



SOCIAL WELFARE APPEALS PROJECT

WELFARE TO WORK SECTION
IRISH NATIONAL ORGANISATION OF THE UNEMPLOYED

REPORT 2017

The Irish National Organisation of the Unemployed

“The INOU is a federation of unemployed people, unemployed centres, unemployed groups, community organisations and Trade Unions. The INOU represents and defends the rights and interests of those who want decent employment and cannot obtain it. We promote and campaign for policies to achieve full employment for all. We also campaign for an acceptable standard of living for unemployed people and their dependents. The INOU is an anti-sectarian, anti-racist, non-party political organisation which promotes equality of opportunity within society.” (INOUE Mission Statement)

The organisation has over 210 affiliated organisations and 2,100 individual members. We work at the local and national level on issues affecting unemployed people through the provision of training and welfare rights information services; analysis of Government policies and related advocacy work; and working with a wide range of other organisations on issues of common concern.

Social Welfare Appeals Project

The Social Welfare Appeals Office (SWAO) as an independent agency providing an appeals service to persons who are unhappy with decisions of the Department of Employment Affairs and Social Protection (DEASP) on questions relating to entitlement to social welfare payments remains vitally important in an ever increasingly complex welfare environment.

As part of its Welfare Rights service, the INOU supports individual clients, INOU affiliated organisations and other service providers in accessing this service, up to and including the provision of direct representation at Social Welfare Appeals hearings. Through this project the INOU aims to capture key information in relation to the availability of appeals support services and identify issues experienced by users and service providers alike.

This project:

- ▶ Engaged with persons who have interacted with the Social Welfare Appeals process to ascertain their experience of the appeals process;
- ▶ Identified key issues and barriers affecting clients access to, and use of, the appeals process;
- ▶ Sought to identify gaps in service provision supporting clients accessing the appeals process;
- ▶ Identified the use of alternate interventions which may offset the need for clients to engage in the official appeals process; and,
- ▶ Through this report provide feedback and recommendations on the existing Social Welfare Appeals process and procedures.

Key Findings and Recommendations:

The following recommendations are based on feedback from the comments and suggestions from individuals who undertook the INOU's survey (Appendix 1); and the survey of Citizens Information Centres (Appendix 2). The telephone respondents had contacted the organisation in relation to issues associated with appeals to the Social Welfare Appeals Office (SWAO). The INOU met with the SWAO and Citizens Information Board to discuss the findings and recommendations contained in this report; and the INOU would welcome an opportunity to work on them with the Department of Employment Affairs and Social Protection (DEASP).

1. Extension of the 21 day submission time limit

- 1.1. While it is accepted that the existing time limit is applied in a flexible and considerate manner by the SWAO, subject to the circumstance of the appellant, such extension would greater facilitate an appellant's ability to seek information, assistance and support in identifying the need for an appeal, grounds of appeal, gathering information and necessary documentation and submitting a more complete appeal to the SWAO.
- 1.2. In an instance where a person is unfamiliar with the processes and procedures in making an appeal, where they have not had an opportunity to seek information or consult with a representative, often for reasons beyond their control, an extension to this time limit would greater enhance an applicant's ability to engage in the process.
 - ▶ ***The INOU recommends the extension of the time limit for the submission of appeals from 21 days to 30 days. In subsequent discussions with the SWAO, the INOU understands this is under review.***

2. Compelling attendance at an Oral Hearing

- 2.1. The independence and impartiality of the SWAO is attested to by its activities and the results of such activities, as outlined in the SWAO Annual Report. However, the issue of non-attendance by DEASP officials at Oral Hearings is an issue that warrants review. An Oral Hearing, at its most basic, can be an adversarial process, where advocates represent their parties' positions before an impartial Appeals Officer who attempts to adjudicate the appeal based on the evidence presented in the context of appropriate, relevant and governing legislation.
- 2.2. An appellant may produce, submit or make utterance of evidence during the course of an Oral Hearing, such being germane to the decision under appeal. DEASP must engage with due process, by means of rebuttal, with reference to any contentions or evidence submitted during the Oral Hearing which was not in the possession, or the subject of consideration, of the DEASP prior to the Oral Hearing.
- 2.3. In the absence of a DEASP official at an Oral Hearing, the DEASP as a body corporate would not be in a position to respond or rebut any additional evidence submitted by

the appellant or clarify such evidence as was considered in reaching its original finding.

- 2.4. While it would be considered somewhat unreasonable to seek to disbar an Appeals Officer from engaging in any line of questioning or in any capacity to seek clarification on a point of law, fact, or eligibility, subsequent to the submission of additional evidence, the absence of a DEASP official to address such submission on behalf of one party in an adversarial action, and any attempt by an Appeals Officer to do so acting in a wholly unbiased *'devil's advocate'* role, could raise issue of the appearance of impartiality within the appeals process.
- 2.5. While certain issues are appropriate for consideration by an Appeals Officer having been raised by the appellant, it is not the role of an independent arbiter or adjudicator to seek to put forward for consideration any potentially adversarial position simply by virtue of absence of one of the parties concerned, particularly where said party declined to attend.
- 2.6. This could appear to place the appellant at a distinct disadvantage, in that, in any further proceedings, it could be misinterpreted to appear to suggest that the Appeals Officer effectively took on the role of the opposing adversarial party, however well intended, and raise the spectre of undue process and the possibility of an inherently unfair, and possibly prejudicial, process in any further proceedings.
 - ▶ ***It is recommended that the SWAO seek to review procedures regarding the compelling of attendance of DEASP officials at Oral hearings; and give consideration to the appellant being able to request the DEASP attend. The INOU is mindful of the SWAO desire to ensure the process is less formal and more accessible.***

3. Representation at Oral Hearing

- 3.1. It is important that additional information is produced and disseminated in support of existing information resources, both printed and online: more prominently highlighting an individual's right to have representation support and assist them as part of any Oral Hearing process. The INOU recognises that it has an important role to play in terms of assisting with the provision of such information.
- 3.2. It would also be important that each applicant for an Oral Hearing be required to clearly identify that they have been advised of their right to have representation; that they have received information on advocacy and appeals representation services; and, that in light of such information have chosen to proceed without such support. This could be achieved by 2 - 3 'tick-box' questions to be completed on the Appeals submission form.
 - ▶ ***It is recommended that the SWAO seek to review its procedures regarding an appellant's right of representation at Oral Hearing.***
 - ▶ ***The INOU is mindful of the fact that the SWAO cannot engage in any activity that might be construed as sign-posting, but additional text in the SWAO***

leaflet under the question ‘Do I need to be legally represented?’ would be useful, for example, by inserting the word ‘advocate /’ between ‘another’ and ‘person’.

4. Formation of Review Group

- 4.1. Such a review group should involve the key stakeholders who provide social welfare appeals supports and services. Such a group would engage with DEASP and SWAO to seek to coordinate engagement and feedback on the appeals process, and to engage with any review process of any proposed changes to existing appeals services. It is suggested that it would review and submit feedback to the DEASP and SWAO on a tri-annual or bi-annual basis, whichever would be deemed most appropriate.
- 4.2. This review group would also engage with national and local appeals service providers in developing models of good practice and procedure in assisting client’s in making appeals, dealing with, and submitting, appeals to the SWAO on behalf of clients.
 - ▶ ***It is recommended that the DEASP and SWAO support the establishment of a review group, consisting of organisations and groups engaged in providing appeals supports and services to appellants to inform and support the existing appeals process.***

5. Production of a Leaflet on the independent supports and services available

- 5.1. As part of the appeals process the official Appeals Leaflet, produced by the SWAO, is disseminated and while such dissemination is important, it would also be very useful for a complementary leaflet to be produced that would inform people making appeals of the independent supports and services that are available to them in making appeals.
- 5.2. This leaflet should then be provided to all persons requesting appeals forms from DEASP, SWAO, Citizens Information Centres and other information providers/outlets as supported by the DEASP and other state funded agencies.
- 5.3. It would also be important to post this leaflet to all persons who submit a formal appeal to the SWAO. And ensure that it is produced in pdf format and made readily available on the DEASP, SWAO, Citizen Information and other relevant websites.
- 5.4. All persons in receipt of decisions of the DEASP, including decisions relating to Basic SWA payments, where such decisions can be appealed to the SWAO, and where such right is communicated to the person in receipt of such appealable decision, should also be provided with this leaflet.
 - ▶ ***It is strongly recommended that the DEASP, in conjunction with the Social Welfare Appeals Office, support the production of a leaflet providing information on the range of independent appeals related supports services available to persons making appeals to the SWAO.***

6. Advisement of the right of Access to DEASP file under FOI

- 6.1. At present this specific information is not as clearly or readily identifiable to individuals seeking information on the process as would be desired, either through the SWAO website or the DEASP website, and could be more prominently identified as a right as part of such process.
- 6.2. Failure to fully and completely advise of such, we believe, could in any further process after an appeal, be interpreted as a form of ‘maladministration’ by the DEASP and SWAO in the exercise of their duties and responsibilities, as can be inferred by its obligations under the tenets of due process, natural justice and fair procedure. While it is assumed that this is not the case, specific further highlighting of this right would remove grounds for any such interpretation.
- 6.3. It would be important that this information be automatically provided as part of any decision provided to an individual where a decision relates to a matter which can be the subject of an appeal to the SWAO.
 - ▶ ***It is recommended that information be produced and disseminated, both printed and online, more prominently highlighting an individual’s right to request a copy of their DEASP file under the provisions of engagement with the Social Welfare Appeals Office and in accordance with the DEASP’s obligations under the Freedom of Information Act.***

7. Advisement of the right of access to an SWA payment

- 7.1. The INOU feels that it would be important that the DEASP and SWAO urgently review the level and extent of information available to individuals in regard to access to Basic Supplementary Welfare Allowance (SWA) payments where they engage with the appeals process.
- 7.2. Provision of such information does not convey any right or entitlement to such payment, but failure to provide a clear and definitive identification of the right of access to such payment, under certain conditions, is anomalous to the obligations of the provision of relevant and appropriate information in this instance as applies to the DEASP and SWAO. This information should contain all necessary clarification as to the eligibility for such payment, particularly in relation to means.
 - ▶ ***It is recommended that information be produced and disseminated, both printed and online, more prominently highlighting an individual’s right to seek a Basic Supplementary Welfare Allowance payment from the DEASP where they have submitted an appeal, or are engaged with an appeals process, with the SWAO.***

8. Advisement of the right of access to ENP/UNP

- 8.1. Engagement with clients on an ongoing basis has identified an information deficit in the provision of information regarding access to payments during the appeals

process and pending the outcome of appeals. Feedback from persons engaged with this research, and general feedback from clients engaging with the appeals process outside of this research, have identified that information relating to the provision of Exceptional Needs Payments (ENP) / Urgent Needs Payments (UNP), where a Basic SWA payment has been refused, is almost non-existent and difficult to identify in the context of engaging with the appeals process.

8.2. While it is accepted that the administration and application of SWA payments such as once off ENP and UNP payments are exclusively within the remit of the DEASP, access to such payments is a vital consideration to those engaging with the SWAO where a Basic SWA payment has been refused, particularly where the refusal of a primary DEASP payment and Basic SWA payment rely on the same determination.

- ▶ ***It is recommended that the DEASP should urgently review the level and extent of information available to individuals with respect of access to ENP and UNP payments where they engage with the appeals process, and particularly where a Basic SWA payment has been refused.***

9. Access to ENP/UNP payments on appeal

9.1. The provision of an ENP or UNP payment under the SWA scheme can require that a person make regular, ongoing and multiple applications for a payment, given the nature of the payment, where a basic SWA payment has been refused.

9.2. As these payments are usually ‘*payments of last resort*’, where the individual has no income or means of support, the requirement of regular, almost weekly, application for a ‘basic income’ can prove a direct deterrent to prospective appellants whose only source of income is a Social Welfare payment. Uncertainty in relation to ongoing entitlement, the time and procedures involved, coupled with the undue psychological and emotional strain of engagement with the appeals process can result in appellants declining to exercise their right of appeal because of an unduly onerous restriction on their access to a subsistence payment pending the outcome of an appeal.

9.3. While it is accepted that the administration and application of SWA payments such as once off Exceptional Needs Payments (ENP) / Urgent Needs Payments (UNP) are exclusively within the remit of the DEASP, access to such payments is a vital consideration to those engaging with the SWAO where a Basic SWA payment has been refused, particularly where the refusal of a primary DEASP payment and Basic SWA payment rely on the same determination.

- ▶ ***It is recommended that any ENP or UNP payment remain in force for the duration of an appeals process, where means or other qualification criteria remain satisfied, and that such payment should not require further ongoing application pending the completion of the appeals process.***

10. Information on access to activation programmes pending appeal

10.1. This research, and engagement with clients outside of this research, have identified issues where persons have made appeals, without subsequent access to standard DEASP payments such as JA, DA and OPFP, and subsequently have been unable to access the BTEA, BTWEA, Community Employment or other appropriate interventions on the basis that they are effectively a person not in receipt of a qualifying payment, pending the outcome of their appeal or where withdrawal of an appeal and reapplication for a 'standard' DEASP payment is necessary in order to qualify for such interventions.

10.2. While it is accepted some progress has been made in the acceptance of periods on SWA, while the subject of appeal proceedings, as part of qualifying periods to gain acceptance on such interventions, the onus and obligation remains with the DEASP to ensure that persons engaging in the appeals process are fully informed that their status on appeal, specifically SWA, does not constitute a qualifying payment in its own right.

- ▶ ***It is strongly recommended that the DEASP actively engage with people to provide additional information, both printed and online, identifying that engagement in an appeal, where the applicant is not in receipt of primary DEASP payment or where the person may qualify to receive a SWA payment while engaging in the appeals process, could affect eligibility for education, training or other interventions.***

11. Direct referral to service providers for assistance with appeals

11.1. Local DEASP / Intreo Offices could support clients seeking to make appeals to the Social Welfare Appeals Office by the provision of information and referral to support organisations, including website and telephone number, grouped by any subject/area of any organisation's general or specialist areas. It would be important that such action would be given similar priority equal to that of the statutory obligation of the DEASP to advise clients of their right of appeal.

- ▶ ***It is recommended that the contact details of groups or bodies that support applicants in making Social Welfare appeals be compiled, produced and made available on the DEASP, SWAO and the Citizens Information websites.***

12. Online tracking of Appeal by Appeal Reference Number

12.1. Each appeal is given a unique Appeal Reference Number. This number could be used by appellants to access information about the progress of their appeal, key dates/stages of progress of an appeal, identify where/when decisions were made and enable the secure communication and exchange of information and supporting material. The DEASP are developing the MyWelfare.ie website to provide online services to customers, and similar developments could be identified/developed in support of the SWAO through their website.

- ▶ ***It is recommended that the SWAO review the use of technology, particularly through their website, to enable appellants track the process and progress of their appeal.***

13. Accreditation of Appeals Service Providers

13.1. A wide range of individuals, groups and organisations are operational within the field of appeals support services, which is currently unregulated. At present, formal accreditation and capacity building of those service providers are available as part of welfare rights; information provision and advocacy courses. There is no evaluation or measure of competence as such and this can result in varying levels of service, representation and outcomes.

- ▶ ***The INOU would recommend that the DEASP and the SWAO would work with the existing providers to further develop certified and accredited training for appeals advocates and appeals service providers engaging with DEASP and the SWAO.***
- ▶ ***This work could be undertaken in conjunction with recommendation 4.***

The INOU would welcome the opportunity to discuss and work through the findings and recommendations contained in this report with the Department of Employment Affairs and Social Protection, and to feed into the work of Social Welfare Appeals Office.

Appendix One: Social Welfare Appeals Questionnaire: Telephone Survey Callers

As part of the Social Welfare Appeals Project the INOU's Welfare to Work Section undertook a questionnaire with clients who contacted the INOU's Welfare Rights service in relation to enquiries regarding Social Welfare Appeals. A total of 127 people undertook the survey in the September to December 2014 period.

Total Respondents:		127
Gender:	Male:	53
	Female:	74
Location:	Dublin:	89
	Other:	38
Issue*:	General Appeal related Query:	47
	Payment Stopped/Reduced/Suspended:	67
	Application for payment refused:	51
	Recovery of Overpayment issue	26
	Overpayment advised by DEASP:	17
	Advised DEASP taking legal Action against:	3
	Seeking SWA payment pending outcome of appeal:	32
	Other Appeal Related Issue:	19
	<i>(*note some clients had multiple issues)</i>	
Referral:	Online Search:	97
	Family / Friend:	14
	Organisation / Group:	11
	Other:	5
Contact*:		
	▶ INOU was first contact point	84
	▶ Assistance /support unavailable elsewhere (unable to find)	15
	▶ Did not want to use local service provider (aware of/ had contact)	25
	▶ Other / No answer / prefer not answer	3
	<i>(*note some respondents cited multiple answers, but primary reason listed)</i>	
Social Welfare Appeals*:		
	▶ Not aware right of access to SW file	96
	▶ Not aware of right of review to original decision maker	68
	▶ Not aware of right of Oral Hearing	107
	▶ Not aware of right to SWA pending Appeal	76
	▶ Not aware of ENP or UNP if SWA refused	113
	▶ Felt provided not enough information about process available	122

Appendix Two: Social Welfare Appeals Questionnaire: Citizens Information Centres

In November 2014, the INOU conducted a survey of 46 Citizens Information Centres¹ in relation to the level and extent of assistance, support and advocacy services they provide to service users. This also included a number of outreach CIC offices which are part of 'main' CIC offices, who are responsible for those outreach offices. Letters and written questionnaires, with stamped self-addressed envelopes, were used and an online version of the Questionnaire was provided using Jotform.

The purpose of the questionnaire was:

- ▶ To identify the availability of direct assistance/advocacy services to clients in relation to Social Welfare Appeals provided by CIC's.
- ▶ To identify any geographical areas where appeals services, particularly advocacy services in relation to oral hearing appeals, were not available.
- ▶ To attempt to identify any barriers or constraints encountered by CIC's in providing direct assistance/advocacy services to clients in relation to Social Welfare Appeals.
- ▶ To identify if CIC's provide a referral service to other service providers where they are unable to provide direct assistance/ advocacy services to clients in relation to Social Welfare Appeals.

Questionnaire Results:

Number of CICs contacted: 46

Number of Responses:

- ▶ By form 39
- ▶ Online response 7
- ▶ No response -

Question 1:

Does your CIS provide direct assistance/advocacy services to clients making Social Welfare Appeals?

- ▶ Yes 46
- ▶ No 0
- ▶ No Answer -

Question 2:

Does your CIS provide assistance/advocacy services in the submission of Appeals material (appeals forms, FOI requests for DEASP files, applications for Basic SWA payments pending appeal, etc?)

- ▶ Yes 46
- ▶ No 0

¹ There are over 100 Citizens Information Centres nationwide supported by the Citizens Information Board operating in over 200 locations. These services provide advocacy as part of an integrated information, advice and advocacy service to the general public including negotiation with third parties and representation at appeals.

- ▶ No Answer -

Question 3:

Does your CIS provide direct advocacy/representation services at Social Welfare Appeals Hearings?

- ▶ Yes 41*
- ▶ No 5*
- ▶ No Answer -

**A total of 26 clarified this answer in the comments box, identifying ability to provide direct advocacy/representation services at Social Welfare Appeals Hearings was primarily subject to constraints imposed by staffing and resources as well as the nature of the appeal.*

Question 4:

Do your CIS refer clients to other service providers (such as FLAC, MABS, etc.) for assistance with Social Welfare Appeals?

- ▶ Yes 43*
- ▶ No 3*
- ▶ No Answer -

**A total of 11 clarified this answer in the comments box, identifying referral occurred either where they were unable to provide direct assistance and support with an appeal, or only where issues relating to legal or financial matters would be better supported by other service providers.*

Additional Comments:

- ▶ 26 respondents identified capacity for direct provision of supports for direct advocacy/representation services at Social Welfare Appeals Hearings was subject to staffing and resource issues.
- ▶ 18 respondents identified specific ability/capacity/experience in dealing with One Parent Family, Domiciliary Care Allowance, Disability Allowance, Invalidity Pension and Overpayment appeals.