An Bord Achomhairc um Sheirbhísí Maoine
Property Services Appeal Board

# PROPERTY SERVICES APPEAL BOARD ANNUAL REPORT 2021

# PROPERTY SERVICES APPEAL BOARD

51 St Stephens Green, Dublin 2.

**ANNUAL REPORT 2021**

Foreword by the Chairman

Dear Minister, McEntee,

It is my privilege to submit this report of the Property Services Appeal Board. This is my third annual report as Chairman since my appointment on 29th May, 2020 and the eight Annual Report of the Board.

The regime introduced on 3rd April 2012 for the regulation of property service providers is now almost ten years in existence. 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. I am pleased to see that these Regulations viz. *The Property Services (Regulation) Act 2011 The (Minimum Standards) Regulations 2020* (Statutory Instrument 564 of 2020) became effective on 30th November, 2020 has extended the scope and range of issues which can be addressed by the Authority, and the Board on appeal.

The Property Services Appeal Board is one of those bodies that has been included within the provisions of sections 29 and 31 of the *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020* which provide for remote hearing of appeals. I welcome this as it provides the Board with assurance to conduct remote hearings of appeals as routine and in particular during the difficulties which arose due to the Covid 19 pandemic.

I wish to thank my fellow Board members, for their hard work and dedication particularly in 2021 where, despite Covid restrictions, the Board convened on 30 occasions often at short notice to deal with significant issues. The Board also dealt with issues including Governance, risk management, data protection, training and taking professional advices. I also wish to express my appreciation to the Board Secretary, Ms Kathleen Fitzpatrick for all the hard work and diligence in preparation and execution of all board business arising. 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
29th March, 2022

**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, 2021 to 31st December, 2021. This is the eighth annual report to the Minister for Justice 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 and decided during the period covered by this report was 26.

Of the 26 appeals received and completed during 2021,

- 21 appeals were disallowed and the Board affirmed the decision of the Authority;
- 1 appeal was out of time.
- 1 appeal was allowed and the decision of the Authority was varied;
- 1 appeal was received on time but was deemed invalid.
- 2 appeals were referred back to the Authority for reconsideration.

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

3. Board Membership

**Mr Philip O'Leary (Chairperson)**

Appointed 29th May, 2020

The members listed below were reappointed to the Board for a subsequent term on 14th February, 2021.

**Ms Dorothy Donovan**

**Ms Dairine Mac Fadden**

**Mr Philip Moynihan**

Ms Sinead Boyle was appointed to the Board on the 27th October 2021 and resigned from the Board with effect from the 6th December 2021. The process for appointing a new Board member has commenced to fill the vacancy which has arisen.

Appointments to the Appeal Board are for a four year term with provision for appointment for a second or subsequent term. The Board would suggest that future appointments should involve a staggered expiry of Warrants to assist continuity of expertise and familiarity with the legislation.

The term of appointment of Mr James Bridgeman, SC, expired on the 13th February, 2021. Mr Bridgeman served for two terms on the Board.

Payments to Members of the Appeal Board are made in accordance with paragraph 5 of Schedule 5 of the Act at Section 5 as set out 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. 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 and expenses for 2021 totalled € 60,932.

4. Meetings

There were 35 Board meetings during 2021 which consisted of hearing appeals, corporate governance, risk management, training, Freedom of Information requests, GDPR and further professional advices.

## 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 engages in professional development training to ensure proper and efficient service delivery in dealing with decisions of the Authority appealed to it.

An Bord Achomhairc um Sheirbhísí Maoine
Property Services Appeal Board

# AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE
# TUARASCÁIL BHLIANTÚIL 2021

# AN BORD ACHOMHAIRC UM SHEIRBHÍSÍ MAOINE

51 Faiche Stiabhna, Baile Átha Cliath 2.

**TUARASCÁIL BHLIANTÚIL 2021**

Réamhrá leis an gCathaoirleach

A Aire McEntee,

Is mór an phribhléid dom tuarascáil seo 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 ar an 29 Bealtaine 2020 agus is í ochtú tuarascáil bhliantúil an Bhoird í.

Tá an réimeas a tugadh isteach ar an 3 Aibreán 2012 chun soláthraithe seirbhísí maoine a rialú ann le beagnach deich mbliana anois. Ceadaítear faoi Alt 95 d'Acht na bliana 2021 rialacháin a dhéanamh maidir leis na caighdeáin a bheidh le leanúint ag ceadúnaithe i soláthar seirbhísí maoine. Tá áthas orm a fheiceáil go bhfuil síneadh curtha ag na Rialacháin viz. *Rialacháin (Caighdeáin Íosta) 2020 (Ionstraim Reachtúil 564 de 2020) den Acht um Sheirbhísí Maoine (Rialáil), 2011 (Caighdeáin Íosta), 2011* a tháinig i bhfeidhm ar an 30 Samhain, 2020 leis an scóip agus réimse saincheisteanna ar féidir leis an Údarás dul i ngleic leo, agus an Bord ar achomharc a fháil.

Is ceann de na forais sin freisin é an Bord Achomhairc um Sheirbhísí Maoine atá san áireamh laistigh de na forálacha faoi Alt 29 agus Alt 31 den *Acht um an Dlí Sibhialta agus an Dlí Coiriúil (Forálacha Ilghnéitheacha) 2020*, a dhéanann foráil d'achomharc a éisteacht go cianda. Cuirim fáilte roimhe seo mar go gcuirtear dearbhú ar fáil don Bhord leis chun éisteachtaí cianda ar achomhairc a dhéanamh mar ghnáthnós agus go háirithe le linn na ndeacrachtaí a tháinig chun cinn de dheasca phaindéim Covid-19.

Ba mhaith liom mo bhuíochas a chur in iúl do mo chomhchomhaltaí Boird, as a n-obair chrua agus as a ndíograis go háirithe le linn na bliana 2021, ainneoin srianta Covid, tháinig an Bord le chéile 30 uair go minic ar fhógra gearr chun déileáil le saincheisteanna suntasacha. Dhéileáil an Bord freisin le saincheisteanna lena n-áirítear Rialachas, bainistíocht rioscaí, cosaint sonraí, oiliúint agus comhairlí gairmiúla a ghlacadh. Is mian liom freisin mo bhuíochas a chur in iúl do Rúnaí an Bhoird, Kathleen Fitzpatrick Uasal as an obair mhór agus a cuid díograis maidir le gach gnó de chuid an bhoird a thagann chun cinn a ullmhú agus a dhéanamh. D'iarr comhaltaí an Bhoird orm a mbuíochas a chur in iúl duit freisin as do chuid tacaíochta agus as tacaíocht oifigigh do Roinne.

Is mise, le meas,

<u>Philip O'Leary, Cathaoirleach</u>
29 Márta, 2022

**CODANNA NA TUARASCÁLA SEO**

1. An tréimhse lena mbaineann an tuarascáil seo
2. Sonraí maidir le líon na gcásanna a fuarthas
3. Comhaltacht & Táillí Boird
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 2021 go dtí an 31 Nollaig 2021. Is í seo an t-ochtú tuarascáil bhliantúil atá á cur faoi bhráid an Aire Dlí agus Cirt mar a éilítear faoi Sceideal 5, ag alt 11 den *Acht um Sheirbhísí Maoine (Rialáil) 2011*.

2. <u>Sonraí maidir le líon na gcásanna a fuarthas</u>

Ba 26 cás a breithníodh agus a cinneadh le linn thréimhse na tuarascála seo.

As na 26 achomharc a fuarthas agus a tugadh chun críche le linn 2021,

- Dícheadaíodh 21 achomharc agus dhearbhaigh an Bord cinneadh an Údaráis;
- Bhí an t-am caite maidir le 1 achomharc.
- Ceadaíodh 1 achomharc agus athraíodh cinneadh an Údaráis;
- Fuarthas 1 achomharc in am ach measadh é bheith neamhbhailí.
- Cuireadh 2 achomharc faoi bhráid an Údaráis arís lena mbreithniú.

Tá treoir curtha ar fáil roimhe seo ag na hUaschúirteanna maidir le cinntí dleathacha a dhéanamh agus go háirithe an gá atá le údair a thabhairt i leith an chinnidh. Mar sin, tugann an Bord Achomhairc, agus prionsabail an cheartais aiceanta agus nósanna imeachta cóir mar threoir aige, cúiseanna i leith na gcinntí.

3. <u>Comhaltaí Boird</u>

**An tUasal Philip O'Leary (Cathaoirleach)**

A ceapadh ar an 29 Bealtaine, 2020

Athcheapadh na comhaltaí atá liostaithe thíos chuig an mBord ar feadh téarma eile ar an 14 Feabhra, 2021.

**Dorothy Donovan Uasal**

**Dairine Mac Fadden Uasal**

**An tUasal Philip Moynihan**

Ceapadh Sinead Boyle chuig an mBord ar an 27 Deireadh Fómhair 2021 agus d'éirigh sí as an mBord le héifeacht ón 6 Nollaig 2021. Tá an próiseas maidir le comhalta nua Boird a cheapadh tosaithe anois chun an folúntas atá ann a líonadh.

Is téarma ceithre bliana atá sna ceapacháin chuig an mBord Achomhairc agus soláthar ann do cheapachán don dara téarma nó do théarma ina dhiaidh sin. 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.

Tháinig deireadh le téarma ceapacháin an Uasail James Bridgeman SC ar an 13 Feabhra, 2021. Chaith an tUasal Bridgeman dhá théarma ar an mBord.

Déantar íocaíochtaí le Comhaltaí an Bhoird Achomhairc de réir alt 5 i Sceideal 5 den Acht in Alt 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 iad as a bheith rannpháirteach i suíonna an Bhoird. Is mar seo a leanas na rátaí, atá faoi réir ag cáin agus gach tobhach eile, a íoctar le Comhalta a fhreastalaíonn ar shuí:

Cathaoirleach €500
Gnáthchomhalta €416

B'ionann táillí agus speansais an Bhoird don bhliain 2021 agus €60,932.

4. Cruinnithe

35 cruinniú Boird a tionóladh i rith na bliana 2021 a bhí comhdhéanta d'éisteachtaí achomhairc, rialachas corparáideach, bainistiú rioscaí, oiliúint, iarrataí faoin Acht um Shaoráil Faisnéise, GDPR agus comhairlí gairmiúla eile.

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.

Tugann an Bord faoi oiliúint forbartha gairmiúla chun seachadadh seirbhíse ceart agus éifeachtaí a chinntiú maidir le déileáil le cinntí a ndéantar achomharc ina leith a láimhseáil.