



Oifig an Cheannaire Oibríochtaí,
Na Seirbhísí Míchumais/An Rannán Cúram Sóisialta,
31-33 Sráid Chaitríona, Luimneach.

Office of the Head of Operations,
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5th April 2022

Deputy Pauline Tully
Dail Eireann,
Leinster House,
Kildare Street,
Dublin 2.
E-mail: pauline.tully@oireachtas.ie

Dear Deputy Tully

The Health Service Executive has been requested to reply directly to you in the context of the following parliamentary questions, which were submitted to this department for response.

PQ: 14383/22

To ask the Minister for Health the number of cases that have been taken against the State in each year since 2005 under the Disability Act 2005 for overdue assessment of need; the amount in legal costs paid by the State; the overall amount of settlements awarded; and if he will make a statement on the matter.

PQ: 14384/22

To ask the Minister for Health the number of current or open cases being taken against the State under the Disability Act 2005 for overdue assessment of need; and if he will make a statement on the matter.

HSE Response

Section 14 of the Disability Act

Section 14 of the Disability Act outlines a number of grounds for complaint in relation to Part 2 of the Act. An applicant may make a complaint in relation to one of more of the following:

- a) a determination by the assessment officer concerned that he or she does not have a disability;
- b) the fact, if it be the case, that the assessment under section 9 was not commenced within the time specified in section 9(5) or was not completed without undue delay;
- c) the fact, if it be the case, that the assessment under section 9 was not conducted in a manner that conforms to the standards determined by a body referred to in section 10; PT. 2 S. 12 [No. 14.] Disability Act 2005 [2005.];
- d) the contents of the service statement provided to the applicant;
- e) the fact, if it be the case, that the Executive or the education service provider, as the case may be, failed to provide or to fully provide a service specified in the service statement.

Section 22 provides detail regarding the system whereby an applicant can apply to the Circuit Court for an enforcement order should the HSE fail



- i. to implement in accordance with its terms a determination of the appeals officer in relation to an appeal under section 18, or
- ii. to give effect to a resolution arrived at under section 19, or to implement in full a recommendation of a complaints officer

Section 22 of the Act goes on to describe the statutory enforcement process via the Circuit Court system. For a period prior to 2018 there were delays investigating complaints under Section 14 of the Act. As a consequence, a number of families initiated Judicial Review proceedings in the High Court on the basis that the statutory remedy was inadequate (n = 29 cases). The resulting judgements stated that, in the absence of delays, the statutory remedy presents a viable remedy for applicants. Since 2018, applicants have utilised the enforcement mechanism via the Circuit Court.

Enforcement orders via the Circuit Court system may relate to one or more of the grounds for complaint under the Disability Act (as outlined above). It is not possible to separate out the information that pertains specifically to delayed Assessments of Need. The table below provides information on all of the Circuit Court Cases taken in relation to all of the grounds of complaint.

	Enforcement Order, Circuit Court
2018	8
2019	53
2020	63
2021	52
Total	176

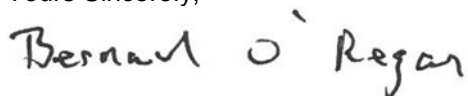
With regard to the amount in legal costs paid by the State and the overall amount of settlements awarded, no damages/settlements have been paid to applicants in connection with these cases.

The average cost of a Circuit Court Case is €4,000 + VAT.

The HSE remains committed to the delivery of appropriate services for children with disabilities and will work with families and staff to develop services that meet their needs.

Of note, children do not require an Assessment of Need to access health services.

Yours Sincerely,



**Mr Bernard O'Regan,
Head of Operations - Disability Services,
Community Operations**

