IPAT Response to the
Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process
(May 2020)

The International Protection Appeals Tribunal (hereinafter referred to as 'the Tribunal') has been asked by the Advisory Group to provide its views/ideas for making possible improvements to the international protection process, and whether or not such changes may require legislative amendment in due course.

In that regard, the Tribunal has been informed that a meeting will be arranged between the Chair and Members of the Advisory Group and the Chairperson and senior management team of the Tribunal to hear the views of the Tribunal and to help identify key blockage points and steps in the process which could be removed or streamlined.

Among the issues on which the Chair is looking for views are the following:

1) *"What additional resources would be required in the **IPAT** for the speed up of decision-making. The Group is engaging with the IPO/ISD about first instance decisions being made in 6 months having regard to a baseline figure of 2,500 to 3,000 applications per year. This could be adjusted upwards or downwards depending on trends, and resource requirements would change accordingly.*

2) *What else (apart from resources) is needed in the **IPAT** to speed up/streamline the IP process including reform of key documentation. There is a recognition that any changes made should not undermine quality of appeal decisions.*

3) *How could **enhanced information technology** assist the IPAT in streamlining work processes - for example,*
    i. *document scanning, greater use of video conferencing*
    ii. *move to a paperless process as is the case in the protection system in Norway and Finland*
    iii. *introduction of the whole of process tracking system*
    iv. *use of video conferencing for appeals hearings*
    v. *see also 10 below.*

4) *Have you any examples of **business processes which could be outsourced** to increase efficiency and enable staff/Members to concentrate on decision making functions and other functions which can only be done by Members/staff?*

5) *Whether any business process mapping has taken place regarding the IPAT work processes which would indicate blockages to be dealt with.*

6) *Do you agree that 6 months is a reasonable time period for an application to be processed in the system?*

7) *Why were the McMahon Report recommendations in relation to decision making not been fully achieved? (McMahon recommendation was a quality decision in 6 months)*

8) *Having regard to all that is being done already including decentralised interviews at first instance, can any further action be taken to improve the interview/hearings process – including timelines for hearings/interviews and interviewer training?*

9) *The Chair wonders if legal practitioners can be allowed an enhanced role at hearings.*

10) *What is your view on the possible introduction of a fully automated processing system linking in decision making bodies and IPAS accommodation to include automated scheduling, remote case file processing, programmed alerts for blockages/build-up of backlogs etc."*

The Tribunal will provide its initial views on the matters listed above in as much detail as possible below and we look forward to meeting with the Chair and Members of the Advisory Group to discuss the issues raised and ways in which the international protection process could be further improved.

1. Introduction and context

Before addressing each of the matters in turn, the following information may be useful context for the Chair and Members of the Advisory Group:

As set out in the Tribunal's annual report for 2019 (Annex 1), the Tribunal had 1,544 appeals on hand at the beginning of the year and, in addition to that, the number of appeals under the International Protection Act 2015 and European Union (Dublin System) Regulations 2018 submitted to the Tribunal in 2019 reached a total of 2,043, compared to a total of 2,127 such appeals reaching the Tribunal in 2018. The Tribunal ended the year with 1,558 such appeals pending before it.

Additionally, the Tribunal received 21 appeals under the European Communities (Reception Conditions) Regulations 2018 during the course of the year, amounting to a total of 2,064 appeals reaching the Tribunal in 2019.

The number of appeals scheduled for hearing in 2019 stood at 2,633, an increase of 53.6% when compared to the number of hearings scheduled in 2018 (1,714). The total increase of the number of hearings scheduled by the Tribunal over the two-year period from 2017 (616) to 2019 (2,633) now stands at 327%, showing a significant impact of measures taken by the Tribunal in this period to increase its efficiency.

These measures also impacted positively on the Tribunal's productivity with regard to the completion of appeals. The number of decisions issued by the Tribunal in 2019 totalled 1,944, a further increase of 78% from the previous year. Additionally, the Tribunal completed 236 appeals which were 'no shows' or appeals that were withdrawn or deemed withdrawn. Over the two-year period from 2017 (680) to 2019 (2,180), the Tribunal's overall output regarding decisions and otherwise completed decisions increased by 221%.

The average length of time taken by the Tribunal to process and complete substantive international protection appeals in 2019, including 'transition cases', which continue to fall under the previous bifurcated system, was approximately 170 working days (= 8 months). However, in relation to appeals that were both accepted and completed within 2019, the average processing time was significantly reduced to 100 working days (= 4.7 months). The processing times for appeals during the year were impacted by several factors, including a high number of postponements, which were based on a pending High Court challenge against the validity of the underlying recommendation from the IPO under s.39(3) of the International Protection Act 2015 and an injunction granted by the Court of Appeal in the matter of *RS v The Chief International Protection Officer & Ors* [2018] IECA 322 in October 2018.

For 2020, the Tribunal has set as an objective that the average processing times for appeals, where an oral hearing is required, will be reduced to 90 working days (= 4.3 months). However, it must be acknowledged that there are number of factors outside the control of the Tribunal that could impede this, including the availability of adequate resources and postponements of hearings. Additionally, the Covid-19 public health emergency will of course have a significant impact on the Tribunal's ability to deliver on its targets in 2020 (and possibly beyond).

As set out above, the Tribunal has effectively held the number of cases 'on hand', completing just over the number of appeals which reached it throughout the year 2019.

However, it must be noted that with the Tribunal having achieved a 221% increase in output over a two-year period while maintaining and further improving the quality of its decision making – without an increase in agreed staff levels or its budget – any further increase will not be possible without at least some level of investment and the provision of the necessary supports by the Department of Justice and Equality.

2. Tribunal's replies to the questions raised by the Advisory Group

2.1. What additional resources would be required in the IPAT to enable faster decision-making?

As set out above, over the two-year period from 2017 (680) to 2019 (2,180), the Tribunal increased its overall output regarding decisions and otherwise completed decisions by 221%. However, it must be noted that this increase in output, which the Tribunal delivered while maintaining and further improving the quality of its decision making and without an increase in agreed staff levels or its budget, cannot continue without at least some level of investment and the provision of the necessary supports by the Department of Justice and Equality.

There are a number of measures the Tribunal has already considered and, where possible, is in the process of introducing, that are designed to enable the Tribunal to achieve a further increase in its output. Any such measures will of course be balanced against the Tribunal's mission to administer, consider and decide appeals to the highest professional standards, to ensure that the functions of the Tribunal are performed efficiently, and to ensure that the business assigned to each Tribunal Member is disposed of as expeditiously as may be consistent with fairness and natural justice.

The following are areas in which improvements of the Tribunal's service delivery are currently either in the process of introduction or under active consideration:

- Case management and decision software
- Scanning and electronic document sharing
- Remote and/or audio-video hearings

These will be detailed further below and while the Tribunal has a strong focus on its obligation to deliver value for money, each of the measures will of course have some resource implications. However, it is expected that on balance, any of the measures taken and proposed by the Tribunal will continue to achieve an overall reduction in expenditure.

Resources will specifically be needed in the following areas:

2.1.1. Case management and decision software

The potential usefulness of software for facilitating better management of cases and decision-making is clear and would:

- allow for online submission of notices of appeal, and all other pleadings and documents and submissions;
- allow for a means of closing pleadings in order to provide clarity of all parties in respect of the documents and evidence before the Tribunal;
- ensure that all parties have the same schedule of pleadings and documents;
- allow for easier scheduling of hearings;
- ensure the booking of interpreters in order to ensure adequate communication at hearings;
- allow for increased efficiency in seeking adjournments and postponements;
- give Members easy and effective access to easily editable decision making templates that are also formatted in a rigorous and robust fashion;
- give Members easy and intuitive access to legal guidance and developments relevant to their decision making;
- allow Members submit and sign/seal their decisions online.

In this regard, the Tribunal is formulating plans for better use of technology and intends to factor this into its Strategy going forward, and will for that purpose to seek assistance from the Department through the provision of IT support/shared services.

2.1.2. Scanning and electronic document sharing

Outside of the potential future development of case management and decision making software, the Tribunal has been engaging with the Department/ IPO in relation to the introduction of the scanning of files and electronic document sharing pursuant to the International Protection Act 2015 and other relevant legislation.

Considerable progress had been made on this issue but progress is currently suspended due to covid-19 restrictions. It had been hoped that the Tribunal would be furnished with only the documents to which it is entitled under the legislation, ensuring equality of arms for all parties and streamlining the process in line with legislative requirements and making the system more efficient.

An electronic submissions system, whereby the Notice of Appeal and all relevant documentation under s.44(1) and (2) of the International Protection Act 2015 as well as any submissions made by or on behalf of the appellant and/ or the Department/ IPO would be automatically stored and available to all parties by way of password restricted access would bring significant time savings for both Tribunal Members and Tribunal staff.

Moreover, the Tribunal is currently in the process of introducing the use of digital signatures which will enable it to further decrease its processing times as part-time Tribunal Members

will no longer have to travel to the Tribunal in order to sign decisions before they can be issued and the Member's fee paid.[1]

The introduction of digital signatures and the scanning of documentation should ideally be combined with the introduction of the electronic submission of appeals and accompanying documentation to the Tribunal along the lines suggested at 2.1.1. above (at least in cases where an appellant is legally represented, which is the case in 98% of appeals submitted to the Tribunal).

2.1.3. Remote/ audio-video hearings

The Tribunal has made a proposal to the Department to put in place a means of convening oral hearings remotely by way of audio-video link. In that regard, it is envisaged, once approved by the Department, that video conferencing facilities will be established in all of the following locations:

- Tribunal building/hearing rooms or agreed locations at facilities already in place within other state bodies/agencies (e.g. court buildings with video link facilities) or, depending on the circumstances, Tribunal Members' offices/home location,
- Appellant's location, e.g. Direct Provision Centre or Emergency Accommodation
    - via hardware supplied by the accommodation centre/ISD or provided by and returned to the Tribunal/DJE Shared Services), or
    - via 'Mobile Hearing Room' – adapted minibus/van that could provide facilities where and when required on a mobile/flexible basis,
- Accommodation centres via hardware supplied by the accommodation centre/ISD or provided by and returned to the Tribunal/DJE Shared Services) – initially this would need to be piloted in a small number of locations,
- Office/home location of the Appellant's legal representative (via hardware owned by the solicitor/barrister),
- International Protection Office or other location within the DJE (via hardware in place in the IPO/DJE Shared Services), and
- Office/home location of the interpreter (via hardware owned by the translation agency/the interpreter himself/herself).

While it is not expected that investment will be necessary to provide audio-video conferencing facilities in the offices of appellants' legal representatives, the Presenting Officers for the Minister or the interpreters, it will be necessary to invest in video-

[1] There is no legal requirement for Tribunal decisions to be signed by a Tribunal Member, however, at present, the Members' contracts with the Department contain such requirement and a Member's signature is viewed as having symbolic value as it can be seen to 'officiate' the decision by way of 'final seal'.

conferencing software, hardware in Direct Provision Centres/ Emergency Accommodation and also in the premises of the Tribunal. Moreover, training in the use of video-conferencing software as well as in the conduct of hearings in an international protection context will be necessary.

2.2. What else (apart from resources) is needed in the IPAT to speed up/streamline the IP process, including reform of key documentation. There is a recognition that any changes made should not undermine the high quality of Tribunal decisions.

There are a number of measures that the Tribunal has identified which could further assist it in ensuring faster decision-making while of course ensuring that the high quality of its decisions is not undermined. These include

- reduction of postponements of Tribunal hearings
- faster delivery of decisions by Tribunal Members post-hearing
- improvements to the appointments and terms of office of Tribunal Members
- proposed legislative amendments – correction of errors or omissions

and will be further detailed below.

2.2.1. Reduction of postponements

The Tribunal will need to reduce the number of postponements of hearings / decision-making. In that regard, the following reasons for postponements have been identified:

- legal rep unavailable/requesting more time, including for medical reports – 28.48%
- appellant unwell/DP quarantine – 18.87%
- interpreter issues (e.g. unavailable, wrong dialect, below standard) – 11.22%
- legal proceedings (e.g. regarding the application of Article 17 Dublin III discretion) – 9.28%

Appellants/legal reps – requests for postponements

The above analysis shows that determination of appeals can be drawn out because of the unavailability, at short notice, of legal representatives for applicants' oral hearings. A part of the reason for this may be the relatively low level of remuneration for legal representatives dealing with appeals before the Tribunal. In that regard, an online case management system (preferably by way of a software app), that would include a facility for confirming attendance

of all parties and legal representatives, would assist significantly in minimising short notice postponements.

The analysis further shows that the determination of appeals can be drawn out because of delays in obtaining potentially critical medical evidence. Where such evidence appears potentially material, the Tribunal typically will adjourn proceedings until that evidence is available. However, there is high demand for such expert reports, and the resources available to the organisation usually relied on, SPIRASI, are limited. It would assist with the speedy determination of appeals if SPIRASI could be better resourced, or if the capacity of other relevant organisations could be increased to enable them to provide a similar service.

Moreover, where an appellant's ability to attend and give evidence at a hearing is in question, section 23(2) of the International Protection Act 2015 provides that *"(W)here in the performance by the Tribunal of its functions (…), a question arises regarding the physical or psychological health of the applicant, the Tribunal may require the applicant to be examined, and a report in relation to the health of the applicant furnished, by a nominated registered medical practitioner chosen by the applicant"*. Section 23(3) of the Act further provides that *"(T)he Minister shall establish a panel of registered medical practitioners who, in the opinion of the Minister, possess the qualifications and experience necessary for the performance of the functions of a nominated registered medical practitioner under this section"*. The establishment of such panel would ensure that the Tribunal is able to ascertain whether there is a need for a postponement for medical reasons in certain circumstances, for example recurring requests for postponements, or whether an appellant is in fact able to give evidence, would assist the Tribunal to avoid unnecessary postponements and with that ensure faster decision making.

In order to assist appellants and their legal representatives in their dealings with the Tribunal, in April 2019 the Tribunal published on its website an 'Administrative Practice Note' (Annex 2) which explains, in plain language, the statutory requirements for appellants in submitting their materials to the Tribunal and other relevant information for appeals, for example the fact that evidence will be given on oath or affirmation, and that appellants can seek interpreters with a particular dialect or can request a Tribunal Member of a particular gender if they believe that the sensitivities of the appeal require same.

Interpreter issues

11.22% of postponements are due to interpreters not being available, an interpreter for the wrong language/dialect having been booked or the interpreter's inability to provide services to the required standard necessary to ensure adequate communication in the international protection context.

In relation to the lack of suitable interpreters, this is a matter on which the Tribunal has actively engaged with the Department of Justice and Equality, and we understand that the Department is currently in the process of developing a framework leading to a tender for the provision of interpretation services in the international protection process. Learning from the issues that have presented at the Tribunal and taking into account international best practice, we developed a *'Code of Conduct and Standards for Interpreters'* which we hope will be included in future contracts with interpretation service providers (Annex 3).

In the interim, the Tribunal has introduced a short form setting out *'Key Standards for the Provision of Interpretation Services at the International Protection Appeals Tribunal'* (Annex 4) which interpreters are required to read and sign prior to any hearing taking place at the Tribunal.

Again, the proposed case management software app could serve to ensure that interpreters' availability is confirmed and bookings made as soon as a hearing is scheduled and that there is reliable matching of the relevant language/dialect as part of the automated booking process.

2.2.2. Tribunal Members – delivery of decisions

The Tribunal is taking further steps to ensure that Tribunal Members deliver their decisions within a maximum time limit of 20 working days post hearing and, ideally – by way of best practice – within 10 working days from the hearing of an appeal, unless of course matters have arisen at hearing that require post-hearing submissions, for example the submission of a medical report.

In that regard, the Tribunal has already introduced a tracking and notification system, which informs and reminds Members of their progress regarding outstanding appeals on a regular basis. The Tribunal is also of the view that the above mentioned case management software system could further assist on this.

2.2.3. Tribunal Members – appointments and terms of office

Section 62(7)(c) and (d) of the IP Act 2015 provide that the terms of office of Tribunal Members, other than the chairperson and deputies, shall be 3 years and that such Members may be re-appointed for a second term not exceeding 3 years.

Much effort is put into finding the best candidates to be Tribunal Members through a competitive PAS process, which requires the investment of a significant amount of resources.

Once appointed to the role, the Tribunal puts much time and effort into Members' training. This includes a process implemented in collaboration with the UNHCR and the Department whereby new Members' decisions are peer reviewed by senior Tribunal Members, currently the two Deputy Chairpersons. Experience has shown that Members begin to get into their stride in terms of efficiency of disposal of the business of the Tribunal in their second year as Members. It therefore seems to the Tribunal imprudent for the default term of office of a member to be as short as 3 years. Moreover, it seems unnecessarily limiting for reappointment to be limited to a second term, particularly as a member, at that point, will be experienced and efficient. It is clear that the current limitation on Members' terms of office has as an unintended consequence the stymying of Members efficiency as decision makers in the medium to long term. Therefore, the Tribunal recommends that the legislation be amended to allow for Members' terms not to be limited as they currently are.[2]

2.2.4. Proposed legislative amendments

Correction of errors or omissions

Regulation 10(1) of the 2017 Regulations provides that *'[t]he Tribunal may correct any error or omission in any decision made by the Tribunal under the Act of 2015'*. This provision would seem to be limited to correcting such things as typographical errors.

In line with the advice of senior counsel, the power to correct errors or omissions contained in Regulation 10 of the IP Act 2015 (Procedures and Periods for Appeals) Regulations 2017 is not wide enough to permit the Tribunal to set-aside the entire merits of a decision after it has been made. While the Tribunal can re-issue a corrected decision, the Tribunal cannot set aside, reconsider and re-issue a decision.

However, it would seem that there is potential for saving both time and costs if the Tribunal could set aside a decision where it is clear from pre-litigation correspondence and considerations that, due to a procedural error or omission (rather than the consideration of material law), the decision should otherwise be quashed.

[2] In this context it must be noted that tribunal members' terms of office can be a factor in establishing whether a tribunal is an independent tribunal for the purposes of Article 267 TFEU. It is currently understood, in the light of the judgment of the CJEU in Case C-175/11 H.I.D., B.A. v Refugee Applications Commissioner and others, that the Tribunal is such an independent tribunal. Inter alia, this helps ensure that the Tribunal is an effective remedy in the international protection process. Any dilution of the Tribunal's functional independence however could risk undermining this delicate state of affairs, also in the light of more recent jurisprudence from the CJEU. Similarly, it would seem prudent to take steps to reinforce the functional independence of members.

On-paper appeals

Amendments of the law to facilitate papers-only appeal hearings where the interests of justice so permit would be very useful. Currently, in most cases, the Tribunal has to have a hearing whenever an appellant asks for one, rather than when an oral hearing is needed in the interests of justice. Inversely, there are situations where the Tribunal is precluded from having an oral hearing (even if it might be of the view that one would be needed in the interests of justice). These lacunae lead to the Tribunal having to have more oral hearings than it needs. The Tribunal sees merit in amending the legislation to allow it to decide when hearings are needed.

2.3. How could enhanced information technology assist the IPAT in streamlining work processes - for example,

a. document scanning, greater use of video conferencing

b. move to a paperless process as is the case in the protection system in Norway and Finland

c. introduction of the whole of process tracking system

d. use of video conferencing for appeals hearings (see also 10 below)

2.3.1. Paperless process/ document scanning

As set out above, the Tribunal has been engaging with the Department/ IPO in relation to the introduction of the scanning of files and electronic document sharing pursuant to the International Protection Act 2015 and other relevant legislation. Considerable progress had been made on this issue but progress is currently suspended due to covid-19 restrictions. It had been hoped that the Tribunal would be furnished with only the documents to which it is entitled under the legislation, ensuring equality of arms for all parties and streamlining the process in line with legislative requirements.

An electronic submissions system, whereby the Notice of Appeal and all relevant documentation under s.44(1) and (2) of the International Protection Act 2015 as well as any submissions made by or on behalf of the appellant and/ or the Department/ IPO would be automatically stored and available to all parties by way of password restricted access would bring significant time savings for both Tribunal Members and Tribunal staff.

Moreover, the Tribunal is currently in the process of introducing the use of digital signatures which will enable it to further decrease its processing times as part-time Tribunal Members

will no longer have to travel to the Tribunal in order to sign decisions before they can be issued and the Member's fee paid.[3]

The introduction of digital signatures and the scanning of documentation should ideally be combined with the introduction of the electronic submission of appeals and accompanying documentation to the Tribunal (at least in cases where an appellant is legally represented, which is the case in 98% of appeals submitted to the Tribunal).

2.3.2. Remote hearings/ audio video hearings

The introduction of remote hearings in various locations around Ireland, near DP centres, may be a way of making the Tribunal more accessible, provided of course that legal and interpretation services can also be provided in remote locations, may also be able to contribute to a further increase of the overall efficiency of the Tribunal's work and contribute to cost saving.

More importantly, particularly in the context of the current Covid-19 public health emergency, the introduction of audio video hearings, which would remove the necessity for the appellant, his/her legal rep and/or the interpreter to travel to the Tribunal for the purpose of the hearing, would be likely to achieve both accessibility and cost-saving (after an initial investment into technology and training in the use of technology and the conduct of audio visual hearings). However, experience from other areas of (quasi-) judicial work seems to suggest that audio video hearings may not be suitable for cases which involve the giving of witness evidence, in particular where such evidence is to be given by a person who is vulnerable or traumatised.

In this regard, the Tribunal has made a business case to the Department, seeking support for the introduction of audio video hearings at least, by way of initial pilot, in relation to cases that do not involve the taking of sensitive evidence, such would be the case for the majority of hearings dealing with transfers under the Dublin III Regulation. It is envisaged that, if successful, the use of such audio video hearings could then also be rolled out for use in appeals where there are no credibility issues which need to be dealt with at the hearing and/or where the appellant is not vulnerable (e.g. due to their experience in their country of origin, age or disability).

[3] There is no legal requirement for Tribunal decisions to be signed by a Tribunal Member, however, at present, the Members' contracts with the Department contain such requirement and a Member's signature is viewed as having symbolic value as it can be seen to 'officiate' the decision by way of 'final seal'.

2.4. Have you any examples of business processes, which could be outsourced to increase efficiency and enable staff/Members to concentrate on decision making functions and other functions which can only be done by Members/staff?

One activity, which is most time consuming for Tribunal Members and can also cause delay in the context of the Tribunal ensuring compliance with the 'equality of arms principle' is the listing of documentation relevant to the appeal. At present, there is no index in the file provided to the Tribunal by the Department/ IPO and appellants/ legal representatives submit any documentation for consideration by the Tribunal to the Tribunal only, thereby requiring the Tribunal to copy and share by way of email/ post the submissions received with the other party for their submission of replies.

An electronic submissions system, whereby the Notice of Appeal and all relevant documentation under s.44(1) and (2) of the International Protection Act 2015 as well as any submissions made by or on behalf of the appellant and/ or the Department/ IPO would be automatically stored and available to all parties by way of password restricted access would bring significant time savings for both Tribunal Members and Tribunal staff. This would be part of the proposed case management software system and would – based on current arrangement with the Department – need to be made available to the Tribunal by way of 'shared services'.

By way of transition to an e-submissions system, if the scanning of existing files could be outsourced, that would bring significant time savings for Tribunal Members and staff as it takes an estimated average of 2-3 hours per case to source and list the relevant documentation on file.

2.5. Whether any business process mapping has taken place regarding the IPAT work processes which would indicate blockages to be dealt with.

Yes, as set out above at 2.2.2., the Tribunal has a process tracking system which has contributed to the significant increase in completed appeals, 221% in the two year period 2017 to 2019. The system allows the Chairperson and Registrar of the Tribunal to ascertain, on the basis of a weekly report, exactly where appeals are in the process and thereby identify and identify issues as they arise. Moreover, in an effort to encourage Tribunal Members to meet the target delivery time for their decisions post hearing, the Members receive regular 'case progress statements', on the basis of which they are requested to provide an update on the progress of their cases and which enable the Registrar to make reports to the Chairperson, should initial efforts to achieve progress not be successful. Under s.63(6) of the International Protection Act 2015, the Chairperson will then address any matters arising directly with individual Tribunal Members.

However, while this system is working well, it would further enhance the efficiency of the Tribunal if this system could be automated and 'progress statements' as well as reports to the Chairperson would be generated and sent electronically.

2.6. Do you agree that 6 months is a reasonable time period for an application to be processed in the system?

The Tribunal notes that the six-month time limit for decisions in the context of the first instance decision making provided in Article 23 of the Asylum Procedures Directive (2005/85/EC) at the Department/ IPO level does not apply to the Tribunal.

The average length of time taken by the Tribunal to process and complete substantive international protection appeals in 2019, including 'transition cases', was approximately 170 working days. However, in relation to appeals that were both accepted and completed within 2019, the average processing time was significantly reduced to 100 working days, in other words to below 5 months. The processing times for appeals during the year were impacted by several factors, including a high number of postponements which were based on a pending High Court challenge against the validity of the underlying recommendation from the IPO under s.39(3) of the International Protection Act 2015 and an injunction granted by the Court of Appeal in the matter of *RS v The Chief International Protection Officer & Ors* [2018] IECA 322 in October 2018.

For 2020, the Tribunal has set as an objective that the average processing times for appeals, where an oral hearing is required, will be reduced to 90 working days, which is significantly below the 6-months target for first instance decisions. However, it must be acknowledged that there are number of factors outside the control of the Tribunal that could impede this, including the availability of adequate resources and postponements of hearings due to legal proceedings, medical issues, or the unavailability of suitable interpreters for Tribunal hearings.

2.7. Why were the McMahon Report recommendations in relation to decision making not been fully achieved? (McMahon recommendation was a quality decision in 6 months)

The McMahon report did not make recommendations regarding the processing times at the International Protection Appeals Tribunal or its predecessor, the Refugee Appeals Tribunal. However, the ongoing quality gains delivered by the Tribunal, achieved through ongoing Members' training and quality control measures such as quarterly audits, the number of

judicial reviews against Tribunal decisions are significantly reduced,[4] thereby contributing substantially to the shortening of the time applicants spend in pursuit of their applications through the international protection system.

The Tribunal closely follows the developments in the superior courts in respect of judicial reviews of its decisions. Whether the Court upholds or quashes a decision of the Tribunal, the Tribunal seeks to implement in its guidance to and its training of Members the jurisprudence of the Superior Courts.

The particular ways in which the Tribunal does this include:

- Clear summaries of the key insights from the jurisprudence, presented systematically in quarterly information notes for the benefit of Tribunal Members.
- Implementation in Chairperson's Guidance Notes pursuant to section 63(2) in respect of developments of the law of international protection.
- Revision and updating of the guidance and training materials used for the professional development of Tribunal Members.
- Revision and updating of the decision-making templates used by Tribunal Members.
- Determining and shaping the training provided to Members internally.
- Determining the external training relevant to Members.
- Hosting workshops, discussion groups and 'lunch and learn' sessions on matters arising from the case law.
- Updates on particular net issues from case law and opinions of counsel.
- Revision and updating of the quality audit materials used for analysing Members decisions with a view to identifying matters for continued improvement.

2.8. Having regard to all that is being done already including decentralised interviews at first instance, can any further action be taken to improve the interview/hearings process – including timelines for hearings/interviews and interviewer training?

A clear distinction needs to be made between first instance international protection interviews and Tribunal hearings, which need to adhere to the standards of a hearing before a 'court or Tribunal', including the equality of arms principle, and which involve the

[4] In 2019 only 4% of single procedure appeal decisions issued in that year (1705) were the subject of JRs (65), though of those JRs that have concluded (30), 33% (10 decisions) were rejected and 66% (20 decisions) resulted in certiorari, which means that overall – of the single procedure decisions issued in 2019 – 1.2% have so far been overturned by the High Court.

participation of legal representatives and often the (cross-)examination of witnesses, under oath or affirmation.

2.9. The Chair wonders if legal practitioners can be allowed an enhanced role at hearings

As outlined at 2.8. above, legal practitioners take an active role in the hearings before the Tribunal and must be practising barristers (instructed by a firm of solicitors) or practising solicitors.

The training of legal practitioners in international protection law as well as in the presentation of an appeal, consisting of the submission of a Notice of Appeal and relevant documentation (personal documentation as well as objective evidence and/ or country of origin information) would have the potential to further decrease the time it takes for an appeal to be processed.

In that regard, section 41(2)(b) of the International Protection Act 2015 provides that an appeal shall be brought by notice in writing *"specifying, in writing, the grounds of appeal and indicating whether the applicant wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal"*.

Two issues must be noted:

i. The Tribunal can only set aside a first instance decision on international protection if it is satisfied that the applicant is a refugee or a person eligible for subsidiary protection (section 46(4)/(5) IP Act 2015); i.e., a successful appeal must be predicated on positive grounds relating to either qualification as a refugee or qualification as a person eligible for subsidiary protection. Grounds relating to errors made by the IPO at first instance, although not necessarily to be dismissed, cannot be dispositive. However, currently, grounds often are in respect of alleged errors made by the IPO, and often do not positively set out why the appellant is a refugee or a person eligible for subsidiary protection.

ii. Point (i) notwithstanding, grounds of appeal are often so minimal as to be without use; e.g. *"the appellant is a refugee within the meaning of section 2(1) of the International Protection Act 2015"*, or *"the international protection officer erred in law and in fact and breached fair procedures in recommending that the appellant not be granted refugee status"*. Such 'grounds' arguably satisfy the requirement in section 41(2)(b), but in so doing make that provision ineffective as a means to ensure that meaningful grounds are before the Tribunal in the context of the notice of appeal.

The Tribunal is of the view that for an appeal to be properly before it, the notice of appeal must have in it grounds of appeal that are fit for purpose, which is to say grounds of appeal that outline why the appellant is a refugee or a person who is eligible for subsidiary protection. Moreover, where grounds are incomplete, the Tribunal ultimately finds itself engaging in often lengthy correspondence with the legal representatives and/ or the Department/ IPO, seeking further information and documentation pursuant to s.42(8)(b) and s.44(2) of the Act, thus adding weeks to the turnaround time for an appeal.

The Tribunal is of the opinion that there is good scope for active participation of both legal practitioners and presenting officers for the Minister, and that this would enhance the process for all parties. Unfortunately, it is the Tribunal's experience that delays have been directly caused by ineffective legal representation, e.g. lack of familiarity with appellants' cases, late submission of documents and submissions, reliance on untranslated documents which have not been discussed with appellants (at times to the detriment of appellants where the documents do not assist their case but in fact damage it), and failure to appreciate the points made above in respect of material grounds of appeal.

The Tribunal is of the opinion that both the Law Society and the Bar Council should provide relevant training for their Members. Moreover, specialist training for legal practitioners on the Legal Aid Board panel would also be essential in order to make proceedings before the Tribunal more efficient and we have offered to collaborate with the Legal Aid Board in the provision of such training.

The Tribunal would also be greatly assisted by more active participation at hearings and by way of pre-hearing submissions by presenting officers for the Minister. Some presenting officers engage actively and enthusiastically, whereas a few presenting officers do not assist at all and are not sufficiently prepared for the hearings. The Tribunal does consider that active pre-hearing management by all parties may assist.

2.10. What is your view on the possible introduction of a fully automated processing system linking in decision making bodies and IPAS accommodation to include automated scheduling, remote case file processing, programmed alerts for blockages/build-up of backlogs etc.

In principle, the Tribunal is in favour of a system that can assist in the coordination of the scheduling of hearings, availability of interpreters, legal representatives and Tribunal Members. However, any such system must be designed to ensure full compliance with GDPR requirements and the independence of the Tribunal as a 'court or Tribunal' under EU law.

3. Conclusion and comment on McMahon Report recommendations

It will be clear from the above that while there is of course room for further improvement, the Tribunal has made great strides to improve both the quality and efficiency of its decision-making over the last number of years. However, it must also be noted that the Tribunal – having achieved its 221% increase in output over a two-year period without an increase in agreed staff levels or its budget – will not be able to deliver further increase, particularly regarding quantity and speed of decision making, without at least some level of investment and the provision of the necessary supports by the Department of Justice and Equality.

Moreover, we note that the **'Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers'** (June 2015) highlighted that the International Protection Bill put in place appropriate governance structures to safeguard the independence of the International Protection Appeals Tribunal while providing for robust forms of accountability and recommended that *"ideally this should be achieved by the introduction of a traditional board structure"*.

The Group further noted that *"the Department of Finance Code of Practice for the governance of State bodies states that "State bodies must serve the interests of the taxpayer, pursue value for money in their endeavours (including managing risk appropriately), and act transparently as public entities. The Board and management should accept accountability for the proper management of the organisation." The entire Code of*
Practice assumes the existence of a board to provide the necessary oversight and reporting structure to give effect to the Code. It does, however, acknowledge that where certain bodies do not have a board structure, they should reach agreement with their parent Department on the extent to which the requirements might be suitably adapted in their case. This is currently the arrangement in relation to the RAT and the Department of Justice and Equality". The Group further noted that the position of the RAT will be altered *"when it is replaced by the International Protection Appeals Tribunal vis-à-vis the Department of Justice and Equality, as it will hear appeals of decisions of the same Department on which it relies for administrative supports, such as staffing and funding. Therefore it is important to provide a mechanism for the Tribunal to be accountable while maintaining its independence from the Department"*.

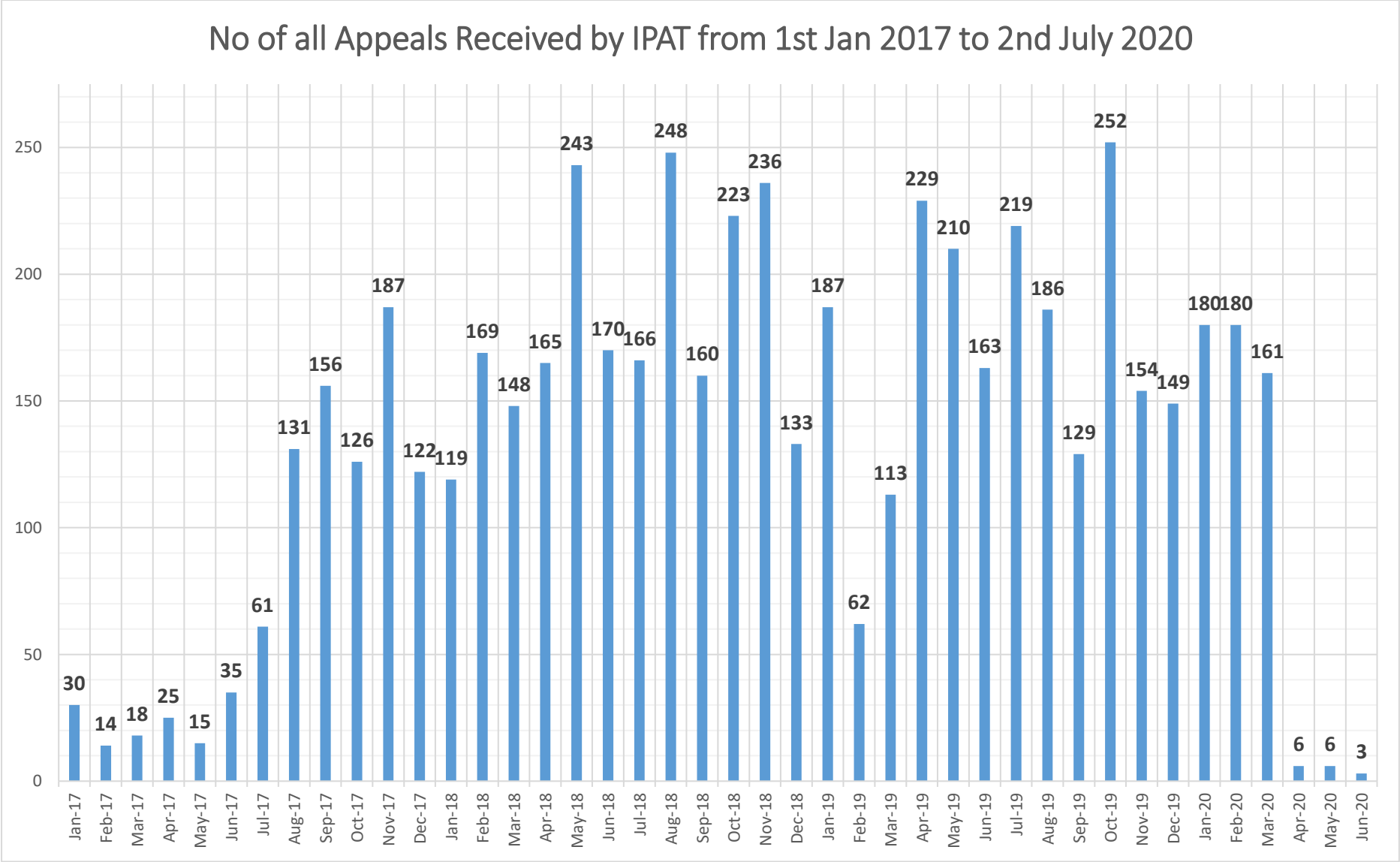
The introduction of a separate governance structure for the Tribunal along the lines of what was proposed by the previous Working Group, could also serve to assist the Tribunal in further improving its efficiency and delivery of 'value for money' and thereby contribute to the overall reduction of time applicants for international protection spend in the process.

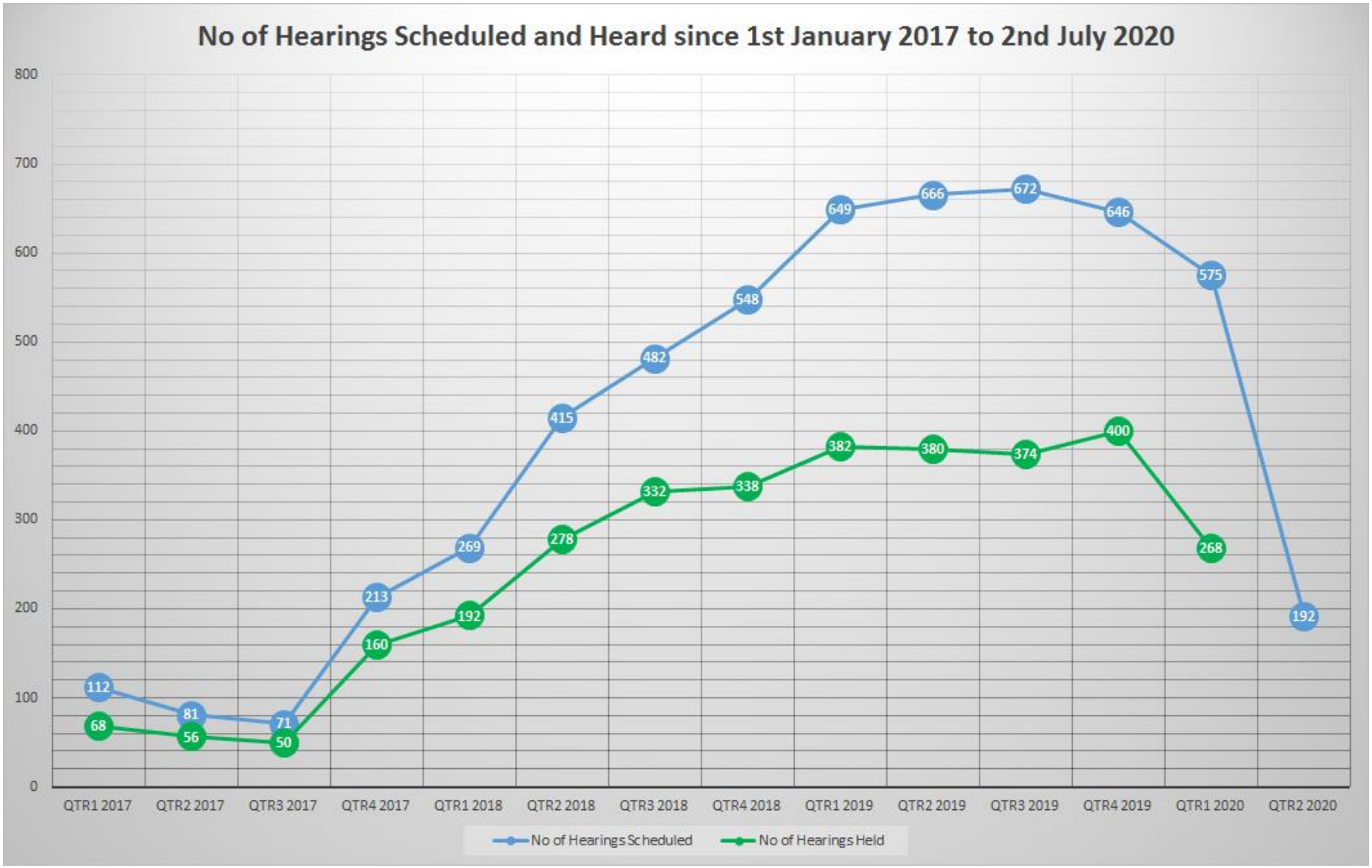
Briefing for DP Advisory Group - IPAT Provisional Caseload Statistics as of 30th June 2020

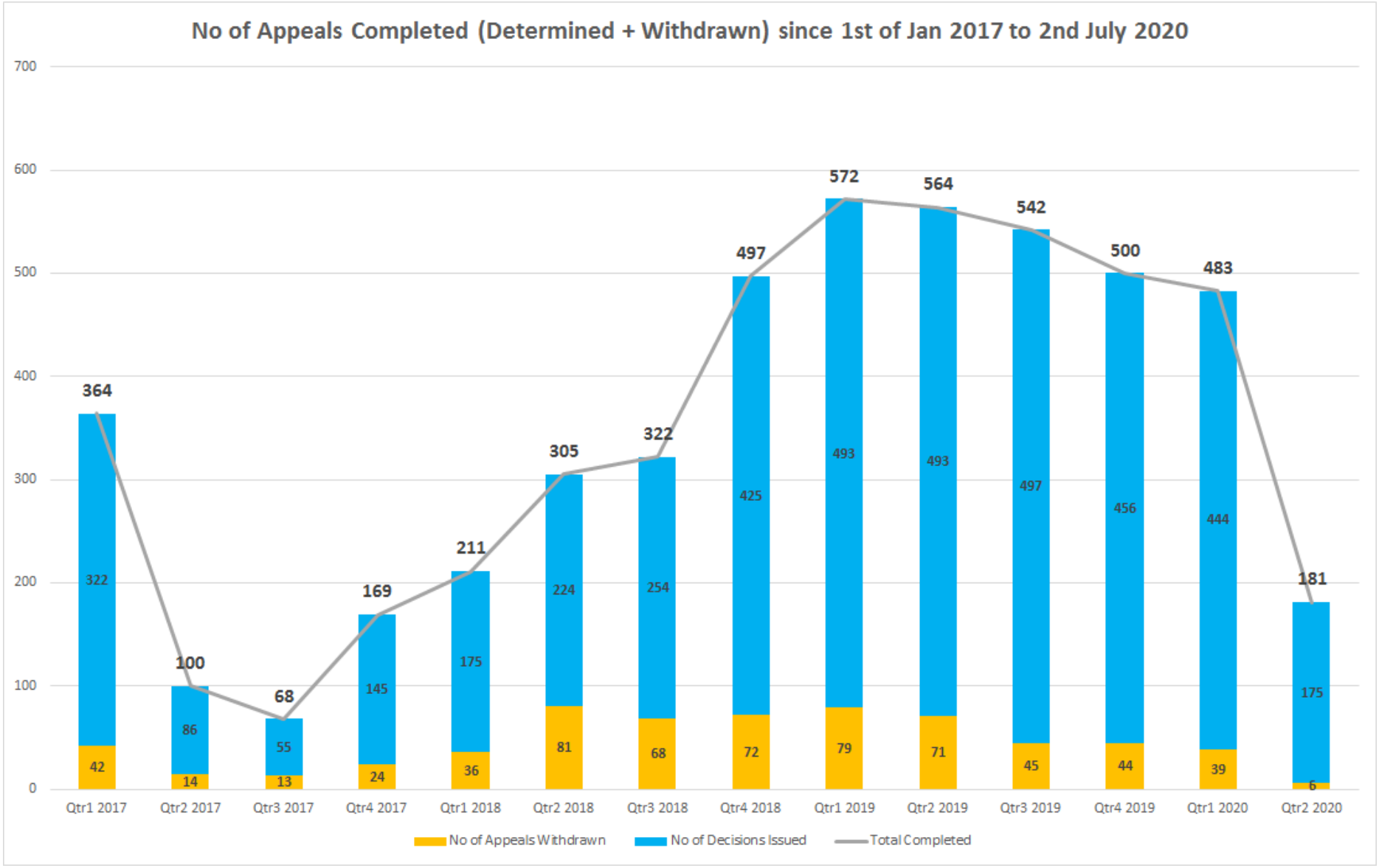
Caseload		
Appeals on hand at start of 2020	1534	
Appeals received up to 30/6/20	580[1]	
Total Appeal Caseload up to 30/6/20		**2114**
Dispositions		
Decisions issued Quarter 1	444	
Decisions issued Quarter 2	175	
Appeals Withdrawn and Deemed Withdrawn	45	
Total Number of Appeals completed up to 30/6/20		**664**
To be determined		
Appeals on hand 30/6/2020		**1450**
Full breakdown of status of appeals on hand is available in the in the following table:		

[1] Including a small number of approx. 64 transition appeals that have older dates

Status	Appeal Type								Grand Total
	Accelerated IP Appeal	Dublin III	Inadmissible Appeal	SP Appeal	Subsequent Appeal	Substantive IP Appeal	Substantive IP Appeal Asylum only	Substantive IP Appeal SP only	
Appeal Accepted - Awaiting File	67		6	1	2	87	1	1	**165**
Appeal Accepted – To be copied	23		1		2	102	10	1	**139**
Appeal Awaiting Assignment to M.O.T.	6				2	34			**42**
Appeal Assigned to MOT	15	6		7	1	37	1		**67**
Appeal Pre Hearing Query			1						**1**
Pre Hearing Query	2	3	1	1		34			**41**
Section 16(6) with 44(2)						2			**2**
Appeal JR ORAC Stage						7			**7**
Appeal Regulation 7(2) / 7(3)		1							**1**
Appeal Regulation 8(5) / 8(6) Enquiry		2							**2**
Appeal Section 44 Enquiry			2			1			**3**
Held - At request JR Unit						1			**1**
Held - Chickenpox						1			**1**
Holding – COVID-19	9	2			1	6			**18**
Appeal Ready for Scheduling	30	5				47	2	1	**85**
Dependant Ready for Scheduling						4			**4**
Appeal Postponed	6	2				64	1	1	**74**
Appeal Postponed - COVID19	61	11		3		246	3	4	**328**
Appeal Adjourned						15			**15**
Appeal No Show - To M.O.T for Recommendation	1					1			**2**
Appeal Heard	2	16		4		164	3	1	**190**
Appeal to be decided on papers	16	6	16		9	5			**52**
Post Hearing - Query	3	2		1		42			**48**
Appeal Decisions in typing						2			**2**
Appeal Decisions First QC					1	8			**9**
Appeal Decisions 2nd QC	2	1				3		1	**7**
Appeal Decisions awaiting Signature	18	10	4	1	4	105	1		**143**
Signed decision received						1			**1**
Grand Total	**261**	**67**	**31**	**18**	**22**	**1019**	**22**	**10**	**1450**


No of all Appeals Received by IPAT from 1st Jan 2017 to 2nd July 2020
250
200
150
100
50
0
30
14
18
25
15
35
61
131
156
126
187
122
119
169
148
165
243
170
166
248
160
223
236
133
187
62
113
229
210
163
219
186
129
252
154
149
180
180
161
6
6
3
Jan-17
Feb-17
Mar-17
Apr-17
May-17
Jun-17
Jul-17
Aug-17
Sep-17
Oct-17
Nov-17
Dec-17
Jan-18
Feb-18
Mar-18
Apr-18
May-18
Jun-18
Jul-18
Aug-18
Sep-18
Oct-18
Nov-18
Dec-18
Jan-19
Feb-19
Mar-19
Apr-19
May-19
Jun-19
Jul-19
Aug-19
Sep-19
Oct-19
Nov-19
Dec-19
Jan-20
Feb-20
Mar-20
Apr-20
May-20
Jun-20


No of Hearings Scheduled and Heard since 1st January 2017 to 2nd July 2020
800
700
600
500
400
300
200
100
0
QTR1 2017
QTR2 2017
QTR3 2017
QTR4 2017
QTR1 2018
QTR2 2018
QTR3 2018
QTR4 2018
QTR1 2019
QTR2 2019
QTR3 2019
QTR4 2019
QTR1 2020
QTR2 2020
112
81
71
213
269
415
482
548
649
666
672
646
575
192
68
56
50
160
192
278
332
338
382
380
374
400
268
No of Hearings Scheduled
No of Hearings Held


No of Appeals Completed (Determined + Withdrawn) since 1st of Jan 2017 to 2nd July 2020
700
600
500
400
300
200
100
0
364
100
68
169
211
305
322
497
572
564
542
500
483
181
322
86
55
145
175
224
254
425
493
493
497
456
444
175
42
14
13
24
36
81
68
72
79
71
45
44
39
6
Qtr1 2017
Qtr2 2017
Qtr3 2017
Qtr4 2017
Qtr1 2018
Qtr2 2018
Qtr3 2018
Qtr4 2018
Qtr1 2019
Qtr2 2019
Qtr3 2019
Qtr4 2019
Qtr1 2020
Qtr2 2020
No of Appeals Withdrawn
No of Decisions Issued
Total Completed

Information requested by the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process on resources required by the International Protection Appeals Tribunal (IPAT)

The International Protection Appeals Tribunal (IPAT) has been asked by the Chairperson of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process to provide estimates of resources that would be required to deal with appeals arising from a total of 3,500 international protection applications being made in Ireland. Calculated on the current grant rate of 25% at the first instance IPO stage, that would mean approximately 2,700 appeals reaching the Tribunal.

In its 'Response to the Advisory Group (May 2020), the Tribunal has outlined in detail the technical resources that would be required in relation to

- **Case-management and decision software**
- **Scanning and electronic document sharing**
- **Remote and/or audio-video hearings.**

Additionally, in order to deal with approximately 2,700 appeals, the Tribunal would need additional staff.

---

1. **Additional staff resources required by IPAT to complete 2,700 appeals:**

To increase output to 2,700 per appeals decisions per annum the Tribunal would require the following:

- **an additional team of 1 x EO and 2 x COs on the processing side, and**
- **a similar increase on the Registration/Reception side, i.e. an additional 1 x EO and 2 x COs, and**
- **an additional APO and a HEO is also required.**

In other words, a total addition of 8 staff members in the Tribunal administration would be necessary.

Explanatory Note:

The management and control generally of the staff and administration of the Tribunal rests with the Registrar (PO (full-time) and one APO). Following the realignment of work divisions and structures on the establishment of the International Protection Appeals (the Tribunal) now, effectively, has **5 functional Administrative Units**.

In addition, a HEO is required to manage Business Unit 3 (**Tribunal Secretariat and Corporate Affairs**).

Up until December 2018, the **Appeal Processing Unit** was managed by 1 HEO however, once the Tribunal was operating near capacity, it became evident that a second HEO was required to manage the high level of appeals under process and the increased number of Tribunal Members.

On the senior management side, an additional Assistant Principal Officer is required to enhance quality across the 3 Business areas and to enable the assignment of an APO to be dedicated to Appeals Processing.

1	**Business Unit 1 A**	Appeals Registration
2	**Business Unit 1 B**	Appeals Scheduling, Reception and Hearing Management
3	**Business Unit 1 C**	Tribunal Registry
4	**Business Unit 2**	Appeals Processing Unit
5	**Business Unit 3**	Tribunal Secretariat and Corporate Affairs

Staff Resources	PO	APO	HEO	EO	CO	Target of delivering on average 2,300 per annum	
	1	1					
Business Unit 1			1	2	12	15	
Business Unit 2			2	5	11	18	
Business Unit 3			0	1	1	2	
Total	1	1	3	8	24	37	

Staff Resources	PO	APO	HEO	EO	CO	Target of delivering on average 2,700 per annum	Increase required
	1						
Business Unit 1		1	1	3	14	19	+ 1 EO and 2 CO
Business Unit 2			2	6	13	21	+ 1 EO and 2 CO
Business Unit 3		1	1	1	1	4	+ 1 APO and 1 HEO
Total	1	2	4	10	28	45	

The realignment of the Department to a functional model has highlighted in particular the requirement for an **additional APO**. Previously INIS provided central administrative supports, particularly in **Business Unit 3 (Tribunal Secretariat and Corporate Affairs)**. That Unit is currently staffed by one EO and one CO and covers a wide range of functions for the Tribunal. In the absence of a dedicated HEO, the Unit reports directly to the Registrar on most of its functions. The functions are most important from governance, due diligence, regulatory and strategic development perspectives. In addition, COVID -19 has created additional responsibilities in this business area.

The Unit plays a vital role in tracking appeal progress and assisting the processing teams in monitoring timelines in delivering decisions other functions include;

Transparency

- Parliamentary Questions,
- Briefing coordination,
- Dealing with requests from Department of Justice.
- Preparation of Reports including Tribunal Annual Report
- Statistic, including
    - EASO
    - UNHCR

- EU
- Weekly, Monthly and Quarterly internal Reports
- Quarterly Report to DJE

Health and Safety

- General Health and Safety
- COVID-19 Actions

ICT Liaison

- Facilities coordination and Corporate Services
- ICT support

Data Protection and Freedom of Information Coordination

Corporate Services

- Office Supplies
- Financial Management
- Strategic Management and Business Planning
- Event Management
- Publications
- HR coordination

Administrative Support

- Tribunal Secretariat
- Support to Chairperson
- Support to Tribunal Members

Judicial Review Coordination

Data Protection and Freedom of Information Coordination

---

2. Need for additional whole-time Tribunal Members

In addition to the staff increase that would be necessary to enable to Tribunal Registry to complete 2,700 appeals per annum, the Tribunal would be able to deal with and decide appeals more efficiently if additional whole-time Tribunal Members could be appointed under s.62(1)(c) of the International Protection Act to allow the Tribunal to deal with appeals on hand and future appeals in the most flexible and efficient way.

Each whole-time Member can deal with at least 100 appeals per annum, depending on the complexity of each appeal. Due to the current part-time nature of the work of the majority of Tribunal Members,[1] they – unlike whole-time Members – are not in a position to focus exclusively on Tribunal work, with the effect that they produce fewer decisions and, where newly appointed, do not gain the relevant experience, and with that efficiency, as quickly as a whole-time Member.

[1] The Tribunal presently has 56 part-time and 3 whole-time Members, in addition to the Chairperson and two Deputy Chairpersons.

As outlined in the *IPAT Response to the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (May 2020)*, much effort is put into finding the best candidates to be Tribunal Members through a competitive PAS process, which requires the investment of a significant amount of resources. Once appointed to the role, the Tribunal puts much time and effort into Members' training. This includes a process implemented in collaboration with the UNHCR and the Department whereby new Members' decisions are peer reviewed by senior Tribunal Members, currently the two Deputy Chairpersons.

Experience has shown that Members begin to get into their stride in terms of efficiency of disposal of the business of the Tribunal in their second year as Members. It therefore seems to the Tribunal imprudent for the default term of office of a member to be as short as 3 years. Moreover, it seems unnecessarily limiting for reappointment to be limited to a second term, particularly as a member, at that point, will be experienced and efficient. It is clear that the current limitation on Members' terms of office has as an unintended consequence the stymying of Members efficiency as decision makers in the medium to long term. Therefore, the Tribunal recommends that the legislation be amended to allow for Members' terms not to be limited as they currently are.

IPAT

8th July 2020