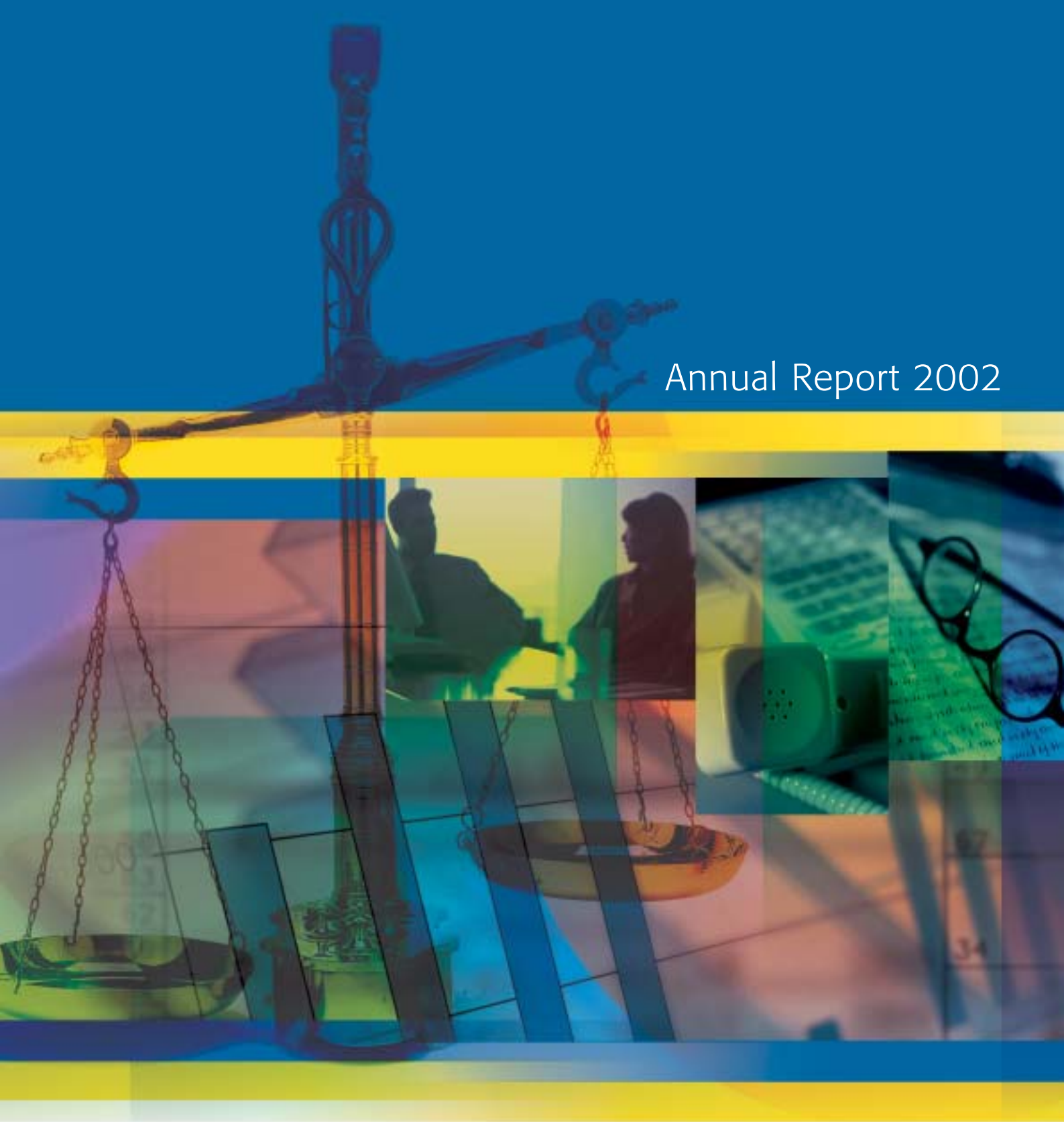


Annual Report 2002



SOCIAL WELFARE

A P P E A L S  
O F F I C E

# To The Minister for Social and Family Affairs, Mary Coughlan, T.D.

Cuirim tuairisc maidir le gnómharta na hOifige Achomhairc Leasa Shóisialaigh i 2002 faoi bhreith de réir fhorálacha Ailt 254(1) den Acht Leasa Shóisialaigh (Comhdhlúthú). 1993.

In accordance with the provisions of Section 254(1) of the Social Welfare (Consolidation) Act, 1993, I submit the report of the Social Welfare Appeals Office for 2002.

Cyril Havelin

Chief Appeals Officer

June 2003



# Contents

Introduction	2
The Business of the Social Welfare Appeals Office	3
Statistics – 2002 and Trends	4
Meetings and Consultations	9
Organisational and Operational Matters	13
Review of the Appeals Office	15
Some Appeals Officers' Decision Cases	17
Appendix 1	27
Appendix 2	28



# Introduction

This is my first Annual report since taking up office as Chief Appeals Officer in mid-2002. That year saw the departure, on their retirement, of Seán Reade, Chief Appeals Officer and John O'Donnell, Deputy Chief Appeals Officer. Seán and John made an excellent contribution to the business of appeals and their going left a big void in the Office.

Into that void were thrust Vincent Long, as the new Deputy Chief, and myself as the new Chief Appeals Officer. We found a well-running, very professional operation which was a tribute to the retirees and the very dedicated staff, both Appeals Officers and administrative personnel who have continued to render excellent service. Naturally, Vincent and myself had a settling-in period and we were very generously aided in this by the Office Manager, Justin McCarthy.

My role as Chief Appeals Officer requires attention to the casework which is the *raison d'être* of the Office. This aspect of the job is a very challenging one and absorbs much of the energies of the management and the nineteen Appeals Officers assigned to the task of determining appeals. In order to give readers of this report a general flavour of how appeals are considered, I am including this year a somewhat wider selection of cases than heretofore.

How we process appeals and the time we take to clear them is of vital importance to appellants. At present we are putting a particular focus on the time it takes to process appeals. By its very nature the appeals process cannot be a particularly quick one – there are submissions to be made, sometimes further enquiries to be undertaken, medical examinations to be arranged and, in many instances, oral hearings to be held. This report gives some details of the progress made in pursuit of the goal of faster turnaround times in 2002. I am happy to say that the progress recorded for that year is continuing and will be reported on in due course.

One of the legacies of the outgoing Appeals administration was the handing over of a just-completed report by consultants Deloitte and Touche. They had been engaged to carry out a review of the appeals service with a view to offering ideas for further improvement. I comment later on the outcome of that report – the recommendations and implementation. Suffice to say at this point that the Report was a welcome and timely one and provides a very useful agenda for consideration and action.

The Social Welfare Appeals Office is an independent entity within the framework of the Department of Social and Family Affairs. It is operationally separate from the Department and makes its decisions on cases on a completely individual basis. I think it is worth emphasising this point because those using the appeals service must have confidence in its ability to carry out an independent role. Notwithstanding this, the Office maintains a good and active relationship with the Department with the aim of ensuring that appellants receive, from every perspective, the best possible service.



# The Business of the Social Welfare Appeals Office in 2002

The provision of a formalised, accessible and transparent system of appeal for customers who are dissatisfied with decisions on entitlements or the insurability of their employment is a principle in the Department of Social and Family Affairs Strategy Statement.

International Instruments of the Council of Europe and the International Labour Office in the field of social security which have been ratified by Ireland also require that "every claimant shall have a right of appeal in the case of refusal of the benefit or complaint as to its quality or quantity".

The Social Welfare Appeals Office provides this service as a statutory right. In addition to covering entitlements provided direct by the Department of Social and Family Affairs, the service also includes a right of appeal in respect of certain decisions made by Health Boards in regard to Supplementary Welfare Allowances.

The mission of the Appeals Office is "to provide an independent, accessible and fair appeals service for entitlement to social welfare payments and to deliver that service in a prompt and courteous manner".

With due regard to the interests of other parties to the appeals process – the Department, Exchequer and the personnel of the Office – business plans of the Office focus primarily on the service to appellants, including particularly the scope for improving the service. As provided for in the 2001 Business Plan a Locall 'phone service was introduced during 2002 to facilitate contact with the Office. This allows people to 'phone the office from anywhere in the country at local call cost.

A consultancy review, begun towards the end of 2001, of the organisation and work processes of the Appeals Office was completed in mid-2002. The outcome and follow-up activity is given in a later section of this report.

The appeals system provides the opportunity to hear at first hand issues which customers of the Department see as of concern to them. Feedback to the Department on such issues is an important feature of the appeals process. Procedures are in place to do this through meetings with the Department's Decisions Advisory Officer and also through input at courses organised by the Department for its Deciding Officers.

These procedures provide the opportunity to inform Departmental officers of the functioning of the appeals process, and thus also help to ensure that the system is used to best effect in the primary function of resolving issues of contention. The need to provide value for money in respect of the resources deployed is, of course, an integral part of the management practices and is so provided for in the business plans.

Recognition of the commitment and contribution of the personnel of the Office also featured prominently in the business plan for 2002. The Partnership Committee set up in January 2002 has worked very successfully.

All staff now participate in the Performance Management and Development Scheme and the necessary action was taken to implement the various stages of the process.



# Statistics – 2002 and Trends

## Appeals received and disposed of

Just over 15,000 appeals were received in 2002. This was some 950 fewer than the number received in the previous year. This intake, coupled with almost 6,800 on hands at the start of 2002, presented a challenging workload of some 21,800 appeals for the year. In the event, the number of appeals disposed of exceeded the total received by more than 800.

Tables relating to the receipt and disposal of the various categories of appeals are set out on pages 5 to 8. It is worth mentioning that reviews of all appeals received are carried out by Deciding Officers, usually at the stage where they are invited to submit their views on the case for the Appeals Officers consideration, and this can lead to a revision in favour of the appellant; new information coming to hand being the most common reason.

## Appeal outcomes

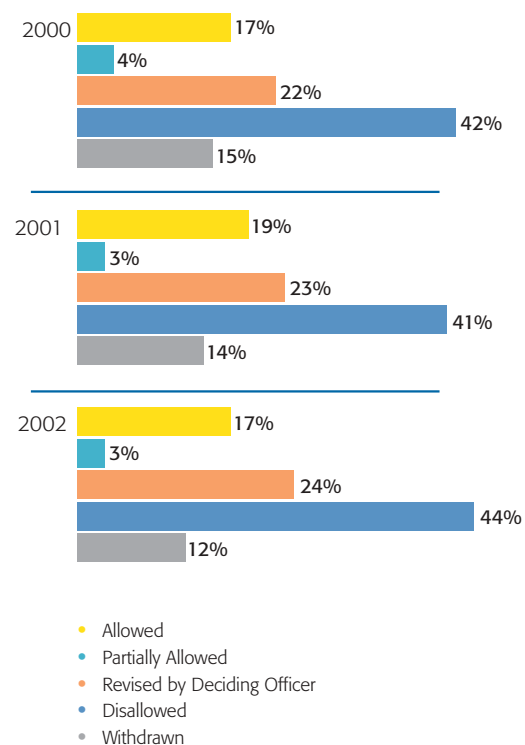
Of the 15,834 appeals disposed of in 2002 over 44% (7,096) resulted in favourable outcomes for appellants. As seen in Figure A this compares with 43% in 2000 and 45% in 2001.

## Appeals in progress and clearance times

Given the quasi judicial nature of the appeals process and the procedures in place to ensure that every appeal gets full and fair consideration it is inevitable that there will be some considerable number of appeals on which work is in progress at any time. By the end of 2000 the number of appeals on which work was in progress had built up to a figure of 7,537. [See Table 4 (Page 8)]. It is pleasing to report that at the end of 2002 the number on hands had been reduced to 6,156. We aspire to a target figure approaching 4,000 appeals in progress at any one time and, while this is a rather challenging figure, we hope to gradually move closer to it over the coming while.

Because of the substantial volume of work on hands the time taken to process appeals is, inevitably, greater than it should be. During the year, the average time taken to process all appeals disposed of was just under 23 weeks. Of this, 10 weeks was attributable to processes in the Appeals Office, 2 weeks to where responses were awaited from appellants and the remainder was attributable to work in the Social Welfare Services. For varying reasons some appeals can be quite protracted and if allowance is made for the 25% most protracted cases the average time to process appeals was 15 weeks.

Figure A



**Table 1: Appeals received and disposed of – 2002**

	In Progress 01-Jan-02	Receipts	Decided Appeals Officer	Revised Decision Deciding Officer	Withdrawn	In Progress 31-Dec-02
Old Age Pensions	332	433	468	65	20	212
Retirement Pensions	13	33	18	7	3	18
Pre-retirement Allowances	14	28	29	7	2	4
Old Age (contributory) Pensions	72	239	65	55	12	179
Disability Benefit	1,522	3,284	1,189	1,363	880	1,374
Invalidity Pension	272	509	214	292	48	227
Disability Allowance	852	1,832	910	558	359	857
Occupational Injuries Benefits	429	575	533	69	44	358
Treatment Benefit	0	4	2	0	0	2
Unemployment Benefit	582	1,588	1,511	155	72	432
Unemployment Assistance – Payments	607	1,983	1,879	97	73	541
Unemployment Assistance – Means	392	1,511	1,104	258	136	405
Widows/Widowers and Orphans Pensions	86	106	104	18	8	62
One-Parent Family Payment	722	840	591	250	63	658
Maternity Benefit	3	9	5	0	1	6
Child Benefit	25	46	33	13	2	23
Carers Benefit and Allowances	749	1,376	965	573	73	514
Family Income Supplement	43	72	55	24	5	31
Farm Assist	52	134	95	24	10	57
Supplementary Welfare Allowances	44	289	272	4	15	42
Rent Allowance (Private Rented Dwellings Act)	0	0	0	0	0	0
Liable relatives (contributions)	58	6	20	15	1	28
Insurability of Employment	104	120	82	7	9	126
<b>Totals</b>	<b>6,973</b>	<b>15,017</b>	<b>10,144</b>	<b>3,854</b>	<b>1,836</b>	<b>6,156</b>

**Table 2: Appeals received 1998-2002**

	1998	1999	2000	2001	2002
Old Age (non-contributory) and Blind Pensions	570	503	558	575	433
Retirement Pensions	29	29	23	25	33
Pre-retirement Allowances	81	38	48	32	28
Old Age (contributory) Pensions	98	87	77	106	239
Disability Benefit	3,813	3,917	3,968	3,434	3,284
Invalidity Pension	543	554	626	491	509
Disability Allowance	1,254	1,302	1,750	1,861	1,832
Occupational Injuries Benefits	793	741	806	677	575
Treatment Benefit	1	1	5	3	4
Unemployment Benefit	1,370	1,738	2,481	1,881	1,588
Unemployment Assistance – Payments	1,157	1,865	2,821	2,262	1,983
Unemployment Assistance – Means	2,911	2,246	1,757	1,511	1,511
Widows/Widowers and Orphans Pensions	125	103	151	142	106
One-Parent Family Payment	578	597	779	762	840
Maternity Benefit	14	20	16	9	9
Child Benefit	116	85	50	56	46
Carers Benefit and Allowance	285	756	1,009	1,334	1,376
Family Income Supplement	64	57	63	78	72
Farm Assist*		481	298	157	134
Supplementary Welfare Allowances**	115	213	239	354	289
Rent Allowance (Private Rented Dwellings Act)	1	2	1	2	0
Liab. Relatives (contributions)***		3	18	117	6
Insurability of Employment	96	127	106	92	120
<b>Totals</b>	<b>14,014</b>	<b>15,465</b>	<b>17,650</b>	<b>15,961</b>	<b>15,017</b>

\* Commenced 7th April 1999

\*\* Commenced 6th April 1998

\*\*\* Commenced 4th May 1999

**Table 3: Outcome of appeals by category – 2002**

	Allowed	Partly Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
Old Age (non-contributory) and Blind Pensions	42 8%	46 8%	65 12%	380 69%	20 4%	553
Disability Benefit	639 19%	19 1%	1,363 40%	531 15%	880 26%	3,432
Invalidity Pension	102 18%	1 0%	292 53%	111 20%	48 9%	554
Disability Allowance	332 18%	24 1%	558 31%	554 30%	359 20%	1,827
Occupational Injuries Benefits	253 39%	107 17%	69 11%	173 27%	44 7%	646
Unemployment Benefit	293 17%	61 4%	155 9%	1,157 67%	72 4%	1,738
Unemployment Assistance – Payments	286 14%	37 2%	97 5%	1,556 76%	73 4%	2,049
Unemployment Assistance – Means	167 11%	73 5%	258 17%	864 58%	136 9%	1,498
Widows/Widowers and Orphans pensions	25 19%	6 5%	18 14%	73 56%	8 6%	130
One-Parent Family Payments	149 16%	34 4%	250 28%	408 45%	63 7%	904
Carers Allowances	344 21%	39 2%	573 36%	582 36%	73 5%	1,611
Family Income Supplement	17 20%	3 4%	24 29%	35 42%	5 6%	84
Farm Assist	16 12%	20 16%	24 19%	59 46%	10 8%	129
Supplementary Welfare Allowances	60 21%	10 3%	4 1%	202 69%	15 5%	291
Insurability of Employment	17 17%	0 0%	7 7%	65 66%	9 9%	98
Other Appeals (OA(C)P, Pre-retirement Allowances, Treatment Benefit, etc.)	15 5%	5 2%	97 33%	152 52%	21 7%	290
Totals	2,757 17.4%	485 3.1%	3,854 24.3%	6,902 43.6%	1,836 11.6%	15,834

**Table 4: Appeals in progress at 31 December**

	1997	1998	1999	2000	2001	2002
Old Age (non-contributory) and Blind Pensions	335	229	275	263	332	212
Retirement Pensions	12	13	10	12	13	18
Pre-retirement Allowances	60	23	21	36	14	4
Old Age (con) Pensions	19	30	43	47	72	179
Disability Benefit	1,212	1,696	1,770	1,676	1,522	1,374
Invalidity Pension	227	231	254	352	272	227
Disability Allowance	582	625	695	946	852	857
Occupational Injuries Benefits	478	521	522	489	429	358
Treatment Benefit	1	1	1	4	0	2
Unemployment Benefit	406	448	618	682	582	432
Unemployment Assistance – Payments	315	387	686	719	607	541
Unemployment Assistance – Means	1,434	950	644	593	392	405
Widows and Orphans Pensions	93	58	64	113	86	62
One-Parent Family Payment	343	340	379	568	722	658
Maternity Benefit	7	8	7	5	3	6
Child Benefit	52	41	33	18	25	23
Carers Allowances	118	133	449	691	749	514
Family Income Supplement	42	46	19	40	43	31
Farm Assist *			301	116	52	57
Supplementary Welfare Allowance**		14	34	50	44	42
Rent Allowance (Private Rented Dwellings Act)	1	1	0	0	0	0
Liable relatives (contributions)***			2	7	58	28
Insurability of Employment	118	84	120	110	104	126
<b>Totals</b>	<b>5,855</b>	<b>5,879</b>	<b>6,947</b>	<b>7,537</b>	<b>6,973</b>	<b>6,156</b>

\* Commenced 7th April 1999

\*\* Commenced 6th April 1998

\*\*\* Commenced 4th May 1999



# Meetings and Consultations

In accordance with legislation governing the appeals system, meetings of Appeals Officers were held on a number of occasions during the year.

The main purpose of these meetings is to establish consistency among Appeals Officers in administering the social welfare code. Also discussed are the requirements of administrative law as they impact on procedure, as well as ways of keeping the system responsive to the needs of appellants and other customers of the Office, including the Department.

Meetings and consultations also took place with the Decisions Advisory Officer, and with officials from the Department who have responsibilities for the administration of the various schemes. Meetings were also held with the Health Board Appeals Officers. The following is a summary of some of the matters that were discussed at these meetings.

## Carer's Allowance

One of the main requirements for receipt of the Allowance is that the person receiving care must be so incapacitated as to require full time care and attention. The question as to whether or not this condition is fulfilled is frequently the subject of appeal. The carer is normally the appellant in such cases. Because of the nature of the considerations involved, oral hearings are generally required. While the carer attends the oral hearing the person being cared for cannot and does not ordinarily attend the appeal. The Appeals Officer does not, therefore, have the opportunity of hearing and assessing the evidence of the person being cared for, at first hand.

As indicated in the 2001 report, it was felt that the evidence gathering procedures at the claim stage of Carer's Allowance applications could be usefully supplemented to provide additional information to clarify whether a person required full time care and attention. One of the suggestions was for the introduction of a standardised reporting format, setting out the relevant features to be addressed whenever a Social Welfare

Inspector is asked to report on a claim. This would be useful to Deciding Officers and Appeals Officers. Discussions with various responsible areas of the Department in relation to this matter are ongoing.

## Disability Allowance

Under the legislation, Disability Allowance is not payable for any period where a person is resident in institutional care and where the person's maintenance is being met in whole or in part by a Health Board (Section 191 B (3) of the Social Welfare (Consolidation) Act, 1993). Difficulties have arisen in deciding whether certain halfway houses or community-based residences come within the scope of the provision. It has been argued that the Health Board funding of some of these community-based residences is directed towards the care rather than the maintenance of the individual residents. If this is correct it means that the residents may have an entitlement to Disability Allowance. However, the position in this regard is not always clear.

Community-based residences are an important mechanism for independent living. It is essential, however, that there be clarity in relation to the statutory provisions vis-a-vis entitlement to Disability Allowance. (See also the Appeals Officer's decision on page 17.)

A further anomaly exists in relation to this matter. Persons who were awarded payment of Disability Allowance prior to being admitted to institutional care are entitled to retain Disability Allowance while resident in the institution [Section 191 B (3B) of the Social Welfare (Consolidation) Act 1993]. However, other residents of the same institution who do not have a pre-existing claim have no such entitlement. This creates an anomalous situation in that certain clients of institutions are in receipt of Disability Allowance whereas others are not. These perspectives have been raised with the relevant section of the Department for their consideration.

## **Disability Benefit/Invalidity Pension – rehabilitative employment**

Disability Benefit and Invalidity Pension are payable to insured persons who are not capable of work because of illness. One of the conditions governing entitlement to payment under these schemes is that a person must not be involved in employment or self-employment activity. In certain limited circumstances, exceptions from these rules may apply in the case of persons who have obtained prior permission from the Department to engage in employment of a rehabilitative nature.

A number of cases have come to light on appeal in which the prior permission of the Department was not obtained resulting in disallowance of claims and the setting up of overpayments. In order to prevent such a situation arising in the future it was felt that greater publicity should be given to the conditions for receipt of Disability Benefit and Invalidity Pensions, with particular reference to the limited circumstances in which a person may continue to receive payment while also taking up rehabilitative employment.

## **Family Income Supplement (FIS) – definition of full time employment**

FIS is a payment for families where the weekly earnings from full time employment are low. Apart from satisfying a means test applicants must also be in full time employment, which for this purpose, means 38 hours per fortnight (19 hours per week). Once awarded, FIS remains payable for a period of 52 weeks at which stage a repeat claim is made and entitlement may be reviewed.

When conducting reviews of FIS claims, the Department has the advantage of doing so on a retrospective basis – i.e. looking back over the previous year's record to check hours of employment. It is also noted that a very strict interpretation of the definition of "full time employment" is applied. If it is found that the number of hours worked drops below the threshold in any fortnight – perhaps due to temporary absence/holiday etc – this could result in disallowance of the claim and setting up of an overpayment. In general, the level of household income in FIS cases is low and the imposition of an overpayment is, therefore, a severe burden.

While noting that the definition of "full time employment" is not overly restrictive (at 38 hours per fortnight) it is nevertheless felt that there should be greater flexibility in

determining whether or not the condition is met. Instead of taking isolated fortnightly periods the average number of hours worked over a (specified) longer period could be used as a more accurate measure of normal employment pattern. [It is accepted that this would require legislative amendment]

A number of FIS appeals on this issue have been received. Appellants complain that they are not advised of the approach to take on a current basis when/if the hours of employment drop below the minimum threshold – for example due to short-term illness of a few days duration. It is felt that additional information needs to be provided at the time of award advising applicants of the "full time employment" requirement and of the specific steps to take if they no longer fulfil this condition.

## **Occupational Injuries Benefit – Occupationally Contracted Disease**

Under the legislation governing the Occupational Injuries Scheme, diseases are prescribed by name in relation to particular occupations and exposure to specified substances. This approach to occupational diseases covers the bulk of diseases met in the workplace and has the advantage of enabling prescribed diseases to be simply and quickly identified. Nevertheless, the coverage is not comprehensive. Cases have arisen where appellants would, on balance of probabilities, have contracted a disease such as Asthma from the workplace but because the link to a prescribed occupation and /or exposure to a specific substance could not be established, the appeals fail.

The work of the Department Review Group on the updating of the statutory list of diseases covered by the Occupational Injuries Benefits scheme was completed during the year and its report and findings are now being considered in the Department. The Appeals Office assisted the Review Group in its work by bringing to attention cases in which the evidence would strongly seem to point to the disease in question being occupational in origin but not a prescribed disease for the scheme.

## **Occupational Injuries Benefit – Disablement Benefit: Offsets**

Under the Occupational Injuries Scheme, a Disablement Benefit may be paid to a person who has suffered a loss of physical or mental faculty as a result of an occupational accident or a prescribed disease contracted at work. The

amount of Disablement Benefit payable – whether by way of lump sum or pension – is related to the extent of the loss of physical or mental faculty. The greater the loss of faculty – which is medically assessed – the higher the award of Disablement Benefit. A reduction or offset in the degree of loss of faculty may be made because of a congenital defect or a pre-existing injury or disease, or for a loss of faculty attributable to a post accident injury or disease.

In the course of a number of appeals, it has emerged that the appellants were not notified that offsets had been applied in their case. In the interests of transparency and good customer service, it is desirable that notifications of the original Deciding Officer's decision should contain information regarding the offset and of the reasons for such. This will ensure that the appellant is fully informed and in a position to present his/her appeal fully.

### **One-Parent Family Payment (OPFP) – earnings from employment**

The OPFP is a means tested payment for lone parents who are bringing up a family without the support of a spouse or partner. Earnings from employment are among the items that are taken into consideration in calculating means for OPFP purposes. In order to encourage lone parents to participate in the labour market, earnings disregards are applied. However, there is an earnings ceiling on entitlement (currently €293 per week) and a lone parent earning in excess of this ceiling is not entitled to receive OPFP. Problems have emerged in relation to lone parents whose earnings fluctuate above and below the earnings threshold.

When conducting reviews of OPFP claims, the Department has the advantage of doing so on a retrospective basis – i.e. looking back over the previous year's earnings. If it is found that earnings have exceeded the weekly threshold, revised decisions are made disallowing OPFP and setting up overpayments. The problem from a lone parent's perspective is that there is no information available as to the approach that they should take on a current basis where earnings fluctuate above the limits set – possibly due to unexpected overtime work or bonus payment. While there is a clear obligation on OPFP recipients to notify the Department in the event of significant changes in means/earnings levels, this particular problem arises where there are marginal and intermittent changes involved in weekly earnings.

A number of these cases have arisen on appeal and lack of information from the Department has been a regular complaint. In the interests of good customer service, additional specific information should be made available, setting out precisely what the earnings thresholds are and advising applicants of what course of action to take where those are exceeded.

### **Supplementary Welfare Allowance (SWA) – Basic Payment**

Weekly payment of SWA is made to people who satisfy a means test and have no entitlement to any other Social Welfare payment. One of the conditions for receipt of SWA is that a person must be "registered for employment" (Section 176 of the Social Welfare (Consolidation) Act, 1993). A number of cases have come to appeal where SWA was disallowed on the basis that the appellant was not available for or genuinely seeking work. There is no requirement in the legislation that these conditions must be fulfilled for receipt of SWA. This was brought to the attention of the Department. [Changes in the conditions for receipt of SWA were made in the Social Welfare Act 2003 to include a requirement that applicants must be "available for and genuinely seeking work".]

### **Supplementary Welfare Allowance (Asylum Seekers)**

Asylum Seekers are provided with accommodation by the Reception and Integration Agency of the Department of Justice, Equality and Law Reform. Some of these Asylum Seekers have also applied to the Health Boards for Rent Supplement for the purpose of renting private accommodation on the grounds that the direct provision accommodation is unsuitable to their particular needs.

The outcome of such an appeal is dependent on whether the evidence establishes that there is an exceptional need involved – e.g. medical, family composition, nature of the accommodation or other pressing reason, that renders the direct provision accommodation unsuitable. (See also Appeals Officer's decision on page 23.) Appeals Officers continued to raise concerns about the level of investigation in such cases – with particular reference to the specific complaints that were often contained in the appeal statement.

[Arising from changes in the Social Welfare Act 2003, Rent Supplement will no longer be payable to persons "not lawfully in the State" or whose immigration status has not been finalised.]

## **Unemployment Payments – Disadvantaged claimants**

As highlighted in last year's report, the position of claimants who are ill equipped to take up employment continues to be a matter of concern to Appeals Officers. Due to factors such as poor literacy skills, impairment of intellectual ability, addiction or a criminal record, such claimants are at a distinct disadvantage in seeking employment. These claimants frequently come to attention on appeal as a result of having their unemployment payments disallowed for failing to fulfil the statutory requirements of being available for, and genuinely seeking employment. We are pleased to note that the Department has implemented, on a pilot basis, a 'high supports process' for this group. This is an inter-agency response that also includes FÁS, the Health Boards and the Vocational Educational Committees.

## **Decisions Advisory Office**

Meetings with the Director of the Decisions Advisory Office and his staff continue to be the main forum for liaison between the Appeals Office and the Department. It is through these meetings that feedback is provided in relation to legislative issues and/or administrative practices that may have been the subject of contention at appeal.

The Decisions Advisory Office played a key role during the year in developing the new Departmental Review Procedure for persons who receive unfavourable decisions in relation to their claims. In the first instance such customers are invited to submit additional information to the Department so that a speedy review and possible remedy can be achieved without the need to have recourse to the formal Appeals system. [The right of appeal to the Appeals Office remains as an option if the review is not fruitful]. The new process appears to be successful and has contributed to a reduction in the overall numbers of appeals that were received by the Appeals Office during 2002.

Among the administrative matters raised with the Decisions Advisory Office were concerns about serious delays being experienced in getting of file papers and

submissions from certain Scheme areas of the Department following receipt of appeals. The negative effect that this was having on our appeal processing times and on customer service in general was highlighted.

The office wishes to acknowledge and express appreciation of the assistance of the Decisions Advisory Office and of the staff of the Department throughout the year. We also wish to acknowledge in a special way the support and assistance provided by Mr Joe Madden the former Director of the Decisions Advisory Office who retired during the year.



# Organisational and Operational Matters

## Resources

An Organisation Chart of the Office as at 31 December 2002 is set out at Appendix 2 to this report.

The number of staff serving at that time was 63. This figure represents an actual full-time equivalent staff of 54.3 persons. (6 Appeals Officers and 14 administrative staff have reduced hours contracts). This reflects the family friendly and flexible working arrangements which are now available to staff.

## Customer Service

The Department's Customer Action Plan embodies principles of quality customer service. This Office fully subscribes to them in the delivery of the social welfare appeals service. Ways of improving the quality of that service are continually considered.

## Departmental Review following initial decision

The Department's Strategy Statement 2001-2004 "People, Policies, Services" contained a commitment to review any decision in the light of any further information brought to notice. This is a very useful and valuable provision. Thus, in the course of many appeals, as new information comes to hand the opportunity is frequently taken by Deciding Officers to revise hitherto adverse decisions thus obviating the need for the appeal to continue. Just under 25% of appeals disposed of in 2002 benefited from this timely process.

## Information

The processing of a very large number of appeals generates considerable interaction with all parties involved in the appeals service.

In relation to appellants, it is the objective that at all times such interaction is timely and informative with the objective of making the quasi-judicial appeals process understandable. Leaflets are made available outlining the process and the oral hearing procedures. All appellants

receive copies as appropriate. Interim letters are issued to keep appellants informed of the progress of their appeals. Where appropriate, oral hearings are arranged to enable appellants to present their cases personally.

Tá deis le fáil chun seirbhís den chaigdean árd chéanna a chur ar fáil do dhuine ar bith ar mian leis/leí acomharc a dhéanamh trí Ghaeilge, éisteacht béil san áireamh, agus tabharfar gach aon cabhair do dhuine ar bith ar mian leo fónamh a bhaint as an deis sin.

To give a fuller understanding of the functions and operations of the office to other parties involved in the appeals service, talks are given by the Office Manager to interest groups and to training courses for departmental officials. He also visits decentralised offices of the Department to discuss the appeals process with local management and the procedures for their responding to the grounds of appeal, including the submission of the relevant departmental papers in a timely manner.

## Locall

A Locall service which enables all customers from whatever location to contact the Office by 'phone at local call rates was introduced and all correspondents are advised of its availability. The new service is being monitored to ensure that it meets the needs of customers.

## Oral hearing venues

In line with the policy of making the service accessible, oral hearings are held at venues convenient to appellants around the country. In the Dublin area, appeal hearings are held at the Office's headquarters in D'Olier House and this accommodation is such that all customers can conduct their business in privacy and in some degree of comfort. Hotels are normally used as venues outside Dublin and these are monitored to ensure that an appropriately good standard is available to enable the parties to the appeals to present their cases in privacy. Where an appellant has special needs and may not be in a position to travel to an oral hearing venue, arrangements are made to conduct the hearing at the person's own home.

### Use of Interpreters

Appeals involving foreign nationals where the use of interpreters is required are becoming an increasing feature of the work of the Office. However, the number of such appeals is still relatively few. In quite a number of instances non-national appellants are accompanied by a person of their own nationality who speaks English and who will assist in translation and enhancing their understanding of the matters at issue.

### Correspondence and Parliamentary Questions

Apart from the normal level of correspondence associated with the processing of appeals, the Office receives enquiries and representations on behalf of appellants. The aim is for a prompt reply outlining the current position in regard to an appeal where a final reply is not possible. This is regularly monitored to ensure that a satisfactory service is provided.

During the year 3,300 such enquiries were received, an increase of about 100 on the 2001 figure.

Where a Parliamentary Question is submitted on a case currently the subject of appeal, the question is dealt with by this Office. During 2002, 271 Questions (322 in 2001) were received relating to:

Unemployment Assistance (means issues)	26
Unemployment payments (statutory conditions)	42
Sickness payments	71
Pensions and other schemes	112
Policy issues	20

Most Questions are usually in the nature of a query as to the present status of an appeal and many are withdrawn by the Deputy concerned following contact with him/her and explanation of the position. 184 Questions were dealt with in this manner. Replies to the remaining 87 were given in Dáil Éireann.

### Freedom of Information

The Social Welfare Appeals Office is a Public Body within the terms of the Freedom of Information Act, 1997.

During the year, 59 formal requests were received under the Act.

This does not, of course, represent the total of the requests received for information. It is an underlying element of this Office's decision making process that a person is entitled to know fully the basis of the case leading to a decision on his/her claim. This would include access to relevant documentation and requests for such information are readily acceded to without the necessity of relying on the Freedom of Information Act.

Where, however, the request is of a formal nature under the provisions of the Freedom of Information legislation, it must be dealt with as such. Of the 59 requests received in 2001, 57 were in respect of personal information and 2 related to non-personal information. These were dealt with promptly by the Freedom of Information Officer. One request for review to the Internal Reviewer was made in relation to the decisions in these cases.

The Act requires every public body to publish a manual on the structure and operations of the body and to revise these not less frequently than every three years. Revised manuals were published in 2001 in accordance with the provisions of the Act.

As well as being available in hard copy, this manual is also available on the Office's page on the Department's website.

### Changes in Personnel

As mentioned earlier, there were several changes in personnel, arising from retirements during the course of the year. In addition to the Chief Appeals Officer (Sean Reade) and Deputy Chief Appeals Officer (John O'Donnell) an experienced Appeals Officer, Vincent Fanning, also retired. A number of administrative staff – Jane Connolly, Hugh Friel, Padraig Creed, Mairead McTiernan and Collette Hilliard also moved on. I wish them all well.



# Review of the Appeals Office

Towards the end of 2001 a consultancy assignment was commissioned, following a tendering process, from Deloitte and Touche. The purpose of the assignment was to examine a variety of issues pertaining to the appeals process and to make recommendations in that regard. The issues included role and functions, organisation, processes, customer service, stakeholder relationships, grading matters and high level IT aspects.

The project was progressed under the auspices of a Project Board and facilitated by a small team specially given the task of supporting the consultants. The report was produced in an impressively short time. Great credit is due to the consultants for being able to offer very valued views in a time-bound situation which required a lot of work to gather all the relevant information needed and to consult extensively. A special word of thanks is owed to the project facilitation team of Jim Kenny and Jack O'Shea whose efforts ensured that the task could be, and was, completed on target and that the focus of the report was such as to provide an immediately usable management implementation blueprint.

The consultants concluded their work just as the outgoing Chief Appeals Officer retired and it was practically his final duty to receive the report. The Deputy Chief Appeals Officer, of longstanding, had just retired about a month earlier so consideration of the report and implementation action fell to a practically new top-level team.

The first task was to introduce all the staff to the findings and to reflect on the possibilities and issues raised in the report. I will discuss briefly some aspects of the report in a bit more detail, following on, but it is useful to comment on the overall position so far of our response to it. There are 33 non-IT-specific recommendations. We have implemented just over half of these already or are in the process of doing so. The approach has been to do those things that could be quickly achieved, particularly where they contributed to improving clearance times. There are only four recommendations that we are proposing not to proceed with, at least at this point in time. There are six

recommendations that we will implement as opportunity allows and six more that require some further consideration as regards desirability, feasibility, value etc.

The IT recommendations have been temporarily "parked" and we will return to them soon. The report was not intended to deal with the IT system in any great depth – the Office already has a very good PC based system which is quite satisfactory at least in the medium-term.

The "vetting" of files is a procedure which is carried out by Appeals Officers at the stage in the appeals process when all the preliminary activities of acquiring statements, medical referrals (where appropriate) etc have been completed. Each appeal is examined by an Appeals Officer to determine if the case can be decided summarily, if an oral hearing is required or if some further piece of information is needed. A key recommendation of the consultants focused on this area and following discussions with the Appeals Officers a new approach was introduced which is much more efficient and effective and offers a valuable saving of time.

This change represented a significant alteration in the way the work was carried out. We focused on it because it gave us a very quick result in terms of improvement in the overall time it takes to clear appeals. It is a good example of the type of recommendation, not all of them of such significance, which by progressing earlier than other recommendations, yielded an improved result for those using the appeals service.

Many of the recommendations deal with process improvements and are already in place wholly or partly. Some deal with the information aspect of appeals and we are addressing these incrementally. In this report we set out the details of a number of appeals across a range of case types. We will be considering further how to enhance the availability of general information about appeals cases and will have due regard to the use of electronic media.

The report encouraged the setting up of a small corporate unit within the Appeals Office to enable enhancements of the office and its work to be more readily considered and implemented. This unit would also play a key role in building information streams for the future. I am concerned to ensure that the vast repository of knowledge and experience which resides in the first instance in the individual appeals officers and secondly in a huge body of case work is leveraged for the benefit of all appeals officers (particularly new ones), appellants and their advocates, the Department, and anyone else who has an interest in our case law.

The consultants' report provides a stimulation for engaging in a process of continual improvement. I will be pressing ahead with most of the ideas contained in it (where they have not already been implemented) and ensuring that we rigorously consider and examine those few elements which we think are open to debate as to their advisability or value (judged in the context of evolving time).



# Some Appeals Officers' Decision Cases

## Carer's Allowance

### Question at issue: Extent of care provided

**Background:** The appellant's application for a Carer's Allowance was rejected. A Deciding Officer determined that the level of care provided was not such as to meet the qualifying conditions under the scheme. The care recipient is the appellant's son who is in his twenties, and is in receipt of Disability Allowance.

**Oral Hearing:** The appellant was unable to attend as she had to bring her son to the doctor, and she nominated her husband and her brother to represent her. The Appeals Officer outlined the decision in the case, and the details provided in the appellant's letter of appeal. He invited her representatives to comment. They provided details as to the health problems experienced by the appellant's son, including arachnoid cyst with hydrocephalus (cysto-peritoneal shunt inserted), and epilepsy. They presented medical evidence indicating that the appellant's son experiences recurrent seizures and that he cannot co-ordinate hand movements. In addition, he has poor vision, his balance is not good, and he needs support when walking. It was established that no sheltered workshops or rehabilitation programmes had been able to offer him a place. He lives with his parents, and an account was provided of a typical day, and the caring requirements involved. Details were outlined as to his medication, his diet, and his activities during the day. The appellant's husband indicated that such an outline referred to 'good' days; their son suffers from seizures and is brought to the Casualty or Accident and Emergency units of the local hospitals on a regular basis. He asserted that the appellant has devoted her life to caring for their son.

**Consideration of the Appeals Officer:** The Appeals Officer considered that it was quite clear that the care recipient in this case has serious health problems. He noted that he has an intellectual disability and requires continual supervision. He noted also that he requires assistance at all times in the management of his medication, and in relation to his bodily functions. He concluded that the level of care

provided by the appellant is such as to constitute full-time care and attention in accordance with the legislative provisions of the Carer's Allowance scheme and that, accordingly, the appeal should succeed.

**Outcome:** Appeal allowed.

## Disability Allowance

### Question at issue: Residence in an 'institution'

**Background:** The appellant had been in receipt of Disability Allowance but, following a review by the Department of Social and Family Affairs, his claim was disallowed on grounds that he was resident in an institution where all or part of his maintenance costs were met by the Health Board. The appeal in this case represents one of a number made by residents of a former psychiatric hospital, living in accommodation owned by the Health Board in question. The appellant's case was selected by the Appeals Officer as a test case in relation to the issue of residence in an 'institution', on grounds that he had legal representation, and she considered the case offered the best prospect for presentation of evidence.

**Oral Hearing:** The appellant attended, accompanied by his solicitor. The Director of Nursing, the Assistant Director of Nursing, and a psychiatrist attended to represent the interests of the Health Board psychiatric services.

The Assistant Director of Nursing explained that there are three units, properties owned by the Health Board, in which former full-time residents of the local psychiatric hospital are accommodated and supported by Health Board staff, with a view to their assimilation back into the community. The support staff includes two nurses, an occupational therapist, and a psychiatric social worker. The nurses on duty provide training in areas such as budgeting, cooking, self-care, and general social interaction. The initial training for independent living is provided in two units, one of which accommodates twenty residents and the other, seventeen residents. The third unit is a separate premises on the grounds of the former

psychiatric hospital and accommodates eight residents who are closer to being ready for full independence; the appellant resides in this unit. The Director of Nursing reported that until recently all of the residents had received Disability Allowance.

It was reported that since the training programme commenced in 1987, some 300 people had been helped to find more independent accommodation, or homes of their own, and to be assimilated back into the community. The scheme arose from the government's document *'Planning for the Future'*, which was published in 1984 and encouraged the rehabilitation of long-term psychiatric patients.

It was submitted that the residents have been discharged from the care of the psychiatric services and are no longer covered by the provisions of the Mental Health Acts. They are required to pay a weekly rent (€18.40) from their own resources, and to make a contribution (€10) to a central fund for shared food. Apart from this, they supply and cook their own food. There are other items to be met from the residents' own resources, and the total cost is estimated at €47 approximately per week. In the appellant's case, these costs were being met from his weekly Supplementary Welfare Allowance payment.

All those present asserted, at various points during the hearing, that the alternative for the residents is homelessness: they are not the responsibility of the psychiatric services, having been discharged, but are not yet ready for independent living. In the appellant's case, he has a home of his own to which he is preparing to return.

**Consideration of the Appeals Officer:** The Appeals Officer considered that the appellant's demeanour and behaviour were consistent with the position conveyed by the Health Board representatives in evidence, and she accepted that he was in the final stages of preparation for a return to living in the community. She noted that the appellant was in receipt of Supplementary Welfare Allowance, and that other residents appeared also to be in receipt of the same payment, in many cases prior to their lodging Disability Allowance claims. She concluded that the evidence presented at the hearing indicated that the appellant was resident in a moderate/high dependency hostel, in which the residents' maintenance costs are met from their own resources, currently from Supplementary Welfare Allowance. On this basis, she concluded that the appellant is not resident in an 'institution' within the meaning of the social welfare regulations and that, subject to medical criteria being met, he is entitled to Disability Allowance.

**Outcome:** Appeal allowed.

## Invalidity Pension

**Question at issue:** Whether incapacity may be regarded as permanent

**Background:** The appellant, in his mid-fifties, had been in receipt of Disability Benefit for approximately eight months when he claimed Invalidity Pension. His certified incapacity was diabetes. He was examined by a Medical Assessor of the Department of Social and Family Affairs who did not consider him to be permanently incapable of work. The Deciding Officer, accordingly, determined that he was not entitled to an Invalidity Pension. He appealed against that decision and submitted further medical evidence. He was then examined by another of the Department's Medical Assessors who concurred with the earlier opinion.

**Oral Hearing:** The appellant was accompanied by his wife. He submitted a letter from his General Practitioner, stating that he suffers from arthritis in his shoulders, ankles and wrists, and that he also suffers from hypothyroidism and diabetes. The letter also set out details of the medication he had been prescribed.

The appellant outlined his employment history. He had been working in a factory but, following its closure, had been unemployed for several years. He had taken part in several FÁS schemes during that period. He indicated that his illness had commenced early in 2001. He had spent two weeks in hospital, and was diagnosed with diabetes. He stated that he had had a thyroid problem for over twenty years, and that he suffered from arthritis for some time, the latter having become worse since he got diabetes. The appellant stated that he had had physiotherapy, and was advised to do exercises at home, but asserted that he is physically unable to do so. In addition to his medication, the appellant's medical evidence indicated that he also gets injections when the pain he suffers becomes severe. The appellant outlined the difficulties he experiences in walking, standing, and sleeping. He stated that his diabetes is under control with the help of medication and that, twice a day, he carries out the blood tests required for monitoring his condition. He asserted that as a result of his thyroid problem, he feels weak and has no energy, and he feels cold even in warm weather. The appellant stated that he can no longer do odd jobs, as he used to, and considers that he will never be able to work again.

**Consideration of the Appeals Officer:** The Appeals Officer noted that the appellant was in receipt of Disability Benefit on the basis that he was incapable of work due to

incapacity. He concluded that, taking account of his age, and having regard to his medical condition, it was difficult to envisage any significant improvement in the appellant's condition in the future. On that basis, he considered that he was permanently incapable of work and entitled to Invalidity Pension, and that, accordingly, his appeal should succeed.

**Outcome:** Appeal allowed.

## Old Age (Contributory) Pension

### Question at issue: Backdating claim and payment of Adult Dependant Allowance

**Background:** The appellant, who is in receipt of an Old Age Contributory pension, had not made a claim for that pension until some time after reaching the qualifying age (66 years), and sought to have the payment backdated. The Deciding Officer had determined that it was not appropriate to do so. In addition, he decided that the appellant was not entitled to an increase for a qualified adult in respect of his wife, on grounds that her income was deemed to exceed the limits provided for in legislation.

**Oral Hearing:** The Deciding Officer, who attended at the request of the Appeals Officer, outlined the grounds for his decision in relation to both questions at issue in the case. The appellant stated that he had been unaware that he was entitled to claim an Old Age Contributory Pension on reaching age 66 years. He indicated that he had not been informed of his entitlements by the Department of Social and Family Affairs although he had continued to pay Pay-Related Social Insurance (PRSI) beyond pension age. He argued that there was an obligation on the Department to ensure that contributions were properly payable, that the Department should have been aware that he had reached pension age, and that he should have been advised accordingly. All aspects of the appellant's case were discussed in detail, including the legislative provisions relating to backdating claims, illness, force majeure, and the provision of misleading information. The appellant advised the Appeals Officer that he suffered from major memory loss at times, and that he had been referred to a specialist a number of years earlier. Following initial consultation, however, he had not taken the matter further. He confirmed that he was not on medication. He acknowledged that he had not been given misleading information, and contended that it was his memory loss that he was relying on as his main grounds of appeal.

In relation to the qualified adult allowance, the position with regard to earnings/income limits was discussed. The appellant argued that the assessment of his wife's shares was unrealistic, as they did not yield the income assessed by the Deciding Officer. He sought clarification as to the value of the shares assessed and asked if he could submit further, more up-to-date evidence in this regard. The Appeals Officer agreed and requested that the Deciding Officer provide him with a full report when the appellant had provided additional information. (The Deciding Officer subsequently issued a reminder but no additional evidence was submitted by the appellant.)

**Consideration of the Appeals Officer:** The Appeals Officer concluded, on the weight of evidence, that the decision with regard to backdating the award of pension, and that concerning the qualified adult allowance were correct, fair and reasonable. In the circumstances, he considered that the appeal must fail.

**Outcome:** Appeal disallowed.

## Occupational Injury Benefit (Accident)

### Question at issue: Cumulative effect of a series of incidents

**Background:** The appellant's claim to Occupational Injury Benefit was rejected on grounds that he had not established that his incapacity for work was caused by an accident (one specific incident) arising out of and in the course of his employment. In determining the claim, the Deciding Officer took account of the opinion of the Chief Medical Adviser for the Department of Social and Family Affairs, who was not satisfied that the appellant's incapacity was occupational in origin. In addition, the appellant's former employer had not accepted that the appellant had had an accident at work.

**Oral hearing:** The appellant was accompanied by his trade union representative and, at the request of the Appeals Officer, a representative of his former employer also attended. (The appellant had retired from work, on medical grounds, some six months prior to the date of the oral hearing.)

The appellant asserted that his incapacity was attributable to stress which he had experienced as a direct result of bullying/harassment in his place of work, over a period of three years. He described a number of incidents of an intimidating nature to which he had been subject,

including damage to his personal belongings, having had his food interfered with, and having been given a 'get well' card while at work. He referred also to snide remarks which had been directed at him by his co-workers. He reported that, in spite of advice from a staff welfare officer and one of his supervisors, he had been unwilling to make a complaint as he did not want to get anyone into trouble. Consequently, he had not invoked the company's formal complaint procedures, and only a verbal warning had been issued to those involved.

The appellant asserted that as a consequence of the bullying he experienced at work, he had become depressed, and started to drink heavily. He reported that he had attended a psychotherapist for almost a year prior to his retirement. During the same period, he had been referred to a cardiologist, under whose care he spent eight days in hospital. Ultimately, the appellant attended the company's doctor who concluded that due to previous work related injuries, which had been compounded by stress and asthma, there were medical grounds on which to retire the appellant. The appellant argued that his retirement on health grounds was directly attributable to the bullying/harassment he had experienced at work.

In her evidence, the employer's representative stated that the company had in place an anti-bullying/harassment policy, but that the appellant had not made a formal complaint in line with the provisions of that policy. She reported that the appellant's former employer did not regard stress as an accident.

**Consideration of Appeals Officer:** The Appeals Officer examined the grounds for the Deciding Officer's decision, the opinion of the Chief Medical Advisor in the case, and the assertion by his former employer that the appellant had not sustained an accident at work. He considered that the medical evidence on file clearly indicated that the appellant was suffering from acute stress and cardiac problems, which he maintained were directly related to the various incidents of bullying/harassment at work. He noted that during the period at issue, the appellant had been assigned light duties, in view of health considerations, while his colleagues were required to carry out the full range of duties associated with the employment. He considered that the incidents outlined by the appellant appeared to have arisen primarily as a consequence of his co-workers having taken exception to this.

The Appeals Officer considered that entitlement to benefit under the Occupational Injury Benefit Scheme is based fundamentally on an employee suffering personal injury, caused by an accident arising out of and in the course of his employment. In this case, he concluded that the apparent bullying and harassment the appellant experienced at work clearly arose out of and in the course of his employment. Furthermore, he was satisfied that the damage caused by the cumulative effect of the series of incidents outlined by the appellant was such as caused him personal injury. In this regard, he referred to a decision of the Social Security and Child Support Commissioners (UK)\* where it was held that the possibility of damage caused by the cumulative effect of a series of specific incidents had to be addressed, and that even where the claimant has suffered some form of injury by process, rather than accident, a conclusion that there has been an accident causing personal injury is not ruled out. The Appeals Officer determined that the appeal in this case should succeed.

*\*CI/3370/1999 (J.Meshner), 15/12/00, (Starred decision 14/01), Journal of Social Security Law (2001) 8, Issue 4*

**Outcome:** Appeal allowed.

## One Parent Family Payment

**Question at issue:** Assessment of capital value of house formerly shared by appellant and her partner in determining means

**Background:** The appellant and her former partner bought a house in which they lived together with their child. Following their separation, the house remained registered in their joint names. The appellant claimed a One Parent Family Payment. The net capital value of the house was determined as the capital value estimated by the Valuation Commissioners, less the amount outstanding on the mortgage. In calculating means, the Deciding Officer assessed the appellant's share as half of this sum.

**Oral hearing:** The appellant attended unaccompanied. She outlined the background to her relationship with her former partner, and provided details of their purchase of a house from the local authority under the tenant purchase scheme. She stated that they had been living together before their child was born but, following the death of a family member, her partner had started drinking heavily and became violent towards her. Ultimately, she ended the relationship, and went to live elsewhere.

The appellant stated that she was unhappy about the decision to assess the capital value of the house in calculating her means. She asserted that she had no income from the house and no access to the capital sum, as her former partner was still living there. She took issue with the Social Welfare Inspector's report, details of which had been outlined by the Appeals Officer, as it indicated that she had paid the deposit for the house. She stated that she had paid no more than a quarter of the deposit but was unable to indicate how much was involved. She agreed that her former partner had been making the mortgage repayments since they separated. When asked by the Appeals Officer why she was not protecting her interest in the house by making some contribution towards the repayments, the appellant indicated that she was satisfied that the house represents an investment for their child. In evidence to the Social Welfare Inspector, as outlined in his report, her former partner had indicated that he held a similar view.

**Consideration of Appeals Officer:** The Appeals Officer concluded that the appellant's assertion that she did not know how much was paid as a deposit for the house was not credible. He considered that there was no legal reason as to why the appellant could not force a sale to realise her interest in the property. He noted, however, that she had argued that there was a risk of her former partner becoming homeless in such an event, and that she had indicated also that he had health problems which might leave him vulnerable in such a scenario. While he considered that the appellant's fears in this regard might be groundless, the Appeals Officer noted that a court could take the view that there would be a risk to his life if he were to be put under threat of eviction, particularly if he produced medical evidence to that effect. He concluded that it could be argued that the house was home to the child when she was with her father, and that any further estrangement could adversely affect her, and might enable the Guardianship of Infants Act, 1964, to be invoked for her protection.

The Appeals Officer noted that the Deciding Officer had taken the view that where a couple is not married and jointly own the house in which they formerly lived together, the capital value of the appellant's share of the property should be assessed for social welfare purposes. In contrast, he noted that when a married couple separates and the party who leaves the marital home applies for a One Parent Family Payment, s/he is not assessed with a beneficial interest in the house. Given that this is the case, he considered that it could be argued

as inequitable to single out cohabitees for adverse treatment. In relation to the legal position of cohabitees vis-a-vis married persons, he concluded that the law distinguishes between them in a number of important ways. He noted the provisions of the Domestic Violence Act, 1996, the Succession Act, 1965 and the Family Home Protection Act, 1976 in this regard, and concluded that married persons and unmarried cohabitees do not have the same rights in law. He considered that there is little case law relating to the property rights of cohabitees, and that decisions which have been handed down have not served to make the position any clearer.

The Appeals Officer concluded that the appellant was adversely affected by the decision of the Department of Social and Family Affairs and that the onus, therefore, was on the Department to establish its case. Moreover, he considered that the adverse effect of the decision would have major implications for the appellant and her child, and that the Department was required to show that the position it had adopted was clearly supported by the law. He concluded that the Department, the much stronger party, had not discharged this obligation with respect to the appellant, the weaker party, and that, accordingly, the appeal should succeed.

**Outcome:** Appeal allowed.

## One Parent Family Payment

**Question at issue:** Liability to make contributions to the Department of Social and Family Affairs in respect of a child

**Background:** A One Parent Family Payment was awarded to a lone parent with one child in 1998. A Determination Order issued to the appellant (the child's father) approximately three years later, advising that he was liable for the support and maintenance of the child. The decision to do so was made by the Deciding Officer with reference to Section 286(1) of the Social Welfare (Consolidation) Act, 1993. The amount specified by way of weekly contribution to be made to the Department of Social and Family Affairs was €76 per week.

**Oral hearing:** The appellant attended, accompanied by his solicitor. The child's mother attended, at the request of the Appeals Officer, and was accompanied by her mother. She confirmed that she was in receipt of the maximum rate of One Parent Family Payment, and that she received

no maintenance from the appellant. She stated that the appellant spends time with their child, approximately once a month.

The appellant, represented by his solicitor, argued that the amount set out in the Determination Order was excessive, particularly in view of the fact that his employment contract was due to expire in a year's time. He indicated that he lives with his parents, and argued that some allowance should be made for the contribution he makes to the household income. The Appeals Officer advised the appellant that all of the relevant allowances had been taken into account in assessing his liability under the legislation. He also pointed out that, in accordance with the relevant legislation, the appellant's income was sufficiently high to warrant a contribution of some €100 per week. However, his liability had been determined with reference to the rate applied by the Family Law Courts for the support of one child (€76 per week).

**Consideration of Appeals Officer:** The Appeals Officer noted that the appellant's income was sufficiently high to have paid a contribution in excess of that set out in the Determination Order. Having examined all of the evidence, he was satisfied that the contribution assessed towards the support and maintenance of the appellant's child was calculated correctly, in accordance with the legislative provisions and that, accordingly, his appeal must fail.

**Outcome:** Appeal disallowed.

## Scope (Insurability)

### Question at issue: Insurability for Pay-Related Social Insurance (PRSI)

**Background:** Following an allegation by a farm labourer ('the engaged person') that employment contributions had not been paid in respect of his employment since 1989, a Deciding Officer determined that the employment was insurable under the Social Welfare Acts at the Class A rate of Pay-Related Social Insurance (PRSI). The employer made an appeal against that decision.

**Oral Hearing:** The appellant attended unaccompanied, and the engaged person attended at the request of the Appeals Officer.

The engaged person reported that he had worked on a farm for two elderly brothers. He stated that, initially, he had been helping out on a temporary basis only but was asked

subsequently to stay on; a weekly wage was agreed and he was told that social insurance contributions would be paid. He outlined how his wages had increased over the years. He reported having asked occasionally about his social insurance and was given to understand that everything was in order. He reported that, following the brothers' deaths, he was retained by the appellant (their nephew) to work on the farm, and his wages were increased.

The appellant, one of two executors to his uncle's will, stated that he was taking the lead role in the administration of his uncle's estate. He denied that any commitment had ever been given by his uncle or himself that PRSI would be paid. The Appeals Officer pointed out that, irrespective of what had or had not been said, the matter had to be determined on the facts and the evidence; the parties were not free to determine unilaterally their working relationship. The appellant asserted that the engaged person worked for other people as well as on his uncle's farm, drawing hay and bringing stock to mart. He reported that when he visited the farm he had concerns as to the health of some of the livestock. He took advice from his solicitor and, ultimately, arranged for the sale of all the stock. He stated that the farm is now rented. The engaged person, in response, reported that he had no land of his own, and that he helped his brother or neighbours from time to time. He denied that he had worked for other farmers.

The Appeals Officer asked the appellant to comment on the replies he had given to the Social Welfare Inspector (recorded on Form INS1) which supported the contention that the engaged person was an employee. The appellant argued that the questions on the form were not appropriate. He asserted that he had pointed this out [at the time but was advised that he must complete it nonetheless.

**Consideration of Appeals Officer:** The Appeals Officer did not accept that the appellant was forced to tender any information in the interview with the Social Welfare Inspector, or was placed under any duress. He noted that the questionnaire used by the Inspector was the standard form used in all such investigations, and was satisfied that the appellant was at liberty to answer the questions as desired. He considered that it was not material whether occasional work was carried out for other farmers. He was satisfied that the evidence showed that the engaged person worked on the farm under the direction of the appellant's late uncles and latterly the appellant himself, and was remunerated as reported on the file submitted by

the Department of Social and Family Affairs. He concluded that the employment took place under a contract of service arrangement and as such was insurable at the Class A rate of PRSI. Accordingly, he determined that the appeal could not succeed.

**Outcome:** Appeal disallowed.

## Supplementary Welfare Allowance

### Question at issue: Refusal of diet supplement on grounds of parental income

**Background:** The appellant applied to his local Health Board for payment of a diet supplement under the Supplementary Welfare Allowance scheme. He made the application in respect of his son whose needs in this regard arose from the diagnosis of diabetes. His application was refused on grounds that he had means derived from full-time employment, and this decision was upheld subsequently by an Appeals Officer of the Health Board. The amount at issue was €6.35 per week.

**Oral hearing:** The appellant was accompanied by his wife. The Superintendent Community Welfare Officer attended at the request of the Appeals Officer.

The Superintendent Community Welfare Officer outlined the calculation used in assessing means. He indicated that, essentially, household income would need to approximate that of a social welfare payment in order for someone to qualify for the supplement. He stated that the appellant's means exceeded the limits provided for in relation to the Supplementary Welfare Allowance scheme and, as such, precluded payment of a diet supplement.

The appellant submitted that diet is a crucial element in the management of diabetes. He reported on his son's dietary requirements, and provided supporting medical evidence. He stated that a medical card had been granted solely on the basis of illness (the ordinary means test having been waived), and asserted that a diet supplement should be provided on the same basis. He argued for the payment of a diet supplement, as of right, where a child has a prescribed medical condition such as diabetes, and a medical card has been provided without reference to his parents' means.

**Consideration of Appeals Officer:** The Appeals Officer considered that the case for payment of a diet supplement had been well made. She concluded, however, that the decision to refuse the appellant's claim was correct, having regard to the legislation governing the Supplementary Welfare Allowance scheme and that, accordingly, the appeal must fail.

The Appeals Officer considered that the issues highlighted by this case, and the operation of current legislative provisions in this regard, should be examined. Accordingly, the Chief Appeals Officer referred the question for consideration by the Department of Social and Family Affairs.

**Outcome:** Appeal disallowed.

## Supplementary Welfare Allowance

### Question at issue: 'Direct Provision' to asylum seekers

**Background:** The appellant, an asylum seeker, had claimed Supplementary Welfare Allowance on grounds of particular difficulties being experienced by his sister in relation to the family's accommodation. His claim was disallowed by the Community Welfare Officer of the local Health Board on grounds that those needs were adequately met under 'direct provision'. ('Direct provision' was introduced in April 2000 and is intended to meet the basic needs of food and shelter directly rather than through cash payments. Under the scheme, asylum seekers receive reduced rates of Supplementary Welfare Allowance to meet the cost of personal requisites not covered by 'direct provision'.)

**Oral Hearing:** The appellant was accompanied by his brother and sister. A teacher from his sister's secondary school attended, as did a representative of the ICTU Centre for the Unemployed and Refugee Support Group. The Superintendent Community Welfare Officer (SCWO) attended at the request of the Appeals Officer. A written submission, in relation to the appellant's sister, was also put forward on behalf of the General Practitioner she attends.

The SCWO outlined the grounds for the decision in this case. He stated that the appellant and his family were resident in a 'direct provision' centre for approximately thirteen months. He indicated that the accommodation was purpose built, was allocated and approved by the Reception and Integration Agency under the 'direct provision' system, and deemed by the Agency to be suitable for families with school-going children. He stated

that the appellant's sister had her own bedroom, and shared a bathroom and toilet with her brothers. He acknowledged that there was no study room, and that the local school had no study facilities but made reference to the fact that the local library is open in the afternoon. He stated that the appellant and his family had been offered a mobile home in another county. He indicated that, in his view, there were no exceptional circumstances to warrant payment of Supplementary Welfare Allowance.

The appellant stated that his sister had no history of ill health or depression, and attributed her current problems to their accommodation. He stated that while she had a room of her own, she had been moved several times within the complex, and could not study with the noise. In addition, her room was not suitable for studying, as it has no desk or chair. He outlined the nature of his sister's medical problems, and referred to the medication she has been prescribed. He asserted that her schoolwork has suffered, and that he did not consider that moving away from the area to take up the offer of a mobile home would have helped her situation.

The ICTU/Refugee Support Group representative stated that the appellant's sister visits their centre often. She stated that, in her view, she had become depressed, and that she has attempted to obtain a psychiatric assessment for her.

The teacher who attended the hearing asserted that the appellant's sister appeared to be suffering from stress. He indicated that he was concerned as to her mental health and felt that, as this was her Leaving Certificate year, she should be offered accommodation where she can study.

The appellant's sister stated that she feels stressed, and that her accommodation is not suitable for her.

**Consideration of the Appeals Officer:** The Appeals Officer noted that the appellant's sister appeared angry and frustrated at the hearing but concluded that she had given a convincing account of the difficulties she is experiencing in relation to her accommodation. In determining the question at issue, the Appeals Officer took account of the appellant's sister's age and particular difficulties, the submission made by the General Practitioner, and representations by the school and ICTU/Refugee Support Group, and the fact that the family had been in 'direct provision' for over a year. She concluded that the evidence indicated the existence of exceptional circumstances, for purpose of the Supplementary Welfare Allowance scheme, and that, accordingly, the appeal should succeed.

**Outcome:** Appeal allowed.

## Unemployment Assistance

### Question at issue: Genuinely Seek Work

**Background:** The appellant's claim to Unemployment Assistance was disallowed. A Deciding Officer determined that he was not genuinely seeking work, in line with the qualifying conditions for receipt of payment under the scheme. He is engaged in an environmental protection project, working in a voluntary capacity.

**Oral Hearing:** The appellant was accompanied by a public representative. The Deciding Officer and Social Welfare Inspector attended at the request of the Appeals Officer. Two assessors (one from the employer's panel and one from the employee's panel) had also been invited to attend but were absent on the day of the hearing. The Appeals Officer outlined the role fulfilled by the assessors, and asked the appellant whether he was willing to proceed in their absence. The appellant agreed to proceed but indicated his dissatisfaction at their failure to attend.

The Deciding Officer outlined the basis for her decision. She indicated that she had advised the appellant that his claim was subject to review but that he had not completed the questionnaire she had given him, nor supplied any documentary evidence to indicate that he was genuinely seeking work. In consequence, she had disallowed his claim in line with the provisions of the governing legislation.

The appellant indicated that he had been in receipt of social welfare payments for ten years prior to the date of his disallowance. He outlined the nature of his involvement with the environmental protection project, the land assigned to it by the county council, and the funding sought from the government to support the work undertaken. He stated that he had applied to the Business Development Centre (FÁS) and the Social Economy Programme (FÁS), and was awaiting replies. He indicated that he had applied to participate in a community employment scheme but was deemed ineligible because of his commitment to the project.

The public representative outlined the nature of the work undertaken by the appellant, and the need for his continued involvement in order to ensure the viability of the project. He argued that in the absence of a basic guaranteed income, there is a need for some type of payment for volunteer workers. He indicated that this issue was being discussed at Green Paper level. He argued that the appellant satisfied the conditions for receipt of

Unemployment Assistance, and that he and others engaged in the project had made every effort to create employment. He stated that the outcome of the appeal in this case would have repercussions for the project, in the event that those involved were required to look for work elsewhere.

The Appeals Officer outlined the qualifying conditions for receipt of Unemployment Assistance, and asked the appellant about his efforts to find work outside of the project. The appellant stated that his work in the project was time-consuming, and that he worked very hard. He indicated that he resents being regarded as unemployed as he considers himself to be actively employed. He reported that he was in receipt of Supplementary Welfare Allowance for himself and his family but was concerned that this payment might be terminated in the event that he lost his appeal. He expressed concern also that in the event that he were to take up regular employment, the project would be jeopardised and animal lives would be put at risk.

**Consideration of the Appeals Officer:** The Appeals Officer noted the Deciding Officer's submission that the appellant had produced no evidence to indicate that he had been seeking work outside the environmental protection project, and that the appellant had not presented such evidence at the oral hearing. He noted also that the appellant had acknowledged that he had been in receipt of Unemployment Assistance for the last ten years, and that he had not looked for work outside the project. He considered the appellant to be dedicated and committed to his work for the project but concluded that he had not fulfilled the statutory requirement of genuinely seeking work, as defined in social welfare legislation. Accordingly, he determined that the appeal must fail.

**Outcome:** Appeal disallowed.

## Unemployment Assistance

**Question at issue:** Failure to show that means do not exceed statutory limit

**Background:** The appellant's claim to Unemployment Assistance was disallowed on grounds that she had failed to show that her means did not exceed the statutory limit (€118.50) applicable to a person in her circumstances. The Deciding Officer was not satisfied that she had shown how she had supported herself for a period of approximately a year and a half.

**Oral Hearing:** The appellant attended unaccompanied.

The Deciding Officer was not present, although the Appeals Officer had requested his attendance. The appellant indicated that she wished to proceed in his absence. The Appeals Officer read the Deciding Officer's decision and appeal submission.

The appellant stated that a person (named in the context of the means assessment) was her best friend but argued that they were not cohabiting. She reported that they had shared two different apartments over a few years, and that there had originally been three people sharing. She stated that she is a lesbian and is not involved in any relationship with a man.

The Appeals Officer advised the appellant that the person named had described her as his partner when he claimed Unemployment Benefit. The appellant said that she was not aware that he had done so, and reiterated her point concerning their friendship but insisted that he led his own separate life. She asserts that they share a two-bedroom apartment only. She pointed out that the Community Welfare Officer had seen the apartment and was satisfied to pay a rent supplement to the appellant only.

The appellant described her health problems, and outlined her financial difficulties. She stated that she had won money (details supplied), and that that had helped to support her, although it was now gone. She asserts that the staff in the Social Welfare Local Office were aware of this win. The appellant reported that she worked wherever she could find employment. She contended that she never withheld information and that all facts about her are known, and were made known to the Social Welfare Inspector. She said that had an Inspector called to her apartment, the living arrangements could have been observed.

**Consideration of the Appeals Officer:** The Appeals Officer noted that the appellant denied having any means, and denied also that she was living with the person named. He considered that there was no evidence of equal or greater weight before him to support any alternative argument, and no evidence to indicate whether or not the person named had received any payment in respect of the appellant as a qualified adult. He noted that the appellant was in receipt of Supplementary Welfare Allowance and a rent supplement. He concluded that the appellant must be regarded as a single person, sharing an apartment but not cohabiting and with no means.

**Outcome:** Appeal allowed.

## Unemployment Assistance

### Question at issue: Genuinely Seeking Work

**Background:** The appellant's claim to Unemployment Assistance was disallowed. A Deciding Officer determined that he was not genuinely seeking work. The appellant was granted refugee status by the Department of Justice, Equality and Law Reform under the terms of the 1951 United Nations Convention relating to the status of refugees, as amended by the 1967 New York Protocol, and as defined in the Refugee Act, 1996.

**Oral Hearing:** The appellant was accompanied by a relative who acted as interpreter.

An assessor from each of the employer's and the employee's panel was invited to attend, but neither was present. The appellant consented to the hearing proceeding in their absence.

The appellant stated that he was attending classes in order to improve his English. He gave the Appeals Officer a letter from a training/educational agency, confirming that he was attending full-time general English classes arranged by the agency with the approval of the Department of Education and Science.

The appellant reported that he was attending classes on five days per week, and that he considered he was making progress although it was a slow process. In his written submission of appeal, the appellant had indicated that he had missed some classes due to illness in his family, and the Appeals Officer asked about his current situation. He outlined the difficulties he had experienced, which were short-term in nature and arose following the birth of a baby. He reported that the problem had been resolved and that he had returned to his classes.

The Appeals Officer explained the qualifying conditions for receipt of Unemployment Assistance, and advised the appellant of the importance of continued attendance at classes in order to improve his English, and enhance his work prospects.

**Consideration of the Appeals Officer:** The Appeals Officer noted the evidence concerning the appellant's attendance at full time classes provided. She was satisfied that his participation in the training programme constituted a reasonable step which offered him the best prospects of obtaining employment, in line with the statutory qualifying

condition for receipt of Unemployment Assistance. She concluded, therefore, that the appellant might be regarded as genuinely seeking work, and that his appeal should succeed.

**Outcome:** Appeal allowed.



# Appendix 1

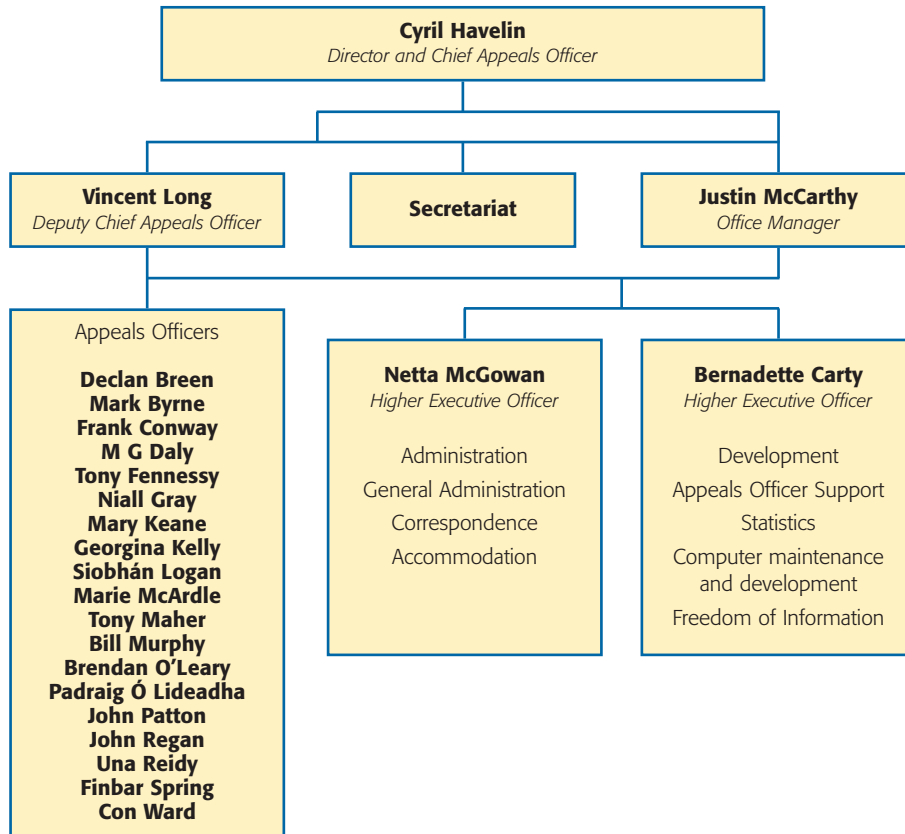
## Venues where oral hearings are held

Arklow	Dublin	Monaghan
Athlone	Dundalk	Mullingar
Ballina	Dungloe	Navan
Ballinasloe	Dunmanway	Nenagh
Bandon	Edenderry	Newbridge
Bantry	Ennis	Newcastlewest
Birr	Enniscorthy	New Ross
Boyle	Fermoy	Portlaoise
Buncrana	Galway	Roscommon
Carlow	Gorey	Roscrea
Carrickmacross	Gort	Skibbereen
Carrick-on-Shannon	Kells	Sligo
Castlebar	Kenmare	Swinford
Castleblayney	Kilkenny	Thurles
Castlerea	Killarney	Tipperary
Cavan	Kilrush	Tralee
Charleville	Letterkenny	Tramore
Claremorris	Limerick	Tuam
Clifden	Listowel	Tullamore
Clonakilty	Longford	Waterford
Clonmel	Loughrea	Westport
Cork	Macroom	Wexford
Donegal	Mallow	Wicklow
Drogheda	Mitchlestown	



# Appendix 2

## Social Welfare Appeals Office Organisation Chart at 31 December 2002







SOCIAL WELFARE  
**A P P E A L S**  
**O F F I C E**

Oifig Achomhairc Leasa Shóisialaigh

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