

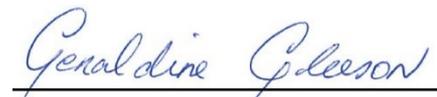
CARANUA APPEALS

Annual Report 2017
of the
Appeals Officers
Appointed under the
Residential Institutions Statutory
Fund Act 2012

Report to the Minister for Education and Skills

We hereby submit our first 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 fourth Annual Report submitted in relation to the Appeals Office since it was established in February 2014.


Brendan O'Leary


Geraldine Gleeson

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Chapter 1: Caranua Appeals

Introduction

We were appointed by the Minister for Education and Skills as Appeals Officers to review decisions of Caranua in relation to applications for assistance from the Residential Institutions Statutory Fund, on 15 May 2017. We are independent of Caranua in the performance of our functions. This is our first Annual Report (fourth Annual Report overall). This Annual Report covers the period from our date of appointment (15 May 2017) to 30 April 2018.

We have been greatly assisted in our 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 our behalf, sometimes in very difficult circumstances, to administer the appeals process efficiently, sensitively and to the highest standards of customer service. His helpful and considerate manner with appellants is particularly noteworthy. We are very grateful to him and we wish to express our appreciation for his support throughout the year. We also wish to thank the staff of the Residential Institutions Redress Unit of the Department for their assistance to us throughout the year.

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 €103 million approx. has been received. 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 helps with their current needs. 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 2017, Caranua had expended a total of €79.95 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 an 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 Redress scheme 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 the Fund was exhausted in 2011.
- 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.
- A Commission of 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.

Appeals Officer Role and Functions

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

The main functions of the Appeals Officer(s) 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, an Appeals Officer is not confined to the grounds on which the original decision was based but may decide the matter 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(s) is/are 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 an 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 an Appeals Officer for determination.

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 or by post at:

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

Chapter 2: The Year's Work

Overview

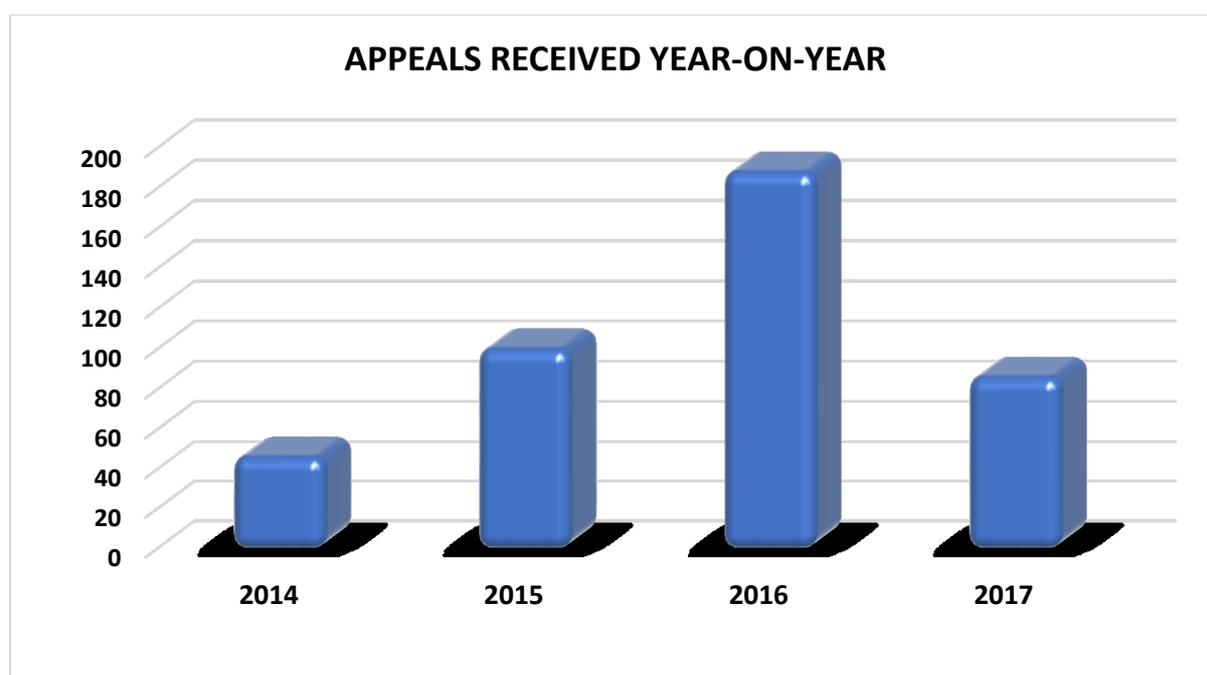
The period from 15 May 2017 to 30 April 2018 saw 87 appeals received. At the end of December 2017, Caranua had received 6,109 applications and had spent €72.5 million approx. in supports to, or on behalf of 4,914 applicants. Administrative costs to the end of 2017 were €7.45 million.

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, perhaps 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 28% of appellants were unsuccessful, 66% received varying degrees of further assistance with their application ranging from the case being referred back to Caranua, partial allowance, up to cancellation of the Caranua decision (43% of appeals upheld), as a result of lodging an appeal while 6% approx. of appeals were discontinued or withdrawn.

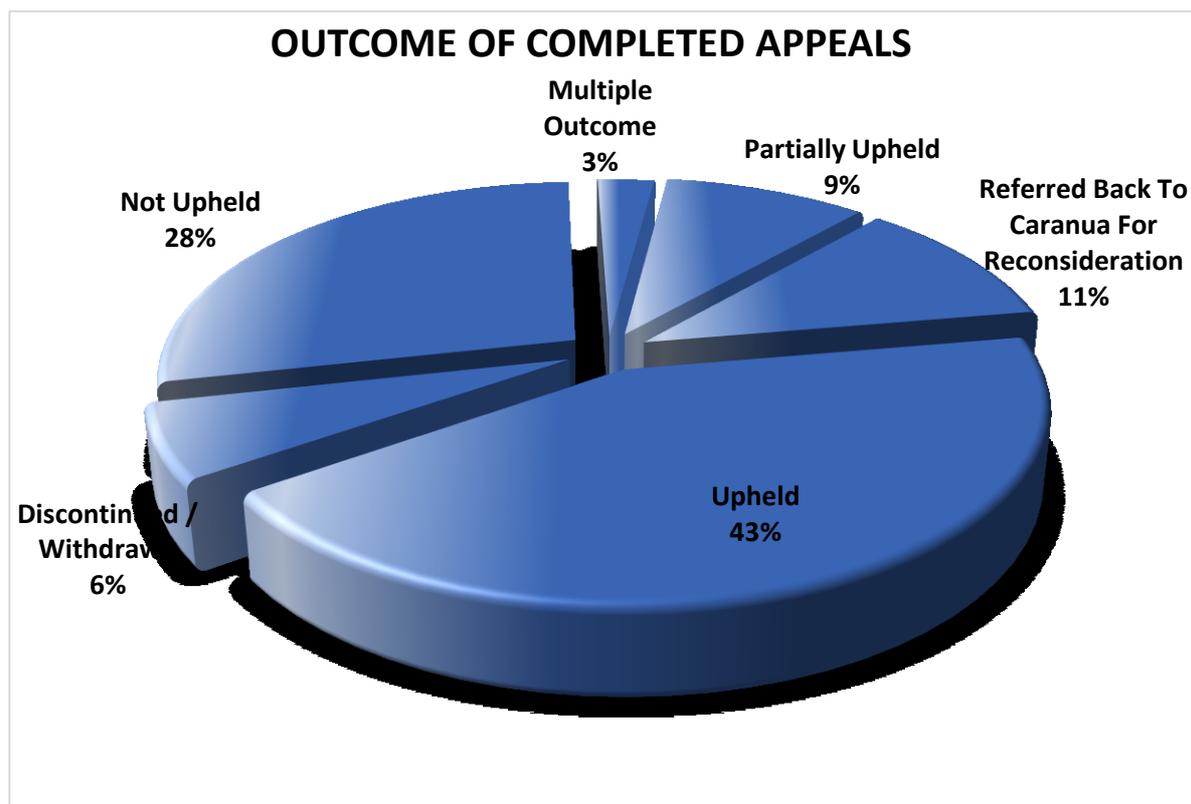
Number of Appeals received

A total of 87 appeals were received in the period covered by this report and 140 were carried forward giving a total of 227 appeals for consideration. 193 cases were completed and 34 were carried forward.



Outcome of completed Appeals

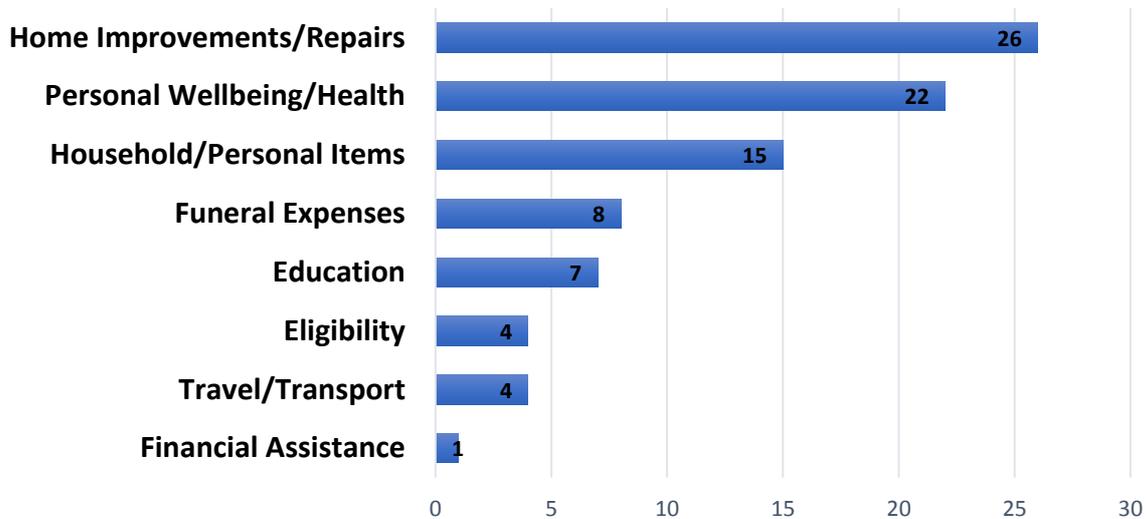
Of the 193 cases completed, eighty three (43%) were upheld (that is, the original decision on the application was revoked by the Appeals Officer), eighteen (9%) were partially upheld and twenty six (14%) were referred back to Caranua for reconsideration in accordance with specific directions from the Appeals Officer. Fifty four (28%) were not upheld (that is, the original decision was affirmed by the Appeals Officer), and twelve (6%) were either discontinued or withdrawn.



Subject Matter of Appeals

Of the 87 appeals received, 26 related to home improvements or repairs, 22 related to personal wellbeing/health matters, 15 related to household/personal items, 8 were funeral expenses, 7 education, 4 eligibility, 4 travel/transport and 1 to financial assistance.

SUBJECT MATTER OF APPEALS RECEIVED



Sample of Appeal Cases

COMPUTER

Caranua refused the application on the basis that provision of a computer was not an approved service. Caranua indicated in correspondence that funding for computers was limited to cases where it was an essential tool for enhancing the day-to-day communication ability of applicants who, without a computer, are not capable of such communication.

The Appeals Officer was of the view that the applicant had advanced significant evidence that without a computer they would be incapable of communication with family, friends and support networks and considered the preponderance of evidence showed that a computer was essential for the applicant's health and wellbeing while Caranua had advanced no evidence that the applicant did not fulfil the relevant criterion.

The Appeals Officer accordingly allowed the appeal.

REPLACEMENT OF GRASS WITH HARD STANDING SURFACE

Caranua refused the application for replacing grass with a hard standing surface on the basis that they could only pay for garden works that address access and mobility issues and are supported by a professional recommendation and that there were no mobility needs identified to warrant such works.

The applicant had problems with his arms and made the application as the replacement of grass would make the garden very low maintenance and would also enhance the appearance of the area.

The Appeals Officer noted that there was no evidence of Caranua having any discussions with the applicant about the requirement for a professional recommendation and invited the applicant to submit such evidence.

The applicant's doctor confirmed the applicant's medical difficulties in relation to garden work and the Appeals Officer noted that the published criterion did not limit garden works to people who have mobility issues and allowed the appeal.

RENT ARREARS

Caranua refused an application for rent arrears on the basis that the guidelines prohibited support for payment of arrears.

The applicant applied for assistance with rent arrears as she was encountering anti-social behaviour where she lived and had applied for a transfer but couldn't be facilitated as there was a requirement that rent be paid up-to-date.

The Appeals Officer, while understanding the applicant's need to move home and to ensure a safe environment for the applicant and her family, pointed out that since the Act specifically prohibited the payment of rent arrears she had no discretion in the matter and therefore disallowed the appeal.

HOUSEHOLD GOODS

Caranua refused an application for household goods on the basis that the 2016 Application Form Part 2 sets out guide limits in the area of household goods. The application exceeded these limits and sufficient grounds had not been provided for the limits to be set aside. Caranua said that while there is flexibility around the guide limits (€2,000 for household goods) there is a limit of €4,000 which is strictly applied.

The applicant said his application had been very modest and he had not sought assistance with other expenditure he would have been entitled to claim. He considered that the household goods sought would significantly increase his quality of life.

The Appeals Officer noted that, in the Applying for Services booklet (2016), it states there is flexibility around the guide limits set out in Application Form Part 2 but there is no indication as to the criteria by which this flexibility would be applied. As the limit of €4,000 was not part of the published criterion the Appeals Officer did not consider to be bound by it and was of the view that any upper limit applicable to a service or flexibility must be published.

Having considered the application, the Appeals Officer was of the view that there was sufficient grounds to allow the appeal in relation to the services sought, subject to the overall personal allocation limit of €15,000.

TREE REMOVAL AND PAVING

Caranua refused an application for tree removal and paving on the basis that they could not pay for work to the garden as there was no evidence of mobility or disability needs which would warrant them supporting the application.

The applicant said the roots of the tree was causing extensive damage to the main water supply and possibly to the sewerage pipes and drains.

The Appeals Officer in considering the application stated he could find no published criterion which limited garden work to people who had mobility issues and wasn't clear where that position emanated from.

The Appeals Officer also considered there was a safety issue involved as the tree was threatening the foundations of the applicant's house and his water supply and having regard

to the guidelines which espoused the aim to make sure a person could stay in their home and be safe, warm and secure there the Appeals Officer was satisfied that the application fitted within the relevant criteria and allowed the appeal.

INTERNAL DOORS

Caranua refused an application for internal doors on the basis that these were outside the scope of the guidelines.

The applicant wanted replacement doors and said that she was not informed that these referred to external doors only.

The Appeals Officer considered the matter to be quite straightforward and noted the fact that Caranua stated they had been consistently interpreting the guidelines as only referring to external doors. The Appeals Officer expressed the view that if the criterion intended to only include external doors it should have said so and considered that since it did not, it included external and internal doors and allowed the appeal.

LASER EYE SURGERY

Caranua refused an application for laser eye surgery on the basis that they could not pay for surgery, dentistry or other treatment that is purely cosmetic and they considered the application made to be cosmetic.

The applicant said he had specific problems with one eye, had worn glasses for a number of years, suffered continually from eye strain and headaches and the surgery was proposed after extensive tests on his eyes. He wished to pursue further education and he felt he could not do so without the surgery and it was having a negative effect on his mental health.

Caranua said the advice they received was that there were two types of laser eye surgery; the first of which was to save sight; the second was cosmetic and only contributed to not having to wear glasses or contacts and there were no sight saving benefits.

The Appeals Officer said that for the appeal to fail the laser eye surgery must be considered to be purely cosmetic. Based on the evidence, in particular the difficulties outlined by the applicant, the Appeals Officer, while accepting that there may have been a cosmetic element to the application, was of the view that it could not be considered to be purely cosmetic and therefore allowed the appeal.

MRI SCANS

Caranua refused an application for MRI scans on the basis that they were unable to pay for services that were completed before the applicant applied to them.

The applicant said he needed MRI scans and was told when he rang that anything medical would be covered so he borrowed money to have the scans done and was applying for repayment of same.

Caranua stated that they could not reasonably give a guarantee that anything medical would be covered and would first need to receive and assess any application for such a service to ensure it fell within the scope of the guidelines.

The Appeals Officer considered that, while the applicant may have felt he was covered for any medical matters, the criterion are very clear that payment cannot be made in respect of services that have already been completed before an application is made. As it was clear that

the applicant had not applied before the scans were completed, the Appeals Officer felt compelled to disallow the appeal.

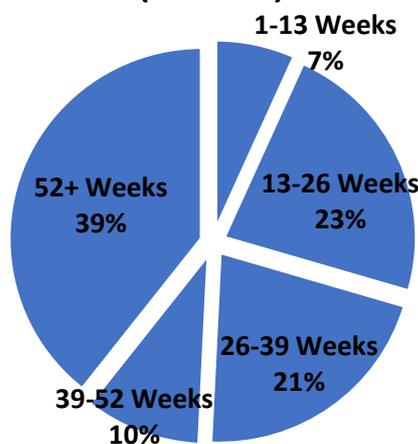
Time taken to deal with Appeals

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 the Appeals Officer 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, 7% were completed in less than 13 weeks, 23% were completed in 13-26 weeks, 21% in 26-39 weeks, 10% in 39-52 weeks and 39% in 52 weeks plus.

**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. The Appeals Officers considered that all cases which came before them could be properly determined without an oral hearing.

Chapter 3 - Issues Arising From Appeals

Personal Allocation Limit

In June 2016, new Guidelines were published by Caranua and introduced, for the first time, a limit on the value of services an applicant may receive. In the new booklet published under the heading “Criteria, terms and conditions”, the following criterion was introduced -

“Values and limits

- The value of services approved cannot exceed €15,000 or £12,000 per applicant. This cannot be exceeded.”

This new limit is described as a “personal allocation limit”.

In implementing this limit, Caranua took account of grants received by an applicant before the introduction of the new criterion. Initially, in cases we decided on this issue, we considered that this interpretation of the new criterion was incorrect as the new criterion did not state that grants made before its introduction were to be included and we were of the view that, had such retrospection been intended by Caranua, then this vital aspect of the new criterion would have been published.

Caranua instigated High Court proceedings challenging one such Appeals decision on the basis that the Board had decided to include such grants. Based on the legal advice received the case was settled by the Appeals Officer. By consent the Court ordered that the Appeals Officer ‘acknowledges that in considering whether an application under the 2016 criteria by a former resident falls within the maximum personal allocation, account is to be taken of all benefits received previously from the Fund by the previous resident.’

On this basis, the Appeals Officers accepted that the Board decision was intended to include moneys paid to applicants before the introduction of the criterion and subsequently decided cases on that basis.

High Court cases were subsequently taken by a number of appellants in relation to decisions regarding the personal allocation limit and these cases are currently before the Court.

Caranua’s Policy of prioritising Applications

Background

This issue was referred to by the previous Appeals Officer in his last two Annual Reports and it has continued to be a source of difficulty for some unsuccessful applicants and also for the current Appeals Officers throughout the past year.

In these type of cases, it would appear that Caranua made an administrative decision to refuse to process further applications from applicants on the basis that they had already received

support and services, in favour of those who had not yet applied or received support. Caranua also went on to state that they must manage the Fund so that it can be shared fairly among all people who can apply to them. The decision not to process further applications was not accompanied by information on how to lodge an appeal with the result that applicants were left with no further remedy.

Policy implications

This is a fund administered under Statute. In accordance with that Statute survivors have the right to apply to the fund for assistance. The applications which Caranua refused to process fell to be considered in accordance with the Residential Institutions Statutory Fund Act 2012 (the Act) and the published criteria and in the case of unsuccessful applicants to inform them of the reasons why their application was not successful and how to go about lodging an appeal.

We consider that the approach of writing to applicants to inform them that it will not be possible to consider further applications, a matter which may not be appealed to the independent Appeals Officers, gives rise to serious concern that applicants may be denied their statutory rights by Caranua on an administrative basis. This would certainly seem to have happened in a number of cases until the matter was brought to the attention of our predecessor. Others may, however, accept the letter at face value and not insist on an appealable decision.

Caranua acknowledged to our predecessor that initially, due to a misunderstanding on its part, it had not advised recipients in 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.

Notwithstanding that, we continued to experience cases on this issue. While these cases may be ones prior to Caranua changing their process, as outlined to our predecessor, we are concerned to ensure that every applicant has his or her application considered in accordance with the legislation and a formal appealable decision made on each such application.

Appendix 1 – How to make an appeal.

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

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?

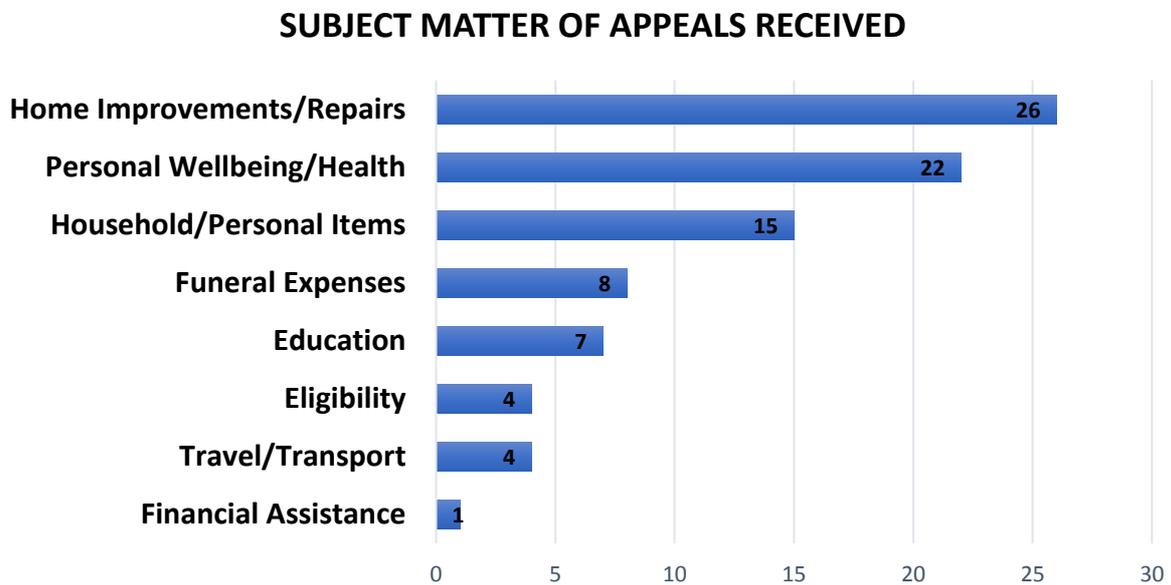
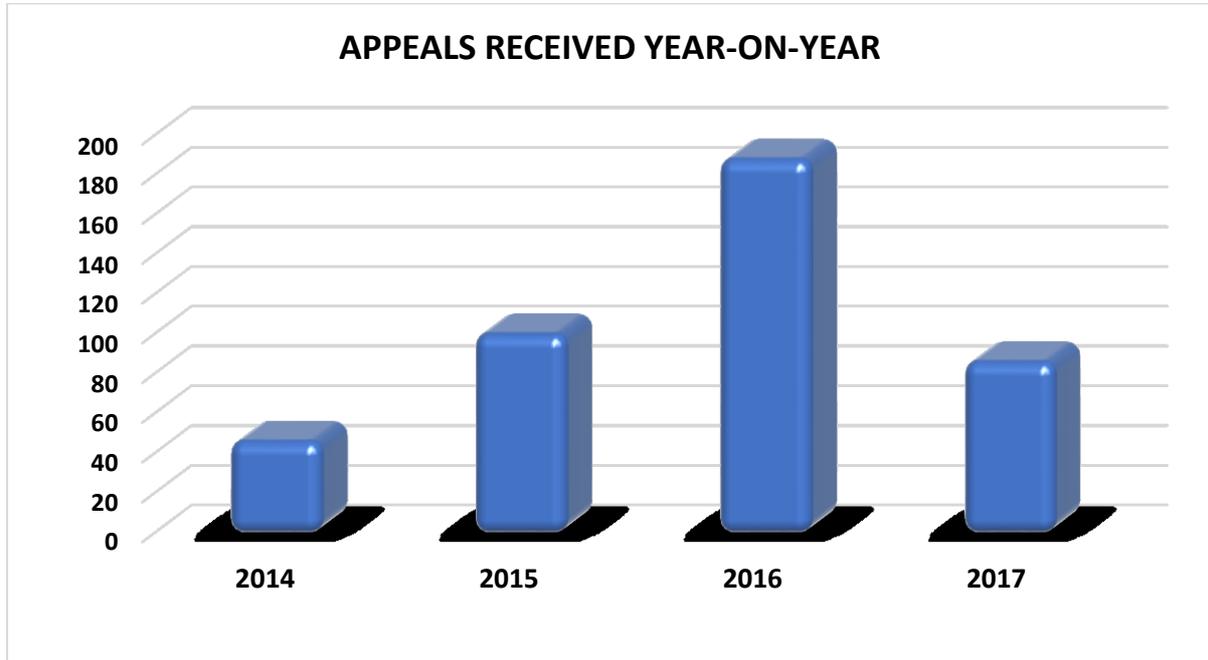
The Appeals Officer can:

- 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.

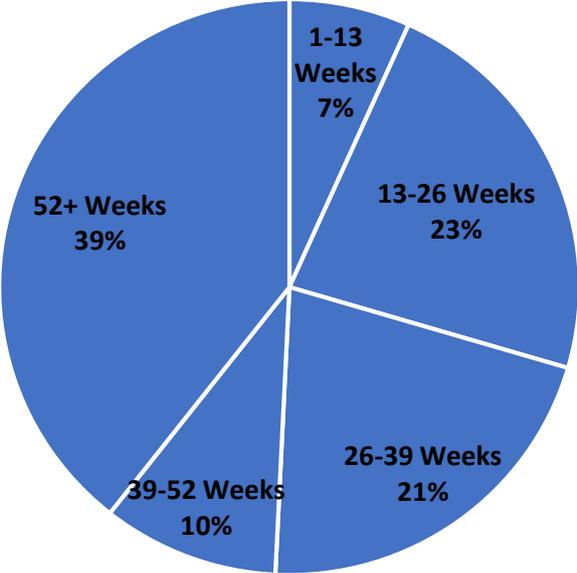
Is the Appeals Officer's decision final?

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.

Appendix 2 – Appeal Statistics



PERCENTAGE OF CASES COMPLETED (WEEKS)



OUTCOME OF COMPLETED APPEALS

