

THE HIGH COURT

[2024] IEHC 8

[Record No. 2022/49MCA]

BETWEEN

RY AND ZR (A MINOR SUING BY HER MOTHER AND NEXT FRIEND RY)

APPELLANTS

AND

DISABILITY APPEALS OFFICER

RESPONDENT

AND

THE HEALTH SERVICE EXECUTIVE

NOTICE PARTY

JUDGMENT of Ms Justice Marguerite Bolger delivered on the 11th day of January 2024

1. This is an appeal on a point of law from the determination of the Appeals Officer dated 31 January 2022 pursuant to s. 20 of the Disability Act 2005 (hereinafter referred to as "*the Act*"). The appellants seek to set the determination aside on two grounds:-

(1) The Service Statement fails to specify a timeframe for the services to be provided, in breach of s. 11(2) of the Disability Act and Regulation 18 of the Disability (Assessment of Needs, Service Statements and Redress) Regulation 2007 (hereinafter referred to as "*Regulation 18*"), thereby rendering the Service Statement incorrect.

(2) The Appeals Officer failed to give adequate reasons for his decision.

I am satisfied that both grounds raise points of law over which this Court has jurisdiction pursuant to s. 20 of the Act.

Background

2. The child Z was born on 15 February 2017 and was assessed as presenting with autism spectrum disorder and global developmental delay in her assessment report of 18 January 2021. A Service Statement was issued on 26 February 2021, which Z's mother considered failed to provide a timeframe within which services would be provided to Z and so she lodged a complaint with the Complaints Officer. The complaint was rejected and was unsuccessfully appealed to the Appeals Officer. The appellant says the Appeals Officer failed to engage with her arguments and that the reasons for his decision are unclear.

3. I outline below what the law says an assessment of needs and a service statement should be and what they should include. I examine what the assessment of needs and service statement at issue here say and I then review the appellant's complaint to the Complaints Officer, her appeal to the Appeals Officer and the determination of the Appeals Officer.

The Disability Act 2005

4. The Act has been described by Baker J. in the Court of Appeal as innovative and far reaching (*E.L.G. v. HSE* [2022] IESC 14, at para. 2). It is a remedial Act that provides a right of enforcement of individual rights for disabled persons. The long title describes it as:

"An act to enable provision to be made for the assessment of health and education needs occasioned to persons with disabilities by their disabilities... for services to meet those needs... to provide for appeals by those persons in relation to the non-provision of those services".

In *J.N. and T.M. v. J.H.* [2023] IESC 9 Dunne J., having cited the long title, said that the Act,

"was intended to provide for an assessment of the health and education needs of persons with disabilities. It provided for the provision of services to meet those needs, having regard to the resources available for them, and specifically it provided for appeals by persons in relation to the non-provision of services." (at para. 31)

Assessment of needs

5. Section 7 of the Act defines "assessment" as,

"an assessment undertaken or arranged by the Executive to determine, in respect of a person with a disability, the health and education needs (if any) occasioned by the disability and the health services or education services (if any) required to meet those needs".

Section 8 of the Act provides for an assessment of an applicant's needs which, according to s. 8(5) is to be done without regard to *"the cost of, or the capacity to provide, any service identified in the assessment"*. This has been described as a resource blind, gold standard approach. The assessment officer prepares a report which, pursuant to s. 8(7)(b)(iii) must set out, *inter alia*,

"a statement of the services considered appropriate by the person or persons referred to in subsection (2) to meet the needs of the applicant and the period of time ideally required by the person or persons for the provision of those services and the order of such provision".

Service Statement

6. If the assessment of needs determines that services are appropriate, a Liaison Officer will prepare a service statement. Section 11(7) of the Act requires the Liaison Officer to have regard to certain matters including the assessment report concerned as well as the practicability of providing the services identified in the assessment report. Regulation 18 requires a service statement to specify:-

- (a) the health services which will be provided to the applicant;*
- (b) the location(s) where the health service will be provided;*
- (c) the timeframe for the provision of the health services;*
- (d) the date from which the statement will take effect;*
- (e) the date for review of the provision of services specified in the service statement;*
- (f) any other information that the Liaison Officer considers to be appropriate, including the name of any other public body that the assessment report may have been sent to under section 12 of the Act.*

7. Dunne J. in *J.N. v. J.H.* described the process as follows:-

"Thus, one can clearly see the task of the Liaison Officer and the matters that have to be dealt with by the Liaison Officer in completing the service statement. Key amongst those factors will be the location where the service will be provided and the timeframe for the provision of the health service at issue."

8. In *C.M. v. HSE* [2020] IEHC 406, Barr J. noted that the Liaison Officer does not adjudicate on a person's entitlement to receive service *"but is merely indicating what services are available to the applicant at that time"* (at para. 123). Having cited the *C.M.*

decision, Dunne J. in *J.N. v. J.H.* said, at para. 67, that it was difficult to disagree with Barr J.'s observations and concluded:-

"it is clear that, so far as a Liaison Officer is concerned, they are obliged to indicate that, if services are not available at that time, to when such services will be available. The fact that a child is placed on a waiting list is not, per se, wrong and will inevitably be a reflection of the services that can be provided at any given time."

9. The possibility of a service statement referring a child for further assessment has arisen in some of the caselaw. In *C.M.* Barr J. saw nothing wrong with a service statement making an onward referral for further assessment. However whilst such a referral can be made, a referral for further assessment for the purpose of identifying required services cannot meet the statutory obligation for an assessment of needs to specify the services appropriate to meet the applicant's needs and the period of time for the provision of those services, reminiscent of Phelan J.'s finding in *C.T.M. v. HSE* [2022] IEHC 131 that a preliminary assessment of need which left over providing a diagnostic assessment as a service, did not meet the requirements of the Act.

Complaints and appeals

10. Section 14(1)(d) of the Act states:

"(1) An applicant may, either by himself or herself or through a person referred to in section 9(2), make a complaint to the Executive in relation to one or more of the following;...

(d) the contents of the service statement provided to the applicant".

This allows an applicant to make a complaint about, *inter alia*, the contents of their service statement to the Complaints Officer and from there, s. 18 allows for an appeal to an Appeals Officer. Dunne J. described what the Appeals Officer can do, at para. 71 of the Supreme Court's decision in *J.N. v. J.H.*:-

"There is no doubt in my mind that an appeals officer is entitled to interrogate issues such as the date when a particular service could be provided and, equally, is entitled to interrogate the question as to whether or not those services could be provided elsewhere in the relevant functional area of the HSE."

The Appeals Officer can make a recommendation to amend, vary or add to a service statement and, if there is an error in the service statement, including in relation to the date

on which services could be provided, Dunne J. said, at para. 74, that *"that must be corrected by means of a recommendation."*

11. Section 18(5) provides:

*"The appeals officer shall make a determination in writing in relation to the appeal affirming, varying or setting aside the finding or recommendation concerned and shall communicate the determination (**including the reasons therefor**) to the applicant, the Executive and, if appropriate, the head of the education service provider concerned who shall comply with the determination."* [my emphasis]

So an Appeals Officer must give reasons for their decision, as confirmed by this Court in *J.N. v. J.H.* [2022] IEHC 407. The reasons for an Appeals Officer's determination should be both ascertainable and adequate but reasons can be derived from the documents or the content of the decision provided *"that the reasons must actually be ascertainable and capable of being determined"* (as per Phelan J. in *N.T & Anor v HSE* [2023] IEHC 109 at para. 62). Phelan J. went on to say, at para. 64,

"knowledge of the matters considered in a decision-making process can also be derived from participation in the assessment processes carried out and being a party to the reports submitted to the decision maker."

This appellant's assessment of needs

12. The appellant's assessment of needs of 18 December 2020 was an extensive, multidisciplinary assessment conducted by an occupational therapist, an educational psychologist and a speech and language therapist. The assessment is set out in a detailed 24 page document. At page 1 the sources of information are identified, including documents forwarded by the assessment officer, an interview with Z's parents, clinical observation and a letter from Z's creche. Ten assessment tools that were used are listed. A summary of preliminary information compiled from information available prior to clinical assessment includes information from the assessment officer interview, the assessment of need application form, previous reports from healthcare professionals and a parent information form. Section 2 refers to the use of clinical interview, observation and/or assessment using a questionnaire or formal assessment tools. Reference is made to information provided by Z's mother on 17 November 2020 during a face-to-face appointment. There was also information obtained from the staff of Z's creche by way of a form completed on 23 September 2020 and a letter from the staff of the creche dated 13 November 2020. Section

2.4 sets out clinical observations made of Z when she attended at the clinic with her mother. Section 2.5 sets out an assessment of Z's speech and language which was conducted by observation and informal activities. There was an assessment of motor skills by observation during the assessment and consideration of reports from Z's mother, an assessment of sensory processing by way of a parent form and a further form completed by Z's teacher, an assessment of adaptive functioning measured by parent and teacher versions forms, an assessment of cognitive function by assessment by the psychologist as well as information on file, parent report and a standardised measure of adaptive functioning, information from speech and language therapy and occupational therapy assessment as well as non-standardised assessments and an assessment of social communication questionnaire completed by Z's mother. Section 3 covered diagnostic assessment which gathered evidence for a diagnostic interview and semi-structured diagnostic observation in addition to information collected from observation and interview noted previously. There was a diagnostic interview with Z's caregivers, a structured diagnostic observational assessment by way of a BOSA (brief observation of symptoms of autism) administered with Z and her mother in the clinic setting and observed by the clinicians through an observation window, observation of Z in a naturalistic setting by way of reports from parents and teachers and the BOSA assessment which included Z's mother showing a number of short video clips of Z at home.

13. The assessment concluded that Z meets the criteria for a diagnosis of autism spectrum disorder and presents with global developmental delays. Section 4 confirmed that she requires support to further develop skills and reach functional developmental milestones and intervention and supports provided within a multidisciplinary team context. Section 5 set out nine separate recommendations, including:-

- (1) That Z access her local multidisciplinary team service with access to psychology, speech and language therapy and occupational therapy to meet her needs.
- (2) Speech and language therapy intervention for targeting the development of Z's communication.
- (3) Occupational therapy intervention for targeting the support for development of fine and gross motor skills, self-care skills, play skills and sensory processing regulation.

This appellant's Service Statement

14. Some two months after the assessment of needs was completed, a Service Statement was issued under cover letter dated 26 February 2021 which was described as *"specifying the health services which will be provided for Z to address the needs identified in her Assessment Report"*. Section 2 is entitled *"Services to be provided in respect of Assessed Needs"* and set out at 2.1 *"Service Type: Development of Individual Family Service Plan (IFSP)"* with a start date of September 2022. Underneath the heading of Service Type, the *"Identified Need"* was *"Z requires a range of interdisciplinary supports as outlined in her Assessment Report i.e. Speech & Language Therapy, Occupational Therapy and Psychology"*. Underneath that, the *"Service Provider"* was identified as Children's Early Years Disability Service. Under that the *"Service Location"* identified a HSE office and finally *"Actual Interventions"* stated *"[t]he first step will be to develop goals through the Individual Family Service Plan process and identify the specific interventions needed to support this"*. Section 4, *"Other Relevant Information"*, stated:-

"As outlined above, it is expected that Z will commence with the Children's Early Years Disability Service in September 2022. The development of her IFSP will determine what further interventions will be provided and the expected timeframe for same."

15. Thus, the service identified in the Service Statement as the service to be provided is the development of an IFSP. There is no definition of an IFSP in the Service Statement or in any of the documents furnished to the applicant at that time. The applicant's solicitors referred in their appeal to a definition contained in a policy document published by the Brothers of Charity (Southern Services) in June 2002:

"a planning process that culminates in a document that specifies a family's desired outcomes for their child, resources, priorities and a plan of services to build on family strengths".

The document goes on to say:-

"It is the task of professionals in family centred early intervention to facilitate the development of partnerships and to support families in identifying and addressing their own concerns. The extent of assistance that families may require will vary between families so an individualised approach is needed. For example, a well-functioning and well-resourced family may be able to identify their own strengths,

resources and needs and require little assistance in planning for their child and family. The level of input in planning and intervening from a professional would be minimal. On the other hand, a family that has fewer resources and higher levels of stress and disorganisation may require lots of assistance to identify their strengths, resources and needs. Assistance or support may range from positive reframing of negative statements about themselves and their family to direct parent training and how to orchestrate child-learning experiences for their child."

16. The full policy document from which those extracts were taken has been exhibited by the HSE's solicitor. None of the parties have taken issue with the definition and so it seems to be agreed that an IFSP is a process of supporting a family and identifying and addressing their concerns. The level of support may depend on the family's own resources and abilities. I have seen nothing in the papers put before me to suggest that Z's family, who are clearly very committed to Z and concerned about what they perceive as a lack of services being provided to her, are not well-functioning, well-resourced and able to identify their own strengths, resources and needs.

17. Insofar as it is relevant, I note that a copy of a 5-page IFSP that was prepared for Z in May 2022 (after the institution of these proceedings) has been exhibited by the HSE. It is prepared in tabular form with separate sections for goal, family goal (as described by the family), what is happening now, family goal (functional/SMART goal) and update. There are entries made under all of the headings other than under "*Update*" for which all of the boxes remain blank. At the end of the document is a heading "*Family strategy/actions*" which sets out two bullet points advising Z's mother what she is to do. After, there is a heading "*Team Support*" for which there are eleven bullet points including the following:-

"By Autumn 2022, a multidisciplinary school visit (SLT/OT/Psychology) will be organised to observe Z in the classroom and offer recommendations for the classroom.

Mum and Z to attend the service on Monday 23rd May @ 12pm to meet with SLT. SLT to informally assess Z's current communication abilities and create a targeted goals for intervention.

SLT to visit Z's school placement with communication strategies and recommendations before summer holidays.

UPDATE 23/05/2022: Mum requested that Z's sensory processing be reviewed by the team OT."

18. A copy of Z's revised Service Statement of 18 January 2023 has also been exhibited and identifies a new service type of *"Support from an interdisciplinary team"* with a start date of May 2022 (which had already passed by the date of issue of the revised service statement). Under the heading *"Identified need"* there appears a similar statement as previously made in the Service Statement the subject matter of these proceedings about Z requiring *"a range of interdisciplinary supports as outlined in her Assessment Report, i.e. Speech and Language Therapy, Occupational Therapy and Psychology"*.

Complaint to the Complaints Officer

19. Z's mother was unhappy with the Service Statement of 26 February 2021 and, by letter dated 2 June 2021 from her solicitors, she made a complaint to the Complaints Officer pursuant to s. 14(1)(d) and (e) of the Disability Act raising the following issues:-

- (i) The Service Statement only listed one service of developing an IFSP which did not have due regard to the assessment report intervention timelines and did not list all the services that Z requires.
- (ii) The complaint described Z's mother's *"principal concern"* by reference to the definition of an IFSP from the Brothers of Charity document (as set out at para. 17 above) which she said meant the IFSP was only the setting out of services required. She said this was unacceptable and contrary to statute and regulations in circumstances where specific needs had already been identified in the assessment of needs process.
- (iii) The Service Statement sets out dates on which Z will be provided with another plan to establish the services she will require and does not set out dates on which she will receive actual intervention.

The complaint invited the Complaints Officer to make a recommendation that the Service Statement specifies occupational therapy, speech and language therapy and psychology are to be provided with a specific timeframe for each service.

Complaints Officer's report

20. By report dated 12 August 2021, the Complaints Officer said the Service Statement contained all of the requirements defined in Article 18 and referred to the following response furnished to the Complaints Officer by the Liaison Officer who prepared the Service Statement:

"An Individual Family Service Plan or IFSP is a collaborative and continually evolving document which details the family's current goals, what has been worked on and by whom. Whilst the IFSP is the starting point for all intervention, it should only be completed when the relevant services can follow through with the necessary supports to meet the child's needs, as agreed and identified within the IFSP."

The Complaints Officer found that the service providers had given start dates for services to be commenced and that the Executive had not failed to provide or to fully provide services specified in the Service Statement and therefore declined to uphold the complaint.

The appellant's appeal to the Appeals Officer

21. Z's mother appealed to the Appeals Officer and, in a 13 page written submission dated 13 October 2020, condemned the IFSP as *"only the setting out of services required by the child"* which was *"unacceptable, and contrary to the Disability Act 2005 and S.I. 263 of 2007, in circumstances where specific service needs have already been identified in the Assessment of Need process"*. The development of an IFSP was described as *"simply setting out, yet again, what has already been identified in the Assessment Report."* The Appeals Officer was asked to *"make a determination that services must be properly listed in a new Service Statement and provided within a specified period of time or, alternatively, to remit the matter to the DCO with the direction that the DCO do so"*.

22. The Appeals Officer sought clarification of the then up to date position from the HSE and, by letter dated 17 January 2022, the HSE informed the Appeals Officer that Z had *"received a phone call from one of her clinicians to allow the team to gather up to date information, and to help us identify current and future needs, strengths, goals and any concerns raised"*. The HSE said they anticipated an initial intervention appointment should happen within three to six months. The letter went on to explain the reasons for the long waiting list and the HSE's efforts to reduce it.

23. The Appeals Officer issued a determination report on 31 January 2022 which set out the background, the issues raised, the investigation, the applicant's appeal and the HSE's response. The Appeals Officer confirmed having considered all of the evidence submitted

and representations made by or on behalf of the appellant and the HSE in determining the appeal. At para. 10 of his determination, he set out his findings on which he based his determination not to allow the appeal. Those findings are sufficiently brief to record here in full:-

"As a consequence of the Investigation findings set out above, I make the following findings in respect of the issues raised by this appeal:-

- a. I find that the Complaints Officer obtained information from the Liaison Officer in order to clarify the dates for the provision of services for Z. The Liaison Officer clarified what the Individual Family Service Plan entails and that this document is not commenced in advance of service commencement date.*
- b. The Children's Disability Network Team 3 are working to reduce waiting lists.*
- c. Whilst the assessment of a child is carried out without any regard to the cost of or indeed the capacity to provide any service identified, the Liaison Officer must have regard to the provisions of Section 11(7) when preparing a service statement.*
- d. I find no basis for finding that the services should be provided any earlier than that outlined in the service statement."*

The appellants' appeal to this Court

24. The appellants have narrowed the grounds for seeking to set aside the determination of the Appeals Officer to the following:-

- (i) Whether the inclusion of a start date for development of an IFSP in a service statement is sufficient to comply with the obligations in s. 11(2) and Regulation 18 to specify the timeframe for the services to be provided.
- (ii) Whether the Appeals Officer had adequate reasons for his decision as required by s. 18(5). The appellant claims that it is not clear from the reasons given, such as they are, why the Appeals Officer did not allow the appeal.

The timeframe for services to be provided

25. In assessing the timeframe issue I address whether the service statement is required to refer to the provision of services identified in the assessment of needs or whether it is permissible for it to identify and focus on a different service.

26. The assessment of needs in this case was a very detailed and thorough process involving a series of assessments of Z by three professionals based on extensive engagements over a period of time with Z's parents and creche teachers. Whilst the assessment of needs sets out a number of services that Z requires, it did not recommend that any further assessment or process was needed in order to clarify how Z's needs could and should be addressed. Given that it is, as Donnelly J. confirmed in *C.M. v. HSE* [2021] IECA 283, "the 'gold standard' of service requirements" it does not seem to me to be likely that an assessment of needs, particularly one as extensive and professional as was done here, would omit any further assessments that a child might require, albeit there may always be the possibility that the service provider might wish to carry out further assessments to establish the up to date position, such as where some time has elapsed since the assessment of needs (a situation that did not pertain here) or such other reason as may apply. Barr J. in *C.M.* confirmed the legality of a service statement providing for further assessment where, at para. 131, he stated:

*"Insofar as there was a complaint in some of the test cases, that the service statement did not set out what services would be provided, but merely made an onward referral for further assessment of the applicant, I do not think that there is any substance to this complaint. It may well be that the assessment of needs recommends a referral to the Early Intervention Team. If that referral is made, it is then up to that body to assess the needs of the child and **assess how best to cater for those needs** within its own framework. I do not see that there is anything wrong in the service statement referring to an onward referral to another body, **which in connection with the provision of services by it**, will carry out a further assessment for their own purposes. So I do not see that there is anything wrong with that."* (my emphasis)

The onward assessment that Barr J. said could legitimately be made in a service statement relates to the recommendations made in the assessment of needs. It does not mean that the Liaison Officer, in preparing the service statement, can refer the child for onward assessment without that recommendation having any regard or relationship to the services and needs identified in the assessment of needs and, particularly, in circumstances where such an onward assessment is used to determine when the services will be provided, which

is part of the information that is required by s. 11(2) and Regulation 18 to be specified in the service statement.

27. "Assessment" is defined in s. 7 as something that determines the health needs occasioned by a disability and the health services required to meet those needs. Section 11(7)(a) requires the Liaison Officer, in preparing the service statement, to have regard to the assessment report concerned and s. 11(7)(d) requires them to have regard to the practicability of providing the services identified in the assessment report. Sections 11(7)(c) and (d) refer to "*services identified **in** the assessment report*" (my emphasis). Section 13(c) requires the HSE to keep and maintain records for the purpose of, *inter alia*, "*specifying the aggregate needs identified **in** assessment reports which have not been included in the service statements*" (my emphasis), which confirms that any services identified in assessment reports that are not included in service statements, are sufficiently important to merit the retention of records.

28. The jurisprudence, in particular, the recent decision of Dunne J. in *J.N. v. J.H.*, also confirms the link between the needs identified in the assessment of needs and the services identified in the assessment report. For example, at para. 53, Dunne J. states:

"Once the person has been found to have a disability, and is in need of services, it is then for a Liaison Officer to engage with the appropriate provider, be it the HSE or an education service provider, to arrange for the necessary services to be provided in accordance with the recommendation" (my emphasis).

At para. 62 Dunne J. highlighted that s. 11(7)(d) "*requires the Complaints Officer to take account of the practicability of providing the services identified in the assessment report*" (my emphasis). At para. 63, she approved of the judgment of Barr J. in *C.M. v. HSE* [2020] IEHC 406 in which she said Barr J. "*noted that the Liaison Officer is to state what services will actually be provided to an applicant in respect of the needs identified for that applicant in the assessment report*" (my emphasis). Barr J. also said at para. 122 in *C.M.* that after the assessment of needs have been ascertained without regard to resources or capacity, the papers are then "*passed to the liaison officer, who has to carry out the much more practical task of stating what services will actually be provided to the applicant in respect of the needs identified in the assessment report*" (my emphasis). A similar point is made in the decision of the Court of Appeal in *C.M. v. HSE* [2021] IECA 283 where, at para. 32, the court said that the Liaison Officer must have regard to, *inter alia*, "*the practicability of providing the*

services identified in the assessment reports" (my emphasis). In *C.T.M.*, Phelan J., at para. 89, described the s. 8 assessment report as being "*directed to identifying the full range of appropriate services to meet assessed needs*" (my emphasis).

29. Thus, the services identified in the service statement as services that will be provided should relate to the needs and services already identified in the assessment of needs. This does not mean that there is an automatic entitlement to a service identified in the assessment of needs because any enforceable right to receive a service can only crystallise in the service statement where the Liaison Officer has found, having had regard to the statutory requirements, that it is practicable for a particular service to be provided within a particular timeframe.

Services identified in this Service Statement

30. The development of an IFSP is identified in the Service Statement as a service that will be provided to Z. It would appear from the definition in the Brothers of Charity policy document, relied on by the applicant and exhibited by the HSE, that an IFSP is not a clinical service. The IFSP in Z's Service Statement is apparently going to determine what services are needed and when they will be provided, even though the detailed assessment of needs that was completed only two months before the Service Statement, had already identified the services that are needed and which are acknowledged in the Service Statement. The detailed list of recommendations in Z's assessment of needs makes no mention of an IFSP.

31. Section 11(2) and Regulation 18 requires the period of time within which services will be provided to be specified in the service statement. Rather than identifying when the services that Z has been found to need will be provided, Z's Service Statement identified a brand new intervention that is not mentioned in the assessment of needs and was not recommended by the multidisciplinary team that prepared it as a service required to meet Z's identified needs. The imposition of this additional step, which the Service Statement says will "*identify the specific interventions needed*" means that delivery of Z's identified needs of the "*interdisciplinary supports as outlined in her Assessment Report i.e. Speech & Language Therapy, Occupational Therapy and Psychology*" and a timeframe for their delivery will be further delayed as the Service Statement says "*what further interventions*" and "*the expected time frame for same*" are to be determined by the development of Z's IFSP.

32. I note that Z's Service Statement did not, as others have (for example, in *C.M.* and *N.T.*) specify a long waiting time for the service due to waiting lists. Instead, it says that this

additional step to "develop goals through the IFSP process" will then identify the "specific interventions needed to support this". It is not entirely clear what "this" even refers to, but I must assume the intention is to support Z and her needs as recommended in the assessment of needs and as identified in the Service Statement.

33. The development of the IFSP to determine the identification of and expected timeframe for further intervention sits uncomfortably with the statutory right of Z and their parents to be told when they will receive the services that have already been identified as what Z needs. Section 11 and Regulation 18 require the Liaison Officer to specify the timeframe for the services to be provided in the service statement. That has not been done here and instead Z's Service Statement says the development of the IFSP will determine both the interventions to be provided and the timeframe for them. That approach does not comply with the clear statutory requirements of what a service statement is required to contain, as developed in the caselaw set out above.

34. Z's Service Statement does identify a start date for the development of the IFSP, which is the timeframe for the provision of that health service, insofar as the development of an IFSP is a health service (which is not challenged by the appellants). However, it is not a timeframe for the provision of any of the services that were recommended in the assessment of needs. Specifying a timeframe for the provision of any of the services that three clinicians have identified in the assessment of needs cannot be sidestepped by interposing an additional process that is apparently intended to support the family to identify their own strengths, resources and needs (as per the Brothers of Charity policy statement). By doing that, the Service Statement has avoided responsibility for specifying a timeframe for the provision of any of the services recommended in Z's assessment of needs. This is reminiscent of what Phelan J. condemned in *C.T.M.* in finding that a preliminary assessment of needs without a diagnostic assessment was inadequate to meet the requirements of the Act because it was a,

"deferral of full assessment so that is outside the Part 2 process results in the removal or diminution of the statutory protection prescribed to safeguard the rights of the child with a disability to police the conduct of the AON under the provisions of Part 2, including through the recording function vested in the respondent and the complaints and enforcement process provided for." (para. 153)

The imposition in Z's Service Statement of an additional step between the identification of the need for the clinical services that are required and specifying a timeframe for the delivery of any services that are to be provided, is an approach neither contemplated by nor consistent with the statutory scheme.

Conclusion on Ground 1

35. The appellants are entitled to succeed on the ground that the period of time within which the services that the Service Statement confirms are needed will be provided, has not been specified in the Service Statement and that this is in breach of the requirements of s. 11(2) and Regulation 18.

Reasons for the Appeals Officer's determination

36. The general principles in relation to the Appeals Officer's requirement to give reasons are firstly, s. 18(5) expressly requires them to communicate their determination to the appellant and the Executive and "*the reasons therefor*", and secondly, their decision affects rights and interests of persons who must know if they have grounds to appeal or judicially review it (*Mallak v. Minister for Justice* [2012] IESC 59).

37. The appellant asserts there was no engagement by the Appeals Officer with the arguments she made in her appeal and that the decision is so incoherent that it is impossible to know why her appeal was dismissed. The Appeals Officer, in standing over his decision, relies on the decision of Phelan J. in *N.T. and J.H. v. HSE* [2023] IEHC 109, in submitting that the reasons for a decision may be derived from the documents and the process in which the appellant was personally and directly involved, relying on the principles identified by the Supreme Court in *Connelly v. An Bord Pleanála* [2018] 2 ILRM 453. Phelan J. found it relevant that the appellant had been involved in all stages of the process (a similar statutory process to the one at issue here) and was aware of the findings made in each assessment. Here, the appellant was involved in all stages of the statutory process, *i.e.* direct involvement in the drawing up of information grounding the assessment of needs, receipt of the Service Statement, her complaint to the Complaints Officer and her appeal to the Appeals Officer. However, the appellant had no involvement in the identification or selection of what the Service Statement describes as the first step, *i.e.* the development of an IFSP. The appellant's appeal to the Appeals Officer was based squarely on the adequacy of the development of an IFSP which she described (at para. 4 of her written submissions to the Appeals Officer) as the "*principal concern*". She described the IFSP as "*only the setting out*

of services required by the child” which she said was “unacceptable, and contrary to the Disability Act 2005 and S.I. 263 of 2007, in circumstances where specific service needs have already been identified in the Assessment of Need process”.

38. The brief and full extent of the Appeals Officer’s findings on the IFSP are set out at 10.1(a) of his Determination Report:-

“I find that the Complaints Officer obtained information from the Liaison Officer in order to clarify the dates for the provision of services for Z. The Liaison Officer clarified what the Individual Family Service Plan entails and that this document is not commenced in advance of service commencement date.”

That is criticised by the appellant for being at odds with the affirmation of the Complaints Officer’s finding that services could not be provided until the IFSP has been completed.

39. I find very little, if any, engagement in the Appeals Officer’s determination with the appellant’s arguments that were set out in detailed written submissions from her solicitors and, in particular, their argument that providing an IFSP will only set out services required, which they asserted is contrary to the Act and the Regulations. This is in spite of the Appeals Officer’s entitlement to interrogate issues including *“the date when a particular service could be provided”* (as per Dunne J., at para. 71, *J.N. v. J.H.*).

40. The next part of the Appeals Officer’s determination at 10.1(b) states: *“The Children’s Disability Network Team no. 3 are working to reduce waiting lists”*. I do not see how that relates to or addresses any of the issues raised by the appellant’s appeal. The appellant’s complaint was not with waiting lists or a delay in providing the services. Her complaint was about the failure to specify dates on which Z will receive actual interventions.

41. That next part of the determination at 10.1(c) is (following an agreed amendment to the wording contained in the report which include typographical errors) as follows:-

“Whilst the assessment of a child is carried out without any regard to the cost of or, indeed, the capacity to provide any service identified, the Liaison Officer must have regard to the provisions of Section 11(7) when preparing a service statement.”

That is a statement of fact that contains nothing demonstrating engagement with the appellant’s arguments or any explanation for the Appeals Officer’s decision to reject the appeal.

42. The final part of the Appeals Officer’s findings is at 10.1(d) where the Appeals Officer states *“I find no basis for finding that the services should be provided any earlier than that*

outlined in the service statement". That misunderstands the entire basis of the appeal. The appellant never took issue with the timeframe for the provision of the IFSP but she took very serious issue with the adequacy of the development of an IFSP as the only service identified in the Service Statement without specifying the dates on which actual interventions would be received. I find nothing in that finding to provide any understanding of the reasons for the Appeals Officer's decision not to allow the appeal.

43. The Supreme Court confirmed in *J.N. v. J.H.* that the Appeals Officer has jurisdiction to consider the date by which services were to be provided. In Z's Service Statement there was no date specified for the services recommended by the assessment of needs and which the Service Statement acknowledged are needed, *i.e.* speech and language therapy, occupational therapy and psychology. This was clearly part of the appellant's appeal but is not addressed in the determination and there is no explanation for its omission. It seems that the Appeals Officer considered it sufficient to address the adequacy of the timeframe provided for the development of the IFSP but that is a different issue to what the appellant raised in her appeal. Section 18(5) requires the Appeals Officer to make a determination in relation to the appeal, which must require at least some engagement with the grounds of appeal as identified by the appellant - particularly where they are set out in as coherent detail by the appellant's solicitors as occurred here. I see no such engagement by the Appeals Officer in his determination. The appellant's involvement in the process does not provide her with the knowledge of the matters considered in it such as satisfied Phelan J. that "*reasons for a decision, including for the purpose of demonstrating that proper regard has been had to relevant matters*" (para. 62).

44. The Appeals Officer is required to provide reasons for their decision. I am unable to identify the reasons for this decision in its very brief findings and determination, the sum of which seems to be firstly at odds with what the Liaison Officer said to the Complaints Officer and secondly bear limited, if any, relevance to the appellant's grounds of appeal. There is little or no engagement with the appellant's detailed arguments which were set out by their solicitors in 13 pages of written submissions. There is a lack of coherence in the determination. Despite the appellant's involvement in the process, she says it is impossible for her to know why her appeal was dismissed and, in my view, there is merit in that position.

45. The lack of reasons in the Appeals Officer's determination is not acceptable and gives rise to an appealable error of law.

Conclusion on Ground 2

46. The appellants are entitled to succeed on the ground that the Appeals Officer failed to give adequate reasons for his decision.

Decision

47. I allow the appellants' appeal on grounds of (1) the failure of the Service Statement to comply with the requirements of s. 11(2) and Regulation 18 to specify the timeframe for the services to be provided; and (2) the failure of the Appeals Officer to give adequate reasons for his decision.

48. I will hear the parties on the final orders that should be made and if any party wishes to file written submissions on final orders, these should be filed with the court 48 hours in advance of the matter coming back before me on 25 January 2024 at 10:30am.

Counsel for the appellants: Derek Shortall SC, Colin Smith BL.

Counsel for the respondent: Mark Harty SC, Stephen Hanaphy BL.

Counsel for the notice party: David Leahy SC, Cormac Hynes BL.