

CARANUA APPEALS

Annual Report 2018
of the
Appeals Officers
Appointed under the
Residential Institutions Statutory
Fund Act 2012

Report to the Minister for Education and Skills

I hereby submit my second 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 fifth Annual Report submitted in relation to the Appeals Office since it was established in February 2014. It covers the period from 1 May 2018 to 30 April 2019.

Ms. Geraldine Gleeson Appeals Officer indicated for personal reasons that she did not wish to be re-appointed and served from 1 May to 15 May 2018 only in relation to the timeframe of this report. She did not make any appeal decisions during that period.

Brendan O'Leary

Contents

Chapter 1: Caranua Appeals	4
Introduction	4
Caranua and the Residential Institutions Statutory Fund	4
Appeals Officer Role and Functions	5
Contacting the Appeals Office	6
Chapter 2: The Year’s Work	7
Overview	7
Number of Appeals received	7
Sample of Appeal Cases	9
Time taken to deal with Appeals	11
Oral Hearings	11
Chapter 3 - Issues Arising From Appeals.....	12
Court Case In Relation to Personal Allocation Limit	12
Implementation of decisions of the Appeals Officer by Caranua.....	12
Not dealing fully with applications/applications being closed without applicant being fully informed	13
Appendix 1 – How to make an appeal.	14
Appendix 2 – Appeal Statistics	17

Chapter 1: Caranua Appeals

Introduction

I was appointed by the Minister for Education and Skills as an Appeals Officer to review decisions of Caranua in relation to applications for assistance from the Residential Institutions Statutory Fund, on 15 May 2017. I am independent of Caranua in the performance of my functions. This is my second Annual Report (fifth Annual Report overall). This Annual Report covers the period from 1 May 2018 to 30 April 2019.

I have been greatly 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 wish to express my appreciation for his support throughout the year. I also wish to thank the staff of the Residential Institutions Redress Unit of the Department for their assistance to me 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 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 March 2019 Caranua had expended a total of €94.2 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 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(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 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(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 1 May 2018 to 30 April 2019 saw 147 appeals received. At the end of March 2019 Caranua had received 6,540 applications and had spent E83.7 million approx. in supports to, or on behalf of 5,971 applicants. Administrative costs to the end of March 2019 were E10.5 million approx.

While a number of appeals are complex, lengthy and time consuming, this year saw a major reduction in the time taken to complete appeals with 60% being dealt with within a 13 week period (and 89% within a 26 week period). Only 5% took over 52 weeks as opposed to 39% in 2017.

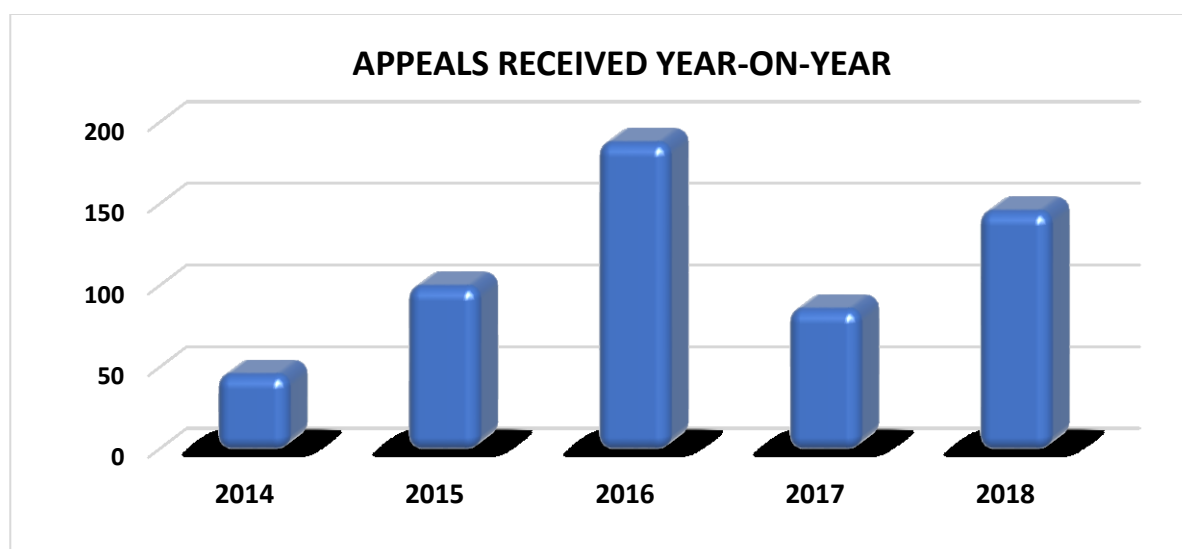
This is partially due to the vast majority of the backlog of appeals having now been dealt with.

While roughly 67% of appellants were unsuccessful, 24% 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 (15% of appeals upheld), as a result of lodging an appeal while 9% approx. of appeals were discontinued or withdrawn.

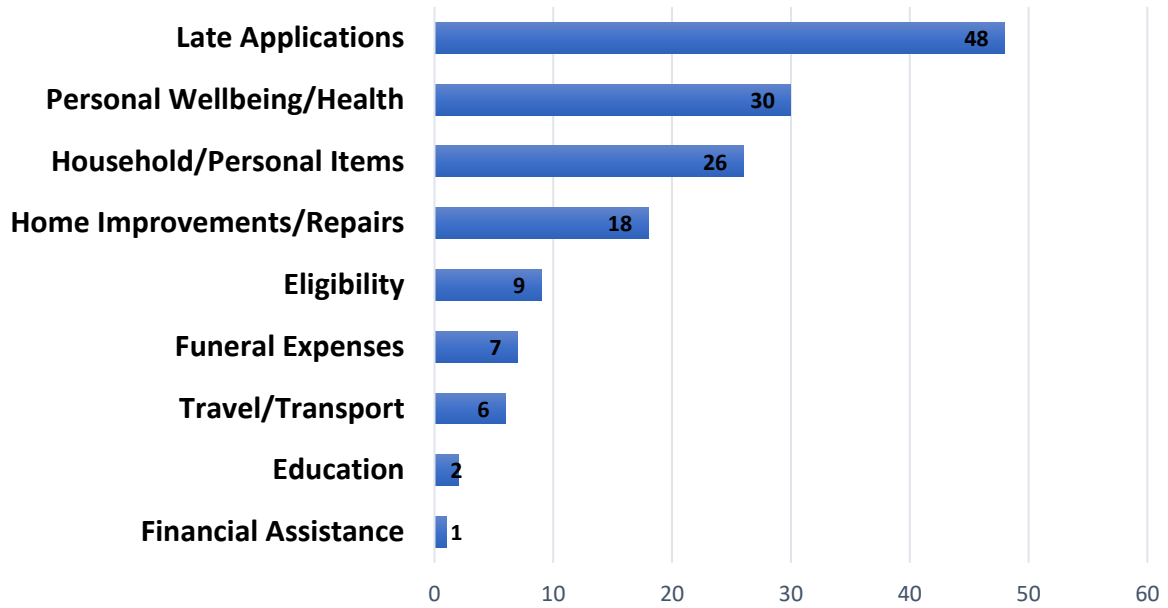
While the number of appeals being upheld has fallen this is partly due to the majority of appeals falling for consideration under the 2016 Guidelines, which are more prescriptive than the 2014 Guidelines.

Number of Appeals received

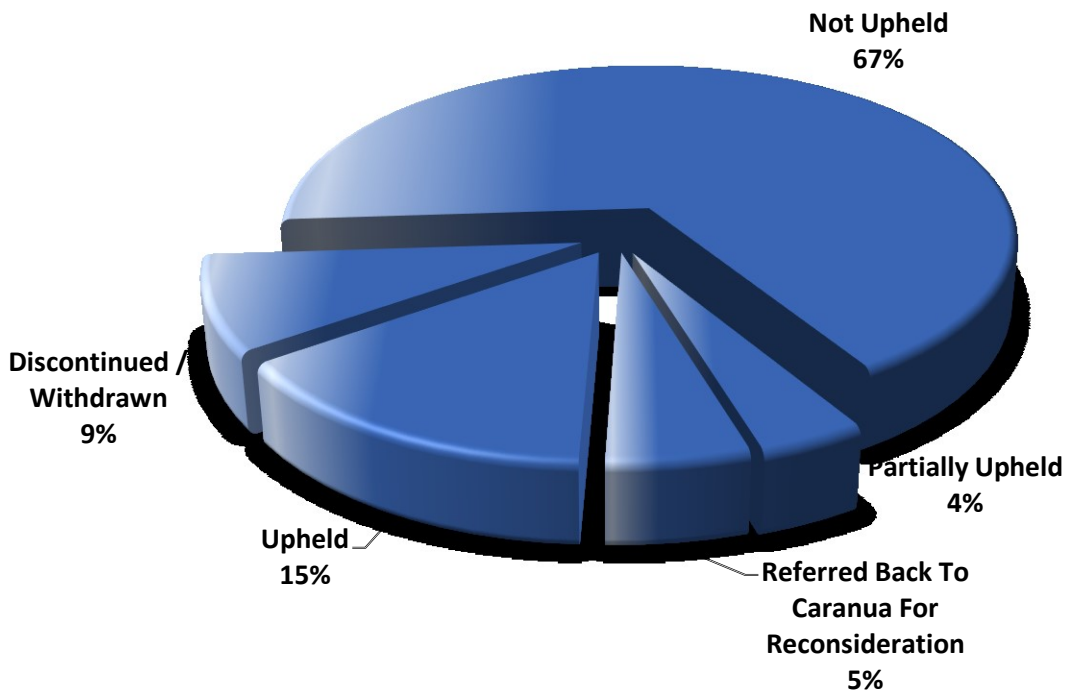
A total of 147 appeals were received in the period covered by this report and 24 were carried forward giving a total of 171 appeals for consideration. 150 cases were completed and 21 were carried forward.



SUBJECT MATTER OF APPEALS RECEIVED



OUTCOME OF COMPLETED APPEALS



Sample of Appeal Cases

ROOF REPAIRS

Caranua refused the application on the basis that they could not pay for roof repairs as it was not an approved service in accordance with the relevant guidelines. The Appeals Officer noted that the Guidelines in relation to Housing Support aimed to ensure that a person should be able to remain in their home and be safe warm and secure there. He considered that the requested repairs to the applicant's roof would be required to allow the applicant to remain there living in safety and comfort. The applicant's GP supported the application on the basis that the problem with dampness affected the applicant's medical conditions. The Appeals Officer accordingly allowed the appeal.

MORTGAGE

Caranua refused the application on the basis that payment of debt (including mortgage) was excluded by the founding legislation. The applicant expressed the view that he should have a say with regards how the money could be spent. The Appeals Officer noted that the legislation specifically excluded mortgage payments and he therefore disallowed the appeal.

GYM MEMBERSHIP

The applicant's request for renewal of his gym membership was turned down by Caranua on the basis that it was received after the 1 August 2018 deadline for applications. It was appealed on the basis that the applicant had suffered a heart attack and also had diabetes and indicated that the gym membership had made a huge difference in relation to his health, both physically and mentally. He submitted evidence from his doctor to that effect. The Appeals Officer while noting that the application had been submitted after the final date also noted the evidence in relation to the general health, the mental health and well-being of the applicant and was of the view that the overall evidence indicated that exceptional circumstances, allied to the relief of hardship did exist as provided for in Section 9(4) of the Act and allowed the appeal on that basis.

The Appeals Officer also advised the applicant that Caranua was given a limited fund to provide financial supports and as this fund was now coming to an end, no further funds for renewal of his gym membership were likely to be available.

FUNDING TO VISIT FAMILY ABROAD

Caranua turned down the applicant's request for funding to visit family members abroad on the basis that his application was received after the 1 August 2018 deadline. Applicant had also received funding in excess of the personal allocation limit of E15,000 introduced in the 2016 Guidelines. As the application was made after the 1 August 2018 and the personal allocation limit had been exceeded the case could only be considered in the context of Section 9(4) of the Act which relates to exceptional circumstances allied to the relief of hardship. The Appeals Officer was of the view that no exceptional circumstances had been shown which would warrant the final application date being extended or the personal allocation limit being breached and upheld the decision of Caranua.

ACCESSIBLE BATHROOM

Caranua turned down the application for an accessible bathroom on the basis that the application was received after 1 June 2016. The 2016 Guidelines introduced a personal allocation limit of E15,000 and the applicant had reached that limit. As the personal allocation limit had been reached the Appeals Officer could only consider the matter in the context of Section 9(4) of the Residential Institutions Statutory Fund Act, 2012 which provides that the relevant criteria can be set aside where exceptional circumstances exist allied to the relief of hardship. The Appeals Officer was of the view that no exceptional circumstances had been shown to exist for the purpose of the relief of hardship and therefore upheld the decision of Caranua.

ORTHOPAEDIC BED

Caranua turned down the application for an orthopaedic bed as they stated they couldn't pay for services that had already been provided. The applicant appealed on the basis that she had scoliosis and as a result had to undergo a number of operations. In that regard she submitted letters of support from her doctor and physiotherapist. Caranua then contended that application had already received funding close to the personal allocation limit of E15,000. The Appeals Officer was persuaded by the medical evidence that exceptional circumstances existed allied to the relief of hardship and considered it appropriate to allow the appeal on that basis.

DENTAL TREATMENT

Caranua turned down an application for dental treatment on the basis that it was purely cosmetic and related to orthodontic work and replacement of a missing tooth. The applicant appealed on the basis that this treatment would make a big difference to his life and would help his confidence. The Appeals Officer decided that for the application to be ruled out it would have to be considered purely cosmetic. He expressed the view that replacement of a tooth could not be deemed to be purely cosmetic and he allowed the appeal.

CAR

Caranua turned down an application for a car on the basis that service did not feature in the 2014 Guidelines and did not fit into any of the categories of Health, Education or Housing Support.

A submission by the applicant contended that the specific aims set out relate, inter alia, to improving the wellbeing of survivors who are eligible for Caranua services and that provision of a car to him would improve his wellbeing in line with the aims of Caranua. It was also suggested that there was nothing in the guidelines to preclude the provision of a car.

The Appeals Officer was of the view that within the guidelines a car could only be considered under assistive technologies and that they related to helping a person remain in their own home. Accordingly he did not believe a car came within the remit of assistive technologies and upheld the decision of Caranua.

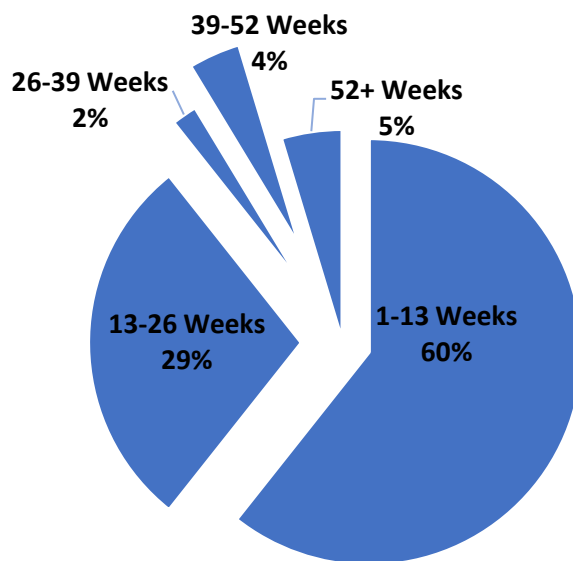
Time taken to deal with Appeals

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 us 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, 60% were completed in less than 13 weeks, 29% were completed in 13-26 weeks, 2% in 26-39 weeks 4% in 39-52 weeks and 5% in 52 weeks plus. This is a big improvement on the 2017 figures with almost 90% of appeals being dealt with within a 26 week period.

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.

Chapter 3 - Issues Arising From Appeals

Court Case In Relation to Personal Allocation Limit

As indicated in last year's Annual Report a number of appellants had taken High Court cases in relation to decisions regarding the personal allocation limit and that these were before the Court at that time.

A High Court decision in relation to the matter was issued by Mr. Justice Garrett Simons on 28 June 2019. The Judgment affirmed the decision of the Appeals Officer and found that Section 9 of the Act confers upon the Board of Caranua express entitlement to prescribe a monetary limit.

The Judge was satisfied that the criteria prescribed by the Board of Caranua in April 2016 was *intra vires* and that the choice made as to the manner in which to allocate the fund was well within the statutory discretion afforded to the Board under the relevant sections of the Act.

Implementation of decisions of the Appeals Officer by Caranua

In a relatively small number of cases problems have arisen in relation to the implementation of decisions made by the Appeals Officer.

In one particular case a decision was made to allow an appeal regarding repairs to a house to alleviate dampness. Following the decision Caranua requested, not unreasonably, that the appellant write to the relevant local authority to ascertain if a grant was available and this was done. However Caranua do not appear to have followed up any further on their original request and the relevant local authority did not reply to the letter..

A representative of the appellant contacted the Appeals Office over 10 months later complaining of inaction in implementing the Appeals Officer's decision.

The Appeals Officer expressed particular concern to Caranua for the delay and drew their attention to page 6 of the 2014 Guidelines that stated that Caranua would only pay for services that were not readily available to an appellant from public bodies like local authorities and the HSE.

The Appeals Officer said that he was of the view that if the local authority was not able to respond to a simple request for information regarding a possible grant in a reasonable time then it could be presumed that such a service was not readily available.

The Appeals Officer requested that the matter should then be dealt with as a matter of great urgency and also asked to be advised when his appeal decision was implemented.

At that stage Caranua implemented his original decision.

Not dealing fully with applications/applications being closed without applicant being fully informed

Issues have arisen where either applications are closed without the applicant being informed and where decisions have not been made on all services applied for.

In one case Caranua appeared to take out one service the applicant applied for and dealt with that, but did not make any decisions in relation to other services applied for and as no decision was made the applicant could therefore not make an appeal. After intervention from the Appeals Office Caranua made a decision on the services sought but not originally dealt with, but it resulted in a significant delay in dealing with the case.

While the number of cases involved is small it is important that every application is fully dealt with and that the applicant gets an appealable decision where any service applied for is not being provided.

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?

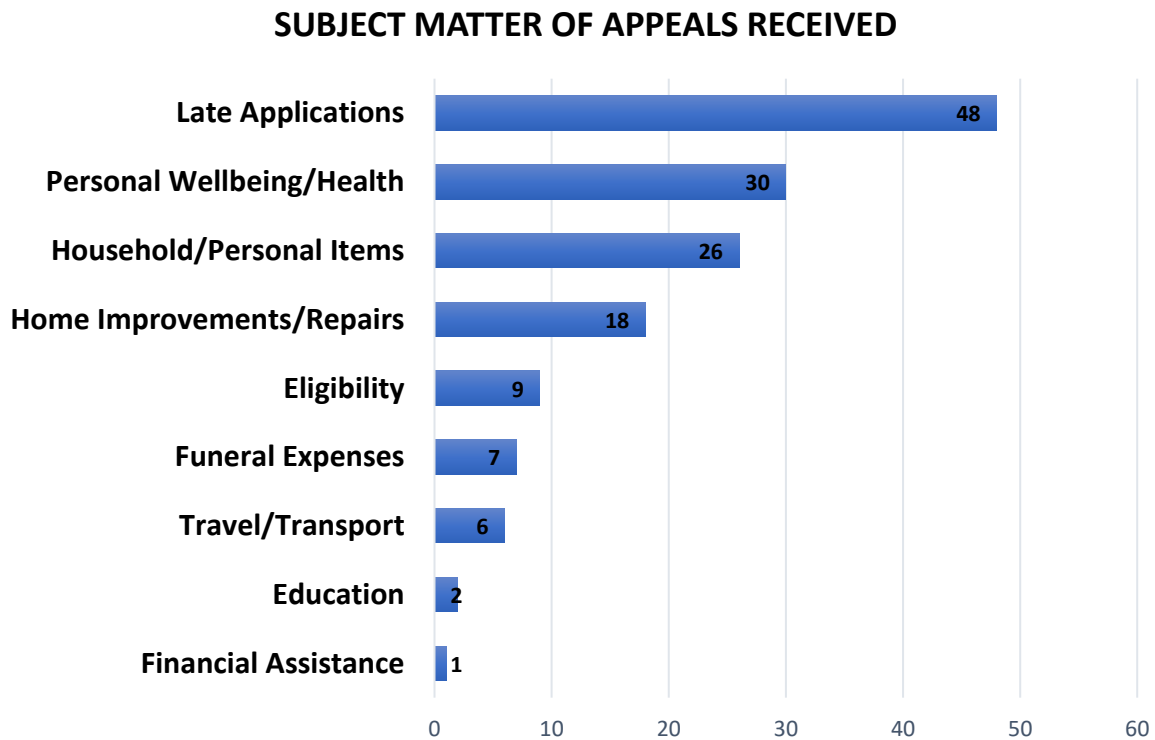
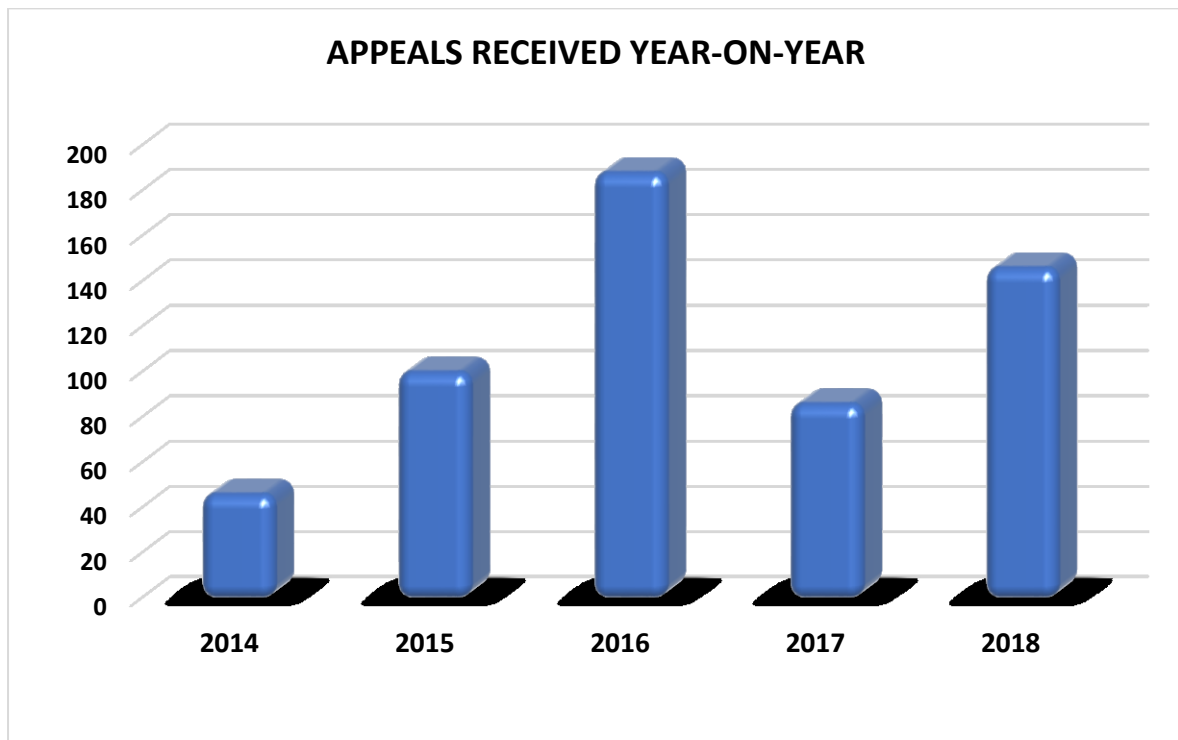
The Appeals Officer can:

- 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.

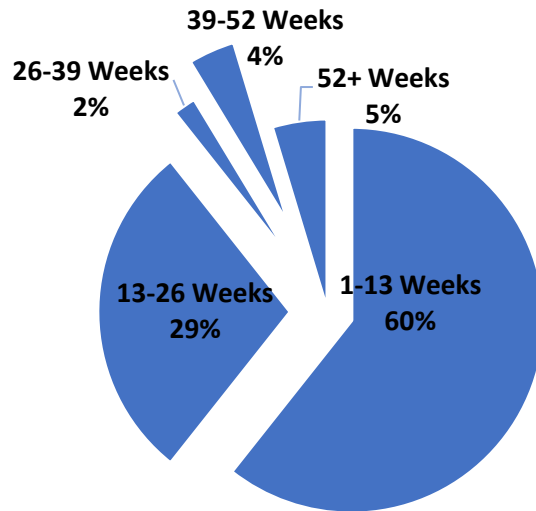
Is the Appeals Officer's decision final?

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

