guidelines and application form and marshalling their arguments in support of their case. Others find the process quite intimidating and have difficulty engaging with the need to supply supporting information such as quotations and medical history, often because they are understandably concerned

about potential infringement of their privacy and the risk of revealing their past background. Others still, take a confrontational approach from the outset by expressing their opposition to the concept of the Fund and Caranua's role in administering it and refuse to engage with Caranua's requests for further information in support of their application. Others, sadly, with varying degrees of mental health problems or cognitive abilities find the entire process very difficult as they are not conversant with application forms or, indeed, the point making procedure which characterises the appeals process. Fortunately, at least some of the latter applicants are represented to good effect by advocates.

A key role of Caranua's applications advisors is to assist individual survivors in navigating the applications process and I acknowledge that they do this successfully often under difficult circumstances. Equally, in terms of the appeals process, the Appeals Administration Unit engages regularly and informally with appellants who may be concerned about making an appeal and provides them with the option to speak by phone about the details of their case. That said, I consider that some survivors would benefit from having the support of an advocate to assist them in formulating their appeal and in responding to Caranua's comments thereon. There may also be a role for advocates to assist some survivors with making their application to Caranua. As already mentioned, some survivors are assisted by advocates, but I suspect that usually this is a result of the survivors' or the advocates' initiative. However, recognising the variations in how individual survivors engage with the process and in the interests of equitable distribution of the Fund, I am suggesting that Caranua and the Appeals Office take the initiative, where appropriate, to identify applicants/appellants who need the assistance of an advocate in order to properly present their case.

## ***Chapter 4: Matters raised in last year's Annual Report***

### ***Appeals referred back for further Action***

In last year's Annual Report, I highlighted three appeals that I had referred back to Caranua for reconsideration. As already explained, these are cases where I was not prepared to affirm the decision of Caranua on the application but, rather, asked it to reconsider the application in the light of particular points or evidence which I considered appropriate.

In the first case, I had asked Caranua to reconsider a woman's application for a leather sofa and armchairs. She was suffering from chronic asthma and although her GP had identified her existing cloth covered suite as a contributory source to her continuing allergic reactions, it was not clear to me whether a leather suite was the only viable solution to her condition. Caranua sought more information from the woman in relation to her medical need for a leather suite. Both Caranua and the woman were in contact with the Asthma Society of Ireland regarding the effects of a cloth covered suite on an asthma sufferer over time. To date, the woman has not pursued her application any further although she has applied to Caranua for funding for other services.

In the second case, Caranua refused a man's application for travel expenses in connection with a family tracing quest on the grounds that it cannot pay for long distance travel. It was the man's intention to conclusively establish his identity by means of DNA testing in the country he was proposing to visit. Caranua argued that the DNA testing could be safely and securely administered in Ireland whereas the man strongly contested this assertion with supporting reasons. I asked Caranua to reconsider the case and to have full regard to the man's arguments as to why the DNA testing should be administered in the country of his visit and, in the event that the testing could not be safely and securely administered in Ireland, to

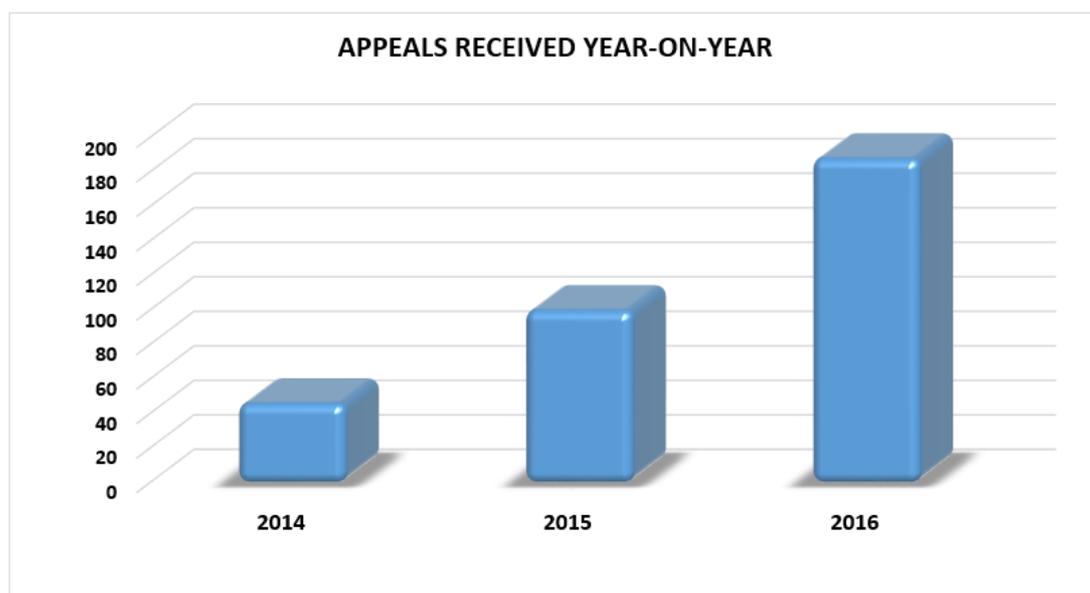
agree an appropriate level of funding for travel to the country concerned. Caranua processed the application for the DNA test and reached an agreement with the man covering legal, court and DNA blood test costs.

In the third case, Caranua had refused a man's application for laser eye surgery on the grounds that it is considered to be cosmetic and specifically excluded from the Guidelines. The man contended that if laser eye surgery was recommended to save his sight and improve the quality of his life, it should not be classed as cosmetic. I asked Caranua to commission a more detailed assessment of his medical condition and to evaluate whether laser eye surgery was necessary on health grounds in his case. Caranua contacted the Association of Optometrists and established that the man's eye clinic carries out only cosmetic surgery. Caranua advised him to contact his optician to confirm if medical laser eye surgery was necessary in which case he could be referred to the public health system for treatment. In the event that the treatment was not available through the HSE, Caranua undertook to reconsider funding the medical laser surgery, provided it was necessary to save his sight.

## Chapter 5: Appeals Statistics

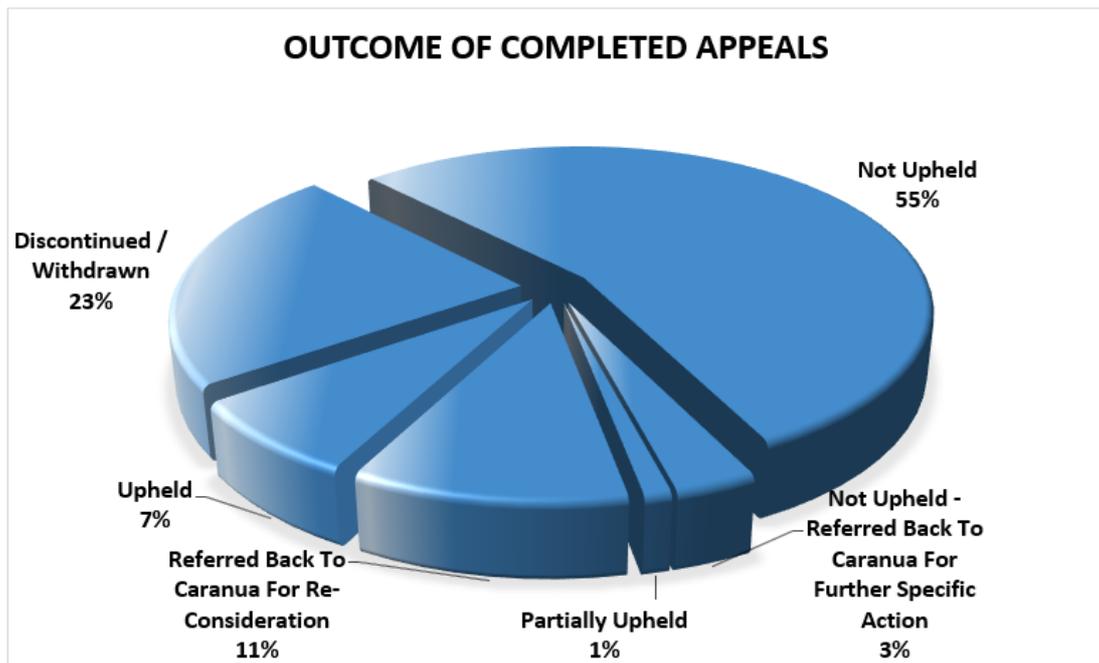
### *Number of Appeals received*

A total of 189 appeals were received in the 15 month period up to 30 April 2017 ("2016" in the chart below) and 44 were carried forward from 2015 giving a total of 233 appeals for consideration as compared with 108 appeals in the previous year. A total of 93 cases were completed and 140 were carried forward to 2017 (Note: The 2015 Annual Report shows 99 appeals received in 2015 and 42 carried forward to 2016. These figures have been adjusted to 101 and 44, respectively, to reflect two cases each of which actually consisted of two separate appeals.)



### ***Outcome of completed Appeals***

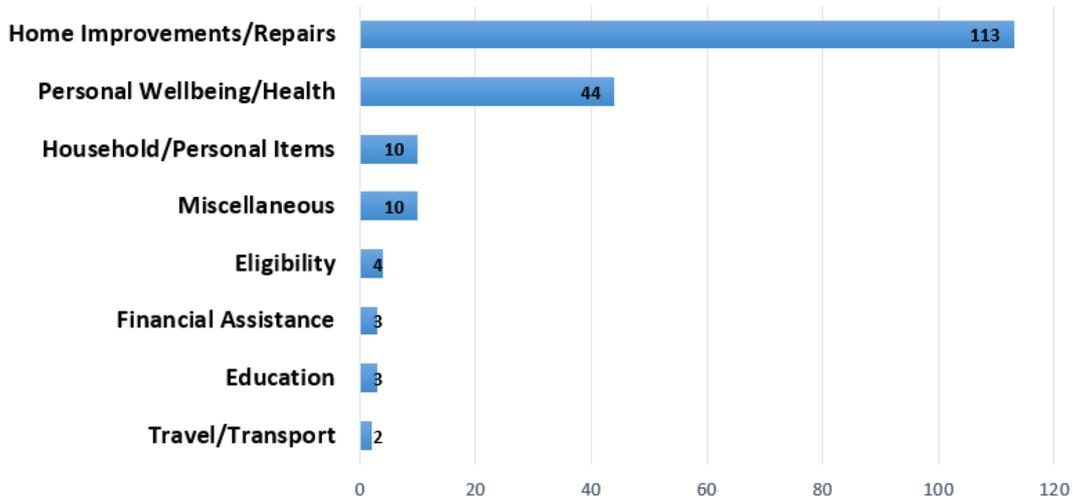
Of the 93 cases completed, seven (8%) were upheld (that is, the original decision on the application was revoked by the Appeals Officer), one (1%) was partially upheld, 10 (11%) were referred back to Caranua for reconsideration in accordance with specific directions from the Appeals Officer, 51 (55%) were not upheld (that is, the original decision was affirmed by the Appeals Officer), a further three (3%) were not upheld but referred back to Caranua for further specific action and 21 (22%) were either discontinued or withdrawn.



### ***Subject Matter of Appeals***

Of the 189 appeals received, 113 related to home improvements or repairs, 44 related to personal wellbeing/health matters, 10 related to household/personal items, 10 were miscellaneous items (for example, applications for more than one service), 4 related to eligibility of the applicant for assistance, 3 related to financial assistance (for example, mortgage or rent arrears), 3 related to education and 2 appeals related to travel expenses or transport.

### SUBJECT MATTER OF APPEALS RECEIVED

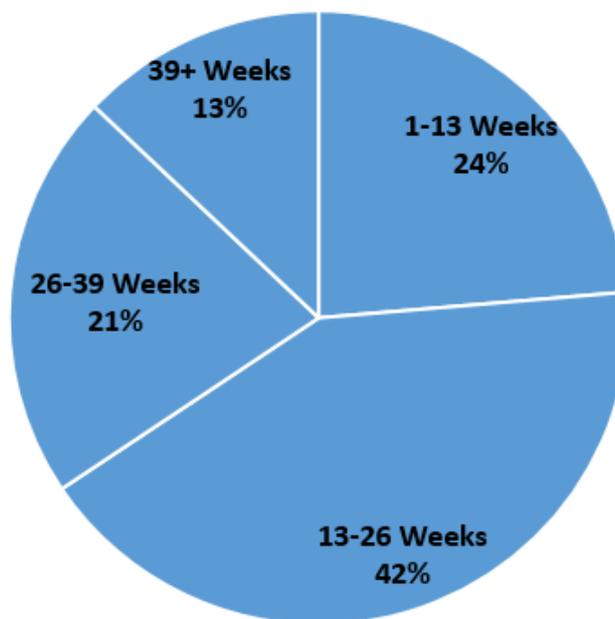


### *Time taken to deal with Appeals*

Looking at the total time taken to process appeals, 22 (24%) were completed in 13 weeks or less, a further 39 (42%) were completed in 13-26 weeks, a further 20 (21%) were completed in 26-39 weeks and a further 12 (13%) were completed in 39 weeks or more.

In summary, 87% of appeals were completed in nine months or less and three appeals took just over one year to complete. These longer completion times as compared to previous years are due to the increased complexity of some appeals together with an 87% rise in the number of appeals received during the period covered by this Report.

### PERCENTAGE OF CASES COMPLETED (WEEKS)



## Appendix 1

### Caranua Appeals

#### What decisions of the Caranua can be appealed?

Decisions made by a Caranua Decision Maker can be appealed to the independent Caranua Appeals Officer appointed by the Minister for Education and Skills. These decisions include

- a decision on an application made by an eligible former residents for assistance and
- a decision that a person is not a former resident eligible to apply under the scheme

#### How do I appeal?

If you are unhappy with a Decision Maker's decision you should appeal within 30 days of the Decision Maker giving notice of a decision being made. In certain circumstances the Appeals Officer can agree to this period being extended by a further 30 days if the Appeals Officer is satisfied that the person making the appeal has given reasonable cause for doing so.

You must make your appeal in writing and include all of the following documents:

- A copy of the decision of the Caranua Decision Maker that is being appealed;
- A full statement setting out your name, address and the grounds on which the appeal is being made. This statement should set out your case fully, explaining why you believe the decision is wrong;
- Any other relevant documents; and
- A list of all documents being submitted.

These documents should be sent by post to:

The Caranua Appeals Officer,  
c/o Department of Education and Skills,  
Cornamaddy,  
Athlone,  
Co. Westmeath

or by email to [caranuaappeals@education.gov.ie](mailto:caranuaappeals@education.gov.ie)

If you want the Appeals Officer to communicate with you by email you should provide the email address you want to be used. If not, the Appeals Officer will write to you at the address you give.

#### What happens next?

When your appeal is received, you will be sent an acknowledgment. A copy of the appeal

will be sent to Caranua for the Deciding Officer to make observations on the points made in the appeal. When these observations are received a copy will be sent to you, the appellant. You will be invited to reply to these observations and if you do a copy of your reply will be sent to Caranua.

### **Can the Appeals Officer look for more information?**

The Appeals Officer can look for further information from you the appellant, or from Caranua or any other person who the Appeals Officer believes is concerned with the matter.

### **How will the Appeals Officer decide on appeals?**

Having received the appeal and the observations from the parties, the Appeals Officer can decide on an appeal without a hearing, where the Appeals Officer believes that it can be decided without a hearing. If not, the Appeals Officer may decide to hold an oral hearing and will invite you, the appellant, to attend.

### **Who will attend a hearing?**

The Appeals Officer will decide the time and place for the hearing and will give reasonable notice to you, the appellant, and to Caranua and any other person that the Appeals Officer believes to be concerned. You can be accompanied at a hearing by a family member. The Appeals Officer can also agree to allow you be accompanied by another person. The Caranua Decision Maker can also attend or with the Appeals Officer's agreement, be represented by another person. Any other person who the Appeal's Officer believes to be concerned can also attend the hearing or with the Appeals Officer's agreement, be represented by another person.

### **Can I be represented at a hearing?**

The Appeals Officer can allow you to be represented by a family member or any other person. However, the Appeals Officer cannot award any costs to you for your representation at an appeal hearing.

The Appeals Officer will decide the procedures to be followed at a hearing and will make every effort to keep the appeal hearing as informal as possible.

### **Can the public attend the hearing?**

No, all appeals will be held in private.

### **Is there a charge for making an appeal?**

No, you do not have to pay anything to make an appeal. The Appeals Officer cannot award you any costs for your expenses in attending an appeal hearing.

### **How will I get the Appeals Officer's decision?**

You will get the Appeals Officer's decision in writing within 14 days of the decision being made. If your appeal is not successful the Appeals Officer will explain why.

## **What decisions can the Appeals Officer make?**

The Appeals Officer can:

- Confirm the Decision Maker's decision;
- Revoke that decision and replace it with a decision he/she considers appropriate; or
- Refer the matter back to the Decision Maker for reconsideration in accordance with such directions as he/she considers appropriate.

## **Is the Appeals Officer's decision final?**

The Appeals Officer's decision is normally final and conclusive. It can be appealed to the High Court by the appellant or by Caranua but only on a point of law. Any such appeal to the High Court must be made no later than 28 days after receipt of the Appeals Officer's decision.