

CARANUA APPEALS

Annual Report 2019-21
of the
Appeals Officers
Appointed under the
Residential Institutions Statutory
Fund Act 2012

Report to the Minister for Education

I hereby submit my third and final Report (which covers a 22 month period) to the Minister for Education in accordance with section 21(5) of the Residential Institutions Statutory Fund Act 2012. This is the sixth Annual Report submitted in relation to the Appeals Office since it was established in February 2014. It covers the period from 1 May 2019 to 28 February 2021.

Brendan O'Leary

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Chapter 1: Caranua Appeals

Introduction

I was appointed by the Minister for Education 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 third and final Annual Report (sixth Annual Report overall). This Annual Report covers the period from 1 May 2019 to 28 February 2021 (a 22 month period).

I have been greatly assisted in my work by officials from the Department of Education, Mr Steven Darcy and Ms. Marian Collins, who managed the Appeals Administration Unit during the period. Steven and Marian have 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. Their helpful and considerate manner with appellants is particularly noteworthy. I am very grateful to them and I wish to express my appreciation for their support throughout the relevant period. I also wish to thank the staff of the Residential Institutions Redress Unit of the Department for their assistance to me throughout the last 22 months.

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 have pledged €110 million which has been received in full. 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)).

Chapter 2: The Year's Work (22 month period)

Overview

The period from 1 May 2019 to 28 February 2021 saw 186 appeals received. For the period of this report Caranua received 7,742 applications from 2,091 applicants. At the end of December 2020 Caranua had received 62,170 applications overall and had spent €97.4 million approx. in supports to applicants. Administrative costs were €13.5 million approx. This gives an overall expenditure of €110.9 million.

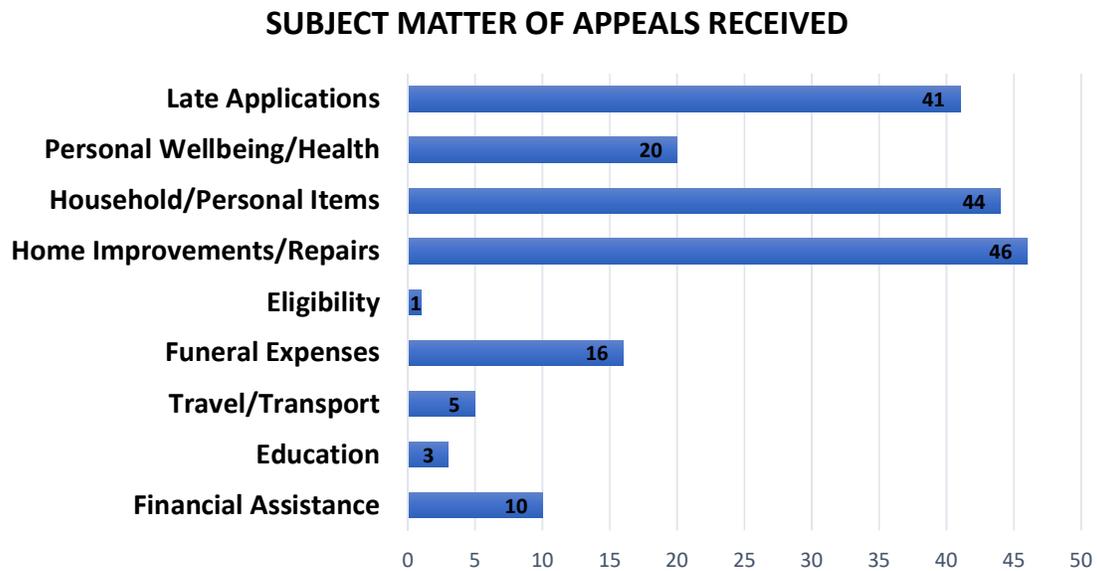
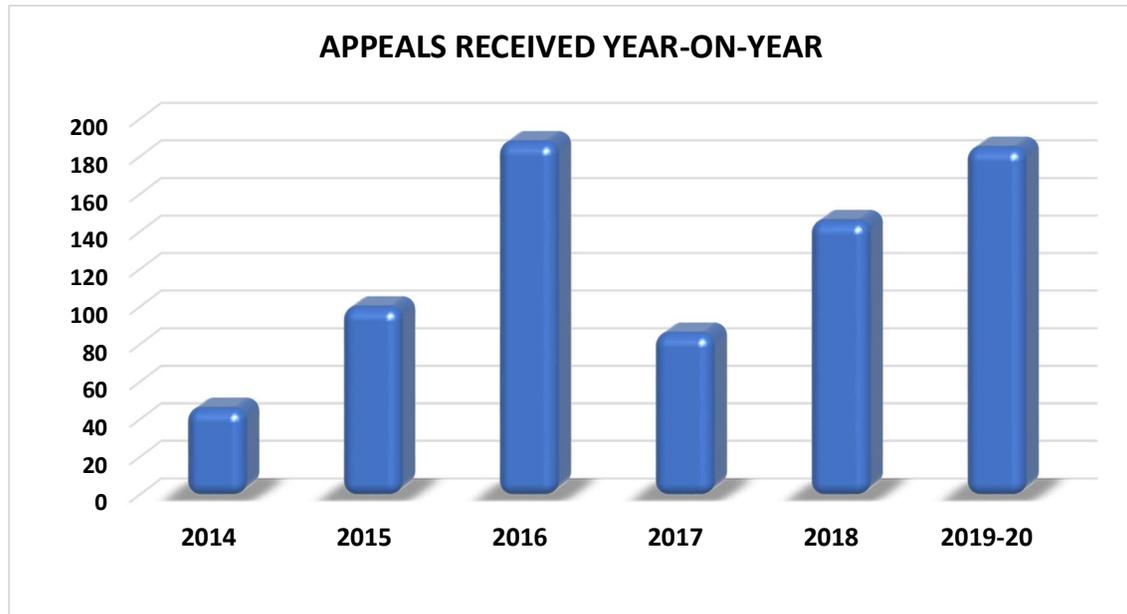
While a number of appeals are complex, lengthy and time consuming, this year saw a further major reduction in the time taken to complete appeals with 88% being dealt with within a 12 week period (and 67% within an 8 week period). Only 3% took over 20 weeks.

While roughly 63% of appellants were unsuccessful, 23% 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 (21% of appeals upheld), as a result of lodging an appeal while 14% approx. of appeals were discontinued or withdrawn.

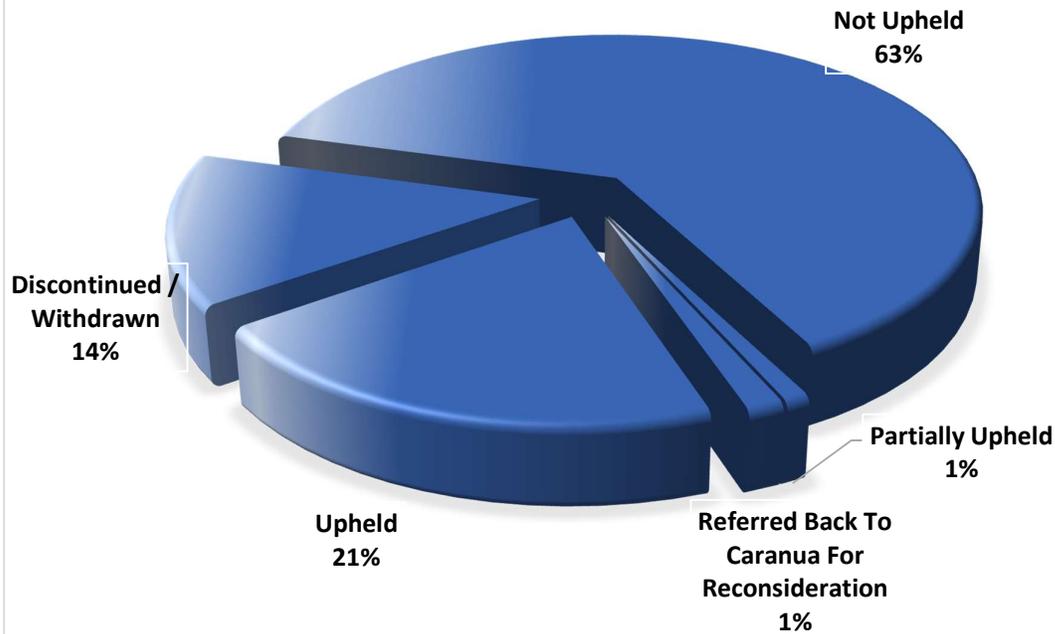
While the number of appeals being upheld has remained static the majority of appeals fell for consideration under the 2016 Guidelines, which are more prescriptive than the 2014 Guidelines.

Number of Appeals received

A total of 186 appeals were received in the period covered by this report and 21 were carried forward giving a total of 207 appeals for consideration. All outstanding appeals before the Appeals Office were decided during the period of this report.



OUTCOME OF COMPLETED APPEALS



Sample of Appeal Cases

REPLACEMENT DOORS AND WINDOWS

Caranua turned down an application for replacement doors and windows on the basis that the applicant was not the property owner nor did he have any guarantee of secured tenancy.

The appeal fell to be considered under the 2016 Guidelines which require that the applicant is the legal tenant or owner of the property. As it was clear that the applicant did not have or would not in the future have a legal right to stay in the property, which was owned by another family member, the Appeals Officer turned down the application.

REPAIR FOLLOWING DISHWASHER LEAK

Caranua turned down an application for repairs following damage caused by a dishwasher leak on the basis that the service was not included in the 2014 Guidelines and did not fit in the category of Housing Support.

The Appeals Officer noted that under the 2014 Guidelines there was no limit to the number of applications that could be made and no financial limits as to what an applicant could receive. He expressed the view that the damage for the leak needed to be addressed so that the applicant could be safe, secure and warm in her home as outlined in the Guidelines and he allowed the appeal.

FLOORING AND ASSOCIATED WORK

Caranua turned down an application for flooring and associated work on the basis that the 2016 Guidelines set out guide limits in the area of Household Goods and this application exceeded the specific limits in place.

In that regard the 2016 Guidelines had set out guide limits of €2,000/£1,500 in relation to Household Goods but had also allowed for flexibility around those guide limits. However in February 2019 the Board of Caranua made a decision to increase the limit for household goods to €5,000/£4,000 but removed the flexibility provision.

As the applicant had already exceeded the €5,000/£4,000 limit in relation to household goods and the Appeals Officer did not consider that the applicant had shown that exceptional circumstances allied to the relief of hardship existed in the case which would have allowed him to set aside the relevant criteria and accordingly the appeal was disallowed.

TREE FELLING

Caranua turned down an application for the felling of trees beside the applicant's house on the basis that the service does not feature in the 2014 Guidelines and didn't fit into any of the relevant categories of Health, Education or Housing Support.

In the 2014 Guidelines, in relation to housing support, Caranua have a stated aim of making sure that an applicant can remain in their home and be safe warm and secure there. The Appeals Officer having considered evidence submitted by a trees surgeon on behalf of the applicant indicating that the trees were a danger to health and safety as they could blow over and damage the house, was of the view that the application came within the scope of the 2014 Guidelines in allowing for the applicant to be warm safe and secure in his home and allowed the appeal.

GLASSES

Caranua refused an application for glasses on the basis that (1) they could only pay for services that were not readily available from public bodies and that the service sought was readily available (2) that they could not pay for services which had already been supplied by Caranua and applicant had received support previously in this area and (3) that a 'personal allocation limit' of €15,000 had been introduced in the 2016 Guidelines and applicant had already received services in excess of this limit.

Applicant indicated that his eyesight had changed and the service needed was no longer available through the public health service and the Appeals Officer accepted that it had not been shown that the service was readily available. The Appeals Officer was also of the view that Caranua were not precluded from giving further support to the applicant because support had been given previously particularly in the context of a situation where the applicant's eyesight had changed and his needs had changed with it.

However as it was clear that the applicant had exceeded the 'personal allocation limit' of €15,000 and as the Appeals Officer did not consider any exceptional circumstances allied to the relief of hardship had been shown by the applicant he disallowed the appeal on that basis.

EYE OPERATION

Caranua turned down an application for funding for a cataract operation on the basis that the application had been made after the final date for receipt of application. Caranua also stated that the application would fall under the 2016 Guidelines and that the applicant had received services in excess of the personal allocation limit of €15,000 introduced in those guidelines. They also stated they couldn't replicate services already available from public bodies.

The applicant provided a letter from his consultant outlining the need for the operation and the cost of same and proof that he was on the waiting list for the procedure. He also indicated that he required the operation urgently as his wife had an illness which necessitated him driving her everywhere she needed to go.

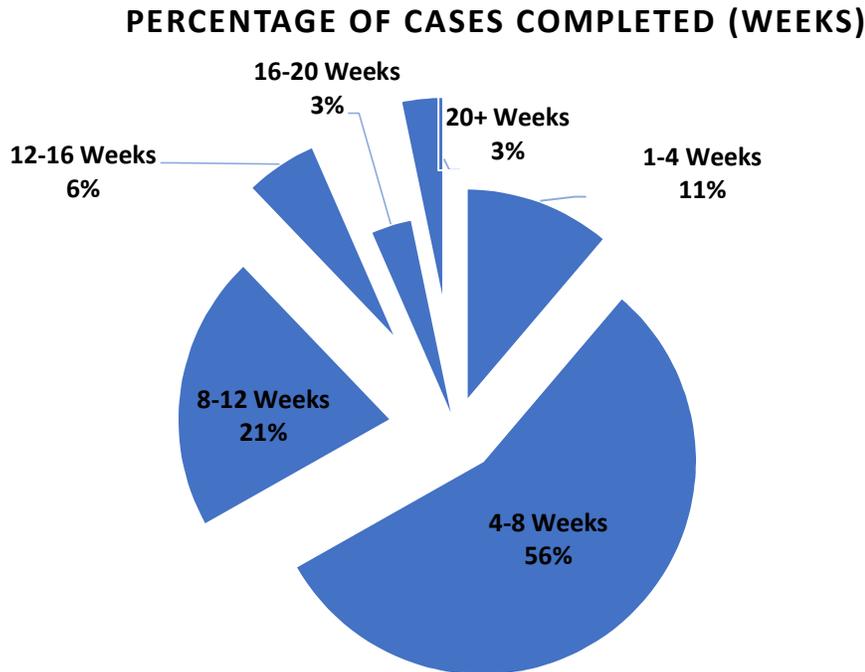
The Appeals Officer noted that the Guidelines referred to services being readily available from public bodies and based on the evidence he was of the view that this operation was not readily available. While it was clear that the applicant had received services in excess of the personal allocation limit of €15,000 having regard to the evidence of the applicant in relation to his wife's illness the Appeals Officer accepted that exceptional circumstances allied to the relief of hardship existed in the case and allowed the appeal on that basis under Section 9(4) of the Act.

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, 11% were completed in less than 4 weeks, 56% were completed in 4-8 weeks, 21% were completed in 8-12 weeks, 6% in 12-16 weeks, 3% in 16-20 weeks and 3% in 20 weeks plus. This is a big improvement on the 2018-19 figures with 88% of appeals being dealt with within a 12 week period.



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

Over the period of this report one of the main issues that arose was the difficulty in finalising appeals that had been referred back to Caranua by the Appeals Officers. Some of these cases took a number of years to progress. Most of them thankfully were finalised prior to the closure of Caranua.

However in relation to one particular case I wish to express my concern. This appeal was referred back to Caranua by the then Appeals Officer in the second half of 2017. Extensive remodelling of a property was being proposed and the case was referred back with a view to establishing ownership of the relevant property, the intention of the applicant to live there permanently, having an assessment of the property carried out and based on the assessment to establish what assistance Caranua could allow. The Appeals Officer instructed that a further appealable decision should then issue.

The Appeals Officer asked Caranua (in May 2020) to make a further appealable decision as a matter of urgency, particularly having regard to the pending closure of Caranua and the representative of the applicant also requested that the case be referred back to the Appeals Officer.

However Caranua did not make any subsequent referral or decision, as they did not consider they had been provided with the information they needed. Then in December 2020 Caranua closed the appeal, without any referral back or reference to the Appeals Officer. In doing this Caranua stated that they had not been provided with the information necessary to progress the appeal and in the light of several missed deadlines, the closure of Caranua and the final date of funding supports, they had no option but to close the appeal and the applicant's application with Caranua.

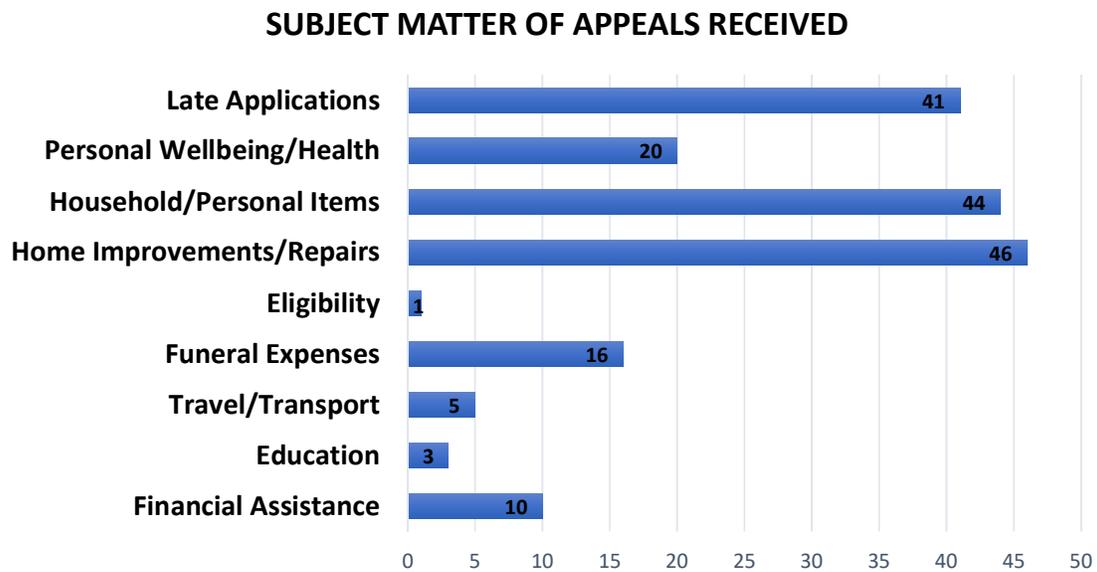
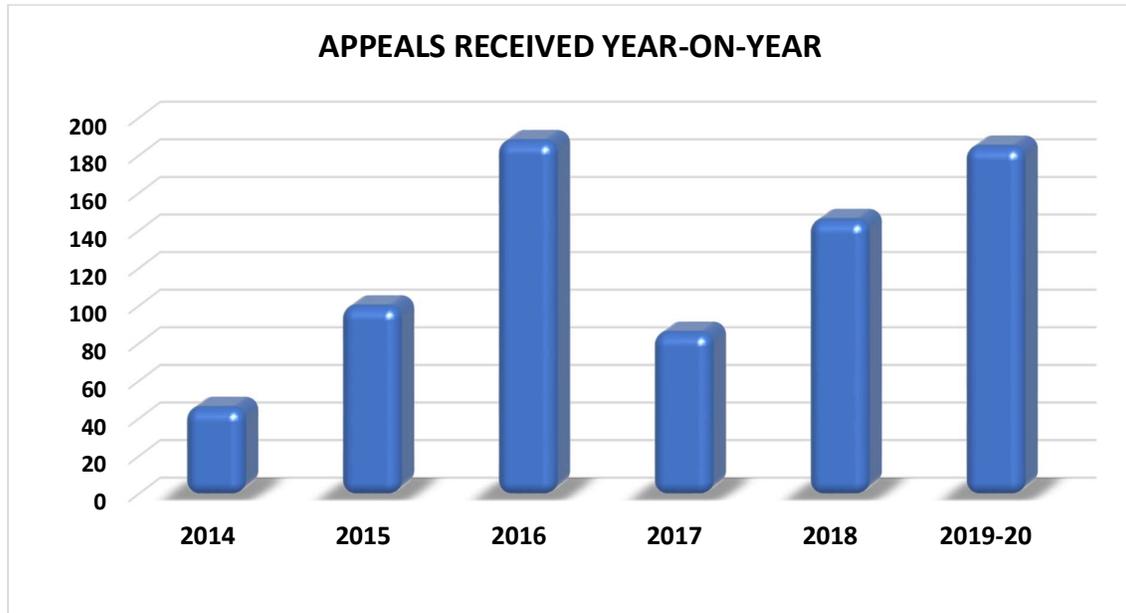
I made it clear to Caranua of my concern at this development particularly having regard to the instruction of the then Appeals Officer when referring the case back to Caranua in 2017 and my request in May 2020 to Caranua to make a further appealable decision as a matter of urgency. However as there was no valid decision before me for consideration under the legislation I did not feel there was any further action I could take in the case.

While I accept that Caranua may have had difficulty in relation to getting information, If Caranua felt they could not get the information they required they could have issued a further appealable decision on that basis or could have referred the case back to the Appeals Officer for further consideration or instruction.

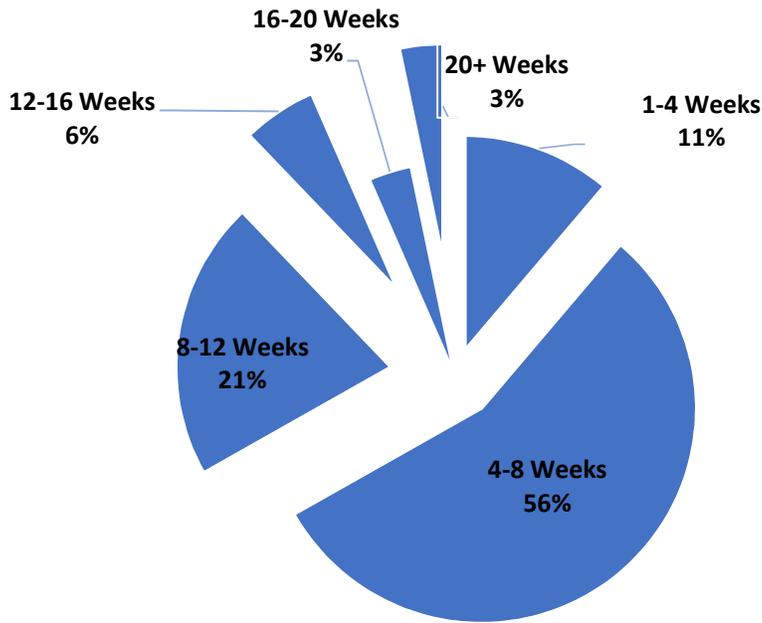
There is no certainty that the appeal would have succeeded if the case was referred back to the Appeals Officer. Nonetheless I consider that the instruction of the then Appeals Officer in 2017 and my request in 2020 should have been followed in order to allow the applicant and his representative make their case fully to the Appeals Officer and for the Appeals Officer to ultimately decide the appeal in accordance with the legislation.

I remain strongly of the view that Caranua should not and did not have the right to unilaterally close down the appeal and the application as they did.

Appendix – Appeal Statistics



PERCENTAGE OF CASES COMPLETED (WEEKS)



OUTCOME OF COMPLETED APPEALS

