

**Property Services Appeal Board  
Annual Report 2014**

Dear Minister Fitzgerald,

The Property Services Appeal Board has pleasure in submitting this report to the Minister for Justice as required under Schedule 5 at Section 11 of the Property Services (Regulation) Act 2011.

The Property Services Regulatory Authority was established on a statutory basis on 3<sup>rd</sup> April 2012 and commenced issuing the first licences under the new scheme in the ensuing months.

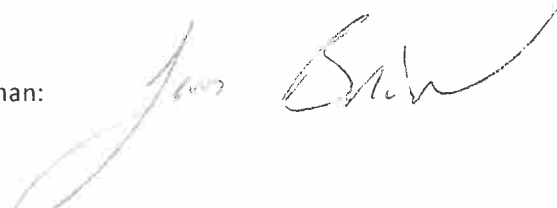
The Property Services Appeal Board was appointed on 24<sup>th</sup> July 2012 and received its first application late in 2013. Up to 31<sup>st</sup> December 2014 the Board has dealt with 62 cases as summarised later in this report.

**SECTIONS IN THIS REPORT**

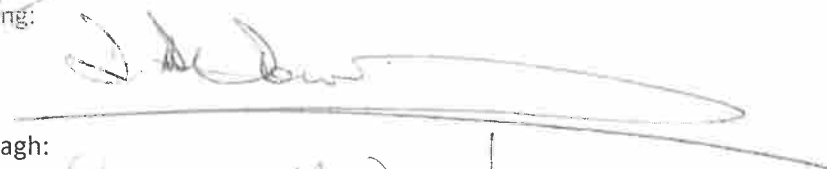
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Signed-

James Bridgeman:



Dorothea Dowling:



Sunniva McDonagh:



David McGarry:



Philip Moynihan:



Dated: 11/11/2015

1. Period covered by this report

This report covers the period from 1 January, 2014 to 31 December, 2014 and is the first annual report to the Minister for Justice as required under Schedule 5 at Section 11 of the Property Services (Regulation) Act 2011.

2. Summary of the statutory provisions

Part 8 of the Property Services (Regulation) Act 2011 at Section 74 provides for establishment of the Appeal Board in the following terms:

*Appeals Against Certain Decisions of Authority*

74.—(1) There stands established a body to be known as An Bord Achomhairc um Sheirbhísí Maoine or, in the English language, the Achomhairc um Sheirbhísí Maoine or, in the English language, the Property Services Appeal Board, to hear and determine appeals against certain decisions of the Authority.

(2) The Appeal Board shall be independent in the performance of its functions.

(3) *Schedule 5* shall have effect in respect of the Appeal Board.

(4) The Minister may prescribe by regulations the fee referred to in *paragraph 14(1) of Schedule 5*.

(5) A person who contravenes *paragraph 9(1) or 10(1) of Schedule 5* is guilty of an offence and liable on summary conviction to a class A fine.

(6) A person who refuses or fails, without reasonable excuse, to comply with a requirement under *paragraph 23(1)(a) of Schedule 5* is guilty of an offence and liable on summary conviction to a class A fine.

A party which is dissatisfied with a determination by the Appeal Board may apply to the High Court in accordance with the provisions at Section 75 as set out hereunder:

75.—(1) Within 3 months from the date on which an appeal is determined by the Appeal Board any party to the appeal may appeal to the High Court on any question of law arising from the determination.

(2) The High Court may—

(a) affirm the determination,

(b) set it aside,

(c) make any other determination which the Appeal Board could have made, or

(d) remit the matter to the Appeal Board for further consideration.

(3) An appeal may not be brought from a decision of the High Court under this section except by its leave.

The remit of the Appeal Board is confined to only some decisions of the Property Services Regulatory Authority as set out at Schedule 5 Section 13 as set out hereunder:

*Decisions of Authority subject to appeal*

13. A person aggrieved by a decision of the Authority—

(a) refusing under *section 31(3)(g), (h) or (i)* to issue a licence,

(b) declining under *section 63(2)* to cause to be carried out an investigation of the matter the subject of a complaint,

(c) imposing under *section 68(4)(a)* a minor sanction,

(d) dismissing under *section 68(4)(c)* a complaint, or

(e) refusing to make a grant or relating to the amount of the grant made,

may, within 30 days from the date of receipt of notice of the decision, appeal to the Appeal Board against the decision by serving on the Appeal Board a notice of appeal which complies with *paragraph 14(1)*.

For clarity on Section 13(a) above, the grounds of refusal by the Authority to issue a licence under Section 31(3), and which may be reviewed by the Appeal Board, are:

- (g) in the case of an individual (not being a partner in a partnership), the Authority is satisfied that the person—
  - (i) is not a fit and proper person to provide the property service concerned, or
  - (ii) does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a) to (f)* of this subsection) of this Act or of regulations made under this Act applicable to the person,
- (h) in the case of a body corporate (not being a partner in a partnership), the Authority is satisfied that—
  - (i) any principal officer of the body corporate is not a fit and proper person to hold the position concerned in a body corporate which is providing the property service concerned, or
  - (ii) the body corporate does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a) to (f)* of this subsection) of this Act or of regulations made under this Act applicable to a body corporate, or
- (i) in the case of a partner in a partnership, the Authority is satisfied that—
  - (i) if the partner is an individual, the partner is not a fit and proper person to provide the property service concerned,
  - (ii) subject to *subsection (4)*, any other principal officer of the partnership is not a fit and proper person to hold the position concerned in a partnership which is providing the property service concerned, or
  - (iii) the partnership does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a) to (f)* of this subsection) of this Act or of regulations made under this Act applicable to the partnership.

It may be noted in particular that the Appeal Board do not have any remit to review refusals of licence renewals by the Authority.

It should also be stressed that the time limit for lodging an appeal is determined by the legislation. The Appeal Board has no discretion to examine any application which is out of time. The 30 day limit is set out as hereunder at Section 15 in Schedule 5:

15. The Appeal Board shall not consider an appeal if the notice of appeal is not received by it before the expiration of the period of 30 days referred to in *paragraph 13* or if the notice does not comply with the requirements of *paragraph 14(1)* (including *clause (d)* of that paragraph).

For the purposes of calculating the 30 day limit above, guidance is provided in Part 13 of the Property Services (Regulation) Act 2011 at Section 92(3) as below:

92. (3) A notice given under *subsection (1)* is deemed to have been received by the person—
- (a) in the case of prepaid registered post, or other recorded delivery, on the third working day after the day on which it was so sent,
  - (b) in the case of electronic mail, when the sender's facility for the reception of electronic mail generates a message confirming the receipt of the electronic mail,
  - (c) in the case of a facsimile machine, when the sender's facsimile machine generates a message confirming the successful transmission of the total number of pages of the notice.
- (4) Documents or information which are required by or under this Act to be made or submitted to the Authority or the Appeal Board within a specified period shall, if the office of the Authority or Appeal Board, as the case may be, is closed on the last day of the period, be regarded as having been received before the expiration of the period if received on the next following day on which the office is open.
- (5) For the purposes of this section, a company is deemed to be ordinarily resident at its registered office and every other body corporate or unincorporated body to be so resident at its principal place of business.

All decisions of the Authority reviewed by the Appeal Board to date have been served on applicants by registered post, with tracked delivery, so Section 92(3)(a) above is of most relevance in determining whether an appeal has been lodged within the time limit.

### 3. Caseload data and commentary on appeals received

The volume of cases considered during the period covered by this report and the types of issues involved are summarised in the chart below:

<b>Volumes</b>	
Number of Cases received	62
Found to be outside remit (predominantly Renewals)	14
Refusal was based on Qualifications	37
Refusal on other grounds*	11

\* other grounds included:

- Bankruptcy of applicant
- Incorrect documentation submitted
- Clerical error
- Refusal by PSRA to investigate a complaint

<b>OUTCOME OF APPEALS</b>	
Appeals allowed in full & full jurisdiction exercised	
Remitted to PSRA for reconsideration*	22
Disallowed & PSRA decision upheld	11
Deemed Withdrawn	1
Appeal out of time	3
Cases on hand awaiting determination	11

\* remissions primarily related to Qualifications refusals under SI 181 of 2012

The Appeal Board is guided by the principles of natural justice and fair procedures. In this context, the duty to give reasons for decisions is of particular importance.

Guidance has been provided by the Superior Courts in relation to lawful decision making. A decision-maker must address the correct question which needs to be answered. In doing so, the decision-maker must have regard to any necessary factors or submissions which should properly be taken into account. The decision-maker must then answer the proper question raised and in assessing all of the matters properly taken into account must come to a reasonable decision in the sense in which that term is used in the jurisprudence. If a person affected by the decision does not have sufficient information as to the manner in which the question was addressed and the factors appropriately taken into account, the decision will be unlawful as the applicant's right to contest the decision has been rendered ineffective as he does not know the basis of same. The reasons for a

decision should be patent from the decision itself and it is not appropriate to supplement the reasons given in the decision with supplemental reasons provided at a later date.

#### 4. Procedural Rules

As the Appeal Board deals with further cases over the forthcoming months it may be deemed appropriate to issue guidelines for the presentation of documentation to assist parties. When these are prepared they will be published on a website in conjunction with the Department of Justice & Equality.

At this point it may be helpful to highlight the statutory provisions which apply to parties, in addition to the time limit as explained above, under the terms of the legislation and regulations issued under the Property Services (Regulation) Act 2011.

#### *Notice of appeal requirements*

14. (1) The notice of appeal shall be in writing and shall state—
- (a) the name and address of the appellant,
  - (b) the subject matter of the appeal,
  - (c) the appellant's interest in its outcome, and
  - (d) the grounds of the appeal and the reasons, considerations and arguments on which they are based, and shall be accompanied by the appropriate fee (if any) and by such documents relating to the appeal as the appellant considers necessary or appropriate.
- (2) The appellant shall not, unless requested to do so by the Appeal Board, elaborate in writing on or make further submissions in writing in respect of the grounds of appeal stated in the notice of appeal or submit further grounds of appeal, and any such elaboration or further submission received by the Appeal Board shall not be considered by it.
- (3) Without prejudice to *paragraph 23*, the Appeal Board shall not consider any documents submitted by an appellant at the appeal other than those which accompanied the notice of appeal.

#### *Matters on which appeal is grounded*

26. An appeal shall be grounded on—
- (a) the record of the decision of the Authority which is the subject of the appeal,
  - (b) the information contained in the notice of appeal,
  - (c) any submissions (including any elaborations thereon) made in accordance with this Part to the Appeal Board on any matter arising on the decision or that information,
  - (d) any other document or information received in accordance with this Part by the Appeal Board on the hearing of the appeal.

#### *Sittings of Appeal Board*

27. Sittings of the Appeal Board shall be held otherwise than in public unless—

- (a) the Authority, the appellant or, if *paragraph 17* is applicable, the other party to the complaint makes a request in writing to the Appeal Board that the sittings (or a part thereof) in respect of the appeal concerned be held in public and states in the request the reasons for the request, and
- (b) the Appeal Board, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.

To date the Appeal Board has not determined that any case required an oral hearing. Such an option is available where required as provided for in Section 28 in Schedule 5 the Property Services (Regulation) Act 2011 a set out below:

#### *Oral hearings*

28. (1) Subject to *subparagraphs (2) to (5)*, the Appeal Board, of its own motion or at the request of a party, may in its absolute discretion conduct an oral hearing of an appeal.
- (2) A request by a party for an oral hearing—
- (a) shall be made in writing to the Appeal Board,
- (b) subject to *clause (c)*, shall be made within the period of 30 days referred to in *paragraph 13*,
- (c) (i) where the request is made by the Authority, shall be made within the period of 30 days referred to in *paragraph 21(1)*, or
- (ii) if the request is made by the person referred to in *paragraph 17* as the “other party”, shall be made within 30 days of the notice of appeal being received by that person.
- (3) The Appeal Board shall not consider a request for an oral hearing made later than the expiration of the relevant period referred to in *subparagraph (2)*.
- (4) Where the Appeal Board refuses request to conduct an oral hearing, it shall serve notice of its decision and the reasons for its decision on each party to the appeal and on any person who has made a submission under *paragraph 22* in respect of the appeal.
- (5) The Appeal Board in conducting an oral hearing may take evidence on oath, and the administration of such an oath by any member of the Appeal Board is hereby authorised.
- (6) The Appeal Board may by notice in writing require any person to attend at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the appeal or to produce any relevant documents within his or her possession or control or within his or her procurement.
- (7) A person referred to in *subparagraph (6)* shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that subparagraph as if the person were a witness before the High Court.
- (8) Where a person referred to in *subparagraph (6)* does not comply or fully comply with a requirement referred to in that subparagraph, the Appeal Board may apply to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.
- (9) The jurisdiction conferred on the Circuit Court by this section may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.

During the period covered by this report the Appeal Board has held 12 formal sittings in addition to considerable preparatory and follow up work by Members and the Secretariat.

Under Section 6(1) in Schedule 5 the Appeal Board is directed to hold as many meetings as may be necessary for the effective performance of its functions. The Appeal Board is also required under Section 12 of Part 2 of Schedule 5 to ensure, as far as practicable, that appeals are dealt with and determined expeditiously.

The Appeal Board would also like to take this opportunity to record its appreciation for the work being undertaken by the Secretariat in the Department of Justice & Equality where Ms Kathleen A Fitzpatrick is assigned on a part time basis in accordance with Section 8 of Schedule 5.

#### 5. Board Membership & attendances

Following advertisements in May 2012 the Minister appointed from the resultant applications the Members listed below on 24<sup>th</sup> July 2012. There have been 12 sittings to date at which attendances were:

**Patricia O'Connor (Chairperson)**  
**Retired September 2014 (attended 2 of 8 meetings)**

**Mr James Bridgeman: 11 of 12**  
**Ms Dorothea Dowling: 12 of 12**  
**Ms Sunniva Mc Donagh: 12 of 12**  
**Mr David McGarry: 10 of 12**  
**Mr. Philip Moynihan: 12 of 12**

Appointments to the Appeal Board are for a four year term.

Payments to Members of the Appeal Board are made in accordance with Schedule 5 at Section 5 as below:

5. Members of the Appeal Board shall be paid such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.

Fees are not paid for Membership of the Board *per se* but for participation in sittings of the Board to determine appeals. The rates, which are subject to tax and all other levies, per sitting where that Member is in attendance are as below:

Chairperson €500  
Ordinary Member €416

Board fees for 2014 totalled €24,712. Travel and Subsistence paid to members during 2014 amounted to €2,698.98



Other outlay amounted to €1,945. This related to legal advice and the €100 to register the Property Services Appeal Board with the Office of the Data Protection Commissioner.

6. Governance Codes applicable to the Property Services Appeal Board

In so far as applicable, the Members of the Board acknowledge their responsibilities under the terms of the Code of Practice for Governance of State Bodies.

At the outset of each sitting of the Appeal Board each Member is required to declare whether they consider they have any conflict of interest in relation to parties or issues scheduled for determination.

7. Other applicable laws

The Board is cognisant of its duties under the Data Protection legislation and is registered with the Data Protection Commissioner as set out below:

DATA PROTECTION COMMISSIONER-

Registry Details for 'Property Services Appeal Board'

<b>Company Name:</b>	Property Services Appeal Board
<b>Ref Number:</b>	14727/A
<b>Reg Type:</b>	DC
<b>Company Address:</b>	51 St Stephens Green Dublin 2
<b>Contact:</b>	Kathleen Fitzpatrick
<b>Purpose:</b>	To adjudicate on any appeals against decisions of the Property Services Regulatory Authority to refuse to issue licences for the provision of property services
<b>Continuation Due Date:</b>	11/08/2015
<b>Description:</b>	Appeals against the decisions of the PSRA to refuse the issue of licences
<b>Discloses:</b>	All appeals Appeal Board Property Services Regulatory Authority
<b>Transfers Abroad:</b>	None

An Bord Achomhairc um Sheirbhísí Maoine  
Tuarascáil Bhliantúil 2014

A Aire Fitzgerald, a chara,

Tá sé de phléisiúr ag an mBord Achomhairc um Sheirbhísí Maoine an tuarascáil seo a chur faoi bhráid an Aire Dlí agus Cirt mar a cheanglaítear in Alt 11 de Sceideal 5 den Acht um Sheirbhísí Maoine (Rialáil) 2011.

Bunaíodh an tÚdarás Rialála Seirbhísí Maoine ar bhonn reachtúil an 3 Aibreán 2012 agus chuir sé tús le ceadúnais a eisiúint faoin scéim nua sna míonna ina dhiaidh sin.

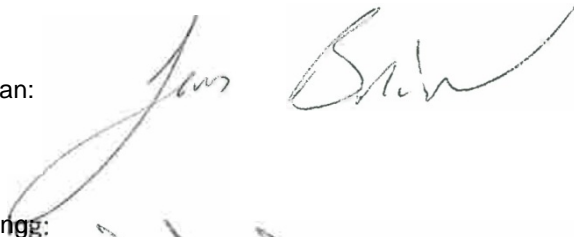
Ceapadh an Bord Achomhairc um Sheirbhísí Maoine an 24 Iúil 2012 agus fuair sé a chéad iarratas go déanach sa bhliain 2013. Dhéileáil an Bord le 62 chás suas go dtí an 31 Nollaig 2014. Tá achoimre ar na cásanna sin le fáil níos déanaí sa tuarascáil seo.

### **RANNÁIN SA TUARASCÁIL SEO**

1. An tréimhse a chuimsítear sa tuarascáil seo
2. Achoimre ar na forálacha reachtúla
3. Sonraí faoin ualach cásanna agus tráchttaireacht ar na hachomhairc a fuarthas
4. Rialacha Nós Imeachta
5. Comhaltáí den Bhord agus Táillí
6. Na cóid rialachais is infheidhme maidir leis an mBord Achomhairc um Sheirbhísí Maoine
7. Dlíthe eile is infheidhme

Sínithe-

James Bridgeman:



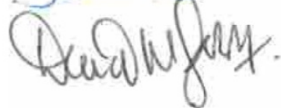
Dorothea Dowling:



Sunniva McDonagh:



David McGarry:



Philip Moynihan:



Dáta: 11/11/2015

1. An tréimhse a chuimsítear sa tuarascáil seo

Cuimsítear sa tuarascáil seo an tréimhse ón 1 Eanáir 2014 go dtí an 31 Nollaig 2014 agus is í an chéad tuarascáil bhliantúil a cuireadh faoi bhráid an Aire Dlí agus Cirt mar a cheanglaítear faoi in Alt 11 de Sceideal 5 den Acht um Sheirbhísí Maoine (Rialáil) 2011.

2. Achoimre ar na forálacha reachtúla

Foráiltear in Alt 74 i gCuid 8 den Acht um Sheirbhísí Maoine (Rialáil) 2011 don Bhord Achomhairc a bhunú ar na téarmaí seo a leanas:

Achomhairc i gCoinne Breitheanna Áirithe ón Údarás

74.—(1) Tá comhlacht arna bhunú ar a dtabharfar an Bord Achomhairc um Sheirbhísí Maoine nó, sa Bhéarla, The Property Services Appeal Board, chun achomhairc i gcoinne breitheanna áirithe ón Údarás a éisteacht agus a chinneadh.

(2) Beidh an Bord Achomhairc neamhspleách i gcomhlíonadh a fheidhmeanna.

(3) Beidh éifeacht le *Sceideal 5* maidir leis an mBord Achomhairc.

(4) Féadfaidh an tAire le rialacháin an táille dá dtagraítear i *mír 14(1)* de *Sceideal 5* a fhorordú.

(5) Aon duine a sháraíonn *mír 9(1)* nó *10(1)* de *Sceideal 5*, tá sé nó sí ciontach i gcion, agus dlífear, ar é nó í a chiontú go hachomair, fíneáil d'aicme A a chur air nó uirthi.

(6) Aon duine a dhiúltaíonn nó a mhainníonn, gan cúis réasúnach, ceanglas faoi *mhír 23(1)(a)* de *Sceideal 5* a chomhlíonadh, beidh sé nó sí ciontach i gcion, agus dlífear, ar é nó í a chiontú go hachomair, fíneáil d'aicme A a chur air nó uirthi.

Sa chás go bhfuil páirtí míshásta le cinneadh ón mBord Achomhairc, féadfaidh sé achomharc a dhéanamh chun na hArd-Chúirte de réir fhorálacha Alt 75, mar atá leagtha amach thíos:

75.—(1) Laistigh de 3 mhí ón dáta a chinneadh an Bord Achomhairc achomharc, féadfaidh aon pháirtí san achomharc, achomharc a dhéanamh chun na hArd-Chúirte ar aon cheist dlí a eascraíonn as an gcinneadh.

(2) Féadfaidh an Ard-Chúirt—

(a) an cinneadh a dhaingniú,

(b) é a chur ar ceal,

(c) aon chinneadh eile a dhéanamh a d'fhéadfadh an Bord Achomhairc a dhéanamh, nó

(d) an ní a tharchur chun an Bhoird Achomhairc chun go mbreithneofaí tuilleadh é.

(3) Ní féidir achomharc a dhéanamh i gcoinne breithe ón Ard-Chúirt faoin alt seo ach amháin le cead ón Ard-Chúirt.

Ní thagann ach breitheanna áirithe ón Údarás Rialála Seirbhíse Maoine faoi shainchúram an Bhoird Achomhairc, mar atá leagtha amach in Alt 13 de Sceideal 5 thíos:

*Breitheanna ón Údarás a bheith faoi réir achomhairc*

13. Aon duine arb éagóir leis nó léi breith ón Údarás—

(a) lena ndiúltaítear, faoi *alt 31(3)(g), (h),* nó *(i)*, ceadúnas a eisiúint,

(b) lena ndiúltaítear, faoi *alt 63(2)*, a chur faoi deara imscrúdú a sheoladh ar an ní is ábhar do ghearán,

(c) lena ndéantar mion-smachtbhanna a fhorchur faoi *alt 68(4)(a)*,

(d) lena ndéantar gearán a dhíbhe faoi *alt 68(4)(c)*, nó

(e) lena ndiúltaítear deontas a thabhairt, nó a bhaineann le méid an deontais a thugtar,

féadfaidh sé nó sí, laistigh de 30 lá ón dáta a fhaightear fógra faoin mbreith, achomharc a dhéanamh chun an Bhoird Achomhairc i gcoinne na breithe trí fhógra achomhairc atá de réir *mhír 14(1)*, a sheirbheáil ar an mBord Achomhairc.

Ar mhaithe le hAlt 13(a) thuas a shoiléiriú, is iad seo a leanas na forais ar a bhféadfaidh an tÚdarás diúltú ceadúnas a eisiúint faoi Alt 31(3) agus a bhféadfaidh an Bord Achomhairc athbhreithniú a dhéanamh orthu.

- (g) i gcás pearsan aonair (nach comhpháirtí i gcomhpháirtíocht), gur deimhin leis an Údarás—
- (i) nach duine cuí ceart an duine chun an tseirbhís maoiné lena mbaineann a sholáthar, nó
  - (ii) nach gcomhlíonann an duine aon cheanglas (nach ceanglas dá dtagraítear in aon cheann de *mhíreanna (a) go (f)* den fho-alt seo) de chuid an Achta seo nó de chuid rialachán arna ndéanamh faoin Acht seo agus is infheidhme maidir leis an duine,
- (h) i gcás comhlachta chorpraithe (nach comhpháirtí i gcomhpháirtíocht), gur deimhin leis an Údarás—
- (i) nach duine cuí ceart aon phríomhoifigeach de chuid an chomhlachta chorpraithe chun an post lena mbaineann a shealbhú i gcomhlacht corpraithe a sholáthraíonn an tseirbhís maoiné lena mbaineann, nó
  - (ii) nach gcomhlíonann an comhlacht corpraithe aon cheanglas (nach ceanglas dá dtagraítear in aon cheann de *mhíreanna (a) go (f)* den fho-alt seo) de chuid an Achta seo nó de chuid rialachán arna ndéanamh faoin Acht seo agus is infheidhme maidir le comhlacht corpraithe, nó
- (i) i gcás comhpháirtí i gcomhpháirtíocht, gur deimhin leis an Údarás—
- (i) más pearsa aonair an comhpháirtí, nach duine cuí ceart an comhpháirtí chun an tseirbhís maoiné lena mbaineann a sholáthar,
  - (ii) faoi réir *fho-alt (4)*, nach duine cuí ceart aon phríomhoifigeach eile de chuid na comhpháirtíochta chun an post lena mbaineann a shealbhú i gcomhpháirtíocht a sholáthraíonn an tseirbhís maoiné lena mbaineann, nó
  - (iii) nach gcomhlíonann an chomhpháirtíocht aon cheanglas (nach ceanglas dá dtagraítear in aon cheann de *mhíreanna (a) go (f)* den fho-alt seo) de chuid an Achta seo nó de chuid rialachán arna ndéanamh faoin Acht seo agus is infheidhme maidir leis an gcomhpháirtíocht.

Go háirithe, ba cheart a thabhairt faoi deara nach bhfuil aon sainchúram ar an mBord Achomhairc athbhreithniú a dhéanamh ar dhiúltuithe ón Údarás ceadúnais a athnuachan.

Ba cheart a lua freisin gur leis an reachtaíocht a chinntear an teorainn ama ina bhféadfar achomharc a chur isteach. Ní féadfaidh an Bord Achomhairc scrúdú a dhéanamh ar aon iarratas a fhaightear lasmuigh den teorainn ama. Tá an teorainn 30 lá leagtha amach thíos in Alt 15 de Sceideal 5.

15. Ní bhreithneoidh an Bord Achomhairc achomharc mura bhfaigheann sé an fógra achomhairc roimh dhul in éag don tréimhse 30 lá dá dtagraítear i *mír 13*, nó mura mbeidh an fógra de réir cheanglais *mhír 14(1)* (lena n-áirítear *clásal (d)* den mhír sin).

D'fhonn an teorainn 30 lá atá leagtha amach thuas a ríomh, tugtar an treoir seo a leanas in Alt 92(3) de Chuid 13 den Acht um Sheirbhísí Maoiné (Rialáil) 2011:

92. (3) Aon fhógra a thabharfar faoi *fho-alt (1)*, measfar é a bheith faighte ag an duine—
- (a) i gcás an phoist chláráithe réamhíochta, nó i gcás seachadta taifeadta eile, ar an tríd lá oibre tar éis an lae a cuireadh amhlaidh é,
  - (b) i gcás an phoist leictreonaigh, nuair a ghinfidh saoráid an tseoltóra chun post leictreonach a ghlacadh teachtaireacht ina ndaingneofar go bhfuarthas an post leictreonach,
  - (c) i gcás innill macasamhla, nuair a ghinfidh inneall macasamhla an tseoltóra teachtaireacht ina ndaingneofar gur éirigh leis líon iomlán leathanach an fhógra a tharchur.
- (4) Maidir le doiciméid nó faisnéis a cheanglaítear leis an Acht seo, nó faoi, a thabhairt don Údarás nó don Bhord Achomhairc, nó a chur faoi bhráid an chéanna, laistigh de thréimhse shonraithe, measfar, má tá oifig an Údarás nó an Bhoird Achomhairc, de réir mar a bheidh, dúnta ar an lá deireanach den tréimhse, go bhfuarthas iad nó í roimh dhul in éag don tréimhse más rud é go bhfaightear iad nó í ar an gcéad lá eile dá éis sin a bheidh an oifig ar oscailt.
- (5) Chun críocha an ailt seo, meastar gnáthchónaí a bheith ar chuideachta ag a hoifig chláráithe agus gach comhlacht corpraithe nó comhlacht neamhchorpraithe eile a bheith ina chónaí amhlaidh ag a phríomháiit ghnó.

I gcás gach ceann de na breitheanna ón Údarás a ndearna an Bord Achomhairc athbheithniú orthu go dtí seo, seirbheáladh iad ar iarratasóirí leis an bpost cláraithe agus le seachadadh rianaithe. Mar sin, is le hAlt 92(3)(a) thuas a bhaineann an ábharthacht is mó maidir lena chinneadh cé acu a cuireadh nó nár cuireadh achomharc isteach laistigh den teorainn ama.

### 3. Sonraí faoin ualach cásanna agus tráchtairacht ar na hachomhairc a fuarthas

Tá achoimre sa chairt thíos ar an líon cásanna a ndearnadh breithniú orthu le linn na tréimhse a chuimsítear sa tuarascáil seo agus ar na cineálacha saincheisteanna a bhí i gceist:

<b>Líon</b>	
An líon cásanna a fuarthas	62
Cásanna a measadh a bheith lasmuigh dár sainchúram (Athnuachaintí den chuid ba mhó)	14
Bhí an diúltú bunaithe ar Cháilíochtaí	37
Bhí an diúltú bunaithe ar fhorais eile*	11

\*áiríodh iad seo a leanas leis na forais eile:

Bhí an t-iarratasóir ina f(h)éimheach

Níor cuireadh na doiciméid chearta isteach

Earráid chléireachais

Dhiúltaigh an tÚdarás Rialála Seirbhísí Maoine imscrúdú a dhéanamh ar an ngearán

<b>AN TORADH AR ACHOMHAIRC</b>	
Achomhairc a ceadaíodh ina n-iomláine agus ar feidhmíodh dlínse iomlán ina leith	
Atarchuireadh an t-achomharc chun an Údarás Rialála Seirbhísí Maoine lena athbheithniú*	22
Dícheadaíodh an t-achomharc agus seasadh leis an mbreith ón Údarás Rialála Seirbhíse Maoine	11
Measadh an t-achomharc a bheith tarraingthe siar	1
Cuireadh an t-achomharc isteach lasmuigh den teorainn ama	3
Cásanna a bhí ar feitheamh cinnidh	11

\* bhain formhór na n-achomharc a atarchuireadh le diúltuithe a bhí bunaithe ar Cháilíochtaí faoi Ionstraim Reachtúil Uimh. 181 de 2012

Is iad prionsabail an cheartais aiceanta agus nósanna imeachta cothroma a threoraíonn obair an Bhoird Achomhairc. Sa chomhthéacs sin, baineann tábhacht ar leith leis an dualgas atá ann cúiseanna a thabhairt le breitheanna.

Chuir na hUaschúirteanna treoir ar fáil maidir le cinnteoireacht dhleathach. Ní mór do chinnteoir aghaidh a thabhairt ar an gceist cheart is gá a fhreagairt. Agus é sin á dhéanamh aige/aici, ní mór don chinnteoir aird a thabhairt ar aon tosca riachtanacha nó ar aon aighneachtaí ba cheart a chur san áireamh i gceart. Ní mór don chinnteoir freagra a thabhairt ansin ar an gceist cheart a cuireadh agus, le linn dó/di measúnú a dhéanamh ar na nithe uile a cuireadh san áireamh i gceart, ní mór dó/di breith atá réasúnach a thabhairt, de réir mar a shainmhínítear an téarma 'réasúnach' sa dlí-eolaíocht. Más rud é nach bhfuil ag an duine a ndeachaigh an bhreith i bhfeidhm air/uirthe dóthain faisnéise maidir leis an dóigh ar tugadh aghaidh ar an gceist agus maidir leis an dóigh ar cuireadh na tosca san áireamh go cuí, is neamhdhleathach a bheidh an bhreith mar gheall gur baineadh an bonn ón gceart a bhí ag an iarratasóir cur i gcoinne na breithe toisc nach raibh eolas aige/aici ar na forais ar a raibh an bhreith sin bunaithe. Ba cheart na cúiseanna le breith a bheith soiléir ón mbreith féin agus níl sé cuí cur leis na cúiseanna a tugadh sa bhreith trí chúiseanna breise a chur ar fáil ar dháta níos déanaí.

#### 4. Rialacha Nós Imeachta

De réir mar a dhéileálfadh an Bord Achomhairc le tuilleadh cásanna thar na míonna atá le teacht, is féidir go measfar é a bheith cuí treoirínite maidir le doiciméid a chur i láthair a eisiúint chun cabhrú le páirtithe. Nuair a bheidh na treoirínite sin réidh, foilseofar iad ar shuíomh Gréasáin i gcomhar leis an Roinn Dlí agus Cirt agus Comhionannais.

Ag an am seo, d'fhéadfadh go mbeadh sé cabhrach aird a tharraingt ar na forálacha reachtúla a bhfuil feidhm acu maidir le páirtithe, mar aon leis an teorainn ama mar atá mínithe thuas, faoi théarmaí na reachtaíochta agus na rialachán arna n-eisiúint faoin Acht um Sheirbhísí Maoine (Rialáil) 2011.

#### *Ceanglais maidir le fógra achomhairc*

14. (1) Is i scríbhinn a bheidh an fógra achomhairc, agus luafar ann—
- (a) ainm agus seoladh an achomharcóra,
  - (b) ábhar an achomhairc,
  - (c) leas an achomharcóra i dtoradh an achomhairc, agus
  - (d) forais an achomhairc agus na cúiseanna, na cúinsí agus na hargóintí ar a bhfuil siad bunaithe, agus beidh ag gabháil leis an bhfógra an táille chuí (más ann) agus cibé doiciméid i ndáil leis an achomharc is dóigh leis an achomharcóir is gá nó is cuí.
- (2) Ní dhéanfaidh an t-achomharcóir, mura n-iarrfaidh an Bord Achomhairc air nó uirthi déanamh amhlaidh, mionléiriú i scríbhinn ar na forais achomhairc, ná aighneachtaí breise i scríbhinn i ndáil leis na forais achomhairc, a luaitear san fhógra achomhairc, ná ní chuirfidh sé nó sí forais bhreise achomhairc faoi bhráid an Bhoird Achomhairc, agus ní bhreithneoidh an Bord Achomhairc aon mhionléiriú ná aighneachtaí breise den sórt sin a gheobhaidh sé.
- (3) Gan dochar do *mhír 23*, ní bhreithneoidh an Bord Achomhairc aon doiciméid a chuir an t-achomharcóir faoina bhráid ag an achomharc seachas na doiciméid sin a bhí ag gabháil leis an bhfógra achomhairc.

#### *Na nithe ar a bhforasaítear achomharc*

26. Beidh achomharc forasaithe ar na nithe seo a leanas—
- (a) an taifead den bhreith ón Údarás is ábhar don achomharc,
  - (b) an fhaisnéis a bheidh san fhógra achomhairc,
  - (c) aon aighneachtaí (lena n-áirítear aon mhionléirithe orthu) arna ndéanamh de réir na Coda seo chuig an mBord Achomhairc maidir le haon ní a eascraíonn as an mbreith nó as an bhfaisnéis sin,
  - (d) aon doiciméad nó faisnéis eile a gheobhaidh an Bord Achomhairc de réir na Coda seo ar an achomharc a éisteacht.

#### *Suíonna den Bhoird Achomhairc*

27. Is ar shlí seachas go poiblí a thionólfar suíonna an Bhoird Achomhairc mura rud é—
- (a) go ndéanfaidh an tÚdarás, an t-achomharcóir nó, más infheidhme *mír 17*, an páirtí eile sa ghearán, iarraidh i scríbhinn chun an Bhoird Achomhairc ar na suíonna (nó cuid díobh) i leith an achomhairc lena mbaineann a thionól go poiblí agus go luafaidh sé nó sí san iarraidh na cúiseanna leis an iarraidh, agus
  - (b) gur deimhin leis an mBord Achomhairc, tar éis dó an iarraidh (go háirithe, na cúiseanna leis an iarraidh) a bhreithniú, gur chuí déanamh de réir na hiarrata.

Go dtí seo, níor chinn an Bord Achomhairc go raibh gá ann le héisteacht ó bhéal in aon chás ar bith. Foráiltear do rogha den sórt sin in Alt 28 de Sceideal 5 den Acht um Sheirbhísí Maoine (Rialáil) 2011, mar atá leagtha amach thíos:

*Éisteachtaí ó bhéal*

28. (1) Faoi réir *fhomhíreanna* (2) go (5), féadfaidh an Bord Achomhairc, as a threoir féin nó ar iarraidh a fháil ó pháirtí, dá lánrogha féin, éisteacht ó bhéal ar achomharc a sheoladh.
- (2) Maidir le hiarraidh ó pháirtí ar éisteacht ó bhéal—
- (a) is i scríbhinn chuig an mBord Achomhairc a dhéanfar í,
- (b) faoi réir *chlásal* (c), déanfar í laistigh den tréimhse 30 lá dá dtagraítear i *mír 13*,
- (c) (i) i gcás inarb é an tÚdarás a dhéanfaidh an iarraidh, déanfar í laistigh den tréimhse 30 lá dá dtagraítear i *mír 21(1)*, nó
- (ii) má dhéanann an duine dá ngairtear an “páirtí eile” i *mír 17* an iarraidh, déanfar í laistigh de 30 lá ón tráth a gheobhaidh an duine sin an fógra achomhairc.
- (3) Ní bhreithneoidh an Bord Achomhairc iarraidh ar éisteacht ó bhéal arna déanamh tráth is déanaí ná an tráth a rachaidh an tréimhse iomchuí dá dtagraítear i *bhfomhír* (2) in éag.
- (4) I gcás ina ndiúltoídh an Bord Achomhairc d’iarraidh ar éisteacht ó bhéal a sheoladh, déanfaidh sé fógra i dtaobh a bhreithe agus na cúiseanna lena bhreith a sheirbheáil ar gach páirtí san achomharc agus ar aon duine a rinne aighneacht faoi *mhír 22* i leith an achomhairc.
- (5) Féadfaidh an Bord Achomhairc le linn dó éisteacht ó bhéal a sheoladh fianaise a ghlacadh faoi mhionn, agus údaraítear, leis seo, d’aon chomhalta den Bhord Achomhairc duine a chur faoi mhionn den sórt sin.
- (6) Féadfaidh an Bord Achomhairc, le fógra i scríbhinn, a cheangal ar aon duine freastal cibé tráth agus i cibé áit a shonrófar san fhógra chun fianaise a thabhairt i leith aon ní faoi shaincheist san achomharc nó chun aon doiciméid iomchuí a bheidh ina sheilbh nó ina seilbh nó faoina urláimh nó faoina hurláimh nó ar fáil aige nó aici a thabhairt ar aird.
- (7) Beidh duine dá dtagraítear i *bhfomhír* (6) i dteideal na ndíolúintí agus na bpríbhleáidí céanna i leith aon cheanglas dá dtagraítear san fhomhír sin a chomhlíonadh amhail is dá mba fhinné os comhair na hArd-Chúirte an duine.
- (8) I gcás nach ndéanfaidh duine dá dtagraítear i *bhfomhír* (6) ceanglas dá dtagraítear san fhomhír sin a chomhlíonadh nó a chomhlíonadh go hiomlán, féadfaidh an Bord Achomhairc iarratas a dhéanamh chun na Cúirte Cuarda, iar bhfógra don duine sin, ar ordú á cheangal ar an duine an ceanglas a chomhlíonadh nó a chomhlíonadh go hiomlán, de réir mar a bheidh, laistigh de thréimhse a shonróidh an Chúirt, agus féadfaidh an Chúirt an t-ordú a lorgáodh nó cibé ordú eile is cuí léi a dhéanamh nó diúltú aon ordú a dhéanamh.
- (9) Féadfaidh an breitheamh den Chúirt Chuarda don chuaird ina bhfuil gnáthchónaí ar an duine lena mbaineann nó ina seolann sé nó sí aon ghairm, gnó nó slí bheatha an dlínse a thugtar don Chúirt sin leis an alt seo a fheidhmiú.

Le linn na tréimhse a chuimsítear sa tuarascáil seo, thionóil an Bord Achomhairc 12 shuí fhoirmiúla. Rinne na Comhaltaí agus an Rúnaíocht obair shuntasach ullmhúcháin agus leantach lena linn freisin.

Faoi Alt 6(1) de Sceideal 5, tugtar treoir don Bhord Achomhairc cibé líon cruinnithe is gá a thionóil chun a fheidhmeanna a chomhlíonadh go héifeachtach. Ceanglaítear ar an mBord Achomhairc faoi Alt 12 de Chuid 2 de Sceideal 5 freisin a chinntiú, a mhéid is indéanta, go bpléifear le hachomhairc, agus go ndéanfar iad a chinneadh, go dlúsúil.

Chomh maith leis sin, ba mhaith leis an mBord Achomhairc an deis seo a thapú chun a thuiriscíú go bhfuil sé buíoch as an obair atá á déanamh ag an Rúnaíocht sa Roinn Dlí agus Cirt agus Comhionannais, áit a bhfuil Kathleen A. Fitzpatrick Uas. sannta ar bhonn páirtaimseartha de réir Alt 8 de Sceideal 5.



## 5. Comhaltaí den Bhord agus freastal ar shuíonna

Tar éis fógraí a fhoilsiú i mí na Bealtaine 2012, rinne an tAire na Comhaltaí atá liostaithe thíos a cheapadh an 24 Iúil 2012 bunaithe ar na hiarratais a fuarthas. Tá 12 shuí ann go dtí seo. Freastalaíodh orthu mar seo a leanas:

**Patricia O'Connor (Cathaoirleach)**

**Chuaigh sí ar scor i mí Mheán Fómhair 2014 (d'fhreastail sí ar 2 chruinniú de 8 gcinn)**

**An tUas. James Bridgeman:** 11 de 12

**Dorothea Dowling Uas.** 12 de 12

**Sunniva McDonagh Uas.:** 12 de 12

**An tUas. David McGarry:** 10 de 12

**An tUas. Philip Moynihan:** 12 de 12

Is ar feadh téarma ceithre bliana a mhaireann ceapacháin chun an Bhoird Achomhairc.

Mar atá leagtha amach thíos, is de réir Alt 5 de Sceideal 5 a dhéantar íocaíochtaí le Comhaltaí den Bhord Achomhairc.

5. Íocfar le comhaltaí an Bhoird Achomhairc cibé luach saothair (más ann) agus liúntais i leith caiteachas a chinnfidh an tAire, le toiliú an Aire Caiteachais Phoiblí agus Athchóirithe.

Ní íocfar táillí le comhaltaí as a bheith ina gcomhaltaí den Bhord *per se*, ach íocfar leo as páirt a ghlacadh i suíonna de chuid an Bhoird chun cinneadh a dhéanamh ar achomhairc. Is mar seo a leanas atá na rátaí a íoctar i leith gach suí ar a bhfreastalaíonn an Comhalta. Tá na rátaí sin faoi réir cánach agus gach cineáil tobhaigh eile.

Cathaoirleach €500

Gnáthchomhalta €416

B'ionann agus €24,712 na táillí Boird don bhliain 2014. B'ionann agus €2,698.98 na speansais Taistil agus Chothaithe a íocadh le comhaltaí le linn na bliana 2014.

B'ionann agus €1,945 na heisíocaíochtaí eile a rinneadh sa bhliain. Bhain an tsuim sin leis an gcostas ar chomhairle dlí a fháil agus leis an táille €100 a gearradh i leith an Bord Achomhairc um Sheirbhísí Maoine a chlárú le hOifig an Choimisinéara Cosanta Sonraí.

## 6. Na Cóid Rialachais is infheidhme maidir leis an mBord Achomhairc um Sheirbhísí Maoine

A mhéid is infheidhme, tugann na Comhaltaí den Bhord aird ar na freagrachtaí atá orthu faoi théarmaí an Chóid Chleachtais do Rialachas Comhlachtaí Stáit.

I dtús gach suí de chuid an Bhoird Achomhairc, ceanglaítear ar gach Comhalta a dhearbhu cé acu a mheasann nó nach measann siad go bhfuil aon choinbhleacht leasa acu maidir le páirtithe nó le saincheisteanna atá sceidealta dá gcinneadh.

## 7. Dlíthe eile is infheidhme

Tá aird ag an mBord ar na dualgais atá air faoin reachtaíocht Cosanta Sonraí agus tá sé cláraithe leis an gCoimisinéir Cosanta Sonraí mar atá leagtha amach thíos:

## AN COIMISINÉIR COSANTA SONRAÍ-

Sonraí Clárlainne don 'Bhord Achomhairc um Sheirbhísí Maoine'

<b>Ainm na Cuideachta:</b>	An Bord Achomhairc um Sheirbhísí Maoine
<b>Uimhir Thagartha:</b>	14727/A
<b>Cineál Clárúcháin:</b>	DC
<b>Seoladh na Cuideachta:</b>	51 Faiche Stiabhna, Baile Átha Cliath 2
<b>Teagmhálaí:</b>	Kathleen Fitzpatrick
<b>Cuspóir:</b>	Breithniú a dhéanamh ar aon achomhairc i gcoinne breitheanna ón Údarás Rialála Seirbhísí Maoine diúltú ceadúnais a eisiúint le haghaidh seirbhísí maoine a sholáthar
<b>An Dáta a Bheidh Athnuachan Dlíte:</b>	11/08/2015
<b>Cur Síos:</b>	Achomhairc i gcoinne breitheanna ón Údarás Rialála Seirbhísí Maoine diúltú ceadúnais a eisiúint
<b>Faighteoirí Ábhair Nochta:</b>	Gach achomhairc; an Bord Achomhairc; an tÚdarás Rialála Seirbhísí Maoine
<b>Aistrithe Thar Lear:</b>	Ceann ar Bith