



An Bord Achomhairc um Sheirbhísí Maoine
Property Services Appeal Board

**PROPERTY SERVICES APPEAL BOARD
ANNUAL REPORT 2019**

PROPERTY SERVICES APPEAL BOARD

51 St Stephens Green, Dublin 2.

ANNUAL REPORT 2019

Foreword by the Chairman

Dear Minister McEntee,

It is my privilege to submit this report of the Property Services Appeal Board. This is my first annual report as Chairman since my appointment on 29th May, 2020 and the sixth 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 set out under caseload data in the report one decision of the Board was overturned by the High Court. One appeal was remitted back to the Board for a new hearing. Both appeals related to claims for a grant from the Compensation Fund.

As mentioned in last year's report a matter that 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 of 2011 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 in particular the previous Chairperson, Anthony Ensor, for his dedication and long commitment to the Board and my fellow Board members , 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 and its officials.

Yours Sincerely,

Philip O'Leary
Chairperson

7th July, 2020

SECTIONS IN THIS REPORT

1. Period covered by this report
2. Caseload data 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 1st January, 2019 to 31st December, 2019. This is the sixth annual report to the Minister for Justice & Equality as required under Schedule 5, at paragraph 11, of the Property Services (Regulation) Act 2011.

2. Caseload data on appeals received

The volume of cases considered during the period covered by this report was 43.

Of the 43 appeals received during 2019,

- 32 appeals were disallowed and the Board affirmed the decision of the Authority;
- 1 was considered out of time;
- 1 decision was overturned by the High Court and 1 appeal was remitted back to the Board for a new hearing. Both appeals related to claims for a grant from the Compensation Fund;
- 3 appeals were allowed or the matter was referred back to the Authority for reconsideration;
- 5 appeals are awaiting consideration and decision by the Board.

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 James Bridgeman

Ms Dorothy Donovan

Ms Dairine MacFadden

Mr. Philip Moynihan

Mr Philip O’Leary (Chairperson)

Appointed 29th May, 2020

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 2019 totalled €21,724.

4. Meetings

There were 11 sittings during 2019.

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 which has recently been upgraded to a new design, making it more user friendly and reflecting recent changes on the Board.

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.



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Property Services Appeal Board

**AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ
MAOINE
TUARASCÁIL BHLIANTÚIL 2019**

AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE

51 Faiche Stiabhna, Baile Átha Cliath 2.

TUARASCÁIL BHLIANTÚIL 2019

Réamhrá leis an gCathaoirleach

A Aire McEntee,

Is mór an pribhléid dom tuarascáil an Bhoird Achomhairc um Sheirbhísí Maoine a chur faoi do bhráid. Is í seo an chéad tuarascáil bhliantúil agam i mo Chathaoirleach ó ceapadh mé an 29 Bealtaine 2020 agus is í séú Tuarascáil Bhliantúil an Bhoird í.

Tá córas iomlán nua chun soláthróirí seirbhísí maoine a cheadúnú tugtha isteach ag an Údarás Rialála Seirbhíse 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 atá leagtha amach faoi shonraí faoi líon na gcásanna sa tuarascáil chuir an Ard-Chúirt cinneadh amháin de chuid an Bhoird ar ceal. Tarchuireadh achomharc amháin ar ais chuig an mBord le haghaidh éisteacht nua. Bhain an dá achomharc le héilimh ar dheontas ón gCiste Cúitimh.

Mar a luadh i dtuarascáil na bliana seo caite, saincheist amháin a chruthaíonn fadhbanna don Údarás agus dá bharr sin, don Bhord Achomhairc ná, maidir le seirbhísí atá á soláthar ag ceadúnaithe. Ceadáítear faoi alt 95 d'Acht 2011 rialúcháin a dhéanamh maidir leis na caighdeáin a bheidh le leanúint ag ceadúnaithe i soláthar seirbhísí maoine ach níor ritheadh aon rialúchán dá leithéid go dtí seo.

Ba mhaith liom an deis seo a thapú chun buíochas a ghlacadh leis an gCathaoirleach a bhí ann roimhe seo, Anthony Ensor, as a dhúthracht agus a thiomantas fada don Bhord agus mo bhuíochas a chur in iúl freisin do chomhaltaí eile an Bhoird 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 do Roinne agus a cuid oifigeach.

Is mise le meas

Philip O'Leary
Cathaoirleach

7^ú Iúil, 2020

CODANNA NA TUARASCÁLA SEO

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

1. An tréimhse lena mbaineann an tuarascáil seo

Baineann an tuarascáil seo leis an tréimhse ón 1^úEanáir, 2019 go dtí 31^ú Nollaig, 2019. Is í seo an séú tuarascáil bhliantúil atá á cur faoi bhráid an Aire Dlí agus Cirt agus Comhionannais mar a éilítear faoi Sceideal 5, ag alt 11 den Acht um Sheirbhísí Maoine (Rialáil) 2011.

2. Sonraí maidir le líon na gcásanna a fuarthas

Ba 43 cás a breithníodh le linn thréimhse na tuarascála seo.

I gcás 43 de na hachomhairc a fuarthas i rith na bliana 2019,

- dícheadaíodh 32 achomharc agus dhearbhaigh an Bord cinneadh an Údaráis;
- Breithníodh go raibh 1 chás amháin imithe in éag;
- Chuir an Ard-Chúirt 1 chinneadh amháin ar ceal agus forchuireadh 1 achomharc amháin ar ais chuig an mBord le haghaidh éisteacht nua. Bhain an dá achomharc le héilimh ar dheontas ón gCiste Cúitimh;
- Ceadaíodh 3 achomharc nó cuireadh an cás faoi bhráid an Údaráis arís lena mbreithniú.
- Tá 5 achomharc fós le breithniú agus le cinneadh ag an mBord.

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

Na hUaschúrteanna 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.

James Bridgeman Uasal

Dorothy Donovan Uasal

Dairine MacFadden Uasal

Philip Moynihan Uasal

Philip O'Leary Uasal (Cathaoirleach)

Ceaptha an 29 Bealtaine 2020

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 ar fhreastalaíonn ar shuí:

An Cathaoirleach €500

Gnáthchomhalta €416

B'ionann táillí iomlán an Bhoird do 2019 agus €21,724.

4. Cruinnithe

Tionóladh 11 gcinn de shuíonna le linn 2019.

5. Rialachas agus Comhlíonadh

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

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

Tá láithreán gréasáin bunaithe anois ag an mBord, a bhfuil uasghrádú go dtí leagan amach nua déanta air le gairid, atá níos éasca le húsáid agus ina gcuirtear athruithe a rinneadh don Bhord le gairid in iúl.

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.