



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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Working together benefits the public

Welcome to the latest edition of the Ombudsman's Casebook. As before, it includes information about cases we have closed in the last quarter so that public service providers can identify possible future failings and avoid them.

This quarter includes a number of cases relating to exams and to student grants. Because of the issues facing students, we have to tackle the cases in a very timely fashion. Where for instance, someone is about to sit their Leaving Cert, they need a decision as to whether the refusal to provide them with assistance is correct in sufficient time for it to be reversed where that is appropriate. Young people who face particular difficulties may need access to a reader, for instance, or to be able to use a laptop. We worked closely with the State Exams Commission on these cases and try to turn them round very quickly without going through our normal processes. The co-operation we receive helps us to deliver speedy outcomes.

In the first year of its operation, SUSI, the body which deals with student grants, came within our jurisdiction. There were many, well-documented problems which led to delays and mistakes. We worked closely with SUSI and they turned matters around very effectively. Nowadays, we get far fewer complaints and usually about interpretation rather than administrative failure. Once more, we are able to turn these around quickly because of the co-operation we receive.

The changing pattern of public service provision means that many services



Ombudsman Peter Tyndall

which were previously provided by public bodies are now delivered by private companies or NGOs. The first major group of bodies to be brought into jurisdiction are private nursing homes where residents are in receipt of "Fair Deal" funding. We've written to more than 400 nursing homes and invited them to attend seminars to help them prepare for the change. We've developed a model complaints policy for them to use accompanied by a procedure and a standard form. We plan to roll out such standard policies in other sectors in the future.

Peter Tyndall, Ombudsman
August 2015

Lessons Learned

In this part of The Ombudsman's Casebook we highlight recurring themes arising from cases closed in the last quarter.

Providing correct information and advice to the public

All public bodies are involved in providing advice and assistance to the public. It is important that the information provided is accurate, up-to-date and relevant. Often information can become outdated or not communicated to the people who need to know it. In order to ensure that someone is not disadvantaged, and to reduce complaints, it is important to ensure that information is provided at the appropriate time, by well-informed and well-trained staff.

In case [C01/14/0596](#) (see Agriculture section) the Department of Agriculture, Food and the Marine provided a partial refund of costs after a man needlessly engaged a planner following the Department's advice on a scheme.

In case [E80/14/0240](#) (see Education section) the Ombudsman upheld a complaint from a student who was never informed about a 'selection interview' she was required to pass to progress her education to the third year of a four-year course.

While in case [C24/15/0195](#) (see 'Incorrect Phone Numbers') the Ombudsman upheld a less serious complaint about an incorrect contact number being used on Government Department e mails.

Ensuring 'fair procedures' are followed in investigations

The Ombudsman regularly receives complaints from the public about the way a public body carried out an investigation into a particular incident or a complaint. It is important that any investigation is carried out in an open and transparent way.

When serious allegations are made about an individual it is particularly important that fair procedures are followed, the investigation is impartial, as independent as possible, and there is a 'right to reply'.

In case [HA9/14/1976](#) (see Health section) the Ombudsman upheld a complaint from a foster carer about Tusla, the Child and Family Agency. Her complaint was in relation to how a review of her eligibility to foster care was conducted and a lack of an appeal of the outcome of the review.

Case [E82/14/0273](#) (see Education section) saw another refusal of the right to appeal in a case of alleged bullying in UCD.

Case [HD1/14/0807](#) (see Health section) concerned a woman's complaint about being treated badly on a visit to a health resource centre being handled by the person against whom the complaint was made.

Further Information on Cases

Please contact us if you require further information about any of the cases mentioned in the Casebook. In order to protect the identity of the complainant we may not be able to give specific details in every case. However, we will be happy to provide general guidance on the learning from the complaint.

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Agriculture

Agri-Environment Options Scheme (AEOS)

Department of Agriculture, Food and the Marine

C01/14/0596

Completed 15/05/2015

Upheld

The Ombudsman received a complaint against the Department of Agriculture, Food and the Marine from a farmer who was participating in the Organic Farming Scheme (OFS). As he was also entitled to apply for the Agri-Environment Options Scheme (AEOS), he engaged a Planner to draw up his application.

Later, on the advice of the Department, he withdrew from the AEOS but asked the Department to refund the vouched costs he incurred in engaging the Planner. However, the Department declined the request.

In this particular case, the Ombudsman considered that the farmer was acting in good faith when he incurred costs in engaging a Planner to draw up his AEOS Plan. The Ombudsman believed the farmer would not have incurred this expenditure had he been aware that the Department was going to offer him the option of withdrawing from the Scheme.

Accordingly, the Ombudsman asked the Department to review its decision. In response, the Department offered the man an good-will payment of €500. The farmer accepted the offer.

Early Retirement Scheme

Department of Agriculture, Food and the Marine

C01/14/0095

Completed 25/03/2015

Not Upheld

The Ombudsman received a complaint from a couple whose application for the Young Farmer's Installation Scheme (YFIS) was refused. The couple's representative said that the couple had been adversely affected as they had not been informed of their right to appeal the decision to the Agriculture Appeals Office. The Ombudsman confirmed that the couple had not been advised of their appeal rights. However, in examining the case he confirmed that the Department had not approved the application as it had been submitted late (the Scheme was suspended on 14 October 2008 but the couple's application was not received until 3 February 2009). As the Scheme was not in operation at the time the couple applied, the Ombudsman considered that the Department's actions in not approving it were reasonable.

Forest Premium Scheme

Department of Agriculture, Food and the Marine

C01/14/0539

Completed 27/05/2015

Partially Upheld

A couple complained to the Ombudsman after being overpaid by the Department under the Afforestation Scheme.

The couple planted 13 hectares of forestry in 1997 and a further 3.95 hectares in 1999. In August 2013, they were advised by the Department that they had been overpaid since 1997 resulting in a debt of €27,566.36 plus interest at 3 %. They appealed the decision on the grounds of it being statute barred but the appeal failed. The couple's applications in respect of both plantations were submitted on their behalf by a representative who was an official of the Forestry Service at the time of the couple's first plantation but who had left the Service by the time of the second plantation.

With regard to the first plantation, the Department said that the debt arose as a result of a payment in respect of ESB corridors, areas under electricity lines which remain unplanted, but in respect of which the applicant can claim compensation from the ESB. As applicants can claim from the ESB for this land, the corridors do not qualify for funding under the Afforestation Scheme. The Department accepted that the overpayment arose due to an error by the Forestry Service official rather than the couple, and on that basis it waived the overpayment in respect of the first plantation.

Regarding the second plantation in 1999, the Department concluded that this debt should still stand as the application was incorrectly completed. This led to a misinterpretation of the data by Forest Service staff, and the resulting overpayment. As the couple's representative was no longer an official of the Forestry Service by the time of the second plantation, the Department said that the onus was on the couple to make a clear and accurate claim.

The Ombudsman was satisfied that the Department's position on the second plantation was fair and reasonable and the complaint was partially upheld.

R.E.P. Scheme

Department of Agriculture, Food and the Marine

C01/14/2289

Completed 07/05/2015

Not Upheld

A man complained that the Department of Agriculture, Food and the Marine had imposed a penalty on his application for funding under the Rural Environment Protection Scheme 3 (REPS 3). A penalty of 15 % was imposed because the Department said that he had failed to spread lime, as agreed in his REPS plan, and had also failed to rejuvenate an agreed area of hedgerow. The man did not contest these omissions but said that it was normal practice for the Department to reduce the amount of penalties on appeal. He also said that bad weather had prevented him spreading the lime.

The Department said that it does not automatically apply reductions in penalties but that such decisions are made on a case-by-case basis taking account of any exceptional circumstances. Having examined all the evidence, the Ombudsman decided that the Department had properly applied the terms of REPS 3 in the man's case. He agreed with the Department's view that the weather did not constitute an "exceptional circumstance" for reducing the penalty as provided for in REPS 3 and so did not uphold the complaint.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/14/0817

Completed 27/05/2015

Not Upheld

A woman's solicitors complained that the Director of the Agriculture Appeals Office had overturned a decision by one of the Office's Appeals Officers. The Director had reviewed the decision following a request from the Department of Agriculture, Food and the Marine. The original decision had been in the woman's favour and concerned the eligibility of land for payment under the EU Single Payment Scheme 2011 and the Disadvantaged Areas Scheme 2011.

The Director found that the Appeals Officer had erred in their findings and she decided that the lands in question were not eligible for inclusion in the Department's payments for two reasons. Firstly, the schemes provide that each land parcel under the Department's Land Parcel Identification System (LPIS) must be defined by a permanent boundary, except in the case of commonage land. External forage boundaries must be stockproof. There was no such boundary in this case. Secondly, the scheme eligibility requirements indicate that there must be defined external boundaries and appropriate fencing for the farming enterprise. Deductions may be made within LPIS parcels for areas of scrub and ineligible features but this does not extend to include deductions for entire separate LPIS parcels containing forestry. As the Terms and Conditions were not met she accordingly overturned the Appeals Officer's decision. The Ombudsman found that the Director had acted fairly and correctly in accordance with the facts and consistent with the relevant legislation. For that reason the Ombudsman did not uphold the decision.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/14/0674

Completed 26/03/2015

Not Upheld

A man applied to the Department of Agriculture under the Single payment scheme in 2012. His farm was inspected in May 2013 following which, the Department told him that some of the land he had submitted as part of his application was not considered eligible as per the terms and conditions of the scheme so it decided that there was an over declaration of land. The Departmental Inspector also reported that no agricultural activity was being carried on at a specified land parcel.

The man appealed the Department's decision and an oral hearing was held by the Agricultural Appeal Office (AAO). Documentary evidence was produced during the oral hearing by the man and his agricultural advisor but the Appeals Officer did not accept that this evidence countered the over declaration nor was it sufficient to prove that agricultural activity had been carried on at the specified land parcel. The man then complained to the Ombudsman.

When all the relevant documentation was examined and additional clarification received from the AAO the Ombudsman was satisfied the Department and AAO had properly applied the terms of the scheme and so did not uphold the man's complaint.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/15/0001

Completed 09/04/2015

Not Upheld

A woman complained that the Department of Agriculture, Food and the Marine had decided that some of her land should not have been eligible for payments under the Single Payment Scheme. The Department explained that, following an EU audit, it had carried out an extensive review of all the lands eligible for the Scheme. This review found that lands such as scrubland had been incorrectly included by a significant number of claimants and that such lands were not eligible for payment. The Department said that it had addressed the woman's concerns and carried out a site visit to confirm the accuracy of its findings. The Ombudsman decided that the complaint could not be upheld.

Department of the Taoiseach

Incorrect contact number

Department of the Taoiseach

C24/15/0195

Completed 12/05/2015

Assistance Provided

A man was given an incorrect contact number on emails from an official in the Department. The number had been changed but the official's automatic email signature details had not been updated.

Following contact from the Ombudsman, the Department apologised for the error and it explained how it occurred. The Department also provided assurance that all automatic email signatures now contain the correct contact details for members of staff. As the issue giving rise to the man's complaint was dealt with, the Ombudsman closed the case.

Education

Advertising of a Course

Trinity College Dublin

E80/14/0240

Completed 28/05/2015

Upheld

A student complained that she was unfairly prevented from progressing from year two, of a four-year course in Psychoanalytic Psychotherapy, into years three and four. The course was offered jointly by Trinity College Dublin and the Irish Institute of Psychoanalytic Psychotherapists (IIPP). It was advertised as a four-year training programme leading to an MSc in Psychoanalytic Psychotherapy after successfully completing the first two years, and a Diploma in Clinical Psychoanalytic Psychotherapy after completing years three and four.

The student successfully completed the first two years and was awarded an MSc. However, during the second year she learned, that as well as achieving the MSc degree, students wishing to progress to clinical training must also pass a 'selection interview'. The student complained that she was never informed about a 'selection interview' before she started her studies. She attended the 40 minute interview and was deemed unsuitable for clinical training. She appealed to the IIPP and Trinity, but her appeals were unsuccessful. Trinity College informed the Ombudsman that before the course commenced, prospective students were informed about the 'selection interview' at briefing sessions. However, the College acknowledged that this requirement was not included in its brochures or printed material for prospective students.

The student had no recollection of receiving this information during briefing sessions and said that other students had no recollection of hearing about such a requirement until after the course commenced. In her complaint to the Ombudsman the student also complained that she received very little information or training to help her to prepare for the selection interview. She wanted an opportunity of being re-interviewed for progression to clinical training in years three and four.

The evidence in this case suggested that when the student committed herself to the Psychoanalytic Psychotherapy course, (personally and financially), she had a reasonable expectation that she would be able to progress into years three and four of the course if she passed the MSc stage of the course, which she did. Trinity College informed the Ombudsman that the IIPP had agreed to arrange a second interview for the student, using an interview panel consisting of parties external to the IIPP.

The complaint demonstrates the importance for all public bodies who may be providing courses of study in partnership with external educational agencies, to ensure there is clarity for students about the roles, responsibilities and limitations of each body involved. It also highlights the importance of bodies having a clear complaints and appeals pathway in place for students who may have a grievance.

Bullying Investigation Procedures

University College Dublin

E82/14/0273

Completed 09/03/2015

Upheld

The Ombudsman received a complaint from a student who alleged that he was being bullied by other students in University College Dublin (UCD). The man initially reported the matter to a student adviser. Subsequently, a formal investigation was undertaken by the College. This investigation did not find in the man's favour. Due to the passage of time between his original complaint and his request for an appeal, the College did not allow the man appeal the outcome of the initial investigation.

UCD came within the remit of the Ombudsman on 1 May 2013. However, many of the issues in this complaint happened before that time. Therefore, there were limitations on what the Ombudsman could examine. The Ombudsman focused on how some elements the College's investigation were carried out.

From an examination of the College's file, it appeared that the man had tried to revisit the complaint process on a number of occasions after he had been told that the matter was closed. However, on all these occasions he was not specifically advised of his right of appeal to the College's Governing Authority. This right of appeal is provided for at point 6.3 of the College's Dignity and Respect Policy. Accordingly, the Ombudsman asked the College to review its decision.

The College allowed the man a further opportunity to make an appeal to the Governing Authority. In this context, this Office takes the view that any remedy offered should be fair and reasonable and, the general rule should be to put the person back into the position they would have been in if the public body had acted appropriately in the first place. Accordingly, the Ombudsman considered the College's latest position to be reasonable.

Recheck of Exam Results

National University of Ireland Galway

E66/14/0760

Completed 21/04/2015

Not Upheld

A woman requested the Ombudsman to examine the process by which the Examinations Appeals Committee of one of the National Universities had dealt with her request to have her examination results rechecked.

The role of the Ombudsman in examining complaints such as this is confined to considering whether there were any shortcomings in relation to how the Committee carried out its administrative functions. In this regard, the term 'administrative functions' relates to how it applied the College's Appeals Procedure when reviewing the papers, and whether there was any evidence that those procedures were not applied correctly and/or fairly.

It is not for the Ombudsman to carry out a re-marking exercise of the papers in question that is done by experienced examiners.

In its report to the Ombudsman, the Committee provided comprehensive details about its Appeals Procedures which it had also supplied to the woman. Additional clarification was received from the Committee which confirmed the date that the Examination Appeals Committee dealing with the appeal and included reports received from the relevant College Lecturers and a report from the relevant external examiner was also reviewed.

From his examination of the further information provided the Ombudsman could find no evidence to sustain the complaint that the Committee acted in breach of its governing legislation or guidelines, so he did not uphold the complaint.

Recognition of Qualifications

Dublin Institute of Technology

E38/14/2259

Completed 11/03/2015

Not Upheld

A student of Dublin Institute of Technology (DIT) complained that the sanction imposed on her by the College for having her mobile phone switched on, in the examination centre was too severe. The DIT had examined the incident in accordance with its General Assessment Regulations (GAR) and had established a Panel of Enquiry. The DIT reported that the members of the panel were aware of the consequences of the sanction they proposed for the student. However, it added that the panel deemed the breach to be of such a serious nature that it warranted the penalty applied.

The student had been made aware of the GAR prior to the examination and that the allegation had been processed in accordance with the relevant policy. The Ombudsman considered the sanction imposed was consistent with the sanction imposed on others found with a phone in similar circumstance.

Recognition of Qualifications

Solas (previously known as FÁS)

O32/14/1909

Completed 13/05/2015

Not Upheld

A man complained to the Ombudsman regarding the level of training he received on an IT course he attended from May to November 2013. The course was provided by Oiluna on behalf of Solas (previously Fás). He complained that the exam questions leading to his qualification were freely available over the internet. He said there was no facility to acquire adequate practical working skills and no method of rating a participant's knowledge/skills. He complained that the course was promoted as a Fetac recognised course but that the certificate he received was not recognised or aligned to the National Framework of Qualifications.

As Oiluna is not within the Ombudsman's remit, the examination of the complaint was restricted to the administrative actions of Solas. In its report to the Ombudsman, Solas explained that it did not promote the course as a Fetac Level 6 certified course. Rather, the documentation Oiluna provided illustrates the FETAC logo which is part of their own approved certification status. It said that learners were encouraged by the trainer to use 'Measure Up' software to prepare for exams which is standard practice for participants. 'Measure Up' is an official and approved testing site endorsed by CompTia and is a study-aid which includes practice test applications.

The Ombudsman noted that the complainant was not adversely affected by the administrative actions of Solas as he received his CompTia certificate, which is recognised globally. He was satisfied that the course was run as per the Solas Training Specification Standards. Under the circumstances, the complaint was not upheld.

SEC - Leaving Certificate Waiver

E85/15/2006

Completed 06/06/2015

Upheld

A woman complained that her daughter had been refused permission to use a laptop computer during her Leaving Certificate exams, by the State Examinations Commission.

Her daughter had a developmental co-ordination disorder which made it difficult for her to write by hand for long periods of time. As she had been using a laptop throughout the school year, she was not used to writing for long periods. During our examination, the mother told us that her daughter has Scoliosis but that she had not informed the Commission.

The Ombudsman contacted the Commission to explain the situation. Subsequently, the daughter was granted approval to use a laptop in her Leaving Certificate examinations.

SEC - Leaving Certificate Waiver

E85/15/0948

Completed 11/05/2015

Upheld

A student with dyslexia and dyscalculia applied for a waiver from being assessed for her spelling, grammar and punctuation in her Leaving Certificate language exams. Her application and her appeal were refused by the State Examinations Commission (SEC).

A SEC report showed that she did not qualify for a waiver because her written script error rates were too low. The Ombudsman examined the written scripts and he considered the error rate to be higher than the scores on the report from SEC. The Ombudsman asked the SEC to confirm whether the student met the criteria for receiving a waiver.

As a result of the Ombudsman's intervention, SEC requested that the Independent Appeals Board review her case. This Board found the student qualified for the waiver, which was granted.

SEC - Leaving Certificate Waiver

E85/15/1025

Completed 28/04/2015

Upheld

A dyslexic student applied for a waiver from spelling, grammar and punctuation in language subjects in his Leaving Certificate exams. He was refused and his appeal was also refused.

The Ombudsman found that the State Examinations Commission (SEC) had trained school staff to conduct tests to assess whether students qualify for waivers or other supports in the Leaving Certificate exams. The tests should be timed to reflect exam conditions. The student said that the school test conducted had not been a true reflection of exam conditions as it had not been time limited. The Ombudsman asked the SEC to arrange for the National Education Psychological Service (NEPS) to conduct a timed test on the student to see whether he met the waiver criteria.

The outcome of the NEPS test proved that the student qualified for the waiver, which was then granted.

SEC - RACE Application Refused

E85/15/0096

Completed 30/03/2015

Upheld

A mother complained on behalf of her son who has autism/Asperger's syndrome after he was refused a reader for his Leaving Certificate exams under the Reasonable Accommodations at the Certificate Examinations (RACE) scheme.

In order to obtain a reader, the student must meet certain criteria. These include reading a passage from a sample examination paper at the appropriate level. This student was sitting three Higher Level subjects in his Leaving Certificate exams. His State Examinations Commission file showed that the school had asked the student to read from Ordinary Level English sample papers. This did not provide a true reflection of his reading difficulties. The error had not been noticed during the review or the appeals process.

The Ombudsman asked the Commission to have the student re-assessed at the correct level.

As a result of the reassessment, the student was found to meet the criteria to qualify for a reader for his Leaving Certificate.

Treatment of Student

National University of Ireland Galway

E66/15/0608

Completed 16/06/2015

Assistance Provided

A man complained about the treatment he received while attending a course at the NUI Galway in the 2013/2014 academic year. He has type 1 diabetes and stated that the relevant supports were not made available to him. He withdrew from the course in February 2014.

The University was satisfied that it had all reasonable supports in place to accommodate a student with type 1 diabetes. However, it regretted that the man had felt compelled to withdraw as a student. Accordingly, it offered to transfer his tuition fees for the 2013/2014 academic year towards the course fees for 2014/2015. The man did not accept this offer at that time.

The Ombudsman considered that the NUI Galway had all reasonable supports in place for the man. After being contacted by the Ombudsman, the University extended its offer to the 2015/2016 academic year. The man indicated that he hopes to resume his studies at the University in 2015.

NUI Galway extended the timeframe for transferring the man's tuition fees. Therefore, the complaint was closed as 'Assistance Provided'.

Enterprise Ireland

Grant Application

Enterprise Ireland

O21/14/2049

Completed 11/03/2015

Not Upheld

A man complained that because he had not been invited to make a presentation on his proposal he had not been given the same opportunities as other applicants for a grant from Enterprise Ireland under the New Frontiers Programme. The Programme is aimed at accelerating the development of sustainable new businesses. Enterprise Ireland said that his applications had been treated on the same basis and it gave details of the standardised application document and evaluation scoring template. Enterprise Ireland accepted that it had no independent appeals or review system for unsuccessful applicants. The Ombudsman could not uphold the complaint but did tell Enterprise Ireland that in the interests of transparency and good administrative practice it should introduce such a facility for future schemes.

Environment, Community and Local Government

Household Charge

Department of the Environment, Community and Local Government

C08/13/1290

Completed 25/05/2015

Not Upheld

A man sought to have his estate retrospectively included in a list of unfinished housing estates to qualify for a waiver from the Household Charge which was introduced in 2012. He claimed that his estate should have been included in a national survey the Department of the Environment, Community & Local Government had conducted in 2010. He claimed that his estate qualified because the developer had effectively been inactive from July, 2011 and had abandoned the development.

The Department admitted that it had made a mistake in not surveying the estate in 2010. It also accepted that it was likely that the estate would have qualified as an unfinished estate under the guidelines in 2010. Tipperary County Council stated that it had understood that the Survey was only to apply to developments commenced after 2000 and this is why it had not included the estate in its suggested amendments in 2010. When the Department reviewed the list in 2011 it said that the estate was substantially complete and therefore did not qualify for exemption. It provided email evidence from the Council and a resident to support their decision.

Given that estates had to meet both the criteria of being unfinished and effectively abandoned by the developer in order to qualify for a waiver from the Household Charge in 2012, the Ombudsman accepted that while the Department had erred in excluding the estate from its survey, it had not resulted in any adverse effect as the Council had correctly categorised it and no exemption was due.

Leader Group Penalty

Department of the Environment, Community and Local Government

C08/15/0555

Completed 07/05/2015

Not Upheld

A community group received a grant under the Rural Development LEADER Programme which was reduced by 10% following a Department inspection. The 10% penalty was applied by the Department for non-compliance with EU Directives and Public Sector procurement procedures.

Funding for publicly funded projects must be conducted in accordance with the requirements of the Construction Procurement guidelines. These are set out in a particular Circular, no.26 of 2010, which the Department sent to both the LEADER Group and the community group.

In this case, the LEADER Group assessed the community group's application mainly on the basis of guidance for privately rather than publicly funded projects. This was a breach of the relevant guidelines which provides that applications such as this should follow the terms and conditions of the Construction Procurement guidelines.

Having regard to the relevant guidelines and regulations, the Ombudsman was satisfied that the Department had acted reasonably in applying the 10% penalty as LEADER Group had not used the correct guidance in assessing the community group's application.

Rural Development Programme

Department of the Environment, Community and Local Government

C08/14/1810

Completed 12/05/2015

Not Upheld

A man complained that the Department of the Environment, Community and Local Government had refused a grant on his group's application for funding under the Rural Development Programme 2007 - 2013 (RDP). In this case the grant was withdrawn because the Department concluded the group had not complied with the conditions for qualifying for funding under the RDP in relation to the use of owned land; cost of works completed before the grant application was approved; non-payment of VAT on certain goods and excessive joint funding.

The man did not accept the Department's findings and argued that a certain building could be moved, that some costs should be discounted and that the group were not responsible for non-payment of VAT by one of its suppliers. The Ombudsman examined the reasons given by the Department for its refusal of the application and decided that the Department's decisions, upheld on appeal, were fair and reasonable and that it properly applied the terms of the RDP. He decided that the complaint could not be upheld.

Health

HSC – Care and Treatment

Beaumont Hospital (HSE Dublin North East Hospital Group)

H82/14/0797

Completed 18/05/2015

Upheld

A woman complained to the Ombudsman that, during a visit to her local hospital for a scan, two medical staff had been rude and hurtful to her. She had been spoken to inappropriately, which left her feeling humiliated. She was also concerned that the scanning procedure had not been carried out appropriately. She had made a formal complaint to the hospital but was dissatisfied with the manner in which it was addressed. She raised a number of issues including that the hospital had passed her correspondence to one of the two individuals she had mentioned in her complaint. The woman wanted an apology and for no one else to go through what she had experienced.

In its initial report to this Office the hospital had acknowledged that the woman should not have been treated in the manner she was and it extended an apology to the woman. It also said that the relevant department in the hospital undertook that, in the future, it would advise patients of the procedure involved in the particular scan.

Following further discussion with the hospital it agreed that the doctor at the centre of the complaint would issue a personal and sincere apology to the woman. The woman did not think the doctor's letter of apology went far enough. However, the Ombudsman was satisfied that in the circumstances the letter of apology was genuine.

HSC – Care and Treatment

Cork South Lee (HSE South)

HD1/14/0807

Completed 01/05/2015

Assistance Provided

A woman was dissatisfied with the service she received from a HSE Health Resource Centre. She said it was slow, inefficient and did not accommodate her difficulties. She also felt that her complaint should not have been dealt with by the person against whom she had complained.

The HSE apologised to the woman. It stated that it hoped that the issues could be resolved locally but accepted that another staff member should have handled her complaint. In response to the woman's complaint it allocated additional resources to the Centre and undertook an administrative review.

As the HSE acknowledged some serious administrative service delivery issues, apologised for these, undertook an administrative review, allocated additional resources to address the issues and appointed a team coordinator to improve communication issues, the Ombudsman was satisfied that it had taken appropriate corrective actions to improve service delivery at the Centre.

HSC - Care and Treatment

Roscommon (HSE West)

HC3/14/1028

Completed 16/04/2015

Not Upheld

A woman complained to the Ombudsman about the manner in which she was treated by her Doctor during a consultation. She maintained that he had shouted at her, had man-handled her out of the consultation room and had failed to provide the necessary level of care. The woman had complained to the HSE and was dissatisfied with the HSE response.

The Ombudsman received the relevant files and reports from the HSE but there were no written records taken at the time of the incident. In response to a request from the Ombudsman, the HSE provided an account of the incident from the doctor complained about and a different doctor who was there at the time which differed from the description of the incident given by the woman. This left the Ombudsman with two differing versions of the same event with no independent evidence to support one version of events over the other. Due to the lack of independent third party evidence, the Ombudsman was unable to uphold the woman's complaint.

HSC - Complaint Handling

Waterford Regional Hospital (HSE South Eastern Hospital Group)

H52/14/1431

Completed 10/03/2015

Assistance Provided

A man attended University Hospital Waterford. He was dissatisfied with the level of care he received and wrote to the General Manager of the Hospital seeking clarification on a number of issues. The man had been seen by two Consultants at the Hospital and the General Manager had requested the Consultants to reply directly to the issues raised in the man's letter of complaint to the Hospital. The General Manager had also indicated that he was willing to meet with the man and discuss all aspects of his complaint.

The man contacted the Ombudsman on the basis that the Hospital had failed to respond to his correspondence to the General Manager of the Hospital. Subsequent to correspondence from this Office the General Manager of the Hospital issued an apology to the man for the Hospital's failure to respond to his initial correspondence, and also offered to arrange a meeting between the man and the General Manager and the relevant Consultants to discuss all issues of concern to the man.

In view of the Hospital's apology, reply and the offer of a meeting to the complainant the Ombudsman decided not to uphold the complaint.

HSC – Investigation Procedures

Kerry (HSE South)

HD9/14/0919

Completed 30/03/2015

Partially Upheld

This complaint related to the way a HSE review had been conducted into the actions of a Senior Social Worker in relation to the complainant's mother. The complainant said the HSE Review Officer had failed to interview and meet with all the relevant stakeholders or to examine the relevant files and records of the Senior Social Worker. While the Review Officer had detailed telephone conversations with all of the relevant parties, she had omitted to review the written social work records. In addition, while the complainant's mother was deemed to be of sound mind, her consent had not been obtained for the purposes of pursuing this complaint. In this case it was suggested that the complainant's mother had suffered adverse affect. The Ombudsman wrote to the HSE requesting that a Complaints Officer be appointed to look afresh at the issues raised by the complainant. The HSE undertook to seek the consent of the complainant's mother before proceeding with a new examination of the complaint.

This case highlighted the need for greater attention to be paid to the need to seek a person's consent, in a situation where they are of sound mind, before examining a complaint made on their behalf.

HSE – Long Term Illness Scheme

Wexford (HSE South)

HD8/14/0620

Completed 15/05/2015

Not Upheld

A man complained to the Ombudsman that although he had been diagnosed with diabetes by a HSE hospital, no HSE authority or individual had advised him that under a HSE scheme he was entitled to free medicine. He says he only became aware of the Long Term Illness Scheme when a friend was diagnosed with a similar condition and mentioned the scheme to him. For a period of 7 years he had paid for his own medication, which he was entitled to for free, under the Scheme. Once he was aware of the scheme he sent in an application and made a number of attempts to establish whether there was an onus on the HSE to advise patients of the availability of the scheme. He was also seeking a refund of the money he had paid out prior to being accepted as eligible for the scheme.

The HSE said that it is only responsible for payments to be made under the scheme, not the scheme itself. Having sought legal advice the HSE said there is no legal obligation on the HSE or its staff to advise patients of the schemes being operated by the HSE. The PCRS

say that in accordance with the scheme which it is operating there is currently no provision for the payments of refunds to individuals who would have been eligible for payment under the Scheme had they applied earlier. The HSE say that its obligation arises where an eligible individual has chosen to avail of the scheme by making an application. If a person never makes an application, the HSE is not obliged to pay for their medicines or approved products.

As he was satisfied that the HSE was operating in accordance with the Long Term Illness Scheme, the Ombudsman did not uphold the man's complaint.

HSC - Nursing Homes

Mayo (HSE West)

HC2/12/1259

Completed 20/03/2015

Upheld

The Ombudsman received a complaint from a man, on behalf of his late mother. He was seeking a backdated payment from the Health Service Executive under the Nursing Home Support Scheme (NHSS) for a 6 month period, ending March 2012. This was refused. The HSE explained that, in respect of applications received after 1 October 2011, the NHSS is paid from the date the application is approved. In this case the application, while received by the HSE on 3 October 2011, was not approved until 23 March 2012.

As the Ombudsman was not satisfied that it took the HSE almost 6 months to process and approve the application, he asked the HSE to review the case.

In response, the HSE conceded that given it received the application form on 3 October 2011, the application should have been processed and approved by 1 December 2011, rather than on 23 March 2012. As a result, the HSE offered an ex gratia payment, in the sum of €8,452.02, on a without prejudice basis, to the complainant.

Land Registry

Property Registration Authority

C31/14/0639

Completed 30/04/2015

Assistance Provided

A man complained that in 1956 his father and a neighbouring farmer had exchanged two fields. Both parties agreed the location of the new boundary line and registered the relevant documents and map with the Land Registry in 1956. In 2009 the man sought maps for the two folios from the PRA. However he believed the maps, which were now digitised, did not match the position as laid out on his father's original 1956 maps. The PRA requested the return of both folios. It returned the maps to the man in 2010 reflecting the changes he had asked for.

In 2012 the PRA were contacted by the neighbouring landowner seeking to have the boundary line relocated to the position prior to the 2010 changes. The man says that the PRA failed to notify him until after these changes were carried out. The PRA said that further changes could only be made on foot of a Court Order or an agreement signed by both land owners.

The PRA said that when it was contacted by the neighbouring landowner in 2012 querying the revision of the boundary between the two folios, the case was referred to the Superintendent of Mapping and the Interim Chief Executive of the PRA. It was decided that the boundaries should be reverted to the position that pertained prior to the 2010 revision. Following an objection, a further review was carried out by the PRA as a result of which the PRA directed that the map lodged in 1956 was inconclusive and should not have been open to a new interpretation in 2010 and the revision should not have been made.

The Ombudsman accepted that as the PRA believed a mistake had occurred in 2010, and it had taken steps to rectify the matter (by reverting to the position as it was before the error occurred), it had complied with the legislation.

While the man has a right of appeal to the Courts, the PRA agreed to review the man's contention that the problem was as a direct result of the digitising of the maps. It agreed to process his complaint (that the digitised maps did not accurately reflect the 1956 agreement between the man's father and the neighbouring farmer) under its procedure for dealing with issues regarding digitisation. As the Ombudsman was satisfied the PRA was dealing reasonably with the matter, he closed the complaint.

Local Authority

Flooding

Galway County Council

L16/14/0890

Completed 29/04/2015

Not Upheld

A man complained to the Ombudsman that the OPW had promised him that money would not be paid to the man's County Council until flood mitigation works were completed in the Woodlawn Bridge area. The man had wanted the riverbed to be dredged. The man also complained that the works carried out by the Council had not improved the flood defences in his area as his house still flooded. He had also requested a copy of a report from the OPW a number of times but had not got it.

The Ombudsman asked the man to supply evidence that his property had been flooded since the Council had carried out the flood mitigation works, but the man did not do so.

The Council supplied relevant files and a copy of an external consultant's report which the Council had commissioned after the flood mitigations works had been completed. The report indicated that the flood mitigation works had been carried out for 2 Km downstream and approximately 650m upstream of the Woodlawn Bridge, removing encroaching vegetation and debris and reforming the flow of the channel. The report also indicated the presence of a protected species in the riverbed under the Woodlawn Bridge and accordingly the riverbed could not be dredged. The OPW had also supplied the relevant documentation.

Maladministration and adverse affect are essential elements of any complaint before the Ombudsman can examine that complaint. There was no evidence of maladministration on behalf of the OPW or the Council in this case and the man had not supplied evidence that he had been adversely affected by the flood mitigation works in this case. Accordingly the Ombudsman did not uphold this complaint.

Housing

Fingal County Council

L60/14/0825

Completed 01/05/2015

Upheld

An elderly woman was awarded a grant of €56,000 by Fingal County Council under the Housing Aid for Older People Grant Scheme. The woman engaged a builder to carry out the works. She told the Council she was not happy with the quality of some of the work completed. Subsequently, the Council released €42,000 of the grant money directly to the builder, rather than to the woman.

The Ombudsman's examination was confined to the interactions the woman had with the Council. The actions of her builder are not within the Ombudsman's remit. This is because she had a private contract with the builder.

In relation to the release of the funds to the builder, the Council said that there appeared to have been some confusion at the time as to whether or not the woman was available to receive her post. It indicated that she may have cancelled her post for a period. In these circumstances, the Council permitted the builder to collect five cheques and to deliver them to the lady, at her home. The Council emphasised that the five cheques were made payable to the woman and, as far as it was aware, the individual cheques were endorsed by her. This was disputed by the woman.

From an examination of the Council's file, it was noted that the woman was on holidays but returned to her home nine days before the Council released the five cheques to the builder.

The Ombudsman took the view that any arrangement which the woman had regarding delivery of her post while she was on holidays was a matter for herself. It was not a matter in which the Council should have become involved, unless there were compelling reasons for doing so. The Ombudsman did not see any valid reason for the Council's release of the five cheques to the builder without the woman's specific authorisation, particularly in the absence of a certification from her that the works were completed to her satisfaction.

Following contact from the Ombudsman, the Council offered the woman €7,500. It also confirmed that, in future, it will only release grant payments to applicants, unless otherwise instructed by an applicant.

The woman accepted the Council's offer. The Ombudsman felt the Council's offer was reasonable and appropriate as he felt it would allow the woman to make good the remaining repairs to her home.

Housing

Kerry County Council

L18/14/1343

Completed 08/05/2015

Not Upheld

A woman applied for social housing to her local county council in 2007. In 2015 she complained to the Ombudsman that she had not been provided with the social housing she had applied for. The Ombudsman established that at the time the woman made her initial application there was an issue as regards guardianship of two of her children and the Council had sought clarification from the woman on this issue, so it could establish the most appropriate accommodation to suit the woman's requirements. However this clarification was not provided and the application did not proceed further.

In 2008, the woman applied again for social housing. However at this time and until 2010, the woman informed the Council that it was her intention to return home to her country of origin. Subsequently the woman was visited by Council staff and her housing needs were established. The Council informed the woman that it did not have any housing stock in any

of her preferred areas and that it considered the Rent Accommodation Scheme was the best option. On two separate occasions the woman obtained private rented accommodation and requested her landlord to consider the RAS. One landlord had no interest in the scheme and while the other landlord was interested he was unwilling to bring the property up to the required standard for the RAS scheme.

Council staff had met with the woman on a number of occasions and documentation provided to the Ombudsman indicated that there had been delays on both sides. On the substantive matter of the woman's housing application, the Ombudsman was satisfied that the Council had acted reasonably and so he did not uphold the woman's complaint.

Housing

Limerick City Council

L27/14/1087

Completed 02/03/2015

Not Upheld

A man complained that he and his family had experienced ongoing problems of anti-social behaviour by a tenant of Limerick City & County Council (the Council) and that, although he had made several complaints, the Council had done nothing about the problem. He said that on one occasion he had written to the Council about the problem but received no reply.

It is not the Ombudsman's function to determine whether anti-social behaviour had occurred or not; the Ombudsman's function is to look at how the Council dealt with complaints of alleged anti-social behaviour and whether any investigations of such complaints were in compliance with relevant rules and policies.

The Council gave details of four individual complaints alleging anti-social behaviour by his neighbour that the man had made to it. The report also detailed the Council's investigations into these complaints as well as the outcomes. The Ombudsman was satisfied that the Council's investigation of these complaints, which were conducted by its Tenancy Enforcement Officer as required under the relevant policy, were thorough and that the outcomes of these investigations were appropriate in the circumstances. The Ombudsman found that there was no basis on which he could make an adverse finding against the Council in relation to its handling of the complaints.

The Council also informed the Ombudsman that after it had received the letter from the man, the Tenancy Enforcement Officer had discussed the contents with him and had given him advice in relation the issues that were raised. Based on the contents of the letter and the details of the advice the Officer had given to the man, the Ombudsman was satisfied that the letter had been responded to verbally and that the issues raised in it had been adequately addressed.

Housing

Limerick City Council

L27/13/1744

Completed 06/03/2015

Not Upheld

A woman complained that her house had been structurally damaged as a result of leaking sewer pipes and that Limerick City and County Council was responsible for the leaks as it was responsible for the sewer.

The Ombudsman examined the point of who had responsibility for the pipe in question. It was subsequently found that the pipe that was draining sewage from the woman's house, and others on the road where she lived, was a service connection to the public sewer. It was not a sewer within the meaning of the Water Services Act, 2007. The responsibilities associated with service connections are outlined in the Act and these include the maintenance and repair which rest with the owners of the premises served by the connection.

The Ombudsman decided that as the Council did not have any legal responsibility for the service connection, as it neither owned or controlled it, he could not uphold the woman's complaint.

Housing

South Dublin County Council

L59/15/0165

Completed 09/04/2015

Upheld

A woman complained that the Council had failed to notify her that she was required to submit a joint application to purchase her home under the 1995 Tenant Purchase Scheme. The woman had submitted an application in her own name but as her husband's name was on the tenancy the Council required a joint application. However, she complained that she was not notified of this requirement by the Council until after the closing date for the scheme had passed.

The Ombudsman pointed out to the Council that it had failed to notify the tenants in writing of the requirement to submit a joint application despite the tenants complying with all other requirements made of them. Nor did the Council notify them of the termination of the 1995 scheme until after the final deadline had passed. The Council agreed to review its handling of this case. It subsequently advised the Ombudsman that it was not in a position to accept any further applications under the 1995 Scheme. However it agreed, if and where an Incremental or other Tenant Purchase Scheme is introduced by the Minister for the Environment within the next two years for which the tenants are eligible, the valuation of their house would be the 2012 valuation applied to the property under the 1995 scheme. As the Ombudsman was satisfied that the woman would at that stage have the opportunity to buy her house at the same price she would have paid under the previous scheme, he closed the case.

Housing

Wexford County Council , Housing General, Level of Assistance (L55/14/2290), completed 17/04/2015

Assistance Provided

A woman complained about a noxious odour in her Council house. She said that the odour occurs intermittently and usually at night. The Council had made various efforts to establish whether or not the odour existed but had not been able to call to the house at night when the woman said it generally occurred. Following contact from the Ombudsman, the Council agreed to visit the woman's home when she next noticed the odour, even if that was in the evening. The Ombudsman closed the case on the understanding that if the woman is not satisfied with the outcome of this process she can come back to him and he will investigate her concerns further.

Noise Pollution

Dublin City Council
L12/14/2288
Completed 12/03/2015

Not Upheld

A man complained about the lack of action by Dublin City Council in relation to noise pollution from the bells of a Cathedral near his home. The Council said that it recorded the noise levels and found that the noise in question is not in breach of the relevant Environmental Regulations. As a result it did not intend to take any further action. It also advised the man that he could pursue an action through the Courts. As he was satisfied that the Council's action in response to the complaint were reasonable, the Ombudsman did not uphold the complaint.

Planning

Clare County Council
L05/14/0648)
Completed 26/05/2015

Not Upheld

A man complained that a County Council had failed to enforce certain planning conditions on his neighbour and that this was having an adverse effect on him and his family. The man's main complaint was about a fence his neighbour had erected which he claimed was in excess of 2 metres and required planning permission. This fence was blocking the light into the complainant's home.

The Council confirmed that the fence in question did not require planning permission as it was not higher than 2 metres and that therefore other issues such as the blockage of light were not subject to enforcement action by the Council. The difference between the height as assessed by the neighbour and the findings of the Council is accounted for by the fact

that the neighbour's garden is at a slightly higher level than the complainant's that of his neighbour due to decking and gravel laid by the neighbour. This raised level is within limits acceptable to the Council. Some other issues raised by the Complaint such as the neighbour causing damp in his home were judged by the Council to be subject to redress under the civil law and outside its remit. The Ombudsman did not uphold the complaint.

Planning

Clare County Council

L05/15/0088

Completed 10/04/2015

Partially Upheld

A man complained that the County Council had failed to take enforcement action against a developer who he said had not completed all works on his housing estate, and that the Council had not replied to his correspondence.

The County Council told the Ombudsman that it had reviewed the correspondence on the relevant files, and that up until February 2014 the unauthorised development file was within the remit of the local Town Council. It acknowledged that the man did not always receive a satisfactory response to his correspondence from the Town Council. The matter was complicated by an additional grant of permission by An Bord Pleanála. This permission made references to a number of the conditions attached to the original grant of permission.

The County Council agreed to carry out a separate review of the second grant of permission. It has included the development in its current register of over 180 estates in the County which are all unfinished. Further to that it told the Ombudsman it inspected the development and once its Engineer's report has been finalised any outstanding works will be brought to the attention of the developers for redress. It noted that the bond the developer lodged with it when planning permission was granted may be called upon to address any outstanding issues. As the Ombudsman was satisfied that the Council is dealing with the matter in a reasonable way, the complaint was closed.

Planning

Monaghan County Council

L38/15/0322

Completed 20/04/2015

Not Upheld

A man complained about a housing development by the Council. The man believed that the Council had breached an agreement it made with him regarding the pile driving used and the stepping back of the house adjacent to his property.

The man did not provide any written confirmation with regard to the pile driving or any damage to his property as a result. He also did not provide any proof of the agreement regarding the house adjacent to his being stepped back from his property.

The Council provided details of the Council Member's resolution to carry out the development. While the Members considered the issue of stepping back the adjacent house, the resolution was passed without any change being made to the location of this property. The man was notified of the resolution by letter within a week of the decision being made. The Council also provided details of the pile driving used, which the Ombudsman agreed was in accordance with the contract approved by the Council Members.

Having reviewed the case and having regard to the applicable legislation, the Ombudsman was satisfied that there was no evidence of the agreement and that the actions of the Council were not unreasonable. As a result he did not uphold the complaint.

Road Works

Offaly County Council

L40/14/0789

Completed 16/04/2015

Not Upheld

A man complained that his car had been damaged by a pothole on a particular road and contended that the Council was liable for the cost of repairs. The Council denied liability invoking the legal principle of "nonfeasance". Under this principle a local authority is immune from liability in respect of any injury or damage arising from a failure on its part to carry out repairs. The local authority is also immune from liability in a case where it has carried out repairs or maintenance and any injury or damage has arisen due to normal wear and tear rather than to negligent or unsafe maintenance work. This principle has been acknowledged by the Courts.

The Ombudsman decided that as there was no proof that the local authority had carried out negligent or unsafe maintenance work on the particular stretch of road in question, nonfeasance applied and he could not uphold the complaint.

Tender Process

Galway County Council

L16/14/0749

Completed 19/05/2015

Not Upheld

The Ombudsman received a complaint from a man whose tender application to Galway County Council was unsuccessful. The Council maintained that the man's application did not contain a Safety Statement. The man maintained that the Safety Statement was attached to the back of his application. Given the very serious nature of the complaint, the Ombudsman arranged for his staff to visit the Council and inspect its processes. Tendering rules require that at least two officials are present when tenders are being opened.

It was noted that the man's sealed tender was recorded as having been received by the Council at a specific time and on a specific date. His unopened tender was given a specific

number and signed for by a named staff member. Subsequently, three staff members were present when all tenders were opened.

Following the inspection, the Ombudsman was satisfied that the Council has comprehensive procedures in place for the receipt, storage and opening of tenders. He was also satisfied that the Council has reasonable preventative and detective control measures in place, involving three staff members, which are aimed at safeguarding the integrity of the tender opening process. He was also reassured that, in this instance, there was a clear administrative audit trail from receipt to opening of the tenders.

In the absence of independent verifiable evidence to support the complainant's case, the Ombudsman could not uphold the complaint.

OPW

Flood Relief Works

Office of Public Works

C20/14/0899

Completed 26/05/2015

Not Upheld

A man complained to the Ombudsman about the quality of flood relief works that were being carried out in his area by Contractors acting on behalf of the OPW. Part of the remedial works being carried out was the replacement of his boundary fence. He asked OPW for a more ornate fence than the proposed paladin fence and agreed to pay a maximum of €1,600.00 towards the cost of the upgrade. Unfortunately at this time, as a result of the relief works being carried out, a flood occurred at his property. The man said that the OPW had indicated that it was prepared to waive the costs of the fencing. He claimed that the OPW was now denying him the waiver and he believed his claim has been singled out for delay, without any explanation, while others had been settled.

Following his examination of the correspondence between the OPW and the man about the cost of the fencing, the Ombudsman considered that there was some ambiguity in the wording of a particular email from the OPW to the man but was satisfied that it was never the intention of the OPW to waive the payment towards the upgrade of the fence. He accepted that the delay in finalising the matter was due to the fact that the OPW were awaiting documentation it had requested from the man to be submitted. The Ombudsman therefore did not uphold the complaint.

Pobal

Audits

Pobal

O80/15/0095

Completed 20/03/2015

Not Upheld

A man made a complaint in relation to Pobal on behalf of a Local Development Company. The company received funding from Pobal under the Local and Community Development Programme (LCDP). Following an internal audit, Pobal imposed a financial penalty of 10% on the company. The man complained that the sanction was imposed with immediate effect and that his repeated requests for meetings with Pobal were refused.

Pobal has responsibility for managing, implementing and monitoring the LCDP on behalf of the Department of the Environment, Community and Local Government. The programme monitoring includes an audit function which allows the auditing body to impose non financial and/or financial sanctions. Pobal provided a correspondence timeline to demonstrate that it observed the audit process as set out under the LCDP including that every opportunity was given to the company to address the issues highlighted in the audit report.

In reply to the claim that a meeting was denied to the company, Pobal referred to numerous pieces of correspondence together with the official meeting and numerous telephone calls which it said made up a substantial chain of correspondence between the company and three directorates of Pobal, including the full Board. The Ombudsman was satisfied that Pobal's position was fair and reasonable and that it had acted in line with the LCDP. For this reason, the complaint was not upheld.

Social Protection

Back to Work Allowance

Department of Social Protection

C22/14/0502

Completed 27/04/2015

Partially Upheld

A woman complained to the Ombudsman regarding the manner in which the Department of Social Protection handled her application for the Back to Work Enterprise Allowance Scheme (BTWEA).

The woman was on Jobseeker's Allowance and decided to apply for the BTWEA. She was informed by the Department what the rate of allowance would be based on one adult dependant and two child dependants. She contacted the Department regarding her husband's Illness Benefit claim to inform them that he had moved to Canada to work. The Department reviewed her case in light of this, and reduced her payment by over €150 per week. Her previous Jobseeker's Allowance and her BTWEA were revised because she was not eligible to claim any amount for her husband. This resulted in an overpayment of €1185.30.

Before her husband left the country, the woman asked the Local Development Company (LDC) if her BTWEA would be affected if her husband got a job in Canada. In the response the LDC officer said that she was told by a member of staff in the Department by phone that if her husband was under her claim, that it would not affect her payment at all.

The Ombudsman considered that there was a basis for the Department cancelling the overpayment of €1,185.30. The Department accepted the Ombudsman's view and did so. However, the Department said that the adult dependent rate could not be paid for the period her husband was in Canada on the basis that it was disallowed because he was absent from the State, and not because he was working. No means were assessed on her claim for her husband's employment. The Ombudsman considered that the Department's position on this point was reasonable and in line with the relevant scheme guidelines which said: "Participation in the BTWEA can be periodically reviewed, to confirm that the conditions of entitlement continue to be satisfied. A review may also be initiated on receipt of notification of any change in circumstances which may affect entitlement. This may include a request for proof of residency in the State". For this reason he did not uphold the part of the woman's complaint regarding the reduction in her BTWEA payment.

Carer's Allowance

Department of Social Protection

C22/14/0858

Completed 13/05/2015

Not Upheld

A man complained to the Ombudsman that he had been refused Carer's Allowance by the Department of Social Protection. His application was refused as the Department decided that the medical evidence did not support the requirement that the person being cared for is so invalidated or disabled as to require full time care and attention, and that the man was working outside the home for more than 15 hours per week. The claimant believed that he did provide full time care and he reduced his hours of work to less than 15. He appealed against the Department's decision but his appeal was refused. The claimant then requested a review of his case by the Chief Appeals Officer (CAO) who upheld the Department's decision.

The Ombudsman examined the relevant files from the Department and the Social Welfare Appeals Office, including the medical evidence submitted by the claimant. The Ombudsman considered that the decision of the Department's medical assessors that the person being cared for did not require full time care and attention was reasonable. On that basis he did not uphold the complaint.

Carer's benefit

Department of Social Protection

C22/14/0874

Completed 10/04/2015

Not Upheld

A woman complained to the Ombudsman about the refusal of her application for Carer's Benefit and a refusal of her subsequent appeal. Her application was refused on the basis that the evidence did not indicate that the woman was providing continual supervision to the care recipient. The Appeal Officer was of the opinion that her involvement in the care of her sister did not constitute full time care and assistance as required for Carer's Benefit. The woman felt that the fact that she had been approved for Carer's Leave suggested that she was providing continual supervision. She also felt that a letter from her sister's Consultant confirmed that she had provided continual supervision.

In the examination of this complaint, it was explained to the woman that Carer's Leave falls under the Carer's Leave Act 2001 and entitlement to this does not automatically mean entitlement to Carer's Benefit. The Ombudsman also felt that the letter from her sister's Consultant did not provide definitive evidence that she was providing continual supervision to her sister.

The Appeal's Officer demonstrated that they had considered all evidence, including the information provided by the woman in relation to the care she provided to her sister. The Ombudsman was therefore satisfied that the woman's application was processed in an appropriate manner and therefore this complaint was not upheld.

Disability Allowance

Department of Social Protection

C22/14/0468

Completed 10/03/2015

Not Upheld

A man complained about the Department of Social Protection's (the Department) decision to refuse his claim for Disability Allowance (DA). His 2011 claim for DA was refused on medical grounds and that decision was upheld by an appeals officer following an oral hearing in November 2013. The man's complaint to the Ombudsman was essentially that the medical evidence from various clinicians that he provided had not been properly considered.

From the initial examination of the Department's file it was unclear if the Appeals Officer had had access to all of the medical evidence at the time of the oral hearing and therefore, the Ombudsman asked him to review the case again having regard to all available medical evidence. The Ombudsman was subsequently informed that, having reviewed the case, the Appeals Officer was satisfied that the original decision to disallow the appeal should stand.

The Ombudsman was satisfied that all of the medical evidence submitted by the man to the Department and Social Welfare Appeals Officer had been taken into account in the decision making processes and he did not see any basis on which he could ask for the claim to be further reviewed.

Jobseeker's Allowance

Department of Social Protection

C22/14/0708

Completed 31/03/2015

Not Upheld

A man was dismissed by his employer in August 2012. In October 2012 the man applied for Jobseeker's Benefit and also applied to have this benefit backdated to August 2012. The Department of Social Protection (the Department) refused both applications. The man appealed this decision to the Social Welfare Appeals Office (the SWAO). The Appeals Officer did not uphold the man's appeal.

The man complained to the Ombudsman about the manner in which his complaint was dealt with by the Department and the SWAO. At the time the man completed his application for Job seeker's Benefit in October 2012, he also completed a UB19 form and in answer to question 16 "Why do you think you have not succeeded in getting work?" the man wrote "Trying to set up own business since being dismissed." The man had rented a shop in early September 2012 and from the date of his dismissal he had been refurbishing the shop. During this time the shop was inspected by the Revenue Commissioner. The Revenue Commissioners forwarded a report to the Social Welfare Special Investigation Unit to establish if there were any outstanding issues.

To be entitled to claim Jobseeker's Benefit an applicant must be available to work and genuinely seeking work. In view of what the man had written on his UB19 form, the evidence given by the SWI at the oral hearing and the fact that the man had not engaged the services of a contractor to refurbish his property, the Ombudsman was of the opinion that the man was not available to work nor was he genuinely seeking work for the period for which he had sought Job seekers Benefit. Accordingly his complaint could not be upheld.

Jobseeker's Allowance

Department of Social Protection

C22/14/1449

Completed 19/05/2015

Upheld

A woman complained about the Department of Social Protection's delay in implementing a Social Welfare Appeals Office (SWAO) decision. The SWAO had decided that the woman's Jobseeker's Allowance (JA) should not have been fully disallowed by the Department for three years because she had failed to disclose her husband's means. Instead, the SWAO directed the Department to reassess the woman's JA based on earnings from her husband's employment during this time. This decision would reduce the final overpayment assessed against the woman.

During the Ombudsman's examination, the woman's revised Jobseeker's Allowance was paid to her. However, she was unhappy with how the Department arrived at the overpayment amount of about €18,500. The Ombudsman found that the Department had not provided a detailed breakdown of how it had determined the figure. The Ombudsman requested that the Department provide a breakdown.

The Department reviewed the matter and informed the Ombudsman that the overpayment amount was incorrect. It explained it had not taken into account the time between the woman's JA being suspended and the time it took for her SWAO appeal to be concluded. As the woman was eligible for JA based on her husband's means for this period, this amount should have been deducted from the final overpayment.

As a result of the Ombudsman's examination, the woman's overpayment was reduced by €8,500.

Jobseekers Benefit

Department of Social Protection

C22/15/0111

Completed 13/05/2015

Upheld

A woman receiving Jobseeker's Benefit (JSB) in Ireland moved to Poland and arranged to have her JSB paid there. She complained to the Ombudsman after her payment ended a month earlier than she had expected.

A person may continue to draw benefit from an EU member state for up to 13 weeks after they move to another member state. The woman's file showed that she was entitled to JSB from 22 May 2014 to 20 August 2014. Payment had ceased on 16 July 2014. The Ombudsman brought this to the attention of the Department of Social Protection. When the Department reviewed her file, it found that her JSB claim had been incorrectly closed.

As a result of the Ombudsman's intervention, the woman was paid her full JSB entitlement.

State Pension (Contributory)

Department of Social Protection

C22/14/0880

Completed 13/05/2015

Not Upheld

A man complained to the Ombudsman after the Department of Social Protection (the Department) sought repayment of overpayments he had received in respect of Jobseeker's Benefit and Illness Benefit in the 1980s.

The man had acknowledged the overpayments and made intermittent payments to the Department. Initially the Department sought repayments of €10 per week. The legislation allowed the Department to seek repayments at a rate of 15% of the man's pension, amounting to €35 per week. However subsequent to a meeting with the man the Department sought €28 per week and the man agreed to this. The Department had previously said that if the man found the €28 per week repayment too burdensome it was open to him to request a review of the arrangement.

The man had requested the Ombudsman to examine why the Department insisted on taking €28 per week when it had initially sought €10 per week. The man also wanted a breakdown from the Department as to how these overpayments had occurred and why the Department was still seeking repayment of the debt.

The Department had supplied the man with a breakdown of the debt and his repayment history on a number of occasions and showed that the man had attended a meeting in the local social welfare office and agreed to repay €28 per week. The Ombudsman considered that the Department had acted reasonably and so did not uphold the man's complaint.

Supplementary Welfare Allowances Scheme

Department of Social Protection

C22/14/1680

Completed 20/03/2015

Upheld

A woman complained to the Ombudsman that she had been refused a 'crèche supplement' under the Supplementary Welfare Allowances Scheme, which is administered by the Department of Social Protection (the Department). The woman needed her child to attend a crèche so that she would have time to provide her partner with the full-time care and

attention he needed, but she could not afford the crèche fees out of the family household income. Her partner became quadriplegic as a result of a road traffic accident and needs an exceptionally high level of care and personal support.

A Review Officer upheld the Department's decision to refuse the application.

The weekly household income consisted of Disability Allowance of €402.20 and Carer's Allowance of €102.00, for the two adults and three children.

The Department decided that the family could afford to pay the €60 per week crèche fee out of the extra income received from Carer's Allowance, without causing undue hardship.

The Ombudsman considered that Carer's Allowance (and half rate Carer's Allowance) is awarded by the Department to offset additional costs arising from the provision of care and support to the individual being cared for. He did not consider it fair or reasonable for the Department to determine that Carer's Allowance is simply considered as additional household income to be used to meet unrelated household costs such as costs arising for children in the family. This is evidenced as the rate of Carer's Allowance (and half rate Carer's Allowance) remains the same whether or not a recipient family comprises child dependants.

The Ombudsman concluded that the application should have been considered under the normal assessment criteria for crèche supplement, but disregarding the income from the half rate Carer's Allowance.

The Department accepted the Ombudsman's analysis and approved the award of a crèche supplement with arrears backdated to the date of the application.

Supplementary Welfare Allowances Scheme

Department of Social Protection

C22/14/0839

Completed 28/04/2015

Not Upheld

A woman applied for an Exceptional Needs Payment towards the cost of home heating oil. Each year, during the winter months, she receives fuel allowance under the National Fuel Scheme. She provided medical evidence to the Department to show that she suffers from diabetes. The Department decided that heating is an ongoing expense which should be budgeted for from weekly income and also no exceptional circumstances existed to warrant a payment towards the cost of home heating oil.

Exceptional Needs Payments are paid to help meet essential, once off, exceptional situations which a person could not reasonably be expected to meet from their own weekly income.

As the Department had acted in accordance with the terms and conditions of the Exceptional Needs Payments Scheme and no exceptional need was identified, the Ombudsman could not uphold the complaint.

Supplementary Welfare Allowances Scheme

Department of Social Protection

C22/14/1570

Completed 17/04/2015

Upheld

A man complained that the Department of Social Protection had incorrectly disallowed his application for Rent Supplement and that his subsequent appeal to the Social Welfare Appeals Office was also disallowed incorrectly.

The man's application was refused on the basis that he had left local authority housing without good cause and he did not have a housing needs assessment from his local authority. The legislation governing entitlement to a payment under the Supplementary Welfare Allowance Scheme, which Rent Supplement is, provides for a payment to be made in cases where someone leaves local authority housing only if the Department is satisfied that the person had good cause for leaving. In this case the man was able to provide evidence that he was the subject of anti-social behaviour. In addition he produced evidence that he had been assessed by his local authority for housing and it had been decided that he did have a housing need.

The Appeals Officer in the Department was satisfied with the information provided by the man and allowed his appeal. Unfortunately a clerical error was made and the man was advised that his appeal was disallowed. An examination by the Ombudsman of the Department's files relating to the case revealed this error and the Ombudsman requested the Department to correct it, as a result the man was paid arrears of Rent Supplement amounting to €4278.

Tusla

Complaint Handling

HA9/14/1976

Completed 14/05/2015

Partially Upheld

A woman complained to the Ombudsman about the handling of a complaint she had made to Tusla, the Child and Family Agency. The woman was a foster carer. Her complaint was in relation to her fostering of a child. Some difficulties arose during the foster placement.

The woman expressed concerns about communications with the social worker of the fostered child. She felt that this social worker was not available enough and was not taking concerns she had voiced seriously. The foster placement subsequently broke down and the child made a complaint about the foster carer. A Foster Care Review subsequently took place.

The National Standards for Foster Care state that regular reviews should take place. These reviews are to examine the continuing capacity of the foster carer to provide high quality care. Additional reviews take place if concerns arise or a complaint has been made, such as in this case.

Reports are prepared by social workers and they are submitted for the Foster Care Review. The woman complained that she had not had access to all material prepared for the Foster Care Review. She also felt that she was denied the opportunity to respond to the social workers' contribution to the Foster Care Committee.

A decision was made to change the approval status of the foster carer. Although she was not removed from the panel, strict limitations were placed on who she could foster. She wished to appeal this decision but she was denied the right to appeal.

The Ombudsman agreed that there had been some communication difficulties with the social worker. He concluded that based on fair procedure, the woman had the right to view all reports about her that were submitted to the Foster Care Committee and to the Foster Care Review. She also had the right to appeal the decision on her foster carer approval status.

The Ombudsman welcomed the fact that Tusla promptly acknowledged that the woman should have had access to all the material prepared for the Foster Care Committee. She should also have had the opportunity to respond to the social workers contribution to the review. Tusla also accepted that the procedures allow people whose approval status has been changed to appeal. Tusla apologised for any upset caused and is meeting with the woman to develop a plan to address her situation.

Valuation Office

Rates

Valuation Office

C27/14/2260

Completed 16/03/2015

Not Upheld

A man complained that as part of an appeal he had made to the Valuation Office he had asked that his property be inspected as he disagreed with the rateable valuation placed on the building. He said that the appointment to view his property was cancelled at the last minute by the Valuation Office and the inspector failed to reschedule the inspection before the relevant deadline had passed. He had appealed the initial decision on the basis that the building should be exempted from rates as it could not be occupied by a tenant due to its condition. He also claimed that the Valuation Office had failed to inform him of his right of appeal to the Valuation Tribunal.

The Valuation Office said that the man's property had been revalued as part of the required revaluation of the local rating authority area. The relevant legislation sets out certain deadlines or time periods for each stage of the valuation process. The Valuation Office say it had contacted the owner of the property on the morning of the inspection to cancel the appointment, due to unforeseen circumstance. Having been unable to reschedule this inspection the Valuer had considered the grounds of his appeal and reviewed all information the Valuation Office had regarding his property including type, size, use, location and photographs. It had also carried out an exterior inspection. Following this the valuation was reduced from €3,010.00 to €1,670.00. The Valuation Office stated that it is its policy to notify individuals of their right of appeal throughout the process and references to the appeals process are included in standard correspondence.

The Ombudsman found that there was a lack of clarity around whether the man was seeking to appeal the valuation of the property or whether he was seeking to have the property removed from the valuation list completely. He informed the man of his right to seek to have his property removed from the Valuation List, under a separate process. Under the legislation the Valuation Office is not obliged to carry out an inspection as part of the Revaluation Process. Finally the Ombudsman was satisfied that the Valuation Office had included information on his right of appeal to the Valuation Tribunal in its correspondence with the man. For these reasons the Ombudsman did not uphold the man's complaint.

An explanation of the Ombudsman's Case Closure Categories

1. Upheld:

The following describe some of the scenarios where the Ombudsman upholds a complaint:

- It has been accepted by the public body that maladministration has occurred which has adversely affected the complainant.
- The complainant is found to have a genuine grievance and the body agrees to resolve/rectify the matter.

2. Partially Upheld includes:

- The complaint is not fully upheld, but the complainant has benefitted by contacting the Ombudsman.
- The complainant has a number of grievances but only some of them are resolved.
- The complainant is seeking a specific remedy but the Ombudsman decides on a lesser remedy.
- The complainant may have come to the Ombudsman with a complaint about a particular entitlement but, on examination, it is found that a different entitlement is more relevant and the complainant receives the different entitlement.

3. Assistance Provided includes:

- The complainant has benefitted from contacting the Office although their complaint has not been Upheld or Partially Upheld. A benefit to a complainant might take the form of:
 - The provision of a full explanation where one was not previously given.
 - The provision of relevant information, or the re-opening of a line of communication to the body complained about.
- While the complaint was not Upheld or Partially Upheld, the public body has adopted a flexible

approach and has granted a concession to the complainant which has improved his/her position or resolved the complaint fully.

4. Not Upheld includes:

The actions of the public body did not amount to maladministration. In other words, the actions were not:

- (i) taken without proper authority,
- (ii) taken on irrelevant grounds,
- (iii) the result of negligence or carelessness,
- (iv) based on erroneous or incomplete information,
- (v) improperly discriminatory,
- (vi) based on an undesirable administrative practice,
- (vii) contrary to fair or sound administration

5. Discontinued/Withdrawn includes:

- The complainant does not respond within a reasonable time to requests from the Ombudsman for relevant information.
- It has been established in the course of the examination/investigation that the complainant has not been adversely affected.
- The Ombudsman is satisfied that maladministration has occurred and that appropriate redress is being offered by the public body. The complainant refuses to accept the redress and is insisting on a level of redress which the Ombudsman considers to be unreasonable.
- The complainant initiates legal action against the public body in relation to the matter complained about.

About the Office of the Ombudsman

The role of the Ombudsman is to investigate complaints from members of the public who believe that they have been unfairly treated by certain public bodies.

At present, the public bodies whose actions may be investigated by the Ombudsman are:

- All Government Departments
- The Health Service Executive (HSE) (and public hospitals and health agencies providing services on behalf of the HSE)
- Local Authorities
- Publicly funded third level education institutions and educational bodies such as the Central Applications Office (CAO) and Student Universal Support Ireland (SUSI)

The Ombudsman also examines complaints about failures by public bodies to provide accessible buildings, services and information, as required under Part 3 of the Disability Act 2005.

From 24th August 2015 the Ombudsman will be able to examine complaints about private nursing homes.

Making a Complaint to the Ombudsman

Before the Ombudsman can investigate a complaint, the person affected must try to solve their problem with the public body concerned. In some cases there may be formal local appeals systems which they will have to go through before coming to the Ombudsman - for example, the Agriculture Appeals Office, the Social Welfare Appeals Office etc. If they fail to resolve their problem and they still feel the body concerned has not treated them fairly, they can contact the Ombudsman.

Further details on making a complaint can be found on our website

<http://www.ombudsman.gov.ie/en/Make-a-Complaint/>

Contacting the Ombudsman

The Ombudsman's Office is located at 18 Lower Leeson Street in Dublin 2.

Lo-call: 1890 223030 Tel: 01 639 5600 Fax: 01 639 5674

Website: www.ombudsman.gov.ie Email: Ombudsman@ombudsman.gov.ie

Twitter: [@OfficeOmbudsman](https://twitter.com/OfficeOmbudsman)

Feedback on the Casebook

We appreciate any feedback about the Ombudsman's Casebook. Please email us at casebook@ombudsman.gov.ie with any comments.



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