

**Review of the  
Agriculture Appeals Act, 2001  
and operations of the Agriculture Appeals Office**

**December 2017**





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## **Chairman's Foreword**

The Programme for Partnership Government provided for a review of the Agriculture Appeals Act, 2001, to ensure the independence and efficiency of the Office in dealing with appeals from farmers. The Agriculture Appeals Office is in operation for fifteen years and it is good practice to review a system to learn from hindsight so it is prepared for the future.

Michael Creed T.D., Minister for Agriculture, Food and the Marine established a Review Committee to carry out the review and furnish its Report, to include recommendations as regards the legislation governing and the future operation of, the Agriculture Appeals Office.

I was very pleased to accept the invitation to chair the Review Committee and together with my fellow members, Pdraig Gibbons and Paud Evans, we are presenting our Report to the Minister for his consideration. Our key conclusion is that the Agriculture Appeals Office is providing a valuable service to its stakeholders and that the fundamental principles underpinning its existence should not be altered. However, based on our consideration of the issues raised with us and our examination of the processes currently in place, we are recommending some legislative and operational changes which we consider will enhance the appeals process, offer more efficient service, and provide greater assurance to stakeholders.

The Committee would like to thank all who contributed to the review process, either through making written submissions through the public consultation process or accepting the invitation of the Committee to meet with it.

Finally, on behalf of the Committee, and my own behalf, I would like to thank the staff of the Corporate Affairs and the Management Services Divisions for their work in supporting the Committee. In particular, I would like to express our sincere thanks to Dermot O'Riordan who acted as Secretary to the Committee.

Niamh O'Donoghue  
Chairperson





## **1. Executive Summary**

### **1.1 Background**

On 12<sup>th</sup> September, 2017, Michael Creed T.D., Minister for Agriculture, Food and the Marine announced the commencement of a review of the Agriculture Appeals Act, 2001 in accordance with a commitment made in the Programme for Partnership Government, and appointed a Review Committee to furnish its Report, to include recommendations as regards the legislation governing and the future operation of, the Agriculture Appeals Office.

The Review Committee consisted of three members:

- Niamh O'Donoghue, former Secretary General, Department of Social Protection (Chair)
- Pdraig Gibbons, farmer, former chairman of Connacht Gold and former President of the Irish Co-operative Organisation Society (ICOS).
- Paud Evans, former Principal Officer, Department of Agriculture, Food and the Marine

The Committee met over the course of a two-month period, agreed a programme of work which involved a number of elements including a public consultation programme. Written submissions for consideration by the Committee were sought by advertisement in the Irish Farmers Journal, Irish Examiner Farming and the Farming Independent and twenty were received by the Committee. In addition, the Committee assessed available information in relation to the agriculture appeals models in operation in some other EU Member States and some of the other administrative appeals models in operation in Ireland. It also reviewed miscellaneous published material in relation to best practice approaches to complaints and appeals processes. Finally, the Committee reviewed both the primary and secondary legislation governing the Agriculture Appeals Office having regard to the issues raised in the course of the submissions and other deliberations.

Secretarial assistance to the Review Committee was provided by the Corporate Affairs Division of the Department of Agriculture, Food and the Marine.

## 1.2 Overview of Key Recommendations

The key recommendations of the Committee are set out below and Chapter 8 discusses these and the other recommendations in more detail.

- ***Administrative Appeals Model***

The Committee was satisfied that the current model of an administrative appeals office under the aegis of the Department can meet the principles identified in best practice elsewhere and provide an independent, speedy, cost effective and efficient appeals mechanism subject to a number of recommended improvements in processes and timescales.

- ***Agriculture Appeals Review Panel***

In order to strengthen the independence of the Agriculture Appeals process, the Committee recommends that where an appellant is not satisfied with the decision of an Appeals Officer, he or she can seek a review of that decision to an independent Agriculture Appeals Review Panel. It is recommended that the Panel should consist of five members, as follows: An Independent Chairperson, the Director of Agriculture Appeals Office and three additional members with technical and practical expertise. This recommendation will involve a legislative change.

The Panel would review the Appeals Office's file on a case and at its discretion could meet with the parties concerned before arriving at its decision. In addition, it is recommended that the Panel should approve the Appeals Office's Code of Practice and would monitor the Office's performance measures for processing its cases. The Committee also recommends the Department would report to the Review Panel on the length of time taken to respond to requests from the Appeals Office for information and files and also report summarised details of the decisions made on internal reviews by the Department. This report should present the data annually on a regional basis.

- ***Reporting Arrangements***

The Act provides that the Director submits an Annual Report to the Minister for Agriculture, Food and the Marine. In addition, the Committee recommends the Director of the Appeals

Office engage with the Farmers' Charter of Rights Monitoring Committee to discuss, on an annual basis, the *Suggestions by the Office for consideration by the DAFM* and the *Suggestions for scheme applicants arising from common errors by Scheme participants* sections of the Appeals Office's Annual Report. The objective is to reduce the number of errors made by farmers in the submission of their applications under the Schemes operated by the Department and to ensure that the processing of applications is as efficient and effective as is possible. In addition, the involvement of the Charter's Monitoring Committee should ensure that there is likely to be much more awareness among the farming community of the reviews and appeals avenues open to them if they are dissatisfied with decisions made under the various Schemes run by the Department.

- ***Code of Practice***

The Committee recommends the Appeals Office publishes a principles-based Code of Practice to provide greater transparency and assurance to stakeholders in relation to the operation and independence of the Appeals Office.

- ***Deputy Director***

The Committee recommends arrangements are made for the appointment of a Deputy Director as provided for in legislation. It is important for business continuity of the Appeals Office that these arrangements are continuously in place. The Committee also considers that the Deputy Director should have a role in quality assurance of appeals processes and consistency of outcomes. This recommendation may involve a legislative change.

- ***Discretion in relation to holding an Oral Hearing***

The Committee considers that an oral hearing of an appeal may not always be the most appropriate, efficient, and effective method of processing appeals. In that regard, the Committee recommends that an Appeals Officer has discretion as to whether to hold an oral hearing or not. However, if a request from an appellant for an oral hearing is rejected, the appellant should be entitled to seek a review of the appeals officer's decision to the Review Panel. This recommendation will involve a legislative change.

- ***Department's Review Process***

Whilst the Department's internal review process is not specifically covered in the Committee's Terms of Reference, it was considered by it because of the direct impact the output of the review system has on the level of appeals submitted by farmers to the Appeals Office and the subsequent efficient processing of individual appeals. Bearing in mind (i) the number of appeals where additional information and supporting documentation, which appellants provide with the application form submitted to the Appeals Office or at the oral hearing and (ii) the number of cases that are revised or partially revised by the Department during the appeals process, the Review Committee suggests that the Department undertakes a comprehensive examination of its internal review process.

## 2. Background

### 2.1 Terms of Reference, Membership, Consultation Process

On 12<sup>th</sup> September, 2017, Michael Creed T.D., Minister for Agriculture, Food and the Marine announced the commencement of a review of the Agriculture Appeals Act, 2001. The Minister said *“the Programme for Partnership Government provided for a review of the Agriculture Appeals Act 2001, to ensure the independence and efficiency of the office in dealing with appeals from farmers. In fulfilment of this undertaking, I have established a Review Committee to carry out the review and furnish its Report, to include recommendations as regards the legislation governing and the future operation of, the Agriculture Appeals Office, to me by the end of this year”*

The Minister added that *“In order to ensure that the review is as comprehensive as possible, consultation will take place with relevant stakeholders”*. In this regard, written submissions for consideration by the Committee were sought and twenty were received by the Committee including submissions from several farming organisations and the Joint Oireachtas Committee on Agriculture, Food and the Marine.

The Committee’s Terms of Reference was:

- The Programme for Partnership Government (May 2016) provided for a review the Agriculture Appeals Act, 2001, to ensure the independence and efficiency of the Office in dealing with appeals from farmers.
- In fulfilment of this undertaking, a Steering Committee, comprising three members to include one former employee of the Department of Agriculture, Food and the Marine, will be established to carry out the review.
- The Review, which will examine the independence and efficiency of the Appeals Office, will include consultation with relevant stakeholders, including the Joint Oireachtas Committee on Agriculture, Food and the Marine, and consideration of other comparable appeals systems in operation in Ireland and other Member States, as appropriate.
- The Committee may request the Management Services Division of the Department of Agriculture, Food and the Marine to assist by conducting an Efficiency Review of the Appeals Office the findings/recommendations of which would be considered by the Steering Committee and incorporated into their final report, as appropriate.

- The Director of the Appeals Office will provide such information and briefing to the Steering Committee as requested and as may be necessary for the conduct of the review. The Steering Committee may also consult with the Ombudsman's Office.
- The Steering Committee will compile and furnish its Report to include recommendations as regards the legislation governing and the future operation of, the Agriculture Appeals Office, to the Minister for Agriculture, Food and the Marine, by the end of December 2017.
- The Steering Committee will provide updates to the Minister for Agriculture, Food and the Marine, as requested.
- The Department of Agriculture, Food and the Marine will provide secretarial assistance to the Steering Committee in its work and in the drafting of the Committee's Report.

The Review Committee consisted of three members:

- Niamh O'Donoghue, former Secretary General, Department of Social Protection (Chair)
- Padraig Gibbons, farmer, former chairman of Connacht Gold and former President of the Irish Co-operative Organisation Society (ICOS).
- Paud Evans, former Principal Officer, Department of Agriculture, Food and the Marine

As part of its consultation process, the Committee invited submissions from interested parties by advertisement in the Irish Farmers Journal, Irish Examiner Farming and the Farming Independent. In addition, the Committee assessed available information in relation to the agriculture appeals models in some other EU Member States and some of the other administrative appeals models in operation in Ireland. It also reviewed miscellaneous published material in relation to best practice approaches to complaints and appeals processes. Finally, the Committee reviewed both the primary and secondary legislation governing the Agriculture Appeals Office having regard to the issues raised in the course of the submissions and other deliberations.

Secretarial assistance to the Review Committee was provided by the Corporate Affairs Division of the Department of Agriculture, Food and the Marine.

The Review Committee would like to thank officials of the Agriculture Appeals Office and the Department of Agriculture, Food and the Marine for their assistance in providing data for the Report.

### 3. Agriculture Appeals Office

#### 3.1 Introduction

The Agriculture Appeals Office (**the Appeals Office**) is an independent office established in 2002 under the Agriculture Appeals Act, 2001 (**the Act**) and the Agriculture Appeals Regulations 2002 (S.I. No. 193 of 2002) (**the Regulations**) to provide an appeals service to farmers who are dissatisfied with decisions of the Department of Agriculture, Food and the Marine (**the Department**) concerning designated Schemes operated by the Department. The Act is amended as required by Statutory Instrument to include new Schemes within the remit of the Appeals Office, the most recent being the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2017 (S.I. No. 219 of 2017).

The Department is the body responsible for the payment of aid under the various European Union (EU) agriculture and food related aid and support Schemes. These Schemes are either fully funded (e.g. the Basic Payment Scheme) or partially funded (e.g. the Areas of Natural Constraints Scheme and Green Low-Carbon Agri-Environment Scheme) by the EU with the remaining funding for these latter Schemes coming from the Irish Exchequer. The Department is recognised by the EU Commission as the Accredited Paying Agency for the implementation of EU agriculture related Schemes in Ireland in accordance with the provisions of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council. The Department is also responsible for the application of national Schemes, the main one being the Afforestation Aid Scheme and other related forestry Schemes. In addition, there are some Disease Eradication Schemes operated by the Department.

#### The Schemes

In 2016, the Department paid nearly €1.7 billion to farmers under fully or partially funded EU Schemes. Details of these payments by Scheme are illustrated in **Table 1** below.

**Table 1**  
**Payments made under the main Schemes operated by the**  
**Department of Agriculture, Food and Marine in 2016**

Scheme	Amount paid in 2016
Basic Payment Scheme	€1,160,000,000
Areas of Natural Constraints Scheme	€201,380,000
Green Low-Carbon Agri-Environment Scheme (GLAS)	€102,615,000*
Afforestation Premium**	€72,940,000
Beef Data and Genomics Scheme	€50,880,000
Agri Environmental Options Scheme (AEOS)	€32,800,000
Afforestation Grant**	€25,700,000
TB and Brucellosis Compensation	€13,990,000
Other Schemes**	€8,772,000
Organic Farming Scheme	€8,050,000
Targeted Agricultural Modernisation Schemes (TAMS)	€7,840,000
Rural Environment Protection Scheme (REPS)	€1,800,000
Total	€1,686,767,000

Source: Department of Agriculture, Food and the Marine Annual Report 2016

\* Supplied by the Department of Agriculture, Food and the Marine

\*\* Schemes mainly funded by the National Exchequer

The numbers of applicants under these Schemes are set out in **Table 2** below:

**Table 2**  
**Number of applications received under the main Schemes operated by the Department of**  
**Agriculture, Food and Marine in 2016**

Scheme	Number of applications received in 2016
Basic Payment Scheme	123,901
Areas of Natural Constraints Scheme	100,306
Green Low-Carbon Agri-Environment Scheme (GLAS)	49,211*

Beef Data and Genomics Scheme	24,500 <sup>1</sup> *
Afforestation Premium	22,112
Targeted Agricultural Modernisation Schemes (TAMS)	10,583
Agri Environmental Options Scheme (AEOS)	8,600
TB and Brucellosis Compensation	3,958
Afforestation Grant	1,905
Organic Farming Scheme	322
Rural Environment Protection Scheme (REPS)	80 <sup>2</sup>
Other Schemes	25
Total	345,503

Source: Department of Agriculture, Food and the Marine Annual Report 2016

\*Supplied by the Department of Agriculture, Food and the Marine

The EU funded Schemes range from annual Schemes such as the Basic Payment Scheme and the Areas of Natural Constraints Scheme to five-year contractual Schemes such as Green Low-Carbon Agri-Environment Scheme and the Beef Data Genomics Programme. The nationally funded Schemes range from once off payments such as compensation to farmers to a 15-year premium scheme in the case of Afforestation Premium.

The EU funded Schemes are governed by the provisions of EU Regulations which are complex in some cases and subject to a significant number of amendments annually. It is one of the primary objectives of the Department of Agriculture, Food and the Marine to make payments to farmers as quickly as possible and it is generally accepted by other Member States and farming organisations that the Department has a good record in this regard. However, when processing applications for payment, the Department has to be mindful of the requirements of the governing EU Regulations and ensure that it adheres to the requirements of these Regulations. For example, the provisions of Article of 75 (2) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council provide that payment of the advance payment of the Basic Payment Scheme, which can commence on 16<sup>th</sup> October each year, cannot be made to farmers unless all of the eligibility inspections have been initiated by the payment commencement date. This means that there is extreme pressure on

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<sup>1</sup> This is a five- year scheme and the figure is for applications processed in 2016.

<sup>2</sup> This was a five-year scheme and the figures are for applications processed in 2016.

the inspection process in order that this task is completed on time to ensure that payments can commence promptly to the vast majority of farmers.

### ***Agriculture Appeals Office***

There are 55 Schemes and programmes listed in the Agricultural Appeals Act, 2001 (Amendment of Schedule) Regulations 2017. These are the Schemes where decisions of the Department of Agriculture, Food and the Marine can be subject to an application for an appeal by appellants to the Appeals Office. The Schemes can be categorised in **Table 3** as follows:

**Table 3**

**Categories of Schemes/Programmes covered in the Schedule to the Agriculture Appeals Act**

<b>Category of Schemes</b>	<b>Number of Schemes</b>
EU Funded Schemes (100%) <sup>3</sup>	4
EU Partially Funded Schemes <sup>4</sup>	15
Schemes funded by National Exchequer <sup>5</sup>	11
Schemes no longer applicable <sup>6</sup>	25
Total	55

Source: Classification prepared by the Review Committee

## **3.2 Review Procedures for the Schemes administered by the Department of Agriculture, Food and the Marine**

### ***Introduction***

An overview of the review and appeals process for the Schemes administered by the Department of Agriculture, Food and the Marine is set out in the Farmers' Charter of Rights (2015 – 2020), see Appendix 1. The details of the processes involved are included in the Terms and Conditions of each of the Schemes administered by the Department.

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<sup>3</sup> These Schemes include the Basic Payment Scheme, Greening Payment, Young Farmers Aid and Protein Aid

<sup>4</sup> These Schemes mainly come under the 2014 to 2020 Rural Development Programme for Ireland

<sup>5</sup> The nationally funded Schemes relate mainly to forestry

<sup>6</sup> While these Schemes are no longer in place there will be some appeal cases outstanding relating to them.

The decisions subject to review by the Department can essentially be broken down into two categories as follows:

- Decisions that arise during or following the administrative checks carried out on applications from farmers and, if appropriate, supporting documentation submitted by the applicant during the duration of the Scheme. In the case of some of the five-year Schemes the provisions of the Schemes or Programmes also involves the submission of documentation and scheme related information required during the course of participation in the scheme in question. This is particularly the case under the five-year Schemes such as GLAS and the Beef Data Genomics Programme.
- Decisions arising following an inspection of the applicant's holding. Such inspections include both on-the-spot inspections and remote sensing inspections. Inspections can relate to both confirmation of adherence to the eligibility conditions of the Scheme or Schemes in question or relating to the requirements of Cross Compliance. Remote sensing inspections are eligibility inspections carried out using satellite imagery provided by the Joint Research Centre of the EU Commission.

### ***Administrative Decisions***

If an applicant is dissatisfied with the outcome of the administrative decision on the application or subsequent administrative process, he or she may seek a review of the Department's decision. Such an application must be in writing and the Committee established that in the case of the vast majority of the Schemes there are no standard forms available to farmers to assist in the submission of the request for a review. The request is normally submitted to the manager of the payment section involved.

### ***On-the-Spot Eligibility Inspections***

If an applicant is dissatisfied with the findings of an inspection he or she can seek a review of the decision by the relevant District Inspector. Details of the official involved is detailed in the letter outlining the findings of the inspection (FN letter). Similarly, it was established that in the vast majority of Schemes there are no application forms to assist in the submission of the application for a review. This absence of applications forms and guidance notes, which will cover both decisions arising from administrative and inspections findings, will be considered further later in this report.

### **Remote Sensing Inspections**

The request for a review of the findings of remote sensing inspections is submitted to the Remote Sensing Inspection Section.

### **Deadlines for the submission of an application for a review**

Under the Terms and Conditions of the Schemes operated by the Department, different deadlines are fixed for the submission of an application for a review. For example, Schemes such as Green Low-Carbon Agri-Environment Scheme (GLAS), Beef Data Genomics Programme (BDGP), Knowledge Transfer Scheme (KT), specify that an applicant has 10 working days after notification of the penalty to submit his or her application for a review. Under the Basic Payment Scheme inspection findings, the deadline is fixed at 28 days. For Cross Compliance inspections, the deadline is fixed at 21 days. The Committee noted that in some cases, it is not clear when the period during which the review application must be submitted commences i.e. whether the period commences on the date of the Department's decision letter or the date of receipt of the letter.

A more comprehensive listing of the deadlines fixed for the submission of applications for reviews is illustrated in **Table 4** below for the main Schemes implemented by the Department.

**Table 4**  
**Deadlines Fixed for the Submission of Applications for Review by farmers to the Department of Agriculture, Food and the Marine**

<b>Scheme</b>	<b>Deadline</b>
Basic Payment Scheme – inspection cases	28 days
Basic Payment Scheme – administrative decisions	21 days
Cross Compliance including Nitrates Regulations	21 days
Green Low-Carbon Agri-Environment Scheme	10 workings days
Agri Environmental Options Scheme	10 working days
Beef Data Genomics Programme	10 working days
Knowledge Transfer	10 working days

Source: Prepared by the Review Committee from the Terms and Conditions of each Scheme

### 3.3 Agriculture Appeals Office Appeals Procedures

When a final decision issues from the Department (i.e. after completion of the Department's internal review), a farmer is notified of the option to appeal the decision to the Appeals Office. The appellant, dissatisfied with the decision, completes a "Notice of Appeal" form and submits it together with any appropriate documentation and information that the appellant sees fit to the Appeals Office. An appeal must be lodged within three months of the Department's decision unless exceptional circumstances apply<sup>7</sup>. The notice of appeal should contain a statement of all the facts and contentions upon which it is intended to rely in the appeal. Documentary evidence submitted in support of the appeal should be enclosed along with the notice of appeal. There is no charge for lodging an appeal.

The Appeals Office requests from the Department the relevant file and a statement regarding the appellant's grounds of appeal. Appellants are entitled to request an oral hearing as part of their appeal. When the response is received from the Department, the Director assigns the appeal to an Appeals Officer. The Appeals Office contacts the appellant to arrange an oral hearing, if requested, or if deemed necessary in the opinion of the Appeals Officer. The Appeals Officer considers all the evidence in full including any evidence presented at an oral hearing if there is one.

Following the conclusion of the process, the Appeals Officer makes a determination on the appeal and notifies the appellant of the decision in writing setting out the reasons for that decision. The Department is also notified of the decision. Under Section 14(1) of the Regulations, the decision of an Appeals Officer shall have regard to the principles of natural justice and comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the scheme in question

The decision of an Appeals Officer is final and conclusive, except in the following circumstances:

- An Appeals Officer may change a decision where there is new evidence/facts or relevant change in circumstances.

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<sup>7</sup> Agriculture Appeals Regulations 2002 (S.I. No. 193 of 2002) provides in paragraph 5 (3) that an appeal, where the Director considers there are exceptional circumstances, may be made after the three-month time period for submitting an appeal set out in the Regulation.

- On request, from either party, the Director of the Appeals Office may revise a decision where there has been a mistake made in relation to the law or the facts of the case.
- An appellant may make a complaint to the Office of the Ombudsman if he or she is not satisfied with the decision of the Appeals Officer.
- On application from the appellant or the Minister, the High Court may revise a decision on a point of law.

The Appeals Office deals with appeals under the Schemes set out in the Act as amended by Regulations, the most recent being the Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2017 (S.I. No. 219 of 2017).

### ***Legal Proceedings***

Section 11 of the Agriculture Appeals Act, 2001 provides for an appeal to the High Court on a point of law in the case of a review of a decision by the Minister for Agriculture, Food and Marine with regard to a scheme to which the Act relates. Given the appeal structures laid out in the Act, there is no provision for a person to take a case against the Minister in relation to such schemes to a lower Court.

### **3.4 Legislation and Staffing of the Agriculture Appeals Office**

The Agriculture Appeals Act, 2001, along with the Agriculture Appeals Regulations 2002, as amended, set down the functions of the Director and the Appeals Officers, the decisions that may be appealed and the procedures to be followed in respect of appeals.

The principal roles of the Director are to assign files to Appeals Officers, review decisions on request and manage the Appeals Office and appeals service. The role of the Deputy Director is to perform the functions of Director when s/he is absent. The current staffing of the Appeals Office is one Director, no Deputy Director, 11 Appeals Officers and 5½ administrative staff. In relation to the appointment of the Director, Section 3 of the Act provides that the *“Minister shall, following selection at a competition held by Committee on Top Level Appointments,...appoint a person holding a position within the Civil Service as...the Director...”*. As regards the appointment of Appeals Officers, under Section 2 of Act *“the Minister may appoint such and so many of his or her officers or,*

*following competitions, or other persons holding positions within the Civil Service...to be appeals officers”.*

### **3.5 Agriculture Appeals Office Performance**

The Agriculture Appeals Office received 10,878 applications for an appeal from its establishment in May 2002 to the end of December 2016. When the invalid applications amounting to 1,170 are excluded, this leaves 9,708 valid appeal cases. At the end of December 2016, there were 231 open cases, which means that 9,477 cases were processed to a decision during that period. When 2002 is excluded as it is a part year, the average number of valid appeals processed annually by the Office over the period was approximately 640 cases.

It is noted that in the context of the Department processing approximately 350,000 applications for payment from farmers annually, the number of appeals made by claimants is extremely low – at 0.18%. This illustrates a level of satisfaction by the majority of farmers with the service that is provided by the Department in processing applications for payment. However, the Committee considers that the level of appeals is also impacted by an element of a lack of awareness among the farming public of the review and appeal processes open to farmers, who are dissatisfied with the decisions made in their cases.

**Table 5** below illustrates the number of appeals applications received by the Appeals Office each year since it was established in May 2002 and the subsequent processing of those applications by the Office.

**Table 5**

**Number of appeals submitted to the Agriculture Appeals Office and the subsequent processing of those appeals<sup>8</sup>**

<b>Year</b>	<b>Total appeals received</b>	<b>Invalid appeals<sup>9</sup></b>	<b>Valid appeals</b>	<b>Open at end of year<sup>10</sup></b>	<b>Total number of valid appeals processed during year for appeals received during the year.</b>	<b>Total number of cases closed including invalid appeals received and cases closed for appeals received in previous years</b>
<b>2002</b>	518	41	477	205	272	313
<b>2003</b>	1,143	78	1,065	302	763	1,046
<b>2004</b>	1,116	118	998	295	703	1,121
<b>2005</b>	790	91	699	28	671	913
<b>2006</b>	427	60	367	139	228	434
<b>2007</b>	394	51	343	140	203	397
<b>2008</b>	481	56	425	142	283	479
<b>2009</b>	692	56	636	268	368	548
<b>2010</b>	832	70	762	323	439	764
<b>2011</b>	736	75	661	273	388	774
<b>2012</b>	1,036	155	881	332	549	950
<b>2013</b>	886	103	783	418	365	793
<b>2014</b>	610	69	541	287	254	727
<b>2015</b>	619	77	542	236	306	672
<b>2016</b>	598	70	528	231	297	615
<b>Total</b>	10,878	1,170	9,708	-	6,089	10,546 <sup>11</sup>

<sup>8</sup> The figures relate to appeals received during a calendar year and processed to a conclusion during the same year.

<sup>9</sup> The number of invalid appeals includes the (i) appeals that were subsequently withdrawn by the applicant, (ii) invalid appeals such as appeals in relation to schemes not listed in the Schedule to the Agriculture Appeals Act and (iii) appeals not submitted within the statutory deadline of three months provided for in the Act.

<sup>10</sup> These are cases that were received during the year which were not fully processed.

<sup>11</sup> This figure in some cases includes some invalid appeals closed during the calendar years concerned.

Source: Supplied by the Agriculture Appeals Office

In order to establish the number of valid appeals received by the Appeals Office annually, it is necessary to exclude the invalid applications. As is outlined in the footnotes above, the total of the invalid applications consists of the following categories:

1. Appeals that were subsequently withdrawn by the appellant.
2. Appeals where it was not possible to submit a valid appeal as no decision had been made by the Department of Agriculture, Food and the Marine or where the scheme was not included in the Schedule to the Agriculture Appeals Act.
3. Appeals, which were submitted after three months of the date of the decision of the Department of Agriculture, Food and the Marine. Under the Act, claimants have three months from the date of the decision of the Department to submit an appeal. Appeals received after that time are not accepted but there is provision in the Act where a case can be made to the Director of the Appeals Office to have the appeal accepted where exceptional circumstances existed.

#### ***Processing time for the completion of appeal cases in Agriculture Appeals Office***

The Appeals Office has set itself a target of three months for the completion of appeals. **Table 6** below sets out the average processing time for the processing of appeals. However, this data relates to the appeals received and processed during the same calendar year. It does not include cases that were carried over from previous years. As is illustrated in the table, the Office more or less meets its target for the processing of current year applications with the exception of the 2008 to 2010 period.

**Table 6**

#### **Processing times of Appeals by Agriculture Appeals Office for appeals received and decided within the year**

<b>Year</b>	<b>Average Number of days</b>
<b>2002</b>	43
<b>2003</b>	49
<b>2004</b>	66
<b>2005</b>	73
<b>2006</b>	71
<b>2007</b>	104

<b>2008</b>	101
<b>2009</b>	102
<b>2010</b>	103
<b>2011</b>	92
<b>2012</b>	96
<b>2013</b>	93
<b>2014</b>	90
<b>2015</b>	85
<b>2016</b>	88

Source: Extracted from the Agriculture Appeals Office Annual Reports

However, when the cases that were carried over from previous years are included in the calculation of the average the time period involved is significantly longer as is illustrated in **Table 7** below.

**Table 7**

**Processing times of Appeals in the Appeals Office including cases received within the year and carried over from previous years**

<b>Year</b>	<b>Total number of appeals closed in the year (including appeals received in previous years)</b>	<b>Average number of days from date of receipt of appeal in Appeals Office to issue of appeal decision (including appeals received in previous years)</b>
<b>2014</b>	727	193
<b>2015</b>	672	164
<b>2016</b>	615	169

Source: Prepared for the Review Committee by the Agriculture Appeals Office

### **Oral Hearings**

Under Section 8 of the Agriculture Appeals Act, 2001 Appeals Officers are legally obliged to grant an oral hearing in every case where the appellant requests it. Section 8 (1) provides as follows;

*“An appeals officer shall, if so requested by the appellant, hold an oral hearing for the purpose of an appeal referred to him or her under the Act.”*

**Table 8****Number of Oral Hearings of valid cases received and closed in the same year since the Agriculture Appeals Office was established in May 2002**

<b>Year</b>	<b>No. of valid cases closed within the year for appeal received within the year<sup>12</sup></b>	<b>The number of oral hearings for valid appeals received and closed during calendar year<sup>13</sup></b>	<b>% of oral hearings for valid cases received and closed during calendar year</b>
<b>2002</b>	272	131	48%
<b>2003</b>	763	435	57%
<b>2004</b>	703	450	64%
<b>2005</b>	671	336	50%
<b>2006</b>	228	120	52%
<b>2007</b>	203	127	62%
<b>2008</b>	283	187	66%
<b>2009</b>	368	151	41%
<b>2010</b>	439	194	44%
<b>2011</b>	388	184	47%
<b>2012</b>	549	134	24%
<b>2013</b>	365	148	41%
<b>2014</b>	254	124	48%
<b>2015</b>	306	142	46%
<b>2016</b>	297	160	54%
<b>Total</b>	6,089	3,023	50%

Source: See Footnotes

As many of the oral hearings held during a calendar year relate to appeal applications received during previous years for which the decisions of the appeals officer were not made until subsequent years, it is not possible from the available published data to provide an accurate figure on an annual basis for the percentage of oral hearings of all appeal cases closed in a given year which involved an oral hearing in that year. However, it is possible to calculate the overall percentage of valid applications that involved an oral hearing from the establishment of the Office in May 2002 to the

<sup>12</sup> Excludes withdrawn cases, invalid cases and appeals received after the three-month deadline. Data from Table 5.

<sup>13</sup> Also excludes withdrawn cases, invalid cases and appeals received after the three-month deadline. Data supplied by the Agriculture Appeals Office.

end of December 2016. During that period, the Office received 10,878 applications from farmers. If the invalid cases amounting to 1,170 cases are excluded, it leaves 9,708 valid applications. During the same period, the Office held 5,578<sup>14</sup> oral hearings amounting to almost 57% of all valid applications since the Appeals Office was established.

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<sup>14</sup> Source: Supplied by the Agriculture Appeals Office

## **4. Public Consultation**

### **4.1 Background**

In line with the Minister's statement that in order to ensure that the review is as comprehensive as possible, a consultation took place with relevant stakeholders. In this regard, notices inviting written submissions for consideration by the Committee have been placed in Irish Farmers Journal, Irish Examiner Farming and the Farming Independent. Twenty written submissions were received by the Committee. A list of those who made submissions is in Appendix 2.

### **4.2 Themes outlined in the Submissions Received**

This section sets out a broad summary of the themes outlined in the submissions which informed the Committee's Analysis and Recommendations Chapters outlined later in the Report

#### ***Department Inspections and Review Process***

- The Department providing a rationale for its review decision to the appellant;
- The Department issuing of a notice of inspection and control report;
- The Department carrying out inspections to a uniform standard;
- The consistency of the review process;
- Farmers to be informed by the Department of their rights including that of an oral hearing by the Appeals Office.

#### ***Agriculture Appeals Office and Appeals Process***

The main focus in the submissions related to the Appeals Office and its appeals process as follows:

- The introduction of a Code of Practice for the Appeals Office;
- The repeal of the Agriculture Appeals Act, 2001 to be replaced by a new Act incorporating additional measures and amendments;
- The independence of the Appeals Office;
- The Appeals Office should cover all farm and related Schemes;
- The Appeals Office should be more customer friendly;
- The Appeals Office should have defined timescales for the processing of an appeal;
- The evidence and new information that may be admitted during an appeal;
- The provision of Department files to appellants;

- Attendance at and location of oral hearings;
- The application of natural justice in the appeals process;
- The recording of an oral hearing;
- The payment of costs to appellants in successful appeals;
- The report on the finding of an appeal should be very comprehensive and cover all aspects of the case;
- The appeal by the Department of an Appeals Officer's decision;
- Right of Appeal by an appellant to the Lower Courts.

#### ***Appeals Officers***

- The method of appointment, training and the independence of Appeals Officers.

#### ***Office of the Ombudsman***

- The implementation of the decisions of the Office of the Ombudsman by the Appeals Office or the Department.

#### ***Independent Review Panel/Board***

- The establishment of an Independent Review Panel/Board to review a decision of an Appeals Officer on request by an appellant.

#### ***Miscellaneous Matters***

- Some of the submissions referred to matters outside of the scope of the review.

## **5. Other Appeals Systems**

### **5.1 Other Administrative Appeals Systems in Ireland**

The Committee examined some of the other administrative appeals process within the Irish public sector, specifically the Social Welfare Appeals Office, the Aquaculture Licensing Appeals Board, the Student Grants Appeals Board, the International Protection Appeals Tribunal and the Employment Appeals Tribunal. The Committee also considered the Office of the Ombudsman publication *Model Complaints System and Policy: The Ombudsman's Guide to developing a Complaint Handling System* and *Six Rules for getting it Right: The Ombudsman's Guide to Good Administration*. The Committee noted that various systems examined provided for either an independent person or a board to consider an appeal and some of the appeals systems used oral hearings where it is felt that additional information could be provided which could affect the outcome of the appeal. Also in some of the systems, the administrative staff is drawn from the parent Department responsible for the appeals body. Details of the systems considered by the Committee are outlined in Appendix 3.

### **5.2 Other Agriculture Appeals Systems within the European Union**

The Committee considered the agriculture appeals processes in some other European Union Member States. Whilst there are differing practices among the countries reviewed, a common theme is that an appeal is heard within the country's Paying Agency or Agencies rather than by a separate independent agency. All EU Member States are required to have Accredited National Paying Agency or Agencies to manage and make payments under the European Union's Common Agricultural Policy measures. Most of these are stand-alone organisations established as a separate entity or entities from a country's Ministry/Department for Agriculture. In the case of Ireland, the Department of Agriculture, Food and the Marine is also the Paying Agency.

There are a number of common themes in the appeal processes operated by Paying Agencies operated in England, Wales and Northern Ireland. These include the following:

- A two-stage process involving a review carried out internally within the Paying Agency. If the appellant is still dissatisfied, he and she can apply to have an Independent Review Panel assess the case.

- The need to adhere to the requirements of meeting the provisions of the governing EU Regulations in assessing the appeal. In other words, the appellant must demonstrate that he or she was fully compliant with the requirements of the governing Regulations.
- The outcome of the Independent Panel's assessment is a recommendation to the Paying Agency rather than a final decision.
- The requirement for the appellant to pay a fee to have the Independent Panel Review his or her case. This can range from £50 for a written review and £100 for an oral review in Wales and Northern Ireland to a sliding scale in the cases of England as follows;
  - £100 if the amount of the appeal is less than £2,000;
  - £250 if the amount of the appeal is between £2,000 and £10,000;
  - £450 if the amount of the appeal is over £10,000;
- The use of consistent deadlines for the submission of both applications under the Stage One and Two Processes – 60 days in the case of Wales and 42 days in the case of Northern Ireland.

The appeal process in Scotland is different. After the completion of the internal review process, the appellant must apply to the Scottish Land Court to adjudicate on his or her case.

From enquiries made, the appeal processes in other EU Member States consist of review committees/units established within the Paying Agencies with the need to pursue the matter by initiating legal proceedings if appellants are still dissatisfied after the completion of the internal review processes. In some Member States, the review is entirely based on an examination of the documentation.

## 6. Efficiency Review Report

As provided for in the Review Committee's Terms of Reference, it requested the Management Services Division (MSD) of the Department of Agriculture, Food and the Marine to assist it by conducting an Efficiency Review of the Agriculture Appeals Office, the findings and recommendations of which would be considered by the Review Committee and incorporated into its final report, as appropriate. The summary findings and recommendations of the Efficiency Review as submitted to the Review Committee are reproduced as follows.

### Efficiency Review of the Agriculture Appeals Office (AAO)

#### 1. Terms of reference for the efficiency review of the Agriculture Appeals Office (AAO) by Management Services Division were, as follows:

*The review will examine, within the existing legislative framework:*

1. *The efficiency of the Appeals process, from submission of an appeal to the issue of a decision to an appellant, and make recommendations for improvement, where relevant.*
2. *The internal administrative processes, including use of technology in the AAO and to make recommendations for business process improvement, where relevant.*
3. *The organisational structure of the AAO.*

*The review may identify any obstacles to efficiency, and any other initiatives which might improve efficiency for stakeholders, including commentary on the Appeals Act.*

MSD commenced the review in the first week of October when the Terms of Reference were agreed.

**2. Methodology;** The methodology of review included: a walk through of procedures from receipt of appellant communications to finalisation of appeals file; examination of procedures manuals; interview of Appeals Officers, administrative staff and the Director; desktop review of other appeals processes; assessment of statistics supplied by the AAO.

### 3. Findings and Recommendations

Efficient appeals processing system benefits both DAFM and its stakeholders. Not only can it resolve issues in a timely and cost-effective way but it can also provide valuable information leading to service improvement to stakeholders, which in turn can lead to a reduction in the number of appeals.

A. When the incumbent Director was appointed there were c87 appeal cases on hand but not assigned to Appeals Officers as this was the function of the Director or a Deputy Director. A backlog of requests for the Director to review decisions also arose.

MSD acknowledges that efficiency of processing of appeals by the Appeals officers has improved, as measured by number of appeals finalised YTD in 2017, compared to the same period in 2016.

While the backlog of appeals has been resolved, the case load of reviews for the Director has increased. MSD notes a significant increase in requests for reviews by the Director, from roughly 20 p.a. in the period 2013-2105 to 40 in 2016 and 38 year to date in 2017. 62 of these reviews are outstanding.

Accordingly, MSD recommends:

- **Proactive succession planning in relation to the Director post to ensure the Director post is not left vacant for extended periods.**
- **Appointment of the Deputy Director and the expansion of this role to the fullest extent.** Section 4 of the Agriculture Appeals Office refers – this would benefit the structure of the organisation and its administration.

B. To promote efficiencies, accountability and greater transparency, interactions between DAFM and the AAO would benefit from a formal structure. Accordingly MSD recommends:

- **Agreement of a Memorandum of Understanding (MOU) between DAFM and the Agriculture Appeals Office (AAO).** The MOU should cover agreed practices, procedures and target timeframes including: target times for receipt of files from DAFM; quality of DAFM responses to Appellant's Appeal; arrangement of and attendance at oral hearings, and monitoring implementation of the MOU. The MOU should also include a formal routine for meetings between the Director and senior management in DAFM through which information distilled from

the processing of appeals could be used to feed forward into better scheme design and to other stakeholders.

C. The AAO can assist farmers by increasing awareness of how to comply with Scheme requirements and, in the event of being subject to a penalty, how best to make an appeal. We note the Director's proposed initiative to provide feedback to farmers and advisors in addition to the traditional use of the Annual report for this purpose.

- **Feedback to Farmers: MSD suggest using additional fora such as the Department's FAS/GLAS training sessions with farm advisors to raise awareness of the Appeals Office and how best to avail of its services.** Raising awareness of the AAO website would be another useful initiative.

D. The AAO staff and management acknowledge the challenge in producing metrics for information and performance management purposes and for feedback to stakeholders. Data collection and management systems currently in use in the AAO are cumbersome and difficult to interrogate to produce relevant metrics. Support from DAFM has been requested to address this.

- **Redesign the AAO database: DAFM needs to approve the resources for an integrated access data base, or, alternatively outsource the project.**

E. Many of the processes and procedures used at the AAO are a consequence of the legislation under which they operate, however, some are amenable to change without recourse to changing the legislation. In respect of these, MSD recommends that the AAO:

- **Consider the following procedural changes:**
  1. **Record reasons for delay where cases are not decided within the target time;**
  2. **Prompt/Request appellants' observations on the Department's response to their Statement of Appeal;**
  3. **Allow appellant to opt for an oral hearing when they have sight of DAFM's Statement of Response to their Appeal;**
  4. **Proceed with summary decisions where appellants repeatedly cancel oral hearings.**

F. The role of an Appeals Officer is a complex and challenging one which requires the development and application of a broad range of knowledge, skills and competencies. The Office has identified a need for improved training and development and has addressed this by developing appropriate training modules. MSD endorses this approach and recommends that the AAO:

- Roll out the AAO programme of formal structured training of AOs and if possible arrange training in conjunction with the SWAO or the Office of the Ombudsman.

**G. Further efficiencies in the operation of the Appeals Office, which would entail changes to the existing legislation, are outlined below:**

- Limit the time period in which an appellant may provide new evidence or facts in relation to a case which has been decided by an Appeals Officer; and
- Limit the time period in which an appellant (or DAFM) may request the Director to revise an Appeals Officer's decision.

#### **H. Staffing**

**Appeals Officers.** Given the increased throughput in 2017 and current caseloads for AOs, the number of Appeals Officers appears appropriate relative to the current workload. MSD notes that it is proposed that Appeals Officers will be appointed members of the new Forestry Appeals Committee. Until this Committee is in operation and the number of appeals is clear, we cannot determine the extent to which this will impact on the functioning of the Appeals Office.

**Administrative Support Staff.** The administrative support staff numbers are adequate at present. The Director has identified a requirement for an additional Executive Officer to allow the AAO absorb the additional tasks of supporting the operations of the Forestry Appeals Committee. MSD did not assess this requirement but does not disagree that the Forestry Appeals Committee will generate an additional administrative workload.

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## 7. Analysis undertaken by the Review Committee

### 7.1 Introduction

The traditional justification for the establishment of a quasi-judicial administrative appeals system over other forms of redress centre around ease of access, fair procedure, timeliness and cost. Accordingly, any consideration of the operation of the Agriculture Appeals Office/Act must consider whether these principles are adhered to or not. In the *Model Complaints System and Policy: The Ombudsman's Guide to developing a Complaint Handling System*, published by the Office of the Ombudsman, a further principle is outlined which is considered appropriate in the current context - complaints should be dealt with as early as possible and ideally at the first point of contact.

### 7.2 Fair Procedures

It is commonly considered that fair procedures are those that uphold the two main principles of Natural Justice viz:

- *audi alteram partem* - “hear both sides” - in other words the individual who is the subject of the process must be given adequate opportunity to have his/her case heard in full and
- *nemo iudex in sua causa* - “no one should be a judge in their own cause” – which really means that the process should not be biased in any way.

Natural justice is a constitutional right: accordingly, it supersedes any legislation; however; natural justice is context-sensitive: it is not set down in prescriptive detail as a constitutional right. Rather, it is a set of constitutional principles of procedural fairness which must govern any statutory appeal scheme.

There is considerable case law which has elaborated these principles in the context of both judicial and quasi-judicial processes and which has specifically addressed issues such as prior notice, disclosure of relevant material, right to a prompt hearing, the right to representation, the right to an oral hearing (in certain contexts) and the requirement that reasons are provided for decisions made.

Many of the submissions received as a result of the public consultation process have raised questions over whether aspects of the processes that are followed in relation to appeals in the

agriculture appeals process adhere to the principles of natural justice. Accordingly, these submissions have called into question whether the fair procedures can be considered to apply.

In addition, the consideration of documents supplied to the Review Committee, together with the discussions held with representatives from the Department and the Appeals Office, highlighted areas where there appeared to be some areas of opportunity for greater transparency and evidence of commitment to the principles enunciated above.

The following analysis details the consideration by the Committee using specific headings and provides the basis for the recommendations made in Chapter 8 of this report

### **7.3 Communications and Information**

#### ***Scheme information and forms***

There are a considerable variety of Schemes under the remit of the Agriculture Appeals Act, 2001, and the conditions of these Schemes change frequently. It is clear that there is considerable investment on a scheme by scheme basis to provide information to applicants. It would appear, however, that the way in which this information is provided to the applicants differs across scheme areas. These variations extend to the format of the Schemes' application forms, the timescales for submission of an application for review and the accessibility and consistency of information on the Department's website.

The Committee formed the view that improvements could be made in relation to how information is provided to applicants in terms of the presentation of information, the consistency of the language used, the scope for including relevant information and ensuring greater understanding and has made some recommendations in this regard.

#### ***Impact of decisions – including financial implications***

In many instances the starting point for the process of appeal is an inspection by the Department's Inspectorate. The results of this inspection are sent to the applicant farmer who, in general, has two weeks to comment, etc. on the outcome. When this period has elapsed, the result of the inspection is finalised, and the applicant can then elect to have the matter formally reviewed.

It became clear to the Committee that the inspection is an important trigger to a number of possible consequences and that, because of the complexities of different Schemes, in many cases the consequences are not easily appreciated or understood in the immediate aftermath of the inspection itself. The inspection process can trigger penalties or changes across a number of different Schemes particularly in respect of area reductions and Cross Compliance, which do not become apparent until payments are being calculated. In some cases, claimants do not become aware that they have incurred a penalty until they receive confirmation of the transfer of their payment under a Scheme to their bank account.

It is also clear that the emphasis in the Department is the speedy processing of payments and there is no desire to impact on this. However, the Committee is of the view that the Department needs to consider how better to communicate the impact (including financial implications) of issues that arise in the inspection process in order to ensure that applicants can raise concerns or engage promptly and comprehensively in the review process in a more informed way.

### ***Department's Review Structures***

From the information available to the Committee, it is clear that the Department's review process is not uniform across all scheme areas. It is also clear from the extent of new information and supporting documentation that is submitted during the Appeals Office's appeals process that farmers do not engage with the Department's review process in the manner that in many cases would lead to more positive results much earlier. This conclusion is substantiated by the significant number of cases that are revised (either in full or partially) by the Department during the appeal process. The main reason for these revisions is the extent and relevance of the information submitted by the appellant during the Appeals Office's appeals process. It is in the interest of farmers to fully engage during the Department's review process as the earlier resolution of problems would lead to more prompt payments of aid to farmers that are due to them if the review leads to a positive outcome.

Therefore, it is considered that there is scope for standardising these processes and for providing a much clearer explanation to farmers as to the pathway through the review and appeal mechanisms.

A good of a clear explanation is a two-page document published by the USA Social Security Administration on its appeals process<sup>15</sup>.

### ***Learning from the process***

As with any administrative process there is scope for all parties to learn from previous experience. There is a section in the Annual Report of the Appeals Office which specifically identifies recommendations for the Department and applicants based on the cases which have progressed through the appeals process. It would appear, however, that apart from the publication of the report and its circulation to representative bodies, there are no formal structures in place to ensure that cognisance is taken of the issues raised in this section. Accordingly, the Committee has made some recommendations with a view to heightening awareness amongst all stakeholders.

### **7.4 Independence of the Agriculture Appeals Office**

A common thread of submissions received during the public consultation process was that because the Appeals Office was not established as a separate entity to the Department and was staffed by Officers of the Minister, that the independence of the structure was called into question and that principles of fair process could not be guaranteed for appellants.

The Committee recognises that this is a theme that has been raised in relation to other administrative appeals models<sup>16</sup> and that there are good arguments in favour of creating a fully independent entity in order to address perceptions of bias and inspire public confidence in the structures and process.

However, the Committee is also of the view that the creation of an independent organisation is not a decision that should lightly be made. Instead, the Committee considered that an examination of available evidence should be conducted to establish if evidence suggests that such fundamental change to the existing process is warranted.

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<sup>15</sup> Social Security Administration (2017) *The Appeals Process*, Publication No. 05-10041, USA Government [www.ssa.gov](http://www.ssa.gov)

<sup>16</sup> FLAC (2012) *Not Fair Enough: Making the Case for Reform of the Social Welfare Appeals System*, [www.flac.ie](http://www.flac.ie)

Many of the submissions made to the Committee made reference to the perceived bias of the Agriculture Appeals Office on the basis that the Appeals Officers were officers of the Minister of Agriculture, Food and the Marine. In addition, reference was made to the fact that the majority (but not all) of the persons appointed as Appeals Officers were Department officials prior to their appointment and on leaving the Appeals Office returned to the Department.

The Review Committee considers that the following general points are relevant to any analysis of such comments.

- Under Section 6 of the Agriculture Appeals Act, 2001, *“Appeal officers shall, subject to this Act, be independent in the performance of their functions.”* It is clear from a legal point of view that appeal officers are obliged to act independently from the Minister and the Department in carrying out their functions as appeal officers. The Act sets out the role and responsibilities of the appeal officers
- In modern day administrations and corporations, it is common practice for persons employed by the same administration or corporation to carry out audit, control, compliance and verification checks on fellow employees. This is, and has been, the case for many decades of the Internal Audit function, Compliance Units and Management Services Units.

### ***Evidence of Appeal Outcomes***

The Committee undertook a comprehensive exercise to examine the level of cases where the decisions on the appeals submitted by the appellants were favourable to the appellants. The outcome of this exercise would assist it in forming an opinion as to the perceived bias. The analysis undertaken by the Committee covered the entire period since the Appeals Office was established in May 2002 to the end of 2016 - a fourteen and a half year period, as is illustrated in **Table 9** below:

**Table 9**

**Number of valid applications received and processed in the same calendar year which either were fully or partially accepted by Agriculture Appeals Office or the Department of Agriculture, Food and the Marine**

<b>Year</b>	<b>Total valid applications fully processed<sup>17</sup></b>	<b>Total fully or partially allowed/partially allowed or favourably revised<sup>18</sup></b>	<b>% Fully or partially allowed/partially allowed or favourably revised</b>
<b>2002</b>	272	106	39%
<b>2003</b>	763	336	44%
<b>2004</b>	703	271	39%
<b>2005</b>	671	283	42%
<b>2006</b>	228	114	50%
<b>2007</b>	203	99	49%
<b>2008</b>	283	128	45%
<b>2009</b>	368	247	67%
<b>2010</b>	439	240	55%
<b>2011</b>	388	225	58%
<b>2012</b>	549	394	72%
<b>2013</b>	365	204	56%
<b>2014</b>	254	110	43%
<b>2015</b>	306	157	51%
<b>2016</b>	297	143	48%
<b>Total</b>	<b>6,089</b>	<b>3,057</b>	<b>50%</b>

Source: Extracted from the Agriculture Appeals Office Annual Reports

<sup>17</sup> These figures relate to valid applications received and processed during a calendar year

<sup>18</sup> These figures do not include decisions relating to applications received during previous years

It was necessary to use the data based on the outcome of the cases received and processed in the same year as the overall data on the outcome of all of the cases reviewed in a calendar year including those appeal cases that were finalised having been received during previous years was not readily available.

**Table 9** above illustrates the outcome of the analysis. It can be seen from the table that the level of positive outcomes from the appellants' point of view is extremely favourable. An analysis of the data in **Table 9**, for example, illustrates that there were two years out of the fifteen years covered by the analysis that the level of positive outcomes was less than 40%. The level of positive outcomes was 40% to 50% in six of fifteen years covered. The level reached over 50%-60% in five of the years while a level of over 60% and 70% was reached in one year each respectively of the 15-year period.

The Committee had some concerns that the use of this data with the exclusion of previous year cases would make the data less reliable. Having carried out some further analysis of including the cases, which were received during previous years, the Committee is satisfied that this is not the case. A separate table was included in the Office's Annual Reports in respect of 2014, 2015 and 2016 which included the cases for previous years, which were decided on during the year covered by the Report.

**Tables 10 and 11** below illustrates the outcomes of all of the cases determined **for 2014, 2015 and 2016** including those cases carried over from previous years, which were decided on in each of these three years.

**Table 10**

**Number of applications closed from current and previous years which either fully or partially accepted by Agriculture Appeals Office or the Department of Agriculture, Food and the Marine**

Year	Number of valid applications processed	Allowed or partially allowed	Rejected	% of appeals allowed or partially allowed
<b>2014</b>	632	248	384	39%
<b>2015</b>	576	278	298	48%
<b>2016</b>	527	253	274	48%

Source: Extracted from the Agriculture Appeals Office's Annual Reports 2015 and 2016. Data for 2014 supplied by the Agriculture Appeals Office.

**Table 11**

**Comparison of the Percentage cases accepted from Tables 9 and 10**

<b>Year</b>	<b>Allowed cases relating to the year of receipt of appeal (Table 9)</b>	<b>Allowed cases relating to all years (Table 10)</b>
<b>2014</b>	43%	39%
<b>2015</b>	51%	48%
<b>2016</b>	48%	48%

Source: Classification prepared by the Review Committee. Data for 2014 supplied by the Agriculture Appeals Office.

When the data in **Table 10** is compared to the data for the cases received and decided during the same years in **Table 9** as is illustrated in **Table 11**, the outcomes are not that dissimilar.

The Committee concludes, therefore, that Appeals Officers are not bound by their ‘attachment’ to the Department in the determination of appeal outcomes. On this basis, the Committee is of the view that a fundamental restructuring of the appeals model is not warranted in this instance.

However, the Committee does accept that if the structure is perceived to be biased by groups of stakeholders, then these perceptions need to be addressed in a very real way. Accordingly, the Committee is making some recommendations with a view to providing greater assurance to stakeholders in relation to underpinning the independence of the process (as opposed to the structure). The Committee is also making recommendations to ensure that there is greater transparency in relation to the relationship between the Department and the Appeals Office.

***Review of decisions by Appeals Officer***

The current structure provides for a review of the decision by an Appeals Officer by a different Appeals Officer or in certain circumstances by the Director. This is a fourth stage in a decision-making process having regard to the Department’s initial decision and review and the consideration of an appeal by an Appeals Officer. Of the total number of appeals lodged, the number that progress to this fourth stage is small as outlined in **Table 12** below. At this point if an appellant is not satisfied with the status of decision, it is likely that the case is contentious and complex and it is at this stage

that the Committee considered that there could be merit in introducing an alternative approach to bring the matter to finality.

**Table 12**

**Number of Appeals Officers' decisions that were subject to an application for a review by the Director**

<b>Year</b>	<b>Number of applications for a review to the Director</b>
<b>2015</b>	21
<b>2016</b>	40

Source: Supplied by the Agriculture Appeals Office.

The Committee considered the other models of administrative appeal in existence and the substance of the submissions made as part of the public consultation process. In designing an appropriate approach, the Committee considered it extremely important that any new approach should support the Director in his/her leadership of the Appeals Office and provide some added value to the overall structure for the appeals process in the Office.

***Appointment and Training of Appeals Officers***

Arising from concerns expressed in the public submissions, the Director provided information to the Committee in relation to both the background of Appeals Officers and the training programmes in place.

The Committee noted that although the majority of Appeals Officers had previously served in the Department, this was not always the case and that a small number had been appointed to the Office immediately following their appointment to the Department from inter-departmental competitions.

Of interest, however, was the view that although the previous experience of the Appeals Officers in the Department was considered a possible source of potential bias by some of the people who made submissions to the Committee, it was also considered to be an important benefit in terms of ensuring an understanding the complexity of the various Schemes and the farming economy as a whole by at least one of those who made submissions.

Although the Committee is satisfied in relation to the independence of operation of Appeals Officers, it welcomed the fact that there was some diversity in the experience in the cadre. It

considered that there is scope to make further improvement, and, accordingly, has made some recommendations in this regard.

The Committee welcomed the plans of the Director to move from an ad-hoc approach to training new appointees to a more structured programme including training in legal matters. The Committee noted that although it had fallen into abeyance, there had previously been some history in the Office of providing bespoke legal training courses for Appeals Officers and, furthermore, that many Officers had undertaken considerable training and further education courses themselves in an effort to enhance their skills.

In the course of its deliberations, the Committee was made aware of the recent development of a structured training programme by the Social Welfare Appeals Office for its Appeals Officers which covers technical and legal skills and is expected to be externally accredited. The Committee is of the view that developments such as this have the potential to form a shared basis from which others could potentially benefit and has made recommendations in this regard.

### ***Operational Consistency and Quality Assurance***

The Committee understands that the Appeals Office operates in accordance with a procedures manual which gives guidance to Appeals Officers on the legislation governing the appeal process and directions in relation to how the process should operate

There is, however, an opportunity for the Appeals Office to provide more public reassurance of its operational practices through the publication of a Customer Service Charter or Code of Practice which gives provides a very public statement of the principles underpinning the operation of the model.

In discussions with the Director and with Appeals Officers, it was very clear that the independence of the decision making of individual officers is a matter which is very important to them individually and collectively. However, the anxiety to ensure independence of operations potentially does come at a cost in terms of consistency of decision making. In terms of overall outcomes and assurance in the process, there is considerable danger of inconsistent decision making undermining the integrity of the appeals process. The Committee is of the view that quality assurance processes within the appeal system are important and accordingly has made some recommendations in relation to the introduction of quality assurance mechanisms within the Appeals Office.



## 7.5 Efficiency

### *Timescales*

The average number of days for the processing of appeals with the Appeals Office is considered too long and it is a matter that should be considered by the Office.

One of the problems raised in some of the submissions to the Committee was the time lag between the Department's initial decision (in many cases the date of the inspection, which is even earlier) and the final decision by the Appeals Officer. Some of the submissions also referred to the delay in the implementation of the decisions of the Appeals Officers by the Department.

In some cases, the financial amounts involved are small but in other cases they can be very significant. In the case of payments under the Single Payment Scheme, for example, the loss of the entire payment following the imposition of penalties can be extremely serious for individual farmers, particularly, small-scale farmers. Figures from the Teagasc National Farm Survey (2016 Results) show that in the case of many farmers, particularly, small to medium scale beef and sheep farmers, the payments under the Basic Payment Scheme and other Direct Payment Schemes are greater than the farmer's net income. In other words, some farmers are utilising their Direct Aid payments to subsidise their farming enterprise. **Table 13** below, which is extracted from the Survey Report, illustrates this point:

**Table 13**

**Value of Direct Payments as a percentage contribution to Farmers' Income 2016**

<b>Farming Enterprise</b>	<b>Direct Payments</b>	<b>Contribution to Income (%)</b>
<b>Dairy</b>	€19,735	38
<b>Cattle Rearing</b>	€14,400	115
<b>Cattle Other</b>	€16,209	96
<b>Sheep</b>	€17,946	114
<b>Tillage</b>	€26,331	85
<b>All</b>	€17,804	75

Source: Teagasc National Farm Survey (2016 Results)

Therefore, any delay in those farmers, whose appeals are successful in receiving their aid payments can have a very significant impact of the farm families in question. The Review Committee analysed four elements that could be regarded as contributing to the delay between the initial decision and conclusion of the appeals case. The matters covered included the following:

1. The timescale between the initial decision by the Department and the completion of the internal review procedure within the Department.
2. The effectiveness of the Department's review process.
3. The provision of documentation and covering statement to the Appeals Office by the Department of Agriculture, Food and the Marine.
4. The timescale for the completion of the appeal within the Appeals Office.

### ***1. The time-scale between the initial decision by the Department and the completion of the appeal process***

The Committee could not readily establish a definitive time-scale for the initial decision by the Department and the completion of the appeal process as comprehensive data is not publicly available data and for the Department and the Appeals Office to generate it within the timescale for preparing this Report would have required a significant diversion of resources that the Review Group did not feel was warranted. However, the Committee concludes, based on the best information available to it, that the length of the time-scale is very significant. In 2016, for example, in the case of the Basic Payment Scheme and Cross Compliance inspections, the average period from the date of receipt of the application for an internal review and the Department's decision on the review was 140 days (see below). In addition, the average period during the same year between the receipt of an application by the Appeals Office and the final decision of the Appeals Officer was 169 days, see **Table 7** above. Bearing in mind also that there is a time-lag between the initial decision of the Department whether it arose from the findings of an inspection or an administrative decision and the request for an internal review, it is clear the period between the original decision of the Department and the decision of the Appeals Officer is considerable and needs to be addressed.

### ***2. The effectiveness of the Department's review process***

While the operation of the Department's internal review process is not within the Terms of Reference of the Committee, the effectiveness of the review process has a direct impact on the

efficiency of the Appeals Office. If the number of cases which were rejected under the internal review process could be reduced, obviously where there were valid grounds for doing so, then the actual number of appeals submitted to the Appeals Office would be reduced and the remaining cases could be dealt with more efficiently and promptly by that Office.

### ***Timeliness of Review***

As already stated, there is a need for the introduction of deadlines for the processing of reviews received from claimants following the issue of findings/decisions. While it is accepted that in the case of some Schemes, the issues raised can be quite complex, there is a need to fix a time-period for the processing of reviews. There will always be cases where it will not be possible to meet this deadline either because of the complexity of the cases or because of the issues that were raised by either the Department or the claimant. In such instances, it would follow good practice to inform the claimant that the review application is still under consideration.

**Table 14** outlines for illustrative purposes details of the number and average processing times in respect of the Basic Payment Scheme and Cross Compliance inspections.

**Table 14**  
**Processing of Basic Payment Scheme and Cross Compliance inspections applications for a review of decisions of the Department during 2016 and 2017 (to date)**

	<b>2016</b>	<b>2017</b>
<b>Number of reviews received</b>	468	319
<b>Number outstanding at year end</b>	42	117
<b>Number of Reviews completed</b>	426	202
<b>Outcome – no change</b>	287 (67%)	137 (68%)
<b>Outcome – change either fully or partially accepted</b>	139 (33%)	65 (32%)

Source; Prepared for the Review Committee by the Department of Agriculture, Food and the Marine

According to data supplied to the Review Committee by the Department of Agriculture, Food and the Marine in relation to the Basic Payment Scheme and Cross Compliance Schemes, the average time between the application for a review received and the completion of the review by the Department in 2016 was 140 days and 2017 (to date) was 102 days.

***Greater Engagement by farmers in the Department’s Review Process***

Reference was already made of the need for farmers to engage with the internal review system operated by the Department. The data contained in **Table 15** below illustrates the number of appeal cases where the Department revised (or partially revised) its initial decision during the appeal process due to the introduction of new documentation and evidence by the appellants. As illustrated, the number of revised cases is significant and is greater than 50% in the case of nine of the fifteen years.

**Table 15**

**Percentage of successful<sup>19</sup> Appeal cases for appeals received and concluded in a calendar year where the Department of Agriculture, Food and the Marine revised its original decision during the Appeals Process**

<b>Year</b>	<b>Total fully or partially allowed/partially allowed or favourably revised<sup>20</sup></b>	<b>Revised by Department of Agriculture, Food and the Marine</b>	<b>% Revised by Department of the total successful or partially successful Appeal cases</b>
<b>2002</b>	106	22	21%
<b>2003</b>	336	102	30%
<b>2004</b>	271	109	40%
<b>2005</b>	283	106	37%
<b>2006</b>	114	56	49%

<sup>19</sup> Includes both full and partially successful appeals cases

<sup>20</sup> These figures do not include decisions relating to applications received during previous years – see Table 9

<b>2007</b>	99	46	46%
<b>2008</b>	128	65	51%
<b>2009</b>	247	82	33%
<b>2010</b>	240	142	59%
<b>2011</b>	225	146	65%
<b>2012</b>	394	331	84%
<b>2013</b>	204	148	73%
<b>2014</b>	110	83	75%
<b>2015</b>	157	95	61%
<b>2016</b>	143	78	55%

Source: Supplied by the Agriculture Appeals Office.

The Committee considers that the level of revisions is a clear illustration of the need for farmers to engage fully with the review system. This will result in reducing the number of appeals and provide for greater efficiency for both the Department and the Appeals Office.

In order to assist farmers there is a need to provide for consistency across the Schemes in respect of both the use of application forms and the introduction of similar deadlines for all Schemes. The application form should be accompanied a guidance document which should be scheme specific, to assist farmers in the submission of a comprehensive application for a review.

### ***3. The provision of documentation and covering statement to the Appeals Office by the Department of Agriculture, Food and the Marine***

Under 6 (2) of the Agriculture Appeals Regulations 2002 (S.I. No. 193 of 2002), the Department is required to provide the following documentation to the Appeals Office:

- “(a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and*
- (b) any information, document or item in the power or control of the deciding officer that is relevant to the appeal.”*

The Director of the Appeals Office is entitled under Section 6 (3) of the Regulations to fix a period for the provision of the information and documentation required under Section 6 (2) and the period has been fixed at 14 days.

**Table 16** below illustrates the time-period involved between the request for data by the Appeals Office and the date for the submission of the appellant’s papers (file) and the responding statement. The table shows the average number of response days since the 2002 and as is evident from the figures the 14-day deadline was not met in any of the years. In 2005, the average number of days (17 days) was the closest to the fixed time-limit of 14 days. In most years, the average number of days exceeded 30 days. The table also illustrates the averages for the four main Schemes - Basic Payment Scheme, Areas of Natural Constraint Scheme, REPS and AEOS.

**Table 16**  
**Provision of Documentation by Department of Agriculture, Food and the Marine to the Agriculture Appeals Office**

<b>Year</b>	<b>Average Number of days for all Schemes</b>	<b>Single Farm Payment/ Basic Payment Scheme</b>	<b>Disadvantaged Areas Scheme/Areas of Natural Constraints Scheme</b>	<b>REPS<sup>21</sup></b>	<b>AEOS<sup>22</sup></b>
<b>2002</b>	28	53	-	36	-
<b>2003</b>	25	33	29	29	-
<b>2004</b>	23	37	23	29	-
<b>2005</b>	17	28 <sup>23</sup>	17	26	-
<b>2006</b>	27	22	36	26	-
<b>2007</b>	33	52 (Area Aid) 16 (SPS)	87	28	-
<b>2008</b>	26	26	10	36	-
<b>2009</b>	34	30	38	34	-

<sup>21</sup> Rural Environment Protection Scheme

<sup>22</sup> Agri-Environmental Protection Scheme

<sup>23</sup> The Single Payment Scheme was implemented in Ireland in 2005. The data for previous years relate to the Area Aid Scheme

<b>2010</b>	32	22	-	40	-
<b>2011</b>	34	30	24	44	23
<b>2012</b>	48	52	77	56	47
<b>2013</b>	34	28	49	31	43
<b>2014</b>	34	28	69	39	54
<b>2015</b>	33	24 <sup>24</sup>	58 <sup>25</sup>	71	31
<b>2016</b>	35	37	77	-	26

Source: Prepared for the Review Committee by the Agriculture Appeals Office

#### ***4 The timescale for the completion of the appeal within the Appeals Office.***

##### ***Documentation from the Department***

The delays in the supply of documentation and covering statement by the Department has a direct impact on the prompt processing of appeals. The Committee considers, however, the 14 days fixed for the submission of the documentation etc. to the Appeals Office is not sufficient and should be extended. Many of the appeal cases relate to inspection cases and the level of documentation involved in such cases is substantial. In addition, appeals relating to Cross Compliance can be extremely complex. The delays in supplying the documentation etc. will have to be addressed by the Department

The implementation of the Committee's recommendations on the submission of the Department's documentation and covering statement would assist in making the process more efficient.

##### ***Oral Hearings***

The Act (Section 8 (1)) provides that an Appeals Officer shall, if so requested by the appellant, hold an oral hearing. The right to have an oral hearing is absolute if the appellant requests it. For

<sup>24</sup> The Basic Payment Scheme replaced the Single Payment Scheme in 2015.

<sup>25</sup> The Areas of Natural Constraints Scheme replaced the Disadvantaged Areas Scheme in 2015.

example, it appears that an appellant has the right to an oral hearing even if the Appeals Officer is of the view that he or she can decide on the basis of the documentation and submissions made by both parties. This provision is unusual when compared with other appeals systems which allow a degree of discretion to an Appeals Officer to decide whether to hold an oral hearing, principally on the basis that it will provide new information which is significant for the outcome of the appeal. The Committee suggests that the appeals process operated by the Social Welfare Appeals Office would provide useful guidance in this regard. The Committee is aware that oral hearings by the Social Welfare Appeals Office have been subject to consideration by the courts<sup>26</sup>.

The Committee notes that considerable efforts are currently made by the Appeals Office to hold oral appeals in locations that are proximate to the location of the appellant. For example, in 2016 appeals were hosted in 61<sup>27</sup> locations throughout the country. This directly impacts on the number of appeals that can be considered and the timeframe for progressing same. In addition, servicing such a large number of locations impacts directly on the efficiency of the administrative systems within the Department.

The Committee has made some recommendations in relation to oral hearings. In that regard, the Committee understands the following points are relevant:

- The actual staff cost and opportunity cost to all parties of holding an oral hearing for the appellant, the Appeals Office and the Department.
- The cost of cancelled oral hearings. For example, in 2016, 43 oral hearings were cancelled which can involve time consuming rescheduling.

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<sup>26</sup> Mel Cousins (2015) *From the Selected Works of Mel Cousins: Social Welfare Appeals, Appeal Revisions and Oral Hearings*, Trinity College Dublin [https://works.bepress.com/mel\\_cousins/85/](https://works.bepress.com/mel_cousins/85/)

<sup>27</sup> Source: Supplied to the Review Committee by the Agriculture Appeals Office

## 8. Recommendations

### Independence

#### 8.1 *Appeals Model*

An issue which was outlined in several of the submissions received under the public consultation was the independence and the perception of the independence of the Appeals Office arising from its links to the Department.

The Committee considers that in relation to the outcomes of the appeals decided since the Agriculture Appeals Office was established in 2002, the evidence would suggest that Appeals Officers do act independently of the Department of Agriculture, Food and the Marine. There are, however, mechanisms where the operation of the Appeals Office can provide for greater transparency and ways to increase the perception that the Appeals Office is independent from the Department.

#### 8.2 *Agriculture Appeals Review Panel*

A number of submissions received suggested the establishment of an independent panel to review cases received in the Appeals Office. The Committee considers that the Appeals Office should be retained as an independent office within the Department led by a Director as provided in legislation.

In order to provide greater assurance to stakeholders and underpin public confidence, **the Committee recommends the introduction of an independent Agriculture Appeals Review Panel**, where reviews of the decisions of Appeals Officers are sought, will considerably strengthen its procedures and underpin public confidence in the operation of the Office.

The support of all stakeholders for an appeals process that is independent, accessible, fair and timely is vital and in this context the Committee considers the recommended changes to the Appeals Office's appeals structure would support the mission of the Office.

The Panel should consist of five members, as follows: An Independent Chairperson, the Director of Agriculture Appeals Office and three additional members with technical and practical expertise. This recommendation will involve a legislative change.

The Panel would review the Appeals Office's file on a case and at its discretion could meet with the parties concerned before arriving at its decision. In addition, it is recommended that the Panel should approve the Appeals Office's Code of Practice and would monitor the Office's performance measures for processing its cases. The Committee also recommends the Department would report to the Review Panel on the length of time taken to respond to requests from the Appeals Office for information and files and also report summarised details of the decisions made on internal reviews by the Department. This report should present the data annually on a regional basis.

The current provision for further review 'at any time' should be changed. **The Committee recommends that the period within which a revision can be sought is six months from the date of decision by the Appeals Officer.** This recommendation will involve a legislative change.

The Committee notes that in many other jurisdictions there is a fee system for the lodging of and appeal. The Committee does not consider that a fee structure is appropriate for an initial appeal to an Appeals Officer. **However, the Committee considers that a fee is appropriate for progression of an appeal to the second tier, the independent Agriculture Review Panel, and suggests that the fee should be set by the Panel.**

**The Committee recommends that the secretarial support for the Panel should be provided by the Appeals Office.**

### **8.3 Recruitment of Appeals Officers**

**The Committee recommends that the Department should continue to broaden the pool from which Appeals Officers are recruited.** It was noted that in addition to selecting from existing staff, the Department had made a number of assignments of new entrants to the Department to the Appeals Office and that this mixture of experience and knowledge is to be welcomed.

Furthermore, with a view to broadening the pool from which assignments are made the Public Appointments Service should consider running a specific competency based open or inter-Departmental competition to recruit staff for the Appeals Office and the range of other administrative appeals bodies (e.g. Social Welfare Appeals Office, Student Grants Appeal Board) across the Government system.

#### **8.4 Training of Appeals Officers**

The Committee notes that there are plans in place to put a more formal programme of appropriate training (including legal training) in place for Appeals Officers in the Appeals Office.

**The Committee recommends that the current plans are developed further to allow for the introduction of a structured programme of knowledge and skills based training and continued development for Appeals Officers.** The Committee also has the view that there is an opportunity for a shared learning approach to be adopted with other appeals bodies and that this opportunity should be pursued.

#### **8.5 Code of Practice**

**The Committee recommends the Appeals Office publish a principles-based Code of Practice** in order to provide greater transparency and assurance to stakeholders in relation to the operation and independence of the Appeals Office. It is suggested that the Office and the Department should consider including commitments to the following elements in the Code of Practice:

- **Full Information** – An appellant should have access to all material which the Department has supplied to an Appeals Officer, including the Department’s file. **The Committee recommends that all contacts between an Appeals Officer and the parties to an appeal should be documented and disclosed to all parties. The Committee recommends that all parties to an appeal are informed of the attendees at an oral hearing at least two weeks in advance of the hearing.**
- **Conflicts of Interest and facility to request an alternate Appeals Officer** – The Committee recommends that the process followed by the Appeals Office in the context of a conflict of interest in relation to any case assigned to the Officer should be outlined in the Code of Practice.

- ***Comprehensive Report on Findings*** - The Committee recommends that the report on a finding by the Appeals Office should be timely and comprehensive in the interest of informing both the Department and the appellant.
- ***Communication*** - The Committee recommends the Appeals Office puts structures in place to ensure that appellants can be advised of the progress of their appeal.
- ***Recordings of Proceedings at Oral Hearings*** - In the interests of transparency, the Committee recommends that the Appeals Office consider recording oral hearings and providing a copy to all parties to the appeals.
- ***Advance Notice of Attendees/Evidence before Oral Hearing*** - The Committee recommends the Regulations (Section 5(5)) be amended to require both parties to submit a list of attendees s/he intends to have at an oral hearing and any new evidence two weeks before the date of the hearing. This recommendation will involve a legislative change.

#### **8.6 Quality Assurance and Consistency of Appeals Decisions**

The Committee recommends the Appeals Office hold case conferences and internal reviews of samples cases to ensure the consistency of decisions by Appeals Officers. Also, the Committee recommends that the Appeals Office develop its management information capacity to track cases and reports. This matter is referenced in the recommendation on the role of the Deputy Director.

#### **8.7 Reporting Arrangements**

The Act provides that the Director submits an Annual Report to the Minister for Agriculture, Food and the Marine. In addition, **the Committee considers that the Director of the Appeals Office engage with the Farmers' Charter of Rights Monitoring Committee** to discuss the *Suggestions by the Office for consideration by the DAFM* and the *Suggestions for scheme applicants arising from common errors by Scheme participants* sections of the Appeals Office's Annual Report. **The Committee recommends that general difficulties and issues raised by the Appeals Office, which are directed at both applicants and farmers should be submitted to the Farmers' Charter of Rights Monitoring Committee on an annual basis. Efforts should also be made to have these recommendations published in the farming media.**

## Efficiency

### ***8.8 Memorandum of Understanding between the Appeals Office to the Department***

**The Committee recommends that there should be a structured approach developed between the Appeals Office and the Department to ensure that there is appropriate feedback from the appeals system in relation to appeals outcomes.** The Committee accepts the suggestion of the Efficiency Review in relation to a Memorandum of Understanding and recommends its implementation.

### ***8.9 Information and Communication***

**There is a need to provide farmers with full details of the decision-making process from the time of initial decision and inspection, the review process, the Appeals Office, the Office of the Ombudsman and the right to initiate legal action. Such information should be provided as a hard and soft copy booklet so it can be available to all claimants. The Committee recommends that the booklet contain details of the different stages of the Department's review and the Appeals Office's appeal processes setting out the deadlines etc.** The details in the booklet should be updated as necessary. As the same findings arising from inspections and administrative decisions are used for different Schemes with different provisions, the booklet should provide clear guidance on when the time limits actually commence for each of the Schemes included in the Schedule to the Act. **It is also recommended that the booklet provide guidance to claimants on the type of information and correspondence they should submit at both the review and appeal stages.**

**The Committee recommends that the Department review its Schemes' documentation in the light of the Plain English initiative promoted by the National Adult Literacy Agency to ensure that it is as clear as possible to the applicants.**

### ***8.10 Engagement of Department with Appeals Process***

**The Committee recommends that the time limit for the submission of correspondence and the covering statement from the Department should be extended from 14 days to 21 days.**

Consideration should also be given to the electronic submission of documentation electronically

as most of the Schemes included in the Schedule to the Act are now fully online. Provision should also be made for the Department to seek approval for an extension to this time limit in complex cases and this can be granted by the Director if he or she deems it appropriate. There should be a robust system of following up Heads of Divisions of the Department, who do not adhere to the time-limit. **The Committee recommends that the Department publishes in its Annual Report details of the length of time taken to respond to requests from the Appeals Office for information and files.** The matter is referenced in the recommendation on the role of the Independent Agriculture Appeals Review Panel, discussed above.

In addition, in order to provide for greater efficiency in the processing of appeals, **the Committee suggests that the following matters be considered;**

- The allocation of the appeal to an appeals officer following confirmation that the appeal is valid. The Appeals Officer could then examine the documentation submitted by the appellant. It might be possible then that the Department could be asked for the inclusion of certain specified information in the covering statement, which should reduce the need to pursue follow-up queries.
- The provision of a set format for the Department's statement, which is forwarded to the Department with the relevant Department's papers on the appeal. This would lead to greater consistency in the information provided to the Appeals Office and streamline the information provided by the Department. The use of an on-line facility to submit this information could also be considered.
- Reference has already been made of the electronic transfer of the Department's papers on the appeal to the Appeal Office. The vast majority of the Schemes operated by the Department are on-line and fully automated. All supporting documentation, including inspection documentation, is scanned and is available electronically. Therefore, the possibility of making this documentation available electronically should be explored taking into account any issues that might arise from a Data Protection point of view.

#### ***8.11 Discretion in relation to holding an Oral Hearing***

**The Committee recommends that an Appeals Officer has discretion as to whether to hold an oral hearing and the appellant may appeal the Officer's decision to the Review Panel.** This recommendation will involve a legislative change.

### **8.12 Location of Oral Hearing**

**The Committee recommends that oral hearings by the Appeals Office should be held on a regional basis in public offices**, not necessarily Department of Agriculture, Food and the Marine or Government offices, perhaps having regard to the regional definitions underpinning the Department's Inspection function. In any event, it is recognised that an applicant should not have to travel an excessive distance to attend an oral hearing.

In addition, the Committee, with a view to improving efficiency and reducing cost for all parties, considers that oral hearings could be held on a 'virtual' basis through the use of technology such as Skype or other video conferencing programmes.

### **8.13 Deputy Director**

**The Committee recommends arrangements are made for the appointment of a Deputy Director as provided for in legislation.** It is important for business continuity of the Appeals Office that these arrangements are continuously in place. This matter has also been highlighted in the efficiency review. The Committee also considers that the Deputy Director should have a role in quality assurance of appeals processes and outcomes. This may involve a legislative change.

### **8.14 Allocation of Cases**

In accordance with the current provisions of the Act, **the Committee recommends that the Director should set down guidelines in relation to the allocation of cases** having regard to location, complexity, numbers, etc. having regard to location, complexity, numbers, etc. which could then be effected at administrative level within the Appeals Office.

### **8.15 Department's Review Process**

The level of revisions carried out by the Department during the appeals process is high. There are a number of reasons for this of which the main one is the additional information and documentation provided by appellants either as part of other their appeal application to the Appeals Office or during the oral hearing.

The Committee considered, however, that if this additional information and documentation could be considered as part of the review stage, then in many cases issues and concerns arising from the original decision could be brought to finality at an earlier stage. This would require more comprehensive engagement in the review process by both the farmer and the Department.

**Bearing in mind the number of cases, which are revised by the Department at the appeal stage, the Committee recommends that the Department undertake an examination of the robustness of its internal review process.** If the provision of information and decision making during the review process becomes more effective it will result in a reduction in the number of appeals directed to the Appeals Office. This will enable the Appeals Office to deal more promptly with the cases submitted by appellants to it. This will have the added benefit of processing cases more efficiently and effectively from the farmer's point of view at review stage by the Department and an appeal to the Appeals Office.

Whilst the Department's review process is not specifically referred to in the Committee's Terms of Reference, it has an impact on the level of appeals to the Appeals Office and in this context the Committee suggest that the Department should consider strengthening the Schemes' decision review processes. Measures to strengthen the current process could include the following:

- The robustness of the current review process.
- The need to provide farmers with comprehensive information of the review system and the type of information and documentation that should be submitted at the review stage.
- Provide for consistency for reviews across all Schemes by the introduction of application forms, which should where possible follow a similar format and also incorporate a scheme specific guidance note to assist in the completion of the form and the submission of all relevant supporting documentation.
- Set a consistent deadline – e.g. 21 days – for the receipt of review applications across all Schemes.
- The need to provide a detailed explanation to the claimant of the review decision.
- The Department publishes on a regional basis details of the number of reviews received and processed annually. The report should provide details by scheme of the average time for processing reviews. In addition, the report should incorporate details of the numbers (i) accepted, (ii) partially accepted or (iii) rejected.

- The Department should report these details to the Independent Review Panel on an annual basis
- The Department considers appointing a Regional Inspector from one region to consider the District Inspectors' review decisions in another region.

## Legislation

### 8.16 *Agriculture Appeals Act, 2001*

**The Committee recommends that the following amendments to the Agriculture Appeals Act, 2001 be considered** in order to give effect to its recommendations:

#### ***Section 4 – Deputy Director of Agriculture Appeals***

The Deputy Director position should be permanently filled rather than when the Director is not available as currently provided for in legislation. The Committee recommends the Deputy Director should have a wider role in the running of the Appeals Office, such as in quality assurance of appeals processes and outcomes.

#### ***Section 8(1) – Oral Hearings***

Appeals Officers should be given discretion to decide whether to grant an oral hearing and the Committee suggests that the Social Welfare appeals system would provide useful guidance in this regard. Also, the Committee recommends that appellants should have the right to seek a review of an Appeals Officer's decision not to hold an oral hearing by the independent Agriculture Appeals Review Panel.

#### ***Section 10 – Revised Decisions by Director and Appeals Officers***

Replace with a new Section setting out the role of the independent Agriculture Appeals Review Panel. The current provision for further review 'at any time' should be changed. The Committee recommends that the period within which a revision can be sought is six months from the date of decision by the Appeals Officer.

## **11 – Appeals to High Court**

Replace Section (b) to refer to the independent Agriculture Appeals Review Panel.

### **8.17 Agriculture Appeals Regulations 2002**

**The Committee recommends that the following amendments to the Agriculture Appeals Regulations 2002 be considered:**

#### ***Section 3***

Amend to allow the Director to make arrangements for the allocation of appeals.

#### ***Section 5(2)***

Clarification on point at which the three-month period begins for reviewing an appeal in the Appeals Office.

#### ***Section 5(4)***

Clarify whether this Section is in agreement with Section 13 (3) in relation to the introduction of new evidence at an oral hearing.

#### ***Section 5(5)***

Amend to require both parties to submit a list of attendees s/he intends to have at an oral hearing and any new evidence two weeks before the date of the hearing.

#### ***Section 8***

Amend to set out timescales for the actions under this section.

#### ***Section 10***

Amend to hold hearings on a regional basis and allow holding a hearing by video conference.

#### ***Section 12***

Amend to require an Appeals Officer to give a reason for taking this decision.

**Section 13**

Amend to require the appellant and the Department of Agriculture, Food and the Marine to submit a list of attendees s/he intends to have at an oral hearing and any new evidence two weeks before the date of the hearing and allow the recording of hearings.

**Section 13 (3)**

Clarify whether this Section is in agreement with Section 5(4) in relation to the introduction of new evidence at an oral hearing.



## **Appendix 1**

### **Extract from Farmers' Charter of Rights (2015 – 2020)**

#### **Review/ Appeals Procedures**

##### **Internal Review**

Requests for review or appeal can arise for many reasons. Appeals may arise from administrative checks or from the inspection process, be it remote or on the ground. The process provides in the first instance for an internal review within the Department followed by an external review if necessary.

##### **Administrative Procedures Review**

Where farmers are unhappy with the outcome of their scheme application or administrative requirements they may, in the first instance, seek in writing, a review of the decision. Reviews can be sought in the first instance from the manager of the particular payment section {scheme} involved. In the case of payments under the Basic Payment Scheme (BPS), initial review requests should be addressed to: Decision maker name (usually HEO/Manager), The Direct Payments Unit. See Annex 3 for contact details.

##### **Ground Inspection Cases (Eligibility/Greening/Cross Compliance) Review**

For the BPS, if the farmer is dissatisfied with the inspection findings he/she can seek a review of the decision to the relevant District Inspector, as detailed in the inspection findings notification letter (FN letter).

##### **Remote Sensing Inspections Review**

If the farmer wishes to seek a review of the results of a remote sensing inspection he/she can submit a review request to Remote Sensing Inspections Sections. See Annex 3 [of the Charter] for contact details.

##### **Other Inspections Review**

Where the applicant is not happy with any other inspection findings he/she can seek a first stage internal review within the inspection service. Notice of findings letters will provide details on the appeal options available and the contact details.

### **Appeal**

If the internal review does not resolve the position to the satisfaction of the farmer, appeals can be made to the Appeals Office, which is an independent statutory agency, which provides an independent, impartial and free appeals service to farmers who are dissatisfied with decisions of DAFM regarding their entitlements under certain Schemes. Appeals must be submitted to the Appeals Office within three months of the date of letter of notification to the farmers of the final decision of the Department. In certain cases, where the director considers it appropriate, this 3 month deadline can be extended on a case-by-case basis. The Agriculture Appeals Act, 2001, along with the Agriculture Appeals Regulations 2002 (as amended), set down the functions of the Appeals Office, the decisions that may be appealed and the procedures to be followed in respect of agriculture appeals. From the date of receipt of all relevant documentation, the Appeals Office will aim to conclude its findings within a 3-month period.

Full details of appeals procedures, including details of the Schemes covered are available on the Agriculture Appeals Office website at [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie) or from the Department's local offices. Appeals should be addressed to the Agriculture Appeals Office. See Annex 3 for contact details. If at the end of the appeals procedure the applicant feels his/her case has not been dealt with properly they can seek the assistance of the Ombudsman by contacting the Office of the Ombudsman. See Annex 3 for contact details.

## **Appendix 2**

### **Public Consultation: Submissions Received**

#### **Name**

1. A Wickham
2. B Sheehan
3. E Bradley
4. Irish Creamery Milk Suppliers Association (ICMSA)
5. Irish Farmers' Association (IFA)
6. Irish Natura and Hill Farmers Association (INHFA)
7. J Buckley
8. J Daly
9. J Dwane
10. J Kirwan
11. J Murphy
12. Houses of the Oireachtas - Joint Committee on Agriculture, Food and the Marine
13. L McGeeney
14. M Carroll
15. North Tipperary Irish Farmers' Association
16. T Sheahan
17. T Walsh
18. T. Sheahan
19. Waterford Irish Farmers' Association
20. Wicklow Irish Farmers' Association



## **Appendix 3**

### **Other Administrative Appeals Systems within Ireland**

#### **Social Welfare Appeals Office**

The Social Welfare Appeals Office operates independently of the Department of Employment Affairs and Social Protection. It decides on appeals where a person is not satisfied with a decision of the Department. It is headed by a Chief Appeals Officer and has its own Appeals Officers who are independent and decide on appeals.

An appellant can make an appeal within 21 days of receiving the decision. The Chief Appeals Officer has discretion to extend this period in certain limited circumstances. An appeal can be made by completing a form or by setting out the grounds of the appeal in a letter or by email.

The appellant is asked to supply their name, address and Personal Public Service (PPS) number and enclose a copy of the decision s/he is appealing against, a statement of the reasons s/he is dissatisfied with the Department's decision, and any relevant evidence that s/he thinks may support the appeal. The appellant is advised to obtain any information or copies of documents that the Department used in reaching the decision by contacting the relevant scheme area of the Department and it know that information is required in order to make an appeal.

When the appeal is registered in the Appeals Office, the appellant will receive an acknowledgement. The appeal is sent to the Department for comment. The Deciding Officer or Designated Officer may change the decision in the appellant's favour at this stage because of new evidence provided. If the decision is not changed, the appeal will be returned to the Appeals Office for consideration by an Appeals Officer. The Appeals Officer will make a decision based on the evidence available and taking account of the scheme qualifying conditions which are set out in legislation. This may be done on the basis of the written evidence only or the appellant may be invited to attend an oral hearing. If the appellant requests an oral hearing it will always be granted, unless it is clear that there is nothing to be gained from such a hearing.

The Appeals Officer may decide to hold an oral hearing to obtain more details about a case or to clarify points which are at issue in relation to the decision which is under appeal. The appellant may wish to request an oral hearing because s/he may wish to elaborate on some aspect of the evidence or considers that s/he can better make a case if s/he appears in person to present evidence.

A request for an oral hearing will not be granted where there is no prospect that additional information could be provided that would affect the outcome of an appeal. Examples of such types of appeal include the following:

- Appeals against assessment of means on the grounds that the assessment did not take into account expenses such as payment of mortgage/rent, utility bills, loans etc. In these types of cases, if the legislation does not allow for such expenses to be taken into account then an appeal on this basis would have no chance of success.
- Appeals relating to PRSI conditionality where a minimum number of contributions are required to qualify. If an appellant does not have sufficient contributions there would be nothing to be gained from an oral hearing.

There is no charge for making an appeal. If an appellant has to travel to attend an oral hearing, the Appeals Office will make a payment to him/her for reasonable travel expenses. An appellant can also request compensation for any loss of earnings if s/he has to take time off work to attend the hearing.

Whilst there is no need for an appellant to be legally represented to make an appeal, s/he may be represented by a solicitor or another person if s/he wishes. The Appeals Officer may make an award to that person if they represent an appellant at an oral hearing. However, this award is limited to expenses for attending the hearing. Any legal costs must be paid by the appellant.

The Appeals Office will send a letter, setting out the appeal decision in writing. This will be done as quickly as possible following consideration of an appeal. If the appeal is not successful, the Appeals Officer will explain why. A copy of the decision is also sent to the Department.

The Appeals Officer's decision is normally final and conclusive but may be appealed to the High Court on any question of law. However, it may be subject to review in the following circumstances:

- by an Appeals Officer where new facts or evidence which are relevant to the original decision are brought to notice since the appeal decision was given, or

- by the Chief Appeals Officer where it is considered that the decision was wrong by reason of a mistake in relation to the law or the facts.

In making a request for a review of an appeal decision the appellant must enclose the new evidence, or, if s/he is seeking a review by the Chief Appeals Officer, must give specific reasons why s/he believes a mistake has been made regarding the law or the facts.

### **Aquaculture Licences Appeals Board (ALAB)**

An appeal can be lodged with the Aquaculture Licences Appeals Board (ALAB) within a month of the publication of the Minister's decision to grant, renewal or regarding a condition of an aquaculture licence. The appeal is verified by ALAB for compliance with S.41(1) and S.55 of the Fisheries (Amendment) Act 1997, as amended. Details of the appeal are posted on the ALAB website where third parties can make submissions within a month of the receipt date of the appeal (S.45(1)). Copies of the appeal/s are sent to the licensee and any other appellant/s if any, and submissions are invited within a month. Copies are also sent to the Minister to provide his file within 14 days (S.43(2)).

Copies of all appeals, the Minister's file and all submissions are supplied to all members of the Board who proceed through a formal process laid down by the Act to consider the appeal. On examination of the documentation, the Board considers whether it has sufficient information to determine the appeal, whether additional information is required pursuant to S.47 or whether technical advice is required. If so, a tender process is carried out to engage an advisor. The Technical Advisor prepares and presents a draft report at a Board meeting. The Board on its own or at the request of a party may in its absolute discretion hold an oral hearing. The Board endeavours to determine an appeal within four months of receipt. S.48 provides for the time to determine an appeal to be extended, if required. When the Board has formed the view that it has all the information necessary, the appeal is determined in accordance with S.61. Notifications and Determinations issue to all the relevant parties. The decision is posted on the ALAB website together with the technical report.

### **The Employment Appeals Tribunal**

The Tribunal was established to provide an inexpensive and relatively informal means for the adjudication of disputes on employment rights under the numerous pieces of legislation that come within the scope of the Tribunal's work. Hearings before the Tribunal are in public. In exceptional

circumstances, on the application of a party, the Tribunal may hear a case in private. The Tribunal deals only with employment rights.

The Tribunal secretariat sets a date for a hearing and communicates this to the parties concerned by registered post. Hearings are held in Dublin and in various locations throughout the country.

Hearings are held in public unless the Tribunal, at the request of either party, decides to hear the evidence in private. A private hearing is only allowed in special circumstances and an application for an '*in camera*' hearing must be made at the beginning of a hearing.

A three-member Division of the Tribunal hears the case. The division will consist of a chairman, one member nominated by an employers' group and one member nominated by ICTU. These nominees/members are there to provide their knowledge and expertise in eliciting the evidence and assist in the decision-making function.

Following the hearing of the case the Tribunal will make a determination, which is recorded in a document signed by the Chairman of the Division and sealed with the seal of the Tribunal. Written determinations are final and conclusive, subject only to the appropriate avenue of legal appeal to the Higher Courts.

The length of time it takes for a determination to issue can depend on a number of variables including, *inter alia*, the complexity of the case or receipt of written legal submissions from the parties. In light of this, determinations issue as soon as possible after the hearing.

If a determination e.g. unfair dismissal is not appealed within six weeks of the date of its receipt by the parties, then the employee can take steps to have it implemented. Implementation is effected by the Circuit Court. All determinations of the Tribunal are legally enforceable.

### **Student Grants Appeals Board**

If an applicant is aggrieved by a determination of an awarding authority, he/she can appeal to an appeals officer in the grant awarding authority which made the decision. Such appeals are required to be made not later than 30 days after receipt of the notice of the determination. This period may be extended by a further 30 days if the appeals officer is satisfied that the person has given reasonable cause to so extend. The appeals officer must make a determination within 30 days.

If the applicant is aggrieved by the determination of an appeals officer, he or she may appeal to the Appeals Board against that determination. The applicant must submit his or her appeal not later than 30 days after the notification of the determination of the appeals officer.

The Student Grants Appeals Board has 60 days in which to make a determination on an appeal. An applicant will be informed in writing of the Appeals Board's decision.

The role of the Appeals Board in examining an appeal is to determine whether the terms and conditions relating to the Student Grant Scheme and associated legislation, were applied correctly. It is not open to the Appeals Board to depart from the terms and conditions of the grant scheme in an individual case, regardless of individual or personal circumstances.

If an applicant is aggrieved by a determination of the Appeals Board, he or she may appeal to the High Court against the determination on a specified point of law.

### **The International Protection Appeals Tribunal**

The International Protection Appeals Tribunal (IPAT) was established in accordance with section 61 of the International Protection Act, 2015. The Act was commenced on 31 December 2016, at which time the functions of the former Refugee Appeals Tribunal transferred to the International Protection Appeals Tribunal.

The Tribunal decides appeals of those persons whose application for international protection status has not been recommended by an International Protection Officer; whose application for international protection has been deemed inadmissible by an International Protection Officer; or whose applications to make a subsequent application for international protection has been refused by an International Protection Officer.

The Tribunal is a statutorily independent body and exercises a quasi-judicial function under the International Protection Act, 2015.

An appeal is dealt with by a Member of the Tribunal. Members of the Tribunal are independent of the Minister and the International Protection

An application can request an oral hearing or an appeal based on papers. Where an applicant does not request an oral hearing or is not entitled to request one, a Member of the Tribunal, unless it is considered not in the interests of justice to do so, will consider the appeal based on the papers submitted.

The applicant is notified in writing of the decision of the International Protection Appeals Tribunal and a copy of the decision is to the Department of Justice and Equality.

## Appendix 4

### Documents considered by the Committee

Agriculture Appeals Office (2017) *Procedures Manual*, [www.agriappeals.gov.ie](http://www.agriappeals.gov.ie)

Dáil Éireann, *Joint Committee on Education and Social Protection*, Wednesday, 20 February 2013, [www.oireachtas.ie](http://www.oireachtas.ie)

Department of Agriculture, Food and the Marine (2017) *EU Basic Payment Scheme (BPS)/Greening Payment Terms & Conditions*, [www.agriculture.gov.ie](http://www.agriculture.gov.ie)

Employment Appeals Tribunal (2015) *Guidelines for Employees, Employers, and Practitioners appearing before the Employment Appeals Tribunal*, [www.workplacerelations.ie](http://www.workplacerelations.ie)

FLAC (2012) *Not Fair Enough: Making the Case for Reform of the Social Welfare Appeals System*, [www.flac.ie](http://www.flac.ie)

Mel Cousins (2015) *From the Selected Works of Mel Cousins: Social Welfare Appeals, Appeal Revisions and Oral Hearings*, Trinity College Dublin [https://works.bepress.com/mel\\_cousins/85/](https://works.bepress.com/mel_cousins/85/)

Office of the Ombudsman (2016) *Model Complaints System and Policy: The Ombudsman's Guide to developing a Complaint Handling System* [www.ombudsman.ie](http://www.ombudsman.ie)

Office of the Ombudsman (2013) *Six Rules for getting it Right: The Ombudsman's Guide to Good Administration* [www.ombudsman.ie](http://www.ombudsman.ie)

Social Security Administration (2017) *The Appeals Process*, Publication No. 05-10041, USA Government [www.ssa.gov](http://www.ssa.gov)

Social Welfare Appeal Office (2016) *Social Welfare Appeals Office: An Introduction Process*, [www.socialwelfareappels.ie](http://www.socialwelfareappels.ie)