

DISABILITY APPEALS OFFICER

Determination and Reasons for Decision Report

Appeal Reference: AP0006 & AP0014

19th May 2009

Redacted and Anonymous Version

1. Background:

- 1.1 On or about 16.07.2007, Mrs X made an application on behalf of her son, Y for an Assessment of Need pursuant to section 9(1) of the Disability Act 2005 (“the Act”). On or about 23.07.2007, Ms C, the appointed Assessment Officer under section 8 of the Act, received and acknowledged the completed application form. Within this letter as dated Ms C outlined that *if Y is eligible for this assessment it will commence on the 22nd October 2007.*
- 1.2 By letter dated 15.10.2007, Ms C, notified Mrs X that Y was eligible for an assessment of need, that the assessment process would begin on 22.10.2007 and that the assessment would *be completed no later than 3 months after that date.*
- 1.3 On 07.04.2008, Mrs X made a complaint to the HSE’s Consumer Affairs Department on the grounds that *“the assessment under section 9 was not commenced within the time specified in section 9(5) or was not completed without undue delay as required by section 14(1)(b) of the Act.*
- 1.4 In an investigation report dated 10.06.2008, Ms.McL, an appointed Complaints Officer under the Act stated relevantly in relation to Mrs X’s complaint that:
 - 1.4.1 *The complainant is concerned that no conclusion to her son’s assessment has been reached and that the recommendations of the assessment officer, psychologist, speech and language therapist, occupational therapist and GP for a child and adolescent mental health assessment are not being dealt with under the terms of the Disability Act.*
 - 1.4.2 *That the assessment should have been completed no later than the 15th January 2008 and is at present still outstanding, with no assessment report or subsequent service statement issued.*
 - 1.4.3 *That the time delay has been caused by the inability to access appropriate assessment.*
- 1.5 Ms McL went on to find relevantly that: *“...it is clear from my examination of this case that the HSE has not successfully completed an assessment within the relevant timescale.”* In accordance with her statutory function under the Act,

Ms McL upheld the complaint of Mrs X and made the following recommendations:

- 1.5.1 That the assessment be completed without undue delay with reports to be available by the 17.07.2008, unless there are clinical indications arising during the assessment that require necessary extensions to the period of assessment. If this was to be the case, Ms McL stated that Mrs X should be advised.
- 1.5.2 The statutory Assessment Report is issued as soon as possible after receipt of the assessor's reports with a recommended date of 24.07.2008.
- 1.6 By Notice dated 24.06.2008 (received 03.07.2008), Mrs X made an appeal (AP0006) to the Disability Appeals Officer pursuant to section 18(1) of the Act.
- 1.7 By Notice dated 07.08.2008 (received 19.08.2008), Mrs X made an additional appeal (AP0014) to the Appeals Officer pursuant to section 18(1) of the Act on the grounds that the recommendations of the Complaints Officer had not been implemented.
- 1.8 For the reasons set out in section 2 of this Determination, I have treated these two (2) Appeal Notices as raising the same issues and have processed both together. By letter dated 23.04.2009, Mrs X confirmed her agreement to these two appeals being dealt with or amalgamated in this way.
- 1.9 An Assessment Report in respect of Y was not issued until 26.11.2008. In that Report, Ms C found that the provision of Psychological, Speech & Language and Occupational Therapy Services were appropriate for Y's needs (section 6, page 2). The Assessment Report also identified that Dietetics and Child & Adolescent Mental Health Services (CAMHS) was an appropriate support need for Y (section 6 page 3).
- 1.10 By letter dated 31.12.2008, a Service Statement prepared by Mr K, Liaison Officer, was furnished to Mrs X and to the HSE. The services specified within the Service Statement as being required by Y are outlined as;
 - 1.10.1; Access to a Multi-disciplinary Team through Child and Adolescent Mental Health Services commencing 03.11.2008. The provider identified was the Child and Adolescent Mental Health Service City General Hospital, Infirmary Road, Cork.
 - 1.10.2; Psychology/Speech and Language Needs anticipated commencement date as January 2009. The provider identified was the Child and Adolescent Mental Health Service City General Hospital, Infirmary Road, Cork.

- 1.10.3; Occupational Therapy Needs to be provided as appropriate. The provider identified was the Child and Adolescent Mental Health Service City General Hospital, Infirmary Road, Cork.
- 1.11 This is my determination in respect of the two Appeals made by Mrs X in relation to her son, Y, in accordance with section 18(5) of the Act.
2. **Issues raised by the Appeal:**
- 2.1 The first Notice of Appeal lodged by Mrs. X indicated that she was both appealing against a finding or recommendation made by the Complaints Officer, Ms. McL and appealing against the non-implementation of the recommendations made by the Complaints Officer in her report of 10.06.2008. However, the reasons furnished by Mrs. X for her Appeal indicate that she was principally, if not solely, concerned with the failure to implement the Complaints Officer's recommendations. She stated in Part 3 of her Appeal Notice dated 24.06.2008 that: "*Y was referred to the CAMHS for assessment but has still not been seen and a report from Y's Assessment Officer still has not made any difference. CAMHS still refuse to assess Y.*"
- 2.2 At the time of the lodgement of Mrs. X's first Appeal Notice, the dates by which the Complaints Officer's recommendations were required to be implemented had not yet been reached. It would appear that Mrs. X lodged this Appeal when she did, firstly because it had already been indicated to her that Y's Assessment of Need would not be completed by the date specified by the Complaints Officer as "*CAMHS still refuse to assess Y*". Secondly, Mrs. X faced the difficulty that if she waited for the passing of the date by which the Assessment Report was recommended to be issued, the time within which she was permitted to Appeal under section 18(3) of the Act would have expired.
- 2.3 Mrs. X's second Notice of Appeal dated 07.08.2008 expressly recognised this difficulty wherein it was stated: "*This Appeal exceeds the six week deadline but could not have been made within six weeks given the date of report is 10/06/08 and the failure to implement occurred 24/07/08*". This second Notice was expressly in respect of the failure to implement the following recommendation of the Complaints Officer: "*Assessment to be completed and the statutory report to be provided by 24 July (2008)*".
- 2.4 Section 18(1) of the Act provides a right to Appeal upon two distinct grounds: namely, against a finding or recommendation made under section 15(8) or against the non-implementation of a recommendation of a Complaints Officer. The time within which an Appeal is required to be brought is specified in section 18(3) to be "*within six weeks of the date on which the finding or recommendation to which it relates was communicated to the person*". Clearly therefore, the time within which an Appeal may be brought commences to run from the date on which the finding or recommendation is made irrespective of whether the Appeal is against a finding or recommendation or whether it is in respect of the non-implementation of a recommendation. This appears to be most unusual.

- 2.5 In most instances, a recommendation will not be required to be implemented on the date it is made or communicated. As in this case, the HSE or an education service provider will usually be required under a recommendation to carry out some act or acts by a specified date. As an Applicant will not be aware in most cases that a recommendation has not been implemented until the date specified for its implementation has passed, an Applicant will not be in a position to bring an Appeal until after the recommended implementation date. However, because the time within which an Appeal must be lodged commences to run not from the date of non-implementation but from the date the recommendation was communicated to the Applicant, the six week Appeal period will have partly or wholly expired before an Applicant will be in a position to exercise his/her Appeal rights.
- 2.6 I consider that this is a deficiency in the provisions of section 18(3) of the Act. There does not appear to be any legitimate reason why the Appeal period furnished to Applicants who wish to appeal against a non-implementation of a recommendation should be any different to those Applicants who wish to appeal against a finding or recommendation. Where, as in this case, the date for implementation of the recommendation is more than six weeks after the recommendation is communicated to the Applicant, the provisions of section 18(3) will deny the Applicant any effective right of Appeal. Clearly in such cases, the facility afforded by section 18(4) of the Act for the Appeals Officer to extend the Appeal period upon being satisfied of “*reasonable cause for the extension*” would be available. However, in principle, I do not consider that Applicants who wish to appeal against the non-implementation of a recommendation ought to be forced to rely upon the discretionary power in section 18(4) for their Appeal rights.
- 2.7 With respect to this Appeal, it is necessary for me to apply the provisions of section 18(3) as they presently stand. The first Appeal Notice of Mrs. X was lodged within the six week period from the date on which the recommendations of Ms. McL were communicated to her and accordingly, the Appeal was clearly brought within time for the purposes of section 18(3) of the Act. However, as the grounds for the Appeal were the alleged non-implementation of the recommendations of Ms. McL, it can be argued that the right of Appeal did not accrue until the date by which the relevant recommendation was required to be implemented. On the other hand, because the terms of section 18(3) require an Appeal to be brought within six weeks of the recommendation having been communicated to an Applicant regardless of whether or not the date of implementation of the recommendation has been reached, together with the fact that Mrs. X indicates that she had become aware of an apparent refusal to provide a part of the assessment which was required to implement the Complaints Officer’s recommendations, it can be argued that there was an entirely legitimate basis to commence this Appeal.
- 2.8 If it had been necessary to determine this issue, I would have provided the parties with an opportunity to adduce evidence (reasons) and to make submissions upon the factual and legal issues which are thereby raised. However, I consider that the bringing of Mrs. X’s second Appeal (AP0014)

has made it unnecessary for me to determine the complex legal issues which arise in relation to the competency of the first Appeal (AP0006).

- 2.9 The second Appeal Notice clearly identifies the grounds of Appeal as the failure to implement the recommendation of Ms. McL in her report of 10.06.2008 and states that the relevant recommendation was the requirement to furnish “*the statutory (assessment) report.....by 24 July (2008)*”. The second Appeal Notice was dated 07.08.2008 and was accordingly more than six weeks after the date on which the relevant recommendation was communicated to Mrs. X. As noted above, in her second Appeal Notice, Mrs. X provides an explanation for her failure to bring this Appeal within this statutory period by stating that the Appeal “*could not have been made within six weeks given the date of the report is 10/06/08 and the failure to implement occurred 24/07/08*”. The Appeal Notice was in fact brought just on two weeks after the date upon which the implementation of the relevant Complaints Officer’s recommendation was required. In the circumstances, I have considered the explanation of Mrs. X for her failure to comply with the time period provided by section 18(3) of the Act and I am satisfied that this constitutes “*reasonable cause*” to extend the time period for the bringing of this Appeal. I accordingly have determined pursuant to the provisions of section 18(4) of the Act to extend the period for the bringing of Mrs. X’s “Second” Appeal to 19.08.2008. It follows that the second Appeal Notice of Ms. X has been brought within this extended period and is thereby a competent Appeal.
- 2.10 Having determined to validate the second Notice of Appeal (AP0014) in this way, it became unnecessary for the first Appeal Notice to be pursued as a separate Appeal. I accordingly informed Mrs. X that I proposed to treat her first Appeal Notice (AP0006) as administratively the same Appeal as her second Appeal (AP0014). Mrs. X gave her full consent to the “*amalgamation*” of her two Appeals in this way.
- 2.11 The issues which are accordingly raised by this Appeal are whether there has been a failure to implement the following recommendations contained in the Complaints Officer’s report of 10.06.2008:
- That the assessment be completed without undue delay with reports to be available by 17.07.2008, unless there are clinical indications arising during the assessment which require necessary extensions to the period of assessment. If this be the case, Mrs. X should be advised.
 - That the statutory assessment report is issued as soon as possible on receipt of the assessor’s report with a recommended date of 24.07.2008.

3. **Mediation**

- 3.1 Following my assessment of the Appeal Notice, the material furnished with the Appeal and the documentation and further information obtained from the HSE and Mrs. X concerning the Appeal, I did not form the opinion that the Appeal might be able to be resolved by mediation. In this regard, I particularly took account of the fact that the outstanding Assessment Report upon Y was provided after the commencement of the Appeal, and that Mrs. X nevertheless remained dissatisfied by the length of time over which her son had been required to wait for the completion of his assessment. Mrs X advised that she wanted a determination to be made in relation to her Appeal even though the Assessment Report had eventually been completed. In light of these circumstances and the nature of the issues raised by the Appeal, I did not consider that mediation was an appropriate means to resolve this Appeal.

4. **The Investigation:**

- 4.1 With the Appeal Notice, the Applicant furnished the Complaints Officer's Report dated 10.06.2008.
- 4.2 By letter dated 17.09.2008, I provided a copy of the Notice of Appeal lodged by Mrs X on behalf of her son Y to Ms O'N, General Manager, Cork North Lee ,HSE South, as the Respondent to the Appeal, and requested that she furnish the following further documents and/or information:
- 4.2.1 a copy of any Assessment of Need Report issued in respect of Y
 - 4.2.2 a copy of any Service Statement issued in respect of Y under section 11 of the Act.
 - 4.2.3 all other documentation pertaining to Y's Assessment of Need and Service Statement.

I also invited the HSE to provide any other information and documents which it considered to be relevant to or which it wished to rely upon in response to the Appeal.

- 4.3 By letter dated 10.10.2008, Ms O'N furnished me with the following documents/information which are listed in Appendix 1 to this Determination.
- 4.4 Following my decision to investigate this Appeal, I wrote again to Ms O'N on 25.11.2008 requesting an update upon the status of Y's Independent Assessment of Need.
- 4.5 By letter dated 01.12.2008, Mr W, HSE Area Administrator, North Lee provided a copy of Y's Assessment Report which was dated 26.11.2008. Within that correspondence, Mr W also advised me that at that stage Y's Service Statement was not yet completed, that the Liaison Officer Mr K was currently working on it and he understood that Mr K had one (1) month to complete the Service Statement.

- 4.6 By letter dated 19.12.2008, I forwarded copies of all documents which I had received from the HSE to Mrs X. In the same letter, I invited Mrs X to make any further representations she wished me to consider in relation to her Appeal and I asked whether she sought an Oral Hearing in relation to her Appeal.
- 4.7 By letter dated 19.12.2008, I wrote to Ms. O’N advising that I had completed a review of Y’s Appeal and I invited Ms O’N to make any further representations on behalf of the HSE which she wished me to consider in response to the Appeal. I also sought her views regarding whether an Oral Hearing was necessary or appropriate in relation to this Appeal.
- 4.8 Ms O’N made contact with my office by telephone on 06.01.2009 seeking clarification in respect of my letter of 19.12.2008 and to advise that she did not seek an Oral Hearing.
- 4.9 By letter dated 06.01.2009, Ms O’N advised that Y’s Service Statement was completed and a copy of that Statement was attached for my information. A copy of Y’s Service Statement dated 31.12.2008 was forwarded to Mrs X on 31.12.2008.
- 4.10 During the course of my investigation, I also sought additional information/documents from Ms K, Complaints Officer. I specifically sought confirmation of the date that Mrs X’s complaint was made to the HSE. By email dated 03.04.2009, Ms K confirmed that the complaint made on behalf of Y was received by HSE Consumer Affairs on 07.04.2008 and subsequently by the Complaints Officer’s Office on 10.04.2008.
- 4.11 By registered letter received on 22.04.2009, Mrs X provided a copy of an Assessment Report of Professor F dated 28.07.2008 together with Professor F’s private invoice for this service. In this letter, Mrs X expressed her dissatisfaction with the time it had taken for the HSE to complete Y’s Independent Assessment of Need.
- 4.12 By email dated 24.04.2009, I sought a copy of the CAMHS Report completed in respect of Y in Sept 2008 from Ms C, Assessment Officer. By letter dated 24.04.2009, Ms C forwarded a copy of CAMHS Report dated 18.08.2008 and 25.09.2008 which was received by the Assessment Officer’s Office on the 30.10.2008. With the same letter, a copy of the CAMHS Assessment of Need Summary Report dated 05.11.2008 was provided. In the CAMHS Summary Report, it was stated in respect of Y’s needs:
“Interventions/services needed: Speech and Language Therapy, Occupational Therapy, Parenting Intervention with respect to behavioural strategies” (Section 8). The timeframe for delivery of services was identified as *“.....currently in treatment”*.
- 4.13 By letter dated 22.04.2009, I furnished Ms O’N with a copy of the letter submitted by Mrs X (22.04.2009) and provided Ms O’N with an additional opportunity to respond to that further material.

- 4.14 By letter dated 05.05.2009; Ms O’N advised that she did not have any further comments to add.
- 4.15 Having regard to the issues raised by the appeal and the information and documents which were able to be obtained without the exercise of my coercive powers, I did not consider it necessary or proportionate to seek to obtain further documents or information through the exercise of my powers under section 18(6), 18(7) or 18(8) of the Act.
- 4.16 Following consideration of the issues raised by the appeal and the evidence, information, documents obtained during my investigation and the representations made by the parties, I also decided that it was not necessary or appropriate to hold an oral hearing in relation to this appeal. In this regard, I took into account that neither party sought an oral hearing when invited to make representations upon this issue and that there were not any disputed and material issues of fact which could not fairly be determined without an oral hearing.

5. **The Case of the Applicant:**

- 5.1 It was the Applicant’s case in respect of this Appeal that:
- 5.1.1 Y was entitled to an Independent Assessment of Need within the timeframe specified by section 9(5) of the Act and Clauses 9 and 10 of the Regulations
- 5.1.2 Following the making of the application for an Assessment of Need for Y which was received by the assigned Assessment Officer under the Act on 23.07.2007, Ms C confirmed in a letter dated 15.10.2007 that Y was eligible for an Assessment of Need and that this assessment would begin on 22.10.2007. Within this correspondence, Ms C confirmed that under the Act the *“assessment of need must begin no later than 3 months after receipt of your completed application and be completed no later than 3 months after the date it begins”*.
- 5.1.3 Y’s Independent Assessment of Need was not completed until 26.11.2008. This was more than ten (10) months beyond the timeframe notified to Mrs X in Ms Cs’ letter of 15.10.2007 and was in breach of the requirements of the Act.
- 5.1.4 Mrs X’s complaint in respect of the HSE’s failure to complete Y’s Independent Assessment of Need was upheld by the Complaints Officer, Ms McL, on 10.06.2008 and her recommendation fixed a new timeframe of 24.07.2008 for issuing the statutory Assessment Report, subject to any necessary extensions required for clinical reasons. These extended further timeframes were also not complied with.
- 5.1.5 At no time during these periods was Mrs X advised in writing by HSE of the reasons for the delay in completing her son’s Assessment of Need or of the setting of a new timeframe for the completion of the assessment

6. **The Case of the HSE:**

- 6.1 Whilst the HSE did not respond directly to the issues raised by this Appeal, the documents which were furnished indicate that there is no dispute regarding the extent of the delays which occurred in the completion of Y's Independent Assessment of Need.
- 6.2 The documents provided confirm that substantial efforts were made by the Assessment Officer, Ms C, to arrange the necessary assessments for Y within the statutory timeframes. In all, Ms C wrote to six (6) professionals within North Lee Early Intervention Services seeking assistance to complete an Assessment of Need for Y. Only two members of the Early Intervention Team completed their assessments of Y's needs within the timeframe required under the Act.
- 6.3 As these initial assessment reports recommended that further assessments be carried out in respect of Y's needs by the CAMHS, Ms C made many attempts to arrange such further assessments. However, her attempts in this regard appear to have been frustrated by the ongoing refusal of some HSE funded bodies to provide the necessary assessments for Y or by the long waiting lists of these bodies. The documents provided appear to suggest that the HSE viewed the delay in carrying out Y's Independent Assessment of Need as unavoidable due to a lack of adequate resources to provide the necessary multidisciplinary assessments for Y within the required timeframe.

7. **Relevant legal principles applied:**

- 7.1 I have approached my determination upon the basis that Mrs X bears the onus of proof in respect of any disputed matters which are material or relevant to her Appeal. The standard of proof which I have applied is the civil standard on the balance of probabilities.
- 7.2 In determining any disputed issues of fact, I have directed myself that it may be unsafe to make positive findings by reliance upon a single item of evidence. I have accordingly attempted wherever possible to identify independent support or corroboration for any disputed statements made or materials submitted by either party from other evidence obtained during the investigation.
- 7.3 In considering the probative value and weight to be given to any documents and records obtained during this investigation, I have taken into account the apparent author of the relevant document, the qualifications of the author, the extent of the author's actual knowledge of the subject matter addressed in the document, whether the document is contemporaneous with the events described, whether the document is genuine or authentic, whether the contents of the document are credible and whether the contents are consistent with

- 7.4 This Appeal concerns the entitlement of eligible applicants to an independent assessment of their health and education needs. The Act confers not only an entitlement to such an assessment but also imposes an obligation on the HSE to provide such an assessment in a prompt manner. The provisions of section 9(5) of the Act establish a dual obligation upon the HSE to:
- 7.4.1 commence an assessment within three months of the date of the receipt of an application or request for an assessment; and to
 - 7.4.2 complete the assessment without undue delay.
- 7.5 The nature and extent of these obligations are further elaborated by the provisions of clause 9 and 10 of the Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 (“the Regulations”). Clause 9 requires the HSE to “*commence the assessment process as soon as possible after the completed application form has been received but not later than three months after that date*”. In respect of the completion of the assessment, clause 10 of the Regulations provides that the assessment shall be completed and the Assessment Report shall be forwarded to the Liaison Officer within three months from the date upon which the assessment commenced save for exceptional circumstances. Where exceptional circumstances do exist, the assessment is required to be completed “*without undue delay*” and the HSE must specify in writing to the Applicant before the expiration of the three month period the reasons why the assessment will not be completed. The HSE must also provide written advice of the time frame within which the assessment is expected to be finalised.
- 7.6 The obligation to complete the assessment without “undue delay” under section 9(5) must be considered separately. The term “undue” in this context normally means “excessive” or “inordinate” delay. The consideration of whether a delay is “undue” requires an objective evaluation of whether the time within which the assessment is completed is longer than would usually be regarded as acceptable. Clause 10 of the Regulations mandates that apart from exceptional circumstances, a period of longer than three months to complete the assessment and to forward the Assessment Report will be regarded as “undue delay”. This however does not mean that a three month time frame for the completion of an assessment will generally be regarded as acceptable. Clause 10 indicates that such a delay will almost inevitably be viewed as unacceptable but does not establish the length of time which will be viewed as appropriate. This must be determined in the individual circumstances of each case. In unexceptional circumstances, a failure to complete an assessment of need well within a period of three months may well constitute “undue delay” for the purposes of section 9(5).
- 7.7 Section 11(8) provides that a Service Statement shall also be prepared and furnished to the Applicant by the HSE “without undue delay”. Clause 19 of the Regulations provides that a Service Statement shall be completed within

8. **Matters required to be taken into account:**

8.1 In accordance with the obligations imposed by section 18(20) of the Act, I have considered the following matters before making my determination with respect of this appeal:

- (a) The Notice of Appeal and supporting materials submitted by the Applicant as referred to above together with all the documents and information furnished by or on behalf of the HSE.
- (b) Whilst for the reasons set out above it has not been considered necessary or proportionate to exercise my powers under section 18(6), 18(7) or 18(8) of the Act to require the furnishing of information or records, I have considered all of the evidence, information and other material obtained during the course of my investigation of the appeal;
- (c) Whilst for the reasons set out above it has not been considered necessary or appropriate to hold an oral hearing for the purposes of this appeal, I have considered all of the evidence submitted and representations made by or on behalf of the Applicant and by the HSE in determining this appeal;
- (d) I have considered each of the matters prescribed by section 11(7) of the Act where relevant including:
 - (i) The Assessment Report dated 26.11.2008
 - (ii) Y's eligibility for services under the Health Acts 1947 to 2004 as indicated in Ms. C letter of 15.10.2007
 - (iii) The approved standards in relation to the provision of the Independent Assessment of Need Report

9. **Findings of the Investigation:**

9.1 The following facts relevant to the Appeal are not the subject of any dispute between the parties:

9.1.1 Mrs X made an appropriate application for an Independent Assessment of Need for her son Y on 23.07.2007

9.1.2 The material furnished by the HSE demonstrates that the assigned Assessment Officer duly commenced to engage with Mrs X from on or about 23.07.2007 with follow up telephone contact commencing on 26.07.2007

9.1.3 By letter dated 15.10.2007, the Assessment Officer, Ms C, notified Mrs X, that Y was eligible for an assessment of need. In the same letter, Mrs X was advised that Y's assessment would begin on 22.10.2007 and that the assessment would *be completed no later than 3 months after that date.*

9.1.4 In her Report dated 12.12.2007, Ms. C, Senior Occupational Therapist, recommended that Y be referred to CAMHS *“as a matter of HIGH priority”*.

9.1.5 In a Report of Ms. D, Senior Clinical Psychologist, dated 17.12.2007 it was recommended that: *“Y access multidisciplinary assessment through Child and Adolescent Mental Health Services so that diagnostic criteria maybe applied to his profile and subsequently intervention offered to Y's family. This is urgent in terms of family functioning and coping.”*

9.1.6 By letter dated 19.01.2008, Ms C made a new referral to Dr C of CAMHS for an assessment based on the recommendations of the Early Intervention Team in which she requested a report by no later than 01.04.2008. This was responded to by letter dated 04.02.2008 by Dr H, Senior Clinical Psychologist, CAMHS. Dr H made reference to the recent findings of the Early Intervention Team in relation to Y and noted that the Team did not offer Y any intervention. Dr H stated relevantly that: *“Prior to assessment for ADHD in this service it is our opinion that this family should be offered intervention by the Early Intervention Team to assist with the current behavioural difficulties.”*

9.1.7 On or about 15.02.2008, Ms C, Senior Speech and Language Therapist, stated as part of her *“Assessment Findings (Further Assessments Needed)”* in the report upon Y that: *“Consultation (required) with Department of Child and Adolescent Psychiatry”*.

9.1.8 On or about 19.02.2008, Ms C again wrote to Dr H, Senior Clinical Psychologist CAMHS, indicating that intervention issues were not relevant for her purposes and stating that: *“what is clearly required in this case is an Assessment by the CAMHS team without which Y's Assessment of Need under the Disability Act cannot be concluded.”*

- 9.1.9 On or about 26.02.2008, a joint letter from Dr C, Consultant Child & Adolescent Psychiatrist; R R, Clinical Psychologist and N C, Senior Speech and Language Therapist was forwarded to Ms C which stated relevantly that: *“this child was referred to this service in August 2007 and was not accepted at that time on the basis of our referral acceptance criteria.....we have considered the re-referral for Y in view of the new information provided and in accordance with our clinical prioritisation criteria, the case has now been placed on the routine waiting list in this department.”* It was also stated that due to the current staffing resources, the assessment of Y would not be completed within the timeframe of 01.04.2008 and that the current waiting time for an assessment was ten (10) months. It was suggested that the Assessment Officer might consider a private assessment of need given the limited resources in their Department.
- 9.1.10 Ms C sought guidance and assistance from within the HSE on a number of occasions in respect of her difficulties with CAMHS prioritising assessments for children referred under the Act. On or about 05.08.2008, Dr C of the CAMHS forwarded a letter to Mr and Mrs X advising that *“your child has been placed on the priority waiting list (with CAMHS)”*.
- 9.1.11 On or about 25.09.2008, Y was seen at the CAMHS for his assessment.
- 9.1.12 Following difficulties in obtaining a dietician’s assessment for Y dating back to October 2007, a Private Dietetic Assessment was completed by Ms M, Dietician Manager, for Y in a report dated 21 .08.2008.
- 9.1.13 Following a complaint made by Mrs X in respect of the failure to complete Y’s assessment of need without undue delay as required by section 9 of the Act, the Complaints Officer, Ms McL, upheld the complaint of Mrs X by finding that: *“it is clear from my examination of this case that the HSE has not successfully completed an assessment within the relevant timescale”*. As a consequence of her findings, Ms McL made the following recommendations: *“..that the assessment be completed without undue delay with reports to be available by the 17th July, unless there are clinical indications arising during assessment that require necessary extensions to the period of assessment. If this is the case, Mrs X should be advised. The statutory assessment report should issue as soon as possible after receipt of the assessors reports. The 24th July is recommended, to be extended if required due to necessary extensions, if any for clinical reasons.”*
- 9.1.14 On 26.11.2008, Y received his Assessment of Need Report, some ten (10) months outside the timeframe required under the Act.

9.1.15 Y's Service Statement was issued by Mr K, Case Manager, Cork North Lee LHO, with effect from 31.12.2008. Within his Service Statement, it was noted that Y had been in receipt of multidisciplinary input from CAMHS since 03.11.2008.

9.2 In addition, I am satisfied to the required standard of proof of the following further facts:

9.2.1 Despite the long delay in completing Y's assessment of need, the HSE did not at any time inform Mrs X in writing of the reasons for the failure to complete her son's Independent Assessment of Need or to provide a new timeframe for the provision of the assessment report as required by clause 10 of the Regulations. Following the recommendations of Ms McL's report of 10.06.2008, Mrs X was again not advised in writing of any reasons for the HSE's failure to comply with the new timeframe which was fixed for the completion of Y's assessment report.

10. **Findings in respect of the issues raised by the Appeal:**

10.1 As a consequence of the investigation findings set out above, I make the following findings in respect of the issues raised by this Appeal:

10.1.1 I am satisfied to the required standard that the HSE (Cork North Lee) failed to comply with the recommendation of the Complaints Officer, Ms McL, that the Assessment of Need in respect of Y be completed by 24.07.2008. The HSE also failed to comply with the recommendation that Y's family were to be advised if there were any clinical reason for any further delay.

10.1.2 As a consequence of these failures, Y was denied an Assessment of his Needs for a further four months. This delay must also be seen in the context of the undue and objectively inexcusable delay which Mrs X and her son had experienced in obtaining an assessment of Y's needs to that point.

10.1.3 The delay in providing an Assessment of Need to Y constituted a breach of the obligation under section 9(5) of the Act to complete an assessment without "undue delay". Failure to complete the assessment and to issue an Assessment Report within three months of the purported commencement date of 22.10.2007 was also in clear breach of clause 9 of the Regulations. The fact that this delay continued from January 2008 until November 2008 makes this a serious breach of statutory duty.

10.1.4 The difficulties which occurred in this case in obtaining an Assessment of Need for Y were identified early on in the process by the Early Intervention Team where three of the professionals - Ms D, Senior Clinical Psychologist; Ms C, Senior Speech and Language Therapist and Ms C, Senior Occupational Therapist - recommended further assessments from the CAMHS team in Cork. Ms C, Assessment Officer, consistently made the HSE aware of the difficulties

10.1.5 The unacceptable overall delay in this case is aggravated by the fact it was known to the HSE at an early stage that there was a significant and urgent need for CAMHS to become involved (Report of Ms D dated 14.12.2007) because of difficulties relating to “*family functioning and coping*”. The very substantial delay which Y and his family experienced in obtaining an adequate assessment of his needs resulted in his family seeking a private appointment with Professor F in July 2008. While I will not otherwise comment on Professor F’s Report as it was acquired privately and was not commissioned under section 8(2) of the Act, his Report further supported the recommendations of the Early Intervention Team in respect of the need for the CAMHS in Cork to be involved with Y.

10.1.6 The HSE also failed to communicate adequately with the X family which added unnecessarily to the frustration they experienced in obtaining an Assessment of Need Report for Y. Clause 10 of the Regulations and the HIQA Standards for the Assessment of Need emphasise the importance of communicating with and involving applicants and their families in the assessment process. This includes allowing applicants and their families to be fully informed regarding, to actively participate in and to contribute to the relevant assessment. The inadequate written communication with the X family by the HSE during the assessment process fell significantly short of these standards.

11. **Determination:**

11.1 As a consequence of the above findings, I have determined that:

11.1.1 the appeal should be allowed;

11.1.2 the findings/recommendations of the Complaint’s Officer in this case should be affirmed;

11.1.3 The HSE failed to comply with the recommendations of the Complaints Officer’s Report of 10.06.2008 in that the HSE failed to provide Y with an Assessment of Need Report by 24.07.2008;

11.2 This case highlights the importance of establishing procedures to ensure that HSE funded Child and Adolescent Mental Health Services comply with requests for Assessments of Need under the Act.

11.3 Where there are delays in completing assessments of need, the obligations to communicate with the applicant’s family as defined by clause 10 of the Regulations and the HIQA Standards for the Assessment of Need, May 2007 should be complied with. The facts of this case suggest that officers of the HSE may not fully appreciate these obligations.

12. **Publication:**

- 12.1 Pursuant to section 18(22) of the Act, I propose to make a duly anonymised copy of this Determination, redacting all identifying information in relation to Y , Mrs X and any other member of the X family, available for public inspection. In the absence of any objections received from either party regarding the form of the anonymised Determination which I propose to make available to the public within twenty one (21) days of the date hereof, I shall thereafter make the said anonymised copy of this Determination available for public inspection between the hours of 10am and 4.30pm on working days at the: **Conference Room: Office of the Disability Appeals Officer, 1st Floor, Dolcain House, Monastery Road, Clondalkin, Dublin 22.**

Dated: 19th May 2009

Teresa Dykes
Disability Appeals Officer

Appendix 1

1. Application for assessment of Disability Related Needs for a Child Under 5 years, inclusive of Application, Assessment of Need Meeting with parents and a Questionnaire about Y
2. Case Notes which infer were hand written by Ms C Assessment Officer, HSE South dated as commencing on 26.07.2007 until 24.06.2008 cataloguing nine (9) communications/engagements Ms C had with Mrs X which related to Y Assessment of Need not completed within the time line agreed. One (1) conversation is noted between Ms C Assessment Officer and M O'S, PHN regarding a home visit.

3. Copy of referral letter dated 20.07.2007 from Dr .C General Practitioner to Dr C Consultant Child & Adolescent Psychiatrist City General Hospital Cork
4. Copy of letter dated 23.07.2007 from Ms C Assessment Officer acknowledging Mr & Mrs X's application for an assessment of need
5. Copy of letter dated 15.10.2007 from Ms C Assessment Officer informing Mr & Mrs X that Y is *eligible for assessment and the assessment will begin on 22.10.2007.*
6. Copies of letters/emails from Ms C seeking an Assessment of Need under the Act 2005 to the following health Professionals:
 - Ms D Audiological Scientist letter dated 15.10.2007
 - Ms F Community Occupational Therapy Manager letter dated 15.10.2007 seeking a report no later than 04.01.2008
 - Ms D, Senior Clinical Psychologist letter dated 15.10.2007 with a report no later than 04.01.2008
 - Ms C, Senior Speech & Language Therapist letter dated 15.10.2007 with a report no later than 04.01.2008
 - Ms H Community Dietician Manager requesting a dietetic assessment for Y. Email dated 12.10.2007 (an initial enquiry)
7. Copy of letter dated 23.11.2007 from Ms H Community Dietician Manager to Ms C Assessment Officer stating that the request for an Assessment of Need could not be facilitated within the Community Nutrition & Dietetic Service North Lee due to the lack of specialisation in paediatrics. *There are no paediatric Dietician posts in place.*
8. Copy of four (4) email correspondence dated 12.09.2007/12.10.2007/12.10.2007/04.10.2007 between Ms C Assessment Officer and Ms O'N A/General Manager North Lee in respect of the difficulties Ms H Community Dietician Manager had in providing an assessment under the Act due to: *No Paediatric specialisation in their team- predominantly an adult service.* (Email from Ms H Community Dietician Manager dated 04.10.2007). Ms C sought advice from Ms O'N on how to proceed in view of the timeline involved under the Act.
9. Copies of email correspondence dated 17.10.2007 between Ms C Assessment Officer and Ms C Senior Speech & Language Therapist in respect of arranging assessment for Y.
10. Independent Assessment of Need Summary Report dated 12.12.2007 from Ms. C Senior Occupational Therapist received by Assessment Officer on 17.12.2007.
11. Independent Assessment of Need Summary Report dated 14.12.2007 from Ms. D Senior Clinical Psychologist received by Assessment Officer on 17.12.2007.

- 12.** Independent Assessment of Need Summary Report dated 03.12.2007 from Ms C Senior Speech and Language Therapist received by Assessment Officer on 15.02.2008.
- 13.** Letter from Ms C seeking an Assessment of Need under the Act 2005 to Dr C, CAMHS, HSE South, letter dated 19.01.2008 seeking a report no later than 01.04.2008
- 14.** Letter from Dr. H Senior Clinical Psychologist CAMHS dated 04.02.2008 to Ms C Assessment Officer.
- 15.** Letter from Ms C dated 19.02.2008 to Dr H Senior Clinical Psychologist CAMHS.
- 16.** Copy of letter signed by Dr. C Consultant Child & Adolescent Psychiatrist, Ms R, Clinical Psychologist and Ms C, Senior Speech and Language Therapist to Ms C Assessment Officer dated 26.02.2008.
- 17.** Copy of email from Ms C to Ms O’N, A/General Manager, Cork North Lee highlighting the difficulties she is experiencing with CAMHS prioritising children referred under the Act. Ms C seeks intervention *from someone at a more senior level* on the issue of non compliance with the legislation with regard to CAMHS. Ms C concludes; *I need guidance on how to proceed as a matter of priority.*
- 18.** Letter from Ms C seeking a Dietetic assessment under the Act to Ms M, Manager Dietetic Dept, Bon Secours Hospital, dated 06.08.2008, seeking a report no later than 05.09.2008.
- 19.** Independent Assessment of Need Summary Report dated 21.08.2008 inclusive of an invoice for the Dietetic Assessment of Need required under the Act from Ms M, Dietician Manager received by Assessment Officer on 26.08.2008
- 20.** Independent Assessment of Need Summary Report dated 11.03.2008 from Ms O’D, Audiological Scientist received by Assessment Officer on 11.02.2008. Noted Assessment was conducted on 07.02.2008.
- 21.** Report of Hearing Test results conducted by Ms E, Audiological Scientist dated 09.04.2008
- 22.** Copy of email from Ms C Assessment Officer dated 24.06.2008 to Ms O’N A/General Manager, Cork North Lee, Mr D, Local Health Manager Cork North Lee, Mr S, Care Group Co-ordinator and Ms S Local Health Manager regarding CAMHS.
- 23.** Copies of email correspondence dated 25.06.2008 initiated by Ms C Assessment Officer to Mr S Care Group Co-ordinator, Mr S Project Manager

- 24.** Copy of email from Ms C Assessment Officer dated 26.06.2008 to the Early Intervention Team.

- 25.** Copy of letter dated 10.10. 2008 from Ms O'N A/General Manager confirming appointment with CAMHS for Y which he attended on 25.09.2008.

- 26.** Copy of CAMHS Report dated 18.08.2008 and 25.09.2008 and the CAMHS Assessment of Need Summary Report dated 05.11.2008.