An Bord Achomhairc um Sheirbhísí Maoine

Property Services Appeal Board

PROPERTY SERVICES APPEAL BOARD
ANNUAL REPORT 2017

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51 St Stephens Green, Dublin 2.

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Foreword by the Chairman

Dear Minister Flanagan,

It is my pleasure to submit this report of the Property Services Appeal Board. This is my third annual report as Chairman since my appointment on 23rd November 2015 and the fourth Annual Report of the Board.

The Property Services Regulatory Authority which was established on 3rd April 2012 has introduced an entirely new regime for the licensing of property services providers. That fundamental change to the regulatory framework presented many challenges for stakeholders. There was a steep learning curve for all involved and this was partly reflected in the volume of challenges by applicants to decisions of the Authority which came to the Property Services Appeal Board for determination. As I said last year a relatively new source of appeal which is emerging relates to complaints about property services providers and these represented 17 of the appeals lodged in the year covered by this report.

One matter that constantly causes problems for the Authority and consequently the Appeal Board is the fact that in relation to the provision of services by licensees, Section 95 of the Act allows for regulations to be made regarding the standards to be observed in the provision of property services by licensees but to date no such regulations have been passed.

I would like to take this opportunity to thank my fellow Board members since their appointment to the Board on 14 February, 2017, for their work and also to express my appreciation to the Board Secretary Ms Kathleen Fitzpatrick. The Board have also asked me to express their appreciation for your support and that of your Department officials since their appointment on 14th February, 2017.

Yours Sincerely,

Anthony Ensor
Chairperson

5th November, 2018

SECTIONS IN THIS REPORT

1. Period covered by this report
2. Caseload data and commentary on appeals received
3. Board Membership & Fees
4. Meetings
5. Governance and Compliance

1. Period covered by this report

This report covers the period from 1 January, 2017 to 31 December, 2017. This is the fourth annual report to the Minister for Justice as required under Schedule 5 at Section 11 of the Property Services (Regulation) Act 2011.

2. 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:

VOLUME	
Number of cases received	30
Found to be outside remit (predominantly Renewals)	4
Refusal based on qualifications	1
Appeal of refusal by Authority to investigate a complaint	17
Appeal of refusal By Authority to award a claim for compensation under the Property Services Compensation Fund	1
Appeal of decision of Authority following a Compliance Audit Investigation	6
Appeal out of time	1

OUTCOME OF APPEALS	
Appeals allowed in full & full jurisdiction exercised	3
Remitted to PSRA for reconsideration	1
Disallowed & PSRA decision upheld	16
Appeal out of time	1
Cases on hand awaiting determination	9

Of the above Outcome of Appeals 5 were withdrawn by the Appellant.

A new Statutory Instrument, S.I. 456 of 2015 was enacted in October 2015 dealing with Qualifications which reflects greater flexibility in the mapping of the academic credit system known as ECTS (European Credit Transfer and Accumulation System). This is a welcome development.

Guidance has been provided by the Superior Courts in relation to lawful decision making. Therefore, the Appeal Board being guided by the principles of natural justice and fair procedures give reasons for their decisions.

3. Board Membership

The terms of appointment of the previous Board members expired on 23 July, 2016.
Following advertisements in July, 2016 the Minister appointed the Members listed below on 14 February, 2017.

Mr Anthony Ensor (Chairperson)
Appointed 23rd November 2015

Mr James Bridgeman
Ms Dorothy Donovan
Ms Dairine MacFadden
Mr. Philip Moynihan

Appointments to the Appeal Board are for a four year term. Again as last year, the Board would suggest that future appointments should involve a staggered expiry of Warrants to assist continuity of expertise and familiarity with the legislation.

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 2017 totalled €21,224.

4. Meetings

No meetings were held between July 2016 to March 2017.
There were 10 sittings during 2017.

5. Governance and Compliance

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.

The Board has now established a website.

The Board was registered as a data controller with the Office of the Data Protection Commissioner.

In accordance with GDPR requirements the Board has recently appointed Ms Eileen Tully as its Data Protection Officer.

An Bord Achomhairc um Sheirbhísí Maoine

Property Services Appeal Board

AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE

TUARASCÁIL BHLIANTÚIL 2017

AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE

51 Faiche Stiabhna, Baile Átha Cliath 2.

TUARASCÁIL BHLIANTÚIL 2017

Réamhrá leis an gCathaoirleach

A Aire Flanagan,

Tá áthas orm tuarascáil an Bhoird Achomhairc um Sheirbhísí Maoine a chur faoi do bhráid. Is í seo an tríú tuarascáil bhliantúil agam i mo Chathaoirleach ó ceapadh mé an 23 Samhain 2015 agus is í ceathrú Tuarascáil Bhliantúil an Bhoird í.

Tá córas iomlán nua chun soláthróirí seirbhísí maoine a cheadúnú tugtha isteach ag an Údarás Rialála Seirbhísí Maoine ó bunaíodh é an 3 Aibreán 2012. Chruthaigh an bunathrú sin ar an gcreat rialála go leor dúshlán do pháirtithe leasmhara. D'fhoghlaim gach a raibh páirteach ann go leor agus léiriú air seo an líon iarratasóirí a thug dúshlán chinntí an Údaráis a cuireadh ar aghaidh chuig an mBord Achomhairc um Sheirbhísí Maoine lena gcinneadh. Mar a dúirt mé an bhliain seo caite, údar nua achomhairc atá ag teacht chun cinn is ea gearáin faoi sholáthróirí seirbhísí maoine agus bhain 17 achomharc a cuireadh faoi bhráid sa bhliain lena an mbaineann an tuarascáil seo leis sin.

Saincheist amháin a chruthaíonn fadhbanna don Údarás agus dá bharr sin, don Bhord Achomhairc ná, maidir le seirbhísí atá á soláthar ag ceadúnaithe, go gceadaítear in Alt 95 den Acht rialúcháin a dhéanamh maidir leis na caighdeáin a bheidh le hurramú i soláthar seirbhísí maoine ag ceadúanithe ach níor ritheadh aon rialúchán dá leithéid go dtí seo.

Ba mhaith liom an deis seo a thapú chun buíochas a ghlacadh le comhaltaí eile an Bhoird ó ceapadh ar an mBord iad an 14 Feabhra, 2017, as an obair a dhéanann siad agus mo chuid buíochais a chur in iúl chomh maith do Rúnaí an Bhoird, Kathleen Fitzpatrick Uasal. D'iarr comhaltaí an Bhoird orm a mbuíochas a chur in iúl duit freisin as do thacaíocht agus as tacaíocht oifigigh do Roinne ó ceapadh iad an 14 Feabhra, 2017.

Is mise le meas

Anthony Ensor
Cathaoirleach

An 5 Samhain, 2018

CODANNA NA TUARASCÁLA SEO

1. An tréimhse lena mbaineann an tuarascáil seo
2. Sonraí maidir le líon na gcásanna agus cur síos ar na hachomhairc a fuarthas
3. Comhaltaí & Táillí an Bhoird
4. Cruinnithe
5. Rialachas agus Comhlíonadh

1. <u>An tréimhse lena mbaineann an tuarascáil seo</u>

Baineann an tuarascáil seo leis an tréimhse ón 1 Eanáir 2017 go dtí an 31 Nollaig 2017. Is í seo an ceathrú tuarascáil bhliantúil atá á cur faoi bhráid an Aire Dlí agus Cirt mar a éilítear faoi Sceideal 5, Cuid 11 den Acht um Sheirbhísí Maoine (Rialáil) 2011.

2. <u>Sonraí maidir le líon na gcásanna agus cur síos ar na hachomhairc a fuarthas</u>

Déantar achoimre ar líon na gcásanna a breithníodh le linn tréimhse na tuarascála seo agus cur síos ar na saincheisteanna a bhain leo sa chairt thíos:

MÉID	
Líon na gcásanna a fuarthas	30
Líon na gcásanna a measadh nach raibh ag teacht faoinár	4
gcúram (Athnuachaintí den chuid is mó)	1
Diúltú bunaithe ar cháilíochtaí	17
Achomhairc a rinneadh maidir le diúltú an Údaráis chun gearán a imscrúdú	1
Achomhairc a rinneadh maidir le diúltú an Údaráis chun éileamh ar chúiteamh a dhámhachtain faoin gCiste Cúitimh um Sheirbhísí Maoine	6
Achomharc ar chinneadh an Údaráis i ndiadh Imscrúdú ar Iniúchadh a Chomhlíonadh	1
Achomharc imithe in éag	

TORADH NA nACHOMHARC	
Achomhairc a ceadaíodh go hiomlán & inar feidhmíodh dlínse iomlán	3
Curtha ar aghaidh chuig an PSRA lena n-athbhreithniú	1
A dícheadaíodh & ar seasadh le cinneadh an PSRA	16
Achomharc imithe in éag	1
Cásanna idir lámha atá fós le cinneadh	9

As Toradh na nAchomharc thuas, ba é an tAchomharcóir a tharraing siar i 5 chás díobh.

I nDeireadh Fómhair 2015, achtaíodh Ionstraim Reachtúil nua, I.R. 456 de 2015 a bhaineann le Cáilíochtaí agus a léiríonn solúbthacht níos mó i dtaobh córas creidiúna acadúil a mhapáil ar a dtugtar ECTS (An Córas Eorpach d'Aistriú Creidmheasa). Fáiltímid roimh an bhforbairt sin.

Na hUaschúirteanna a chuireann treoir ar fáil maidir le cinntí dleathacha a dhéanamh. Mar sin, tugann an Bord Achomhairc, agus prionsabail an cheartais aiceanta agus nósanna imeachta cóir mar threoir aige, cúiseanna i leith na gcinntí.

3. Comhaltaí Boird

Chuaigh téarmaí ceapacháin na gcomhaltaí Boird a bhí ann roimhe seo in éag an 23 Iúil, 2016.
I ndiaidh fógraí in Iúil 2016, cheap an tAire na Comhaltaí liostaithe thíos an 14 Feabhra, 2017.

An tUasal Anthony Ensor (Cathaoirleach)
Ceaptha an 23 Samhain 2015

An tUasal James Bridgeman
Dorothy Donovan Uasal
Dairine MacFadden Uasal
An tUasal Philip Moynihan

Téarma ceithre bliana atá sna ceapacháin chuig an mBord Achomhairc. Mar a dúradh cheana an bhliain seo caite, mholfadh an Bord go mbeadh Barántais in éag ar bhonn céimnithe ag baint le ceapacháin amach anseo chun go mbeidh fáil leanúnach ar dhaoine a bhfuil saineolas agus cur amach acu ar an dlí.

Déantar íocaíochtaí le Comhaltaí an Bhoird Achomhairc de réir Sceideal 5 i gCuid 5 thíos:

> 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 íoctar táillí *per se* as Comhaltacht ar an mBord ach íoctar as a bheith rannpháirteach i suíonna an Bhoird nuair atá achomhairc á meas. Is mar seo a leanas na rátaí, atá faoi réir ag cáin agus gach tobhach eile, a íoctar le Comhalta a fhreastalaíonn ar shuí:

An Cathaoirleach €500
Gnáthchomhalta €416

B'ionann táillí iomlán an Bhoird do 2017 agus €21,224.

4. <u>Cruinnithe</u>

Níor tionóladh aon chruinnithe idir Iúil 2016 agus Márta 2017.
Tionóladh 10 gcinn de shuíonna le linn 2017.

5. <u>Rialachas agus Comhlíonadh</u>

Aithníonn Comhaltaí an Bhoird na freagrachtaí a leagtar orthu faoi théarmaí an Chóid Cleachtais chun Comhlachtaí Stáit a Rialú, a mhéid is infheidhme.

Ag tús gach suí den Bhord Achomhairc, ní mór do gach Comhalta a dhearbhú má cheapann siad go bhféadfadh coinbhleacht leasa a bheith i gceist maidir le haon pháirtithe nó saincheisteanna atá leagtha amach lena gcinneadh.

Tá láithreán gréasáin ag an mBord anois.

Cláraíodh an Bord ina rialaitheoir sonraí le hOifig an Choimisinéara Cosanta Sonraí.

Ceapadh Eileen Tully Uasal ina hOifigeach Cosanta Sonraí don Bhord le gairid de réir cheanglas GDPR.