

Public Consultation on the proposed Social Welfare (Appeals) Regulations 2023.

Submission by the Citizens Information Board (May 2023)

Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission to the Department of Social Protection (DSP) with regard to the proposed Social Welfare (Appeals) Regulations 2023.

CIB, funded by the Department, is the national agency responsible for supporting the provision of information, advice and advocacy on social and public services through citizensinformation.ie and through CIB-funded services – Citizens Information Services (CISs), the Citizens Information Phone Service (CIPS), Money Advice and Budgeting Services (MABS), the National Advocacy Service (NAS) for people with disabilities and the Sign Language Interpreting Service (SLIS). CIB also collaborates and engages with a range of specialist organisations that support and represent the interests of disadvantaged sections of the population.

CIB is committed to ensuring that people can access quality information, advice, and advocacy services, and to informing and influencing social policy development by drawing on the experiences of users of the range of CIB-funded services. This submission is based on feedback by individual CISs, and in particular Advocacy Support Workers on their experience of assisting and advocating for clients with appeals, as reported to the Citizens Information Board (CIB) in recent years, as well as a review of the database evidence recorded on social welfare appeals.

CIB is cognisant of the fact that we have an important role to play in supporting and supplementing the work of the Department and the Social Welfare Appeals Office by informing, enabling and assisting people to negotiate the social welfare appeals process.

In 2022, there were 5,052 queries related to social welfare appeals recorded by CISs compared to 5,183 in 2019. In 2022, two-thirds of these queries related to three payments, Disability Allowance (33% or 1,670), Carer's Allowance (18% or 934), and Invalidity Pension (14% or 717). In 2019 half of social welfare appeals queries (56%) concerned these payments.

CISs provide advocacy supports to clients with their appeals, which typically involves:

- Supporting clients to gather further necessary documentation that they did not furnish with their initial application.
- Assisting clients to request copies of their file under FOI if relevant (especially where claims are reviewed and benefits suspended).
- Drafting submissions on behalf of the client or with the client.
- Preparing clients for oral hearings.

- Attending oral hearings in a supportive capacity as required and as resources allow.

Note: Of the 1,982 social welfare advocacy cases closed by CISs between 01/01/2021 and 31/03/2023, 58% (1,149) had an 'appeal' intervention.

The waiting times for social welfare appeals¹ to be processed, notwithstanding ongoing positive developments in this area (12.9 weeks in 2021 compared to 16.9 weeks in 2020) continues to present difficulties for CIS and CIPS users. This can be a particular problem for people with illnesses and disabilities seeking to access payments appropriate to their needs.

The number of appeals, and, in particular, the extent to which appeals are upheld (more than half in 2021), suggests the ongoing existence of problems at the level of first-instance decision-making. The high success rates of appeals, particularly, in relation to people claiming illness, disability and caring payments, who may have mental health conditions including fluctuating conditions indicates that the current system is not working well for them. The statistics from the Social Welfare Appeals Office (SWAO) show appeal outcomes in relation to disability and illness payments. In 2021, 58% of Disability Allowance decisions were subsequently allowed either through the appeals process or through a revised Deciding Officer decision, 65% of Invalidity Pension decisions were subsequently allowed, 43% of Carer's Allowance decisions, and 73% of Domiciliary Care Allowance decisions. The Working Family Payment had 64% of decisions subsequently allowed following appeal and revised DO decisions.

Outcome of Appeals by Scheme, 2021

Scheme	Allowed	Partially allowed	Revised DO decision	Disallowed	Withdrawn	Total
Disability Allowance	2611	101	643	2178	42	5,575
Carer's Allowance	886	95	519	1743	24	3,267
Invalidity Pension	869	5	439	675	19	2,007
Domiciliary Care Allowance	533	25	484	338	5	1,385

Source: SWAO, Annual Report 2021.

It is acknowledged that revised decisions, and appeals allowed could be due to insufficient information being provided at initial decision-making stage. The responsibility to provide complete and adequate information at the outset should not rest solely with the appellant, and deciding officers need to ensure that all relevant issues and questions are addressed when considering the initial application.

CIB notes in this regard the recommendation of the Comptroller and Auditor General's report (2021) to the Department: 'Examine the application process and related guidance for those schemes which are medically or social and care needs assessed in order to ensure claimants are able to supply all necessary information to assess eligibility when they are making a claim.'

CIB concurs with the view expressed in a UK report noting the benefit of getting decision-making right the first time, in that fewer resources are spent on the process of challenging decisions, and there are

¹ Social Welfare Appeals Office (SWAO) Social Welfare Appeals Office Annual Report 2021.
<https://www.gov.ie/en/collection/ae6ada-news-and-publications-from-the-social-welfare-appeals-office/>

broader public sector savings that may ensue including improved health outcomes for claimants, and therefore savings in health and social care.²

CIB welcomes the proposed regulations and particularly their intention to improve the efficiency and operation of the appeals process, e.g. through Article 5, and Article 8. CIB at the same time recognises the challenge in getting the balance right between extending time limits and ensuring the appeals system is not characterised by extensive delays. The need for the Appeals Office to be provided with sufficient resources to administer appeals is noted as well.

This submission firstly sets out the responses to questions asked of CISs on the proposed regulations, and combines this with the feedback recorded in relation to case work and advocacy interventions. It then presents other issues arising and questions for consideration.

Feedback by CISs

Article 5 – Functions of Chief Appeals Officer

CISs welcome Article 5 which provides for a ‘feedback loop’ between the Social Welfare Appeals Office and the Department of Social Protection, namely a role for the Chief Appeals Officer to provide feedback and guidance to the Minister and to Department staff on the correct interpretation of statutory provisions relating to decisions. This feedback to the Department should help to improve consistency in applying the rules of the various payments/schemes, and thus the quality and consistency of first instance decision-making. CIB notes as well the recommendation of the Comptroller and Auditor General’s report, which recommended that the Department ‘carry out periodic reviews of successfully appealed cases where no new or additional material information was provided’ on the basis that “these reviews could assist the Department in learning from the cases determined by appeals officers and in improving the quality of decisions made by its deciding officers in determining claims’. Article 5 should assist in this process.

Article 5 also provides for the delegation of initial consideration of reviews under Section 318 (provides for the Chief Appeals Officer to review an Appeals Officer’s decision where that decision was based on a mistake in relation to facts or law) of the Social Welfare (Consolidation) Act 2005 Act to Deputy Chief Appeals Officers, which may perhaps help to improve the delays in obtaining a decision in a Section 318 review.³

Article 7 - Submission of appeal and information to be supplied by appellant

Article 7 (2) deals with the timeline for submitting an appeal. The proposed change is to extend the timeline from 21 days to 60 days (8-9 weeks). In general, this extension to the time limit to submit an appeal is welcomed as it would give extra time to obtain additional evidence. Information Providers

² Justice/Administrative Justice Council, 2021 Reforming Benefits Decision Making. <https://files.justice.org.uk/wp-content/uploads/2021/08/17151507/Reforming-Benefits-Decision-Making-FINAL-updated-August-2021.pdf>

³ FLAC (2012) Not Fair Enough: Making the Case for the Reform of the Social Welfare Appeals System.

in CISs often have to rely on the review mechanism in order to access an appeal as the 21 day timeframe is too short.

While the proposed extension to the time limit is welcomed, most CISs felt that it should be extended further with some considering that three months would be sufficient, others four months, and some proposing six months for a fully supported appeal. It was also suggested that extending the time limit to four months for example, could then allow for less time in which to submit a late appeal, e.g. four months. Extending the proposed time limit of 60 days is needed in order to provide adequate time to gather the evidence and prepare a submission involving for example, gaining access to the client's file under the Freedom of Information process, and organising medical evidence. Clarification was also sought on whether these referred to working days or not.

A potential downside to extending the timeline might be clients being without an income for longer periods in the context of difficulties being experienced by some in accessing Supplementary Welfare Allowance through the Community Welfare Service.

Often clients come to CIS very close to the 21 day deadline and there is a risk that if the time line is extended, it may result in further delays in contacting our service. On balance, extending the time limit is a positive development, however 60 days may not be sufficient to request and review FOI file, collect additional documents (for example medical reports) and submit a complete appeal. Increasing the time limit to three months would allow for, in most cases, the gathering of the necessary evidence and reviewing FOI before submitting an appeal'. [CIS Advocacy Support Worker]

Where an appellant does not have access to advocacy support and is required to have a fully completed appeal lodged in the 60 day timeframe, it was observed that comprehensive guidance would need to be provided. CISs noted that there was little information for appellants on the current Appeals Form, and sought clarity on the status of the new Appeals Form, as it is not mentioned in the proposed regulations. An improved form should assist the general public in understanding the requirement to provide detailed submissions/reports, and potentially would assist in reducing negative appeals outcomes.

Notwithstanding Article 10, which concerns responding to a request for further information from the Appeals Office, it is not clear whether further evidence provided by the appellant after this 60 day period will be accepted, and whether there will be a strict cut off time limit. It is noted that appellants or other interested parties retain the right under section 317 of the Act to seek a review of an Appeals Officer Decision at any time if new facts or evidence are available to be submitted.

According to Article 7 (3) the possibility of lodging an appeal at any time⁴ has been removed in the proposed regulations. The rationale as set out for the establishing of an outer time limit (180 days) is that the initial appeal submission time has been extended to 60 days. However, it was considered in CIS feedback that there may be exceptional circumstances (such as errors) where an appeal should be accepted at any time, and therefore this provision should be maintained in the new regulations.

Article 7 (3) covers late appeals and provides for up to 180 days in which to submit a late appeal, which must be due to 'exceptional circumstances' and where there must also be strong *prima facie* grounds

⁴ (Art 9(3) of SI 108/1998)

for appeal. CIB notes that there is no definition of 'exceptional circumstances' provided in the draft regulations. Would for example the fact that a client had poor literacy, addiction problems, physical or mental health issues, and/or ability to understand documents, and was unable to understand that they could appeal fall within this standard and meet the requirements for exceptional circumstances?

Note the case of *JMcE. v. Residential Institutions Redress Board*. Court of Appeal 2016 Record No. 2014/1326 in this regard, where the meaning of 'exceptional circumstances' was examined and where Judge Horan stated that it should be given a 'broad and liberal interpretation as befits a remedial statute of this kind'. He found that the standard for exceptional circumstances at issue must be compared to contemporary standards within the general public.

It is suggested that 'exceptional circumstances' should thus be broadly defined so that the parameters of what it includes are understood. Another suggestion is to change the standard to one of 'reasonable cause' here.

Neither is there an explanation of what *strong prima facie* grounds entails. While it is reasonable for the Appeals Office to wish to have the basic grounds of appeal set out before granting extra time to appeal, the use of the word 'strong' is quite subjective, with little indication of what this might entail, and could lead to litigation if an appeal is refused on this basis.

Providing Information in Lodging the Appeal

Article 7 (4) and 7 (5) provides further detail on the information to be submitted in the notice of appeal i.e. details of the original claim submitted, the grounds of the appeal, and any additional information that the appellant considers relevant to the appeal. Feedback from CISs indicated that clients need to be supported in identifying what type and the extent of information that needs to be supplied with the lodgement of an appeal. It is noted in Article 7 (4) that the requirement in the notice of appeal to include details of the original claim may not always be possible in the timeframe due to wait times/delays in accessing these details under a FOI.

Article 8 – Notification of appeal to Minister and information to be supplied.

In relation to the processing of appeals, Article 8 introduces a timeline in which the Department must either review its original decision or provide information used in reaching the original decision to the Appeals Office, and sets a timeline of three weeks within which this must be done. This article also removes the obligation on Deciding Officers to provide a statement in each appeal case, the new article recognises that this is not necessary, or of value, in all cases.

This change will require the Department to respond promptly to provide all documents and information relevant to the claim/appeal. This should shorten the time taken to process appeals. CIB welcomes this change, which will help to eliminate delays connected to providing statements to the Appeals Office.

Concern was expressed about any negative impact on the appellant's case, where the time limit is not met and the file is not sent. On the other hand, the process whereby the Department reviews its original decisions is necessary and important, particularly decisions relating to illness, disability and caring schemes. It may also engage with a claimant to make sure all relevant information has been included, so while this may delay the review process it might also lead to revised decisions which ultimately results in less appeals being considered by the Appeals Office. In practical terms, therefore,

given the workload of the Department, 21 days may not be a realistic time frame. Consideration therefore, should be given to extending this time limit, where it is considered too short for quality reviews to take place. The view was expressed that if the 21 day limit is kept, deciding officers seeking reviews of Appeals Officers' decisions could also extend the process.

It was suggested that where the review of an appeal by the DSP produces an unsuccessful outcome for the appellant, that the SWAO should forward a copy of the DSP case to the appellant and their representatives.

Article 10 - Request for Further Information from an Appeals Officer

Article 10 provides a timeframe of no more than three weeks, which may be extended at the discretion of the appeals officer, for the furnishing of further information by the appellant or any other person. This proposed article was generally welcomed. It is acknowledged that the intention here is to ensure consistency and efficiency in the appeals process. However, CIB considers that it is important to recognise that the three week deadline may not be met due to reasonable grounds or even 'typical' grounds. Examples given included waiting times for an FOI request, obtaining documentation from medical experts, obtaining documentation to prove a person is habitually resident, obtaining a birth certificate from outside Ireland, support letters from hospitals, and letters from landlords or employers. Issues can also arise administratively, with delays in processing and obtaining a receipt of request for further information.

It is also restrictive for those who because of specific needs, or disadvantage, e.g. language barrier, literacy issues, disability, or being from an ethnic minority group are receiving advocacy support with their appeal. It is suggested therefore that the appeals officer should use discretion accordingly and allow for circumstances such as these.⁵ At the same time, the process for acceptance of requested additional information outside of the three week deadline appears 'administration heavy'. In this regard, consideration should be given to extending the time limit by a further two weeks to prevent clients and advocates having to seek extensions.

To improve efficiency, it was pointed out that this step should be carried out by a deciding officer before the initial decision is being made, as clients may not realise the extent and type of additional documentation needed, e.g. medical evidence. Improved communication from deciding officers on the rules and requirements for particular schemes would help eliminate clients being on inappropriate payments.

Article 10 (3) provides for the introduction of a 'deemed withdrawn' where an extended deadline of 7 days after the designated return date for additional information has not been met. For an appeal to be considered withdrawn, a longer time frame should be allowed after the return date, as it has the potential to lead to increased administration, through having to seek a Section 317 review, particularly with respect to the more vulnerable appellants who are not availing of advocacy support and may not understand the process of section 317 reviews.

⁵ This is notwithstanding the right, which has been retained, under section 317 of the Act for appellants or other interested parties to seek a review of an Appeals Officer Decision at any time if new facts or evidence are available to be submitted.

Article 12: Decision involving an assessment of capacity to work or requirements for care

This provides that an appeal about a person's capacity to work or need for care will be decided by an appeals officer who is a registered medical practitioner or by an appeals officer who has looked for the opinion of a medical assessor. This proposed regulation was considered to be good practice, and that it would hopefully lead to more informed decisions, as it means that an appeals officer in making a judgement about the medical evidence needs to either have this particular expertise or be able to access the required medical expertise. The proposed regulations provide that while an appeals officer is empowered to take a decision that is contrary to the medical opinion, they must set out their reasons for doing so. Payments affected are Illness Benefit, Partial Capacity Benefit, Injury Benefit, Invalidity Pension, Disability Allowance, Carer's Benefit, Carer's Allowance, and Domiciliary Care Allowance.

This new article was largely welcomed by CISs and it was felt that it would generally lead to more informed decisions. At the same time some reservations were also expressed. CISs feedback in relation to the proposed regulations included:

- It is essential that an appeals officer who is a registered medical practitioner or the medical assessor have knowledge of the rules and medical context of each particular scheme.
- Preventing potential occurrences where decisions are based on the appeals process' medical assessment, which is mirroring the medical evidence provided for in the initial decision-making on the scheme. At appeals stage, if a medical assessor is used then they must be independent of the Department's existing medical assessors.
- The importance of being provided with the option of an oral hearing when the decision involves an assessment of a person's capacity to work or requirement for care was stressed. The challenges in accessing GPs and/or consultants to get medical evidence was reiterated, particularly so, since the Covid-19 pandemic. On the other hand, it was observed that an oral hearing lengthens the process, creating a gap, and should only be used where necessary to avoid introducing further delays in the appeals process.
- The view was expressed that deciding officers usually defer to the opinion of the medical examiner, rather than have regard to it, while taking into account all the other factors. Therefore, it was considered important that the medical evidence is there to support a case, and not to decide it, and for the appeals officers to maintain a balanced view on this.
- The expert opinion of an occupational health physician might be useful given the assessment of a person's capacity to work.

Article 13 – Summary Appeals

CIB welcomes this proposed article which requires an appeals officer, for the first time, to set out their reasons for determining the appeal on a summary basis. This is intended to improve the transparency of the process and assist appellants in deciding whether to take up the option of further reviews under Sections 317 and 318 of the 2005 Act.

Articles 14 and 15 – Hearings and Notice where hearing required

Article 14 provides that an appellant is entitled to request an oral hearing, and that an appeals officer must provide reasons if this is not granted. This has already been a feature of general practice within the appeals office, and is now an entitlement with this article. Oral hearings allow appellants the

opportunity to put their case forward in-person. The decision here to grant an oral hearing rests solely with the appeals officer. This is possibly a limitation on the current case law and the position that exists under *Kiely v. Minister for Social Welfare [1971] 1 I.R. 21*, that if a hearing was requested that it would be granted. This case also draws attention to the process and balance of power of an oral hearing:

‘Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice’.

CIB concurs with the Comptroller and Auditor General’s report recommendation that written guidelines for appeals officers should be prepared that clearly establish the circumstances that usually result in an oral hearing being held. As noted these guidelines should be published on the Appeals Office’s website and made available to the public.⁶ The Appeals Office has stated that, in practice, an oral hearing is held in situations where there is a conflict of evidence or a judgement to be made, or where there are multiple parties involved (e.g. insurability of employment).

Feedback from CISs note the higher positive outcomes in appeals where an oral hearing has been held because it allows appellants to make a more complete presentation of their circumstances and to have the option of representation. In 2021, 1,050 (6.3%) of the 16,567 appeals finalised by appeals officers were dealt with by way of oral hearing, and 70% (733) of these had a favourable outcome. This contrasts with 15,517 appeals finalised by summary decisions, and of which 38% (5,909) had a favourable outcome. It is recognised however that there may be a number of other factors involved in appeal outcomes.⁷

It was emphasised that an appellant should be provided with an oral hearing where that is appropriate even if not requested by the appellant/representative. The value of oral hearings was stressed where the issues at hand are subjective in nature, as relevant facts may come to light in the oral setting. Face to face hearings as opposed to online hearings were also considered preferable, especially for people with mental health conditions. The reasons for refusing a request for an oral hearing should be in a ‘lay’ person’s terms. It was also considered that in line with the principles of natural justice, that there should be a procedure for challenging the refusal of a request for an oral hearing.

While there is a right to request an oral hearing in the proposed regulations, there is no right to information about this fact. The appellant should be informed that he or she can request an oral hearing, e.g. this right could be included on the Appeals Form to present this as a possibility and to draw attention to the significance of an oral hearing; and/or this information could be provided in an information leaflet, reaching people who experience digital exclusion.

⁶ <https://www.audit.gov.ie/en/find-report/publications/2021/chapter-10-management-of-social-welfare-appeals.pdf>

⁷ Note Oireachtas debate, Draft Regulations on the Operation of the Social Welfare Appeals Office, 25 April 2023, where it was referenced that a lower proportion of claims are being appealed, and a higher proportion of those are being dealt with at review stage rather than appeal stage. <https://www.oireachtas.ie/en/press-centre/press-releases/20230425-social-protection-committee-to-discuss-draft-regulations-relating-to-the-operation-of-the-social-welfare-appeals-office/>

Article 15 states: ‘... and as soon as may be, fix a date and place for the hearing, and give reasonable notice of the said hearing to the appellant...’

‘Reasonable notice’ is not defined in the draft regulations. Note here that the Residential Tenancies Board provides an appellant with 14 days’ notice of a hearing.

Article 16 – Persons who may appear at hearing

‘...the consent of the Appeals Officer’ is required for ‘any other person’ to appear at the oral hearing. It is recognised that CIS representatives can seek to appear in a case.

Article 19 (2) – Procedure at hearing

This includes a provision on postponements or adjournment of hearings, which shall only be granted in exceptional circumstances. ‘Reasonable cause’ (including e.g. attending a medical appointment) was considered preferable in favour of ‘exceptional circumstances’ which can have a varied interpretation.

Article 20 – Decision of appeals officer

This provides that the decision of the appeals officer must be sent to all parties to the appeal within 15 days (working days) of the decision being made.

This was broadly welcomed and should help to reduce stress for appellants who may be in vulnerable situations, on inappropriate payments, and who have been waiting for a decision. It was considered important to ensure that the appeals office has the necessary resources to administer this. The use of language and plain English in decision letters was raised, where the wording in appeal decision letters could be overly legalistic, and confusing for clients, e.g. the current wording of "Appeal Allowed" is confusing for some people, and replacing this with more direct language e.g. ‘Your appeal is successful, you will receive X payment’ is clearer.

CIB has noted in previous submissions that the review and appeals process would be significantly enhanced by a much fuller statement of reasons for refusal other than that which is currently provided.

Article 21 – Method of sending documents

This includes that electronic means can be used for sending documents, which is welcomed. However, it should not become ‘digital by default’ as there are groups experiencing digital exclusion, such as older people, and people with disabilities. Communicating by electronic means necessitates having a robust and effective email system with the necessary staff in place.

Other Issues not included in the proposed regulations

Role of Advocacy/ Representation

Representation is regarded as having a significant influence on the outcome of oral hearings. There was a perception that this was due to the fact that advocates had familiarity with and an understanding of the appeals system while, in many instances, individuals do not and the lack of representation thus resulted in their significant disadvantage.

CISs regularly act on behalf of clients in the social welfare appeals process, where an Authority to Act form is signed by their client and forwarded to the Appeals Office at the initial stage of an appeal. CISs consistently raised the non-recognition of the role of an advocate/representative, which is typically at the discretion of the Appeals Officer. The experience has been that the Appeals Office will often only correspond with the appellant, excluding the CIS, despite the Authority to Act form being on their file. This can have a distressing impact on the client. It is noted that the new Appeals Form includes a section on representation. It is recommended therefore that both the appellant and their representative are kept informed/advised at all times of any correspondence/decisions.

'Client contacted the Information Officer to advise that they had received a letter from the Social Welfare Appeals Office confirming that their appeal had been successful. Citizens Information Service is logged and confirmed as a third party with Social Welfare Appeals Office on this appeal. As such we should have received a copy of the appeal decision letter advising as to whether the appeal was successful or not. Information Officer contacted the Social Welfare Appeals Office who confirmed that we are indeed logged as a third party on this appeal and apologised for the oversight in not sending us a copy of the appeal decision letter. The Social Welfare Appeals Office should (as a matter of course) issue copies of all communications to both the client and CIS when the Service is acting as and registered as, a third party on the clients appeal'

Client has literacy issues. Their Disability Allowance was stopped because they did not respond to letters sent by the DA section. The client cannot read and during Covid-19 could not attend a CIS office. The Information Officer (IO) appealed the decision but the DA section continued to send the correspondence to the client even though the IO had Authority to Act on the client's behalf.

Reason for refusal of first instance decisions

One of the recommendations of the Comptroller and Auditor General's report was that the Department should 'review its current procedures so as to ensure that all claimants are informed clearly of the reason(s) for refusal of claims'.

This would allow claimants to make informed decisions about their appeal/reviews. Feedback from CISs indicated that clients continue to find notification of decisions from deciding officers confusing and difficult to understand. The Department, as noted above, was to review its guidelines for reasoned decisions. CISs expressed the view that it would be useful if decision letters from the Department could stress the importance of the time limit and the urgency of starting the process as soon as possible particularly in relation to gathering the supporting evidence.

Administration

CISs note problems in the administration and communication of the appeals system and need for improved timeframes and procedures, e.g. delays in getting an appeal registered, delays in acknowledgement of appeals submitted and the issuing of appeal numbers, and information/documents not being added to appellants' files for appeals officers. To improve transparency, and ensure documentation has been received by the correct person, it would be useful for CISs and the appellant to know the name of the Appeals Officer handling the appeal or oral hearing.

Questions for Consideration

- Improved data provision: further statistics should be provided including the number of cases taken under Section 317, Section 318, and the decisions that were either allowed or partially allowed, whether they came about through a summary decision or an oral hearing; data should be published on the number of appeals cases with third party representation.
- Improved decision-making: provide for a citizen-centred perspective to ensure that social welfare applicants have access to good and 'correct' decisions at the earliest possible stage through enhanced training of decision officers, and appeals officers, particularly, to support the quality of first-instance decision-making including consistent application of the eligibility criteria. Carry out periodic reviews of successfully appealed cases where no new or additional material information was provided.
- Consider extending the proposed 60 day time limit in which to lodge an appeal to four months to allow for a fully supported appeal.
- Provide comprehensive information on the appeals process either on the new Appeals form, or through an information leaflet.
- The possibility of lodging an appeal at any time has been removed in the proposed regulations, but there may be exceptional circumstances, which should allow for an appeal to be accepted at any time, and therefore this provision should be maintained in the new regulations.
- In relation to Article 7(3) concerning late appeals, it is suggested that 'exceptional circumstances' should be broadly defined to include its parameters. Another suggestion is to change the standard to one of 'reasonable cause' instead.
- There is no explanation for strong prima facie grounds in the regulations, which is a subjective measure, and gives little indication of what this might entail. Therefore, it is suggested that 'strong' be removed here.
- It is noted in Article 7 (4) that the requirement in the notice of appeal to include details of the original claim may not always be possible in the timeframe due to wait times/delays in accessing these details under a FOI request.
- Consideration should be given to extending the time limit of three weeks in which the Department must either review its original decision or provide information used in reaching the original decision to the Appeals Office, where that would facilitate improved Department review mechanisms.
- Where the review of an appeal by the DSP produces an unsuccessful outcome for the appellant, the SWAO should forward a copy of the DSP case to the appellant and their representatives.
- Consideration should be given to extending the time limit for further information to be provided by an appellant/any other person by a further two weeks to prevent clients and advocates having to seek extensions. To improve efficiency, it was pointed out that this step should also be carried out by a deciding officer before the initial decision is being made, as clients may not realise the extent and type of additional documentation required.
- For an appeal to be considered withdrawn, a longer time frame should be allowed, after the return date as it has the potential to lead to increased administration, through having to seek a Section 317 review, particularly with respect to more disadvantaged appellants who are not availing of advocacy support and may not understand the process of Section 317 reviews.

- At appeals stage, if a medical assessor is used then they must be independent of the Department's existing medical assessors. The importance of the medical evidence being there to support a case, and not to decide it was emphasised.
- Ensure there are written guidelines for appeals officers that clearly establish the circumstances that usually result in an oral hearing being held.
- The value of oral hearings was stressed where the issues at hand are subjective in nature, as relevant facts may come to light in the oral setting. The importance of being provided with the option of an oral hearing when the decision involves an assessment of a person's capacity to work or requirement for care was stressed. Face to face hearings as opposed to online hearings were also considered preferable, especially for people with mental health conditions. The reasons for refusing a request for an oral hearing should be in a 'lay' person's terms. It was also considered that in line with the principles of natural justice, that there should be a procedure for challenging the refusal of a request for an oral hearing.
- Provision of information about the right to request an oral hearing should be included in the new Appeals Form.
- With regard to postponements/adjournments of hearings, 'Reasonable cause' (including e.g. attending a medical appointment) was considered preferable in favour of 'exceptional circumstances' which can have a varied interpretation.
- The use of language and plain English in decision letters was raised, where the wording in appeal decision letters could be overly legalistic, and confusing for clients.
- It is recommended that both the appellant and their representative are kept informed/advised at all times of the appeals process of any correspondence/decisions.

Appendix 1

Timeline for Social Welfare Advocacy Cases

ACTION	Time Scale
Initial Meeting with Client, explain Advocacy Service and Authority to Act signed. Notice of Appeal Lodged with Appeals Office. Case recorded on ECMS ⁸ and FOI Request Submitted to DSP.	Day 1
Letter to client setting out actions completed in week 1 and outlining what information/ documentation is required from them to progress the case	End of Week 1
Check if FOI file received and if not follow up (usually takes four weeks for file to come from DSP)	Week 5
FOI File Reviewed	Week 5-6
Discuss case with DM & decide on next steps	Week 5-6
Follow-Up Meeting arranged with client to discuss file and agree how to proceed – amend Advocacy Plan	Week 7
Client informed of any additional information/ documents which s/he is required to gather as a result of reviewing file and time-frame to return	Week 7
Submission Drafted	Week 8 & 9
Submission sent to Appeals Office	Week 10

⁸ Internal electronic case recording system used by Citizens Information Services to record advocacy casework.