



**Office of the Disability Appeals Officer
Oifig an Oifigigh Achomhairc um Míchumas**

**Annual Report of the
Disability Appeals Officer
2008**

**Report by the Disability Appeals Officer on the activities of the Office of the
Disability Appeals Officer in 2008**

PRN: A9/0813



**Office of the Disability Appeals Officer
Oifig an Oifigigh Achomhairc um Míchumas**

**Mr John Moloney TD
Minister for Equality, Disability & Mental Health
Hawkins House
Dublin 2**

30th June 2009

Dear Minister Moloney,

In accordance with the provisions of Section 17 of the Disability Act 2005, I hereby submit the report on the activities of my Office for the year ended 31st December 2008.

Yours Sincerely

**Teresa Dykes
Disability Appeals Officer**

Mission Statement:

“To provide and deliver an independent, accessible, transparent and fair disability appeals redress service in a timely and courteous manner.”

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Foreword

Overview by the Disability Appeals Officer

This is the second annual report produced by me and contains an outline of the work of the Office of the Disability Appeals Officer (ODAO) in 2008.

Legislative Landscape

The Disability Act 2005 (Commencement) Order 2007 (Statutory Instrument 234 of 2007) fixed the 1st June 2007 as the day on which the provisions of Part 2 of the Disability Act 2005 (“the Act”) came into operation in relation to persons under 5 years of age.

Section 16 of the Act 2005 provides for the appointment by the Minister of a person “who shall be known as the appeals officer” to perform the functions conferred on him or her by the Act.

Substantive rights are created by Part 2 of the Act which rights include relevantly the statutory entitlement to an independent assessment of health and education needs pursuant to section 9. The Act recites that it is an Act to enable “*provision to be made for the assessment of health and education needs occasioned to persons with disabilities by their disabilities.*”

Section 1(3) of the Act permits the phased introduction of Part 2. It states relevantly:

“Part 2 shall come into operation on such day or days as, by order or orders made by the Minister for Health & Children, where appropriate, after consultation with the Minister for Education and Science, may be fixed therefor either generally or with reference to persons of different ages or with reference to any other particular purpose or provision and different days may be so fixed for persons of different ages, for other different purposes or for different provisions.”

The reason for this envisaged phased introduction of Part 2 of the Act has been explained in the Sectoral Plan of the Department of Health & Children, Section 5.3 at page 58 in the following terms:

“When the Disability Bill was before the Oireachtas, it was widely understood that, having regard to resource and capacity issues within the health services and to the complexity of the delivery system, the provisions of Part 2 of the Disability Act would have to be implemented on a phased basis.”

It is asserted in the same section of the Sectoral Plan that following consultation with relevant stakeholders:

“It has been agreed that, in the phasing arrangements for the implementation of Part 2, priority will be given to the needs of young children. Among the factors underlying this decision are: - the importance of intervention early in

life, which can have a significant impact on the disabling effects of a condition/impairment.....”

Against this background the Commencement Order was made and fixed 1st June 2007 as the date upon which Part 2 of the Act came into operation “*in relation to persons under five years of age.*” The ODAO provided a redress service in 2008 to applicants who are eligible under this order.

General

I was appointed as the Disability Appeals Officer effective from 5th August 2008. I commenced the process of reviewing Appeals which were lodged by developing pathways and methodologies which were grounded in the core principles and statutory framework of the Act. The ODAO engage best practice associated with quasi judicial independent statutory officers and to this end have a continuing education/training commitment to ensure we can assure the work we do. This report elaborates on what and how these methods intend to enhance this redress service.

The ODAO team of four are committed to delivering a service in an efficient, courteous and timely manner.

The legal advisors procured for the Disability Appeals Officer have played an important role in advising me on points of law and relevant up to date case law.

In conclusion

I would like to convey my sincere appreciation to my three colleagues who have supported the development of the ODAO alongside me. It has been a challenge within the constraints of the resources allocated to my office. I wish to note their untiring dedication and experience in meeting the needs of all parties accessing this service.

I would also like to thank the IT Department of the Department of Health and Children who have assisted me in all the IT developments required for this office. I appreciate their overall contribution to the development of our Web site www.odaio.ie and the practical support in particular was very much appreciated.

This annual report is being printed in bilingual form. If you have any comments on any aspect of the report please get in touch.

Teresa Dykes
Disability Appeals Officer

30th June 2009

Chapter 1: Introduction

Introduction

The Office of the Disability Appeals Officer (ODAO) is committed to operating a redress service within the parameters of the Disability Act 2005 (the Act) and at the highest standard within its remit in the implementation of Sections 16-23 of the Act. The objective of this office is to ensure that the role and function of the ODAO is to deliver a service which is clear, fair and courteous to those who use the service. The ODAO undertakes to operate with integrity to ensure that the rules of natural and constitutional justice are upheld for all.

Core Values of the ODAO

The ODAO is committed to a set of fundamental values that express our dedication to providing a quality appeals service that all can trust. Our fundamental values concern the individual, rights, and the organisation.

The individual;

Each individual submitting an appeal to the ODAO has the right to be treated with dignity and respect, to have their privacy safeguarded, and to have the confidentiality of their personal information protected.

Rights;

We will uphold the legal and human rights of each person accessing our service, and are respectful at all times. The ODAO acknowledges this obligation and will take action to uphold the rights of all applicants and respondents in a manner which is consistent with the Act and natural justice.

The Organisation;

The ODAO must be accountable, comply with all relevant laws and regulations and ensure that they monitor their own service delivery against the requirements of the Act so that those persons accessing the service can be assured that the service they receive is efficient and effectively managed. The ODAO must demonstrate that they will support and enable all people who access our redress service to raise issues of concern and areas of dissatisfaction.

The ODAO acknowledges and supports these organisational values and will ensure that the process of appealing a decision on a complaint is always fair, transparent and accessible.

Chapter 2: Code of Practice

The Office of the Disability Appeals Officer Code of Practice

During 2008 a Code of Practice Manual was developed and finalised in December 2008. It is an internal document for the general guidance of staff in the ODAO, explaining the various procedures for processing appeals in our office. The Code of Practice will be monitored continually against appeals lodged and reviewed annually for performance rating.

The explanations and terms we use and the guidance we give in this document is intended as a guide only. They are not, or not necessarily to be taken as a legal interpretation or analysis of the Act or an exhaustive or definitive interpretation or analysis.

The objectives of the Code of Practice can be summarised into three (3) main Goals

1. To ensure our approach to appeals is fair and is seen to be fair and in accordance with the Act and with law generally.
2. To ensure we are consistent and fair when we deal with appeals and that we do so in accordance with law.
3. To enable easy access to the service for all applicants and respondents by application of good working practices and employment of relevant communication tools.

Goal 1

The ODAO adopt a transparent methodology when engaging with all applicants and respondents. We ensure understanding by adopting informative, clearly written and verbal communication throughout the process. All relevant correspondence and documents pertaining to appeals are shared with both parties and time is allowed for responses as necessary.

Goal 2

The ODAO developed a Determination Framework Document called *Determination and Reasons for Decision Report* in keeping with section 18 (5) of the Act to ensure Determinations issued are clear with regard to the decisions outlined. This document is a comprehensive tool which describes all stages involved in the consideration and determining of appeals.

Goal 3

The ODAO has developed a pathway referred to as the ODAO Pathway (see Table 1 of this Report) to assist all stakeholders in understanding how the Appeal Service operates. This pathway is the framework reference document utilised by this office on a daily basis.

The ODAO Pathway is intended as a guide to the expected pathway of most appeals made to the Disability Appeals Officer. The Disability Appeals Officer may adopt such procedures as she considers appropriate in all the circumstances of any individual case.

It should be noted that the Act provides that subject to the provisions of that Act the procedure for conducting an appeal is to be such as the Disability Appeals Officer considers appropriate in all the circumstances of the case and without prejudice to this, is to be as informal as is consistent with the due performance of the functions of the Disability Appeals Officer.

The ODAO Code of Practice Manual is subject to review from time to time and in particular in circumstances where the Minister for Health and Children makes regulations pursuant to the Act and in particular section 3 and section 21(d) and/or (e) thereof.

Finally in keeping with responsible corporate governance the ODAO implements a number of policies specific to this office to ensure national standards for good practice are adhered to. The following are those we currently refer to:

1. Information Security Handbook Policies and Procedures (DOHC January 2009)
2. Reporting of child safeguarding concerns arising during the appeal process (ODAO November 2008)
3. Data Protection Acts 1988 and 2003

Chapter 3: Strategy 2008-2013

The Office of the Disability Appeals Officer; Strategy 2008-2013

Our Strategy Statement which was completed in 2008 outlines the broad parameters within which the ODAO will work and is supported by an action plan which outlines in greater detail what the office hopes to achieve in the period 2008 - 2013.

The aims of the strategy are:

- To clearly set out the ODAO mandate and the core values underpinning its implementation.
- To set out the approach that will be taken in implementing the mandate.
- To provide the context within which the ODAO will operate.
- To clearly identify what applicants/appellants can expect to get from the ODAO when they use this service.

What is the Office of the Disability Appeals Officer?

The ODAO is committed to operating a redress service as per the Disability Act 2005 at the highest standard within its remit in the implementation of Sections 16-23 of the Act. The objective of this office is to ensure that the role and function of the ODAO is to deliver a service which is clear, fair and courteous to all who use it. The ODAO undertakes to operate with integrity and to ensure that the rules of natural and constitutional justice are upheld for all.

What is the Background and Context of the ODAO?

The ODAO was established in 2007 as required under section 16 of the Act.

For the first time ever in Ireland persons with a disability are statutorily entitled to receive from their service provider (HSE /Education Service Provider) an assessment of their needs, a statement of what services will be provided for them and if they are unhappy with this the right to complain and ultimately the right to appeal to an independent appeals officer for redress.

An individual with a disability who wishes to submit an appeal is entitled to expect that:

- it will be dealt with in an efficient, courteous and appropriate manner;
- it will be investigated in accordance with the provisions of the Act and the principles of natural justice and;
- any determination issued will be fair and reasonable;
- the basis for the determination will be clear and easily understood.

With the implementation of Part 2 of the Act the Minister for Health and Children stated within the Statutory Instrument No. 234 of 2007 Disability Act 2005 (Commencement) Order 2007 that: *The 1st of June is hereby fixed as the day on which the provisions of Part 2 of the Disability Act 2005 comes into operation in relation to persons under 5 years of age.*

Implementing Part 2 of the Act

Under section 9 of the Act as of the 1st June 2007 children under 5 years whose relatives/guardian are of the opinion that they may have a disability within the meaning of Part 2 of the Act became legally entitled to an independent assessment of their health and educational needs. The production of the assessment of need report called the “Assessment Report” will be the responsibility of the appointed Assessment Officer whose functions are conferred under section 8 of the Act. The Assessment Officer prepares a report in writing of the results of the assessment and furnishes the completed report to the appointed Liaison Officer under section 11 of the Act. The Liaison Officer will prepare a Service Statement which must be completed within one month following receipt of the Assessment Report. The Liaison Officer will prepare this Service Statement and specify the health services or education services or both as appropriate that the relevant child will receive whilst having regard to the matters referred to under section 11 (7) of the Act. In addition the Service Statement will specify the time within which such services will be provided. Under the Statutory Instrument S.I. No. 263 of 2007 Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 (the Regulations), clause 20 of the Regulations require the Assessment Report and Service Statement to be issued at the same time to the child’s relative/guardian or other persons so referred to under section 9(2) of the Act and to other appropriate recipients such as the HSE and or Education Service Provider.

If a person acting on behalf of the child is unhappy with the Assessment Report and or the Service Statement issued they can make a complaint to a Complaints Officer of the HSE on specific grounds under sections 14-15 of the Act. If they are unhappy with a finding or recommendation of the Complaints Officer or if a recommendation of a Complaints Officer is not being implemented they can submit an appeal to the Disability Appeals Officer. The HSE or an education service provider can submit an appeal against a finding of a Complaints Officer that they failed to provide a service or against a recommendation by the Complaints Officer that they provide a service in full (see Sections 16-20 of the Act).

The Disability Appeals Officer must deal with an appeal in accordance with the terms of the Act and make a determination in writing affirming, varying or setting aside the finding or recommendation concerned. This is further explained in Chapter 4 of this report.

The considerable powers accorded to the Disability Appeals Officer under the Act require that in exercise of those powers she operates in a just and lawful manner.

Chapter 4: Appeal Process

ODAO Appeal Process

The ODAO Appeal Process (Table 1) developed in 2008 is intended as a guide to the expected pathway of most appeals made to the Disability Appeals Officer. The Disability Appeals Officer may adopt such procedures as is considered appropriate in all the circumstances of any individual case and accordingly this guide should not be relied upon as the process which will be followed in any particular case. For example an Appeal may be referred to mediation at any time after the commencement of the Appeal and not just at Stage 5. Similarly a decision of the DAO regarding whether to hold an oral hearing may be taken or reconsidered at any stage.

Examining and investigating Appeals

Following the screening of a valid Appeal information is sought from the parties involved (the Applicant and Respondent). The Disability Appeals Officer conducts an initial assessment of this information furnished by both parties and decides the best approach for resolving the Appeal. The ODAO developed “Sorting Log Sheets” in order to assist in identifying all relevant documentation relating to the Appeal. The Disability Appeals Officer will decide at this stage if an Appeal can be resolved by mediation or if further investigation is required. In the case where mediation is not recommended or where the Applicant does not consent to mediation the Disability Appeals Officer will continue along the Appeal Process Pathway to Determination.

At all times the Disability Appeals Officer shares all relevant information/material submitted to her with both parties. Both parties are given equal opportunity to submit any material as evidence to support or respond to an Appeal or any other information they wish the Disability Appeals Officer to consider in determining an Appeal.

Oral Hearing

During the course of an investigation, it may become apparent that an oral hearing is necessary or desirable in order to determine the Appeal. Oral hearings are held in private. They are also held in a location and at a time that is as convenient as possible for the individuals concerned.

Oral Hearings will be conducted;

- when such a hearing is requested by the applicant or the appellant and/or
- if the documentary evidence is unclear or insufficient or old and/or
- if there is a conflict between the contents of the information, documentation or evidence provided by the parties on material issues and/or
- if either of the parties object to the admission of any aspect of any written statement or information or document submitted by any of the other parties and/or

- if in order to ensure the fairness of the Appeal generally it is necessary to hold such a hearing.

Determining Appeals

The Disability Appeals Officer will complete the “Determination and Reasons for Report” after a full and comprehensive review of all material submitted by both parties compliant with section 16-20 of the Act. The issues which were vital to the Disability Appeals Officer’s conclusion are identified and the manner in which she considered them explained.

The Disability Appeals Officer is required to determine appeals in writing as per section 18 (5) of the Act.....”*The appeals officer shall make a determination in writing in relation to the appeal affirming, varying or setting aside the finding or recommendation concerned and shall communicate the determination (including the reasons therefor) to the applicant, the Executive and, if appropriate, the head of the education service provider concerned who shall comply with the determination*”.

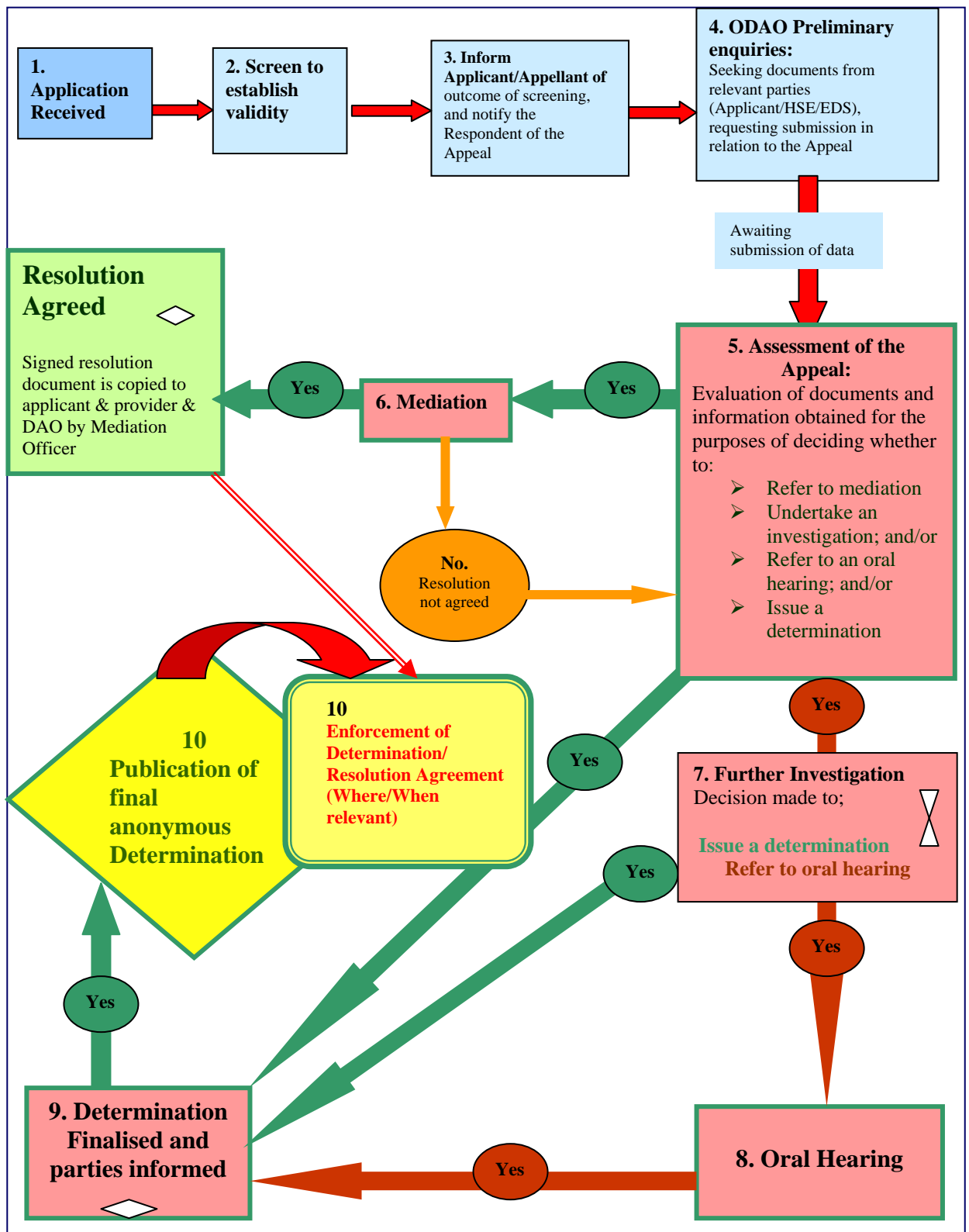
As required by section 18(20) of the 2005 Act before deciding an appeal the Disability Appeals Officer shall consider the following:

- the notice of appeal;
- any relevant information obtained during the course of the appeals process;
- the evidence presented and any representations made at any oral hearing;

The ODAO has adopted the *7 C Principle of making good Decisions* (Judicial Studies Board 2008), to support clear and rational determinations within the appeals process.

1. **Consistency**- both internally and externally
2. **Corroboration**- including corroboration of all documents
3. **Context**- does the appeal the Disability Appeals Officer is considering fit with available objective evidence and the context for the events involved.
4. **Credibility**- facts are tested against the evidence so that decisions made by the Disability Appeals Officer are credible
5. **Cover up**- that there is no reason that the applicant/appellant/respondent are concealing any relevant information
6. **Conduct**- relevant to each case
7. **Critical Examination**- has the evidence been thoroughly tested by the Disability Appeals Officer

Table 1 Appeal Process Pathway 2008



Chapter 5: Mediation Service

Mediation

At any time after an appeal has been initiated under section 18 of the Act the Disability Appeals Officer may refer the matter for mediation to a Mediation Officer if he or she is of the opinion that the appeal could be resolved by mediation.

The Disability Appeals Officer informs the person who initiated the appeal of that opinion and unless the applicant objects the Disability Appeals Officer will refer the matter for mediation to a Mediation Officer.

What is Mediation?

Mediation is a voluntary process that is held confidentially and in a non-public forum, in which an impartial person facilitates a negotiation between people in conflict and helps them find and agree shared solutions that meet their interests and needs. Mediation is about moving forward and resolving conflict. The role of the mediator is to give everyone the best opportunity of achieving a settlement. Mediation does not prejudice any party or his or her legal or other options if it does not result in a settlement and no settlement will take hold unless it is agreed in writing by all parties. Mediation is not therefore a process of adjudication – no solutions or judgements will be imposed on anyone taking part. The mediator remains neutral at all times and delivers no legal or other judgement about who is right and who is wrong.

All persons taking part in a mediation will be assured that the entire process is confidential and without prejudice. Since mediation is a voluntary process designed to achieve a consensus, persons can withdraw from the process at any time if they so wish. If the parties involved choose to stay and complete the process and if they reach agreement on a solution (a “resolution”) a document called a “Mediation Resolution Document” will be drawn up and signed by relevant parties (who are described in section 19 of the Act). A resolution may be enforced by Circuit Court action if not given effect to.

Mediation as provided by the ODAO

The Mediation Officer employed by the Office of the Disability Appeals Officer trained as a mediator with the Chartered Institute of Arbitrators and is a Member of the Institute. The Institute teaches the “facilitative” model of mediation. “In facilitative mediation the mediator structures a process to assist the parties in reaching a mutually-agreeable resolution. The mediator is in charge of the process while the parties are in charge of the outcome” (Fenn 2005)

The mediation model used by the ODAO is in keeping with the views of the Law Reform Commission which states relevantly... “*The Commission views mediation as a facilitative, consensual and confidential process, in which parties to the dispute select a neutral and independent third party to assist them in reaching a mutually acceptable negotiated agreement. The participation of the parties in the process is voluntary and the mediator plays no advisory or evaluative role in the outcome of the*

process but may advise on or determine the process” Consultation Paper Alternative Dispute Resolution (July 2003).

Chapter 6: Appeals 2008

Appeals in 2008

Grounds for Appeal;

- ✚ By an applicant (section 18 (1))
 - Against a finding or recommendation of a Complaints Officer
 - Against the non implementation of a Complaints Officer's recommendation by HSE or an education service provider (section 15 (8))

- ✚ By HSE or an education service provider (section 18 (2)). The HSE /Ed. Service is referred to as the appellants within the ODAO)
 - Against the recommendation of a Complaints Officer relating to the provision of a service specified in the Service Statement (section 15 (8) (f) of the Act)

There were twenty three (23) Appeals lodged from June 2008 until the end of December 2008, of which twenty one (21) appeals were considered as valid appeals. In August 2008 one (1) appeal was withdrawn, which resulted in twenty (20) appeals for consideration by the Disability Appeals Officer. Of the twenty (20) valid appeals fifteen (15) related to delays in the Assessment of Need process and five (5) related to issues in respect of a Service Statement.

Table 2 Number of Appeals lodged 2008.

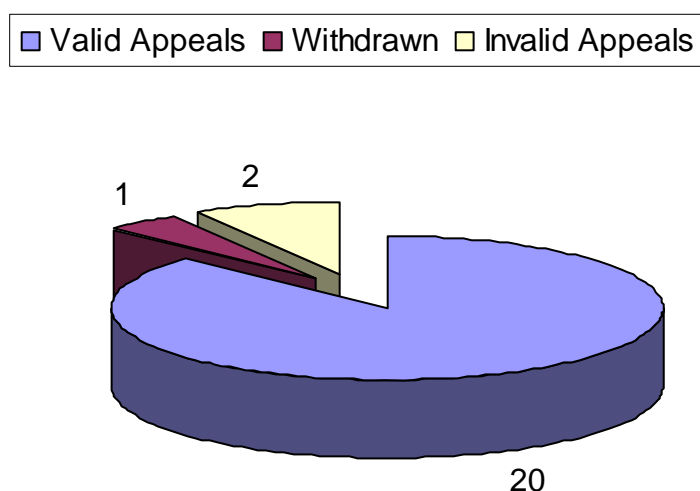


Table 3 Number of Valid Appeals (15 related to Assessment of Need delay, 5 related to Service Statements)

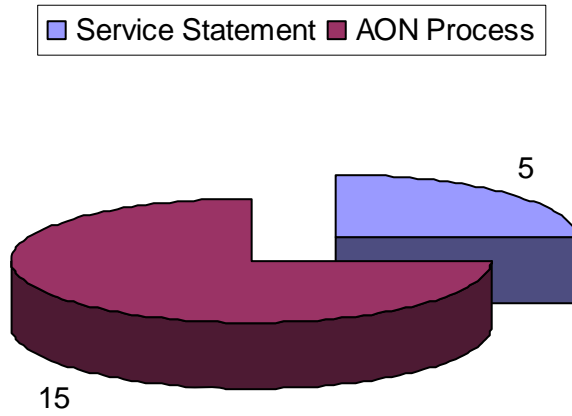


Table 4 HSE Geographical Spread.

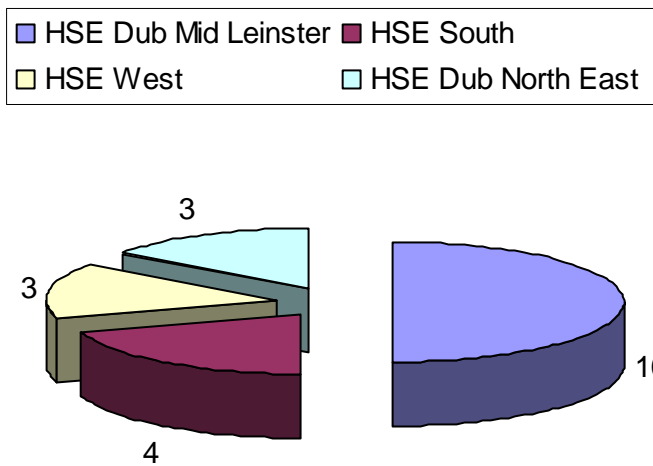


Table 5 Number of Appeals by LHO Areas.

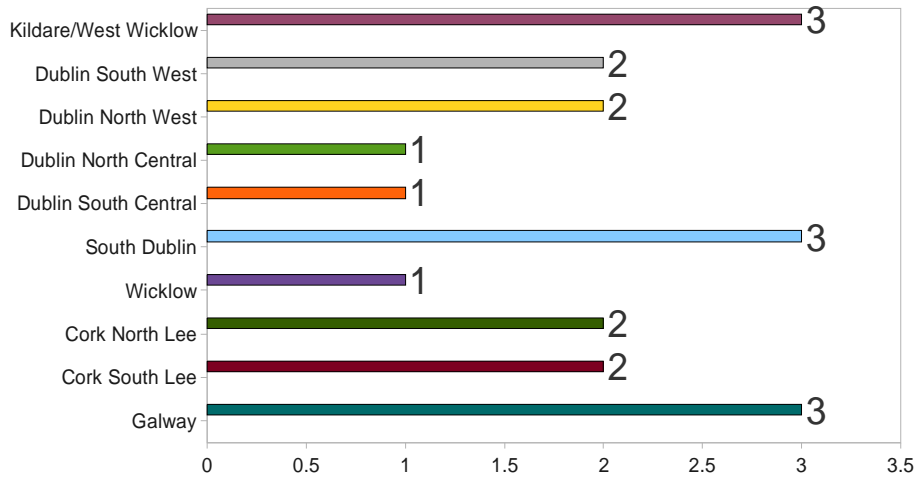
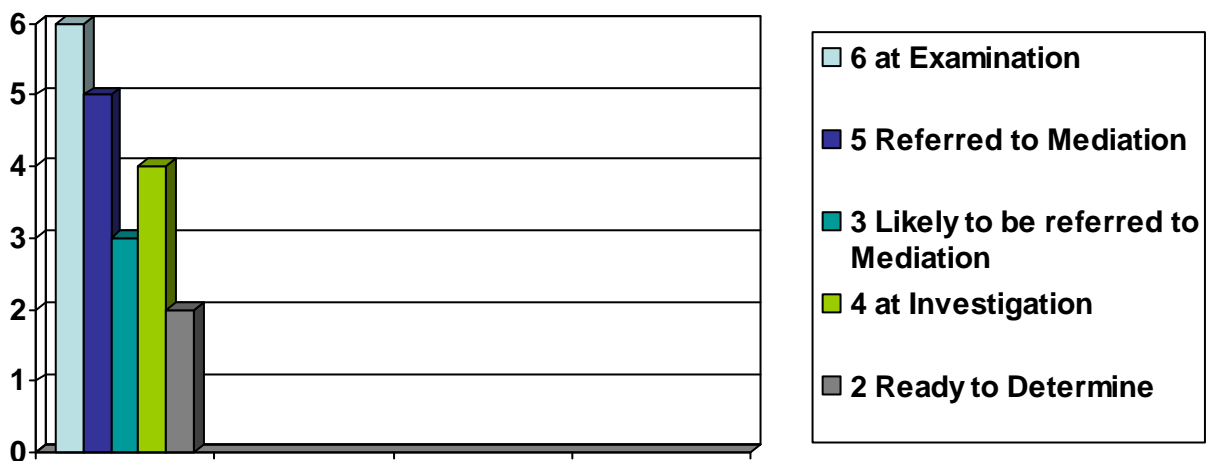


Table 6 Status of Appeals 31.12.2008



Chapter 7: Financial Report

Revenue Costs:

There are four main costs incurred within the ODAO which are described under the following headings:

- Pay and related costs
- Office running costs
- Independent Advice (Legal & Mediation)
- Training (External & In-service)

Table 7 below represents an approximation of all expenses incurred within the ODAO in 2008. The figures are based on invoices paid, expenses incurred, and include staff salaries, which are paid by the Department of Health & Children (DoHC). In the absence of an allocated budget in 2008, I requested an exact breakdown of costs from the DoHC, as I have not received same at the time of publication the costs quoted are approximate.

Table 7

	Amount €
Pay and related costs	288,195
Office running costs	73,868
Independent Advice (Legal & Mediation)	80,676
Training (External & In-service)	16,268
Total	459,007

Human Resources:

From January to September 2008 there were five personnel attached to the ODAO:

- 1 x Disability Appeals Officer (PO)
- 1 x Mediation Officer (AP)
- 1 x Higher Executive Officer (HEO)
- 1 x Executive Officer (EO)
- 1 x Clerical Officer (CO)

Due to constraints outside this office's control the ODAO had a decrease of 40% in the staff compliment in the last quarter of 2008.

- 1 x HEO commenced maternity leave on 22.09.08 and was not replaced
- 1 x CO transferred back to the Department of Justice on 28.09.2008.

Effectively in the last quarter of 2008 there were 3 staff within the ODAO:

- 1 x Disability Appeals Officer
- 1 x Mediation Officer
- 1 x Executive Officer

Chapter 8: Training Report

The ODAO Training Report

Training Summary -2008

Month	Supplier	Training	Staff involved by grade
January	PAI Publications	FOI	Higher Executive Officer
January	Chartered Institute of Arbitrators Ireland	Introduction to Mediation	Mediation Officer
February	Halley & Associates	Mediation	Mediation Officer
March	Chartered Institute of Arbitrators London	Training in Mediation	Mediation Officer
October	Halley & Associates In-service	Core Principles of Mediation	Disability Appeals Officer Mediation Officer Executive Officer
November	Judicial Studies Board UK	Tribunal Essential Skills & Competences	Disability Appeals Officer
November	Ivor Fitzpatrick Solicitors In-service	Examination/ Investigation and Decision making Skills applied in practice	Disability Appeals Officer Mediation Officer Executive Officer
December	Halley & Associates	Mediation in Practice	Mediation Officer