



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

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12th April 2022

Deputy David Cullinane,
Dail Eireann,
Leinster House,
Kildare Street,
Dublin 2.
E-mail: david.cullinane@oireachtas.ie

Dear Deputy Cullinane,

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 16527/22

To ask the Minister for Health the number of separate court cases taken against the HSE in relation to the Disability Act 2005; and if he will make a statement on the matter.

PQ 16528/22

To ask the Minister for Health the number of legal actions taken against the HSE under the Disability Act 2005; and if he will make a statement on the matter.

PQ 16529/22

To ask the Minister for Health the number of legal cases settled by the HSE in respect of the Disability Act 2005; and if he will make a statement on the matter.

PQ 16530/22

To ask the Minister for Health the total cost to the State of all legal costs incurred in relation to cases taken against the HSE, heard in court or settled under the Disability Act 2005; and if he will make a statement on the matter.

PQ 16545/22

To ask the Minister for Health the number of times the HSE has been found to be in breach of the Disability Act 2005; and if he will make a statement on the matter.

PQ 16546/22

To ask the Minister for Health the number of court cases in which he or the HSE was cited in relation to the Disability Act 2005; and if he will make a statement on the matter.



PQ 16549/22

To ask the Minister for Health the total legal cost to the State of all court cases taken in relation to the Disability Act 2005; and if he will make a statement on the matter.

PQ 16553/22

To ask the Minister for Health the number of times the HSE has sought and received legal advice in relation to its compliance with the Disability Act 2005; 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). The table below provides information on all of the Court Cases taken in relation to all of the grounds of complaint.

	Enforcement Order, Circuit Court	Judicial Review, High Court
2018	8	9
2019	53	41
2020	63	38
2021	52	27
Total	176	115

With regard to the amount in legal costs paid by the State, the delegation to the State Claims Agency (SCA) of the management function in relation to claims for costs took effect on 29 May 2018 under SI 191 2018.

Prior to that, the HSE discharged claims for costs amounting to €100,103 in 2018.



At this point in time, the SCA have not sought reimbursement from the HSE of payments made by SCA for claims for costs arising from AON litigation.

The HSE's own legal costs are set out below:

	Amount
2018	€ 40,020
2019	€ 274,618
2020	€ 386,177
2021	€418,005
Total	€ 1,118,820

There have been 176 applications to the Circuit Court for enforcement orders under Section 22 of the Disability Act. These cases relate to the grounds for complaint listed above. The HSE does not resist these enforcement orders.

Judicial Review cases in the main address some wider issues relating to the AON process for example the requirement for referral to the National Council for Special Education and the provision of reviews.

Of note, a small number of cases have also been escalated to the Court of Appeal and Supreme Court. These cases reflect the complexity of the legislation and the conflicting interpretations of same.

The management of legal cases relating to the Disability Act (2005) requires on-going engagement with and advice from the HSE's legal advisors.

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



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