

Office of the Disability Appeals Officer

Leaflet B2

Office of the Disability Appeals Officer

Information for Applicants in relation to Appeals by the Health Service Executive (HSE) or the head of an Education Service Provider (ESP)

Who is the Disability Appeals Officer?

The Disability Appeals Officer is an independent officer appointed by the Minister for Health & Children. He/she provides an appeals service for persons who wish to appeal

- against a finding or recommendation of a complaints officer of the HSE made under the Disability Act 2005 (“the 2005 Act”), or
- against the failure of the HSE or an ESP to implement a recommendation of a complaints officer.

What can the HSE or the ESP appeal against?

Under section 18(2) of the 2005 Act, the HSE or the head of an ESP can appeal against a finding or recommendation of a HSE complaints officer if they disagree with that finding or recommendation.

Currently, the 2005 Act and the appeals process apply only to children under 5 years of age.

How does the HSE/ESP appeal against the finding/recommendation?

An appeal must be brought within 6 weeks of the date on which the finding or recommendation of a HSE complaints officer is communicated to the HSE/ESP.

In some cases, the Disability Appeals Officer may extend this 6-week deadline by a period not exceeding a further 12 weeks, if the Disability Appeals Officer is satisfied that the HSE or ESP has given reasonable cause for the extension.

What do you need to do now?

- With our letter informing you that an appeal has been submitted by the HSE/ESP we will have enclosed a copy of the HSE/ESP’s appeal form and, to the extent necessary, copies of any documents submitted by the HSE/ESP;
- If you wish to oppose the appeal, you should provide us with any representations, information, documentation or evidence that you think is relevant in response to the appeal. This may include reports from individuals such as doctors, speech, physical or occupational therapists, if you think these are relevant.
- The representations, information, documentation or evidence should be provided to us within 21 days of receipt of our letter. If it is too difficult for you to comply with this timeframe, please contact us to discuss this issue.
- Details of such representations, information, documentation and evidence that you supply may be provided to the HSE/ESP in order for them to comment on that material.
- Any factual information that you submit should generally be in the form of a written statement. The statement (which can be a letter) should be in your own words and should—

What do you need to do now? Contd.

- set out the factual background to your appeal;
- be signed and dated by you;
- be fully legible and should normally be typed or written on one side of the paper only;

If you have any difficulty in preparing such a statement, please contact us to discuss this issue.

- The Disability Appeals Officer will generally treat the contents of any information, documentation and written statements of evidence as being true and accurate, unless there are reasonable grounds for believing this may not be the case and/or unless the HSE/ESP objects to this.
- If there is any conflict between any of the written statements of evidence provided by you/the HSE/ESP, or if you/the HSE/ESP object to the admission of any aspect of the written statements, information or documentation, it is likely that an oral hearing will need to be held in order to resolve this (the Oral Hearing process is described below).
- If you wish to meet with a member of the staff of the Disability Appeals Officer to provide him/her with information, or further information, this can be arranged in appropriate circumstances. As above, please note that any information you provide at such a meeting may also have to be given to the HSE/ESP.
- Any person who gives false evidence to the Disability Appeals Officer during the appeal process is guilty of an offence.

What will the Disability Appeals Officer do then?

The Disability Appeals Officer may request further inquiries to be carried out, and information relating to the appeal to be given by relevant persons within the HSE/ESP. The HSE/ESP personnel must comply with any such request.

The Disability Appeals Officer may request any other person who might have information, records or papers that are relevant to the appeal to provide them to him/her.

The Disability Appeals Officer may take, examine or take copies of any records or papers that, in his/her opinion, are relevant to the appeal.

The Disability Appeals Officer can also go to the premises of any public body or the provider of a health or education service and require any person there to provide to him/her any information that they have or records or papers that might be relevant to the appeal.

What is the process after this?

When the Disability Appeals Officer has the papers and the information requested from you, the complaints officer, the HSE/ESP or any other party, he/she will consider the appeal.

When the Disability Appeals Officer examines the materials submitted and obtained in an appeal, he/she decides the best way for the appeal to go ahead.

An appeal can be handled in a number of ways. The Disability Appeals Officer may, at any time in the process, consider that the appeal could be resolved by mediation. Alternatively, if he/she is of the view that the appeal cannot be resolved by mediation, he/she shall commence (or re-commence) the 'Investigation', as described below.

What is mediation?

Mediation means that you, a mediation officer (a neutral person from the staff of the office of the Disability Appeals Officer) and officials from the HSE or the ESP, meet. At the meeting, the mediation officer will help you discuss your differences and see if they can be resolved.

You do not have to agree to mediation. It will only be arranged if you do not object. You can also withdraw from mediation at any time. The investigation of the appeal will then continue.

Mediation is conducted in private, and the process and the discussions involved, are confidential.

If I do not object to mediation what happens next?

If you do not object to mediation a mediation officer will contact you, generally within 14 days after the referral of the matter to him/her by the Disability Appeals Officer, to arrange the mediation session or sessions. Mediation will always be held at a venue that is convenient to you, and may involve more than one session.

Generally speaking, no more than 30 days will pass from the time the matter is referred to mediation to the time you reach agreement or decide you cannot agree. However, if, for example, the mediation is very involved or if it has not been possible to have a sufficient number of sessions in that time, the mediation may take longer.

If you reach an agreement, you and the HSE/ESP will sign a resolution document. The terms of a signed resolution document are legally binding on you, the HSE and any ESP concerned. This means that you accept the contents of the document, and the HSE or the ESP must do what the resolution document says. You will be given a copy of the signed document.

What if the terms of the resolution document are not implemented?

If the HSE or the ESP concerned fails to implement the terms of a resolution arrived at through mediation

- within three months from the date on which the signed resolution document is sent to you; or
- within three months of the date specified in the resolution document for the provision of a service,

you or your representative or the Disability Appeals Officer may apply to the Circuit Court for an enforcement order.

Such an application must be made on notice to the HSE or the head of the ESP concerned.

What if we do not reach a resolution at mediation?

If you do not reach an agreement, or if you have objected to, or withdrawn from mediation, the appeal will then go through the 'Investigation' process described below. The mediation officer will not be involved in the investigation and will not discuss with the Disability Appeals Officer any issues that arose at any mediation.

What is an 'Investigation' by the Disability Appeals Officer?

In an 'Investigation', the Disability Appeals Officer reviews all the information, documentation and evidence in an appeal if mediation does not take place or is not successful.

During the investigation, the Disability Appeals Officer may request further information and/or documentation and/or evidence from the parties. The Disability Appeals Officer may also decide that an oral hearing is required. Oral hearings are described further below.

At the end of the investigation the Disability Appeals Officer will issue a written determination. If an oral hearing is not required, this written determination will generally issue within 56 days of the decision not to enter mediation or of the date that the Disability Appeals Officer is told that mediation was unsuccessful.

What is an oral hearing?

The 2005 Act provides for the holding of oral hearings in appropriate cases. The Disability Appeals Officer decides if it is appropriate to hold an oral hearing; for example, if there is a conflict between the information or evidence given.

How soon the oral hearing can be held will depend, for example, on the number of hearings going on, as well as the information / documentation / evidence-gathering required beforehand. Every effort will be made to hold a hearing within 49 days of the date on which the Disability Appeals Officer decides that an oral hearing is desirable. You will be informed of the exact time, date and venue at least 28 days beforehand.

The Disability Appeals Officer can adjourn or postpone the oral hearing as he/she sees fit, so if you have reasonable grounds for saying that the date or time allocated does not suit you, please let us know.

Who attends the oral hearing?

A number of people, bodies or organisations may attend an oral hearing. They include:

- you the applicant, your representative or both;
- a representative from the HSE;
- the assessment officer from the HSE;
- the liaison officer from the HSE;
- the complaints officer from the HSE;
- a representative from the ESP concerned (if applicable);

Who attends the oral hearing? Contd

- any other person whose evidence the Disability Appeals Officer requires and who is directed to attend by the Disability Appeals Officer.

The Disability Appeals Officer will make sure that all of the people concerned know about the hearing and can attend.

Normally, any person directed to attend an oral hearing must attend. However, if the Disability Appeals Officer is of the view that requiring you (the applicant) to attend an oral hearing might be prejudicial to your mental health, well-being or emotional condition, you can be excused from attending. Your representative can attend in your place.

Oral hearings are held in private, so nobody other than the persons listed above are permitted to attend.

Do I need a legal representative (e.g., a solicitor) for the oral hearing?

You do not have to use a legal representative for the oral hearing unless you choose to hire one. The oral hearing process is designed so that you or your representative may make your oral representations to the Disability Appeals Officer. Every effort will be made to keep the hearing as informal as possible.

If you hire a solicitor, you are responsible for their costs, even if your appeal is successful. The 2005 Act does not provide for legal costs to be paid by the Disability Appeals Officer.

What happens at the oral hearing?

The Disability Appeals Officer will make an opening statement explaining how the hearing will be conducted. He/she will introduce the people present.

He/she will also administer an oath to those giving evidence.

You will also be told if other people have been called to give evidence. The Disability Appeals Officer will then outline the matter in question, the case set out by the HSE/ESP in its appeal and the response from you and from the complaints officer.

He/she then invites the HSE to make a statement about their appeal.

Next, the complaints officer is invited to make a statement. You will then be given an opportunity to make a statement or to make representations, whether in person, or through a representative, as the case may be.

Any witnesses appearing generally, or on behalf of any of the parties, then give their evidence in turn.

The Disability Appeals Officer may ask questions of any of the witnesses. If any of the parties wishes to do so, and is so permitted by the Disability Appeals Officer, that party can cross-examine witnesses not called by him. Any witness whose evidence has been or is to be given before the Disability Appeals Officer is entitled to the same privileges and immunities as a witness in court

Each side is then allowed to make a closing statement and the hearing then concludes.

Every effort will be made to keep the hearing as short and informal as possible, and you will be afforded every courtesy during the course of the hearing.

Will I know the Disability Appeals Officer's determination when the oral hearing ends?

No. The Disability Appeals Officer needs to take time to consider what he/she has heard at the hearing and all the other information, evidence and documentation he/she has gathered. He/She then issues a reasoned, written determination at a later date.

How will I get the determination after the oral hearing?

Generally speaking, within 56 days of the oral hearing, you will get a letter from the Disability Appeals Officer enclosing a copy of his/her determination and the reasons for the determination. A copy of the determination will also be sent to the HSE, to the complaints officer and, if appropriate, to the head of the ESP concerned.

Anonymised copies of determinations of the Disability Appeals Officer will also be printed and will be made available for inspection by the public at a time and place determined by the Disability Appeals Officer.

What if the determination of the Disability Appeals Officer is not implemented?

If the HSE or the ESP concerned fails to implement a determination by the Disability Appeals Officer

- within three months from the date on which the determination of the Disability Appeals Officer was communicated to you; or
- within three months of the date specified in the determination for the provision of a service,

you or your representative or the Disability Appeals Officer may apply to the Circuit Court for an enforcement order.

Such an application must be made on notice to the HSE and any ESP concerned.

What can I do if I disagree with the determination of the Disability Appeals Officer?

You can appeal the determination of the Disability Appeals Officer to the High Court within 21 days of the giving of notice of the determination to you by the Disability Appeals Officer. This period can be extended by the Court, if it is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter.

You can appeal against the Disability Appeals Officer's determination on a point of law only.

Where can I get more information?

For further information, telephone our LoCall Information Line on 1850 211 583

THIS LEAFLET IS INTENDED AS A GUIDE ONLY.

It is not a legal interpretation, and ought not to be relied upon as such.