



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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# A single complaint can benefit many

Welcome to the May 2017 edition of The Ombudsman's Casebook. It has been another busy few months for us and we are preparing for the launch of our Annual Report in June. The report will focus on our role in **improving public services** through learning from complaints.

Often we deal with cases where only the complainant has been affected and there is no risk of a similar problem affecting anyone else. However, in some instances we find that others have been affected, whether through receiving multiple complaints or through looking at the underlying problem with the processes or procedures concerned. Being able to make changes to benefit many more people than those who complained to us is one of the greatest benefits to the work of the Office. While this may only be a handful of people in some instances, in others it may be many thousands.

The confirmation of our jurisdiction over **Direct Provision** accommodation centres has been a big feature of our recent work. We have been meeting with centre managers, with NGOs but above all with the residents of the centres to discuss our role and take any complaints. Our [Factsheet](#) is available on our website in five languages.

As I write the weather has improved as it so often does in the run up to the **exam season!** We have our systems in place to deal quickly with complaints we receive on issues including support



Ombudsman Peter Tyndall

for disabled students and access to grants. Some examples of our work in the field of education are featured in this Casebook.

Finally, one of the positive signs we see as the financial situation improves is a reduction in complaints about **Social Protection**, as more people go into work and benefit claims reduce. It remains our single largest source of complaint, simply because of the high volume of transactions undertaken by the Department.

We hope you find the featured cases of interest.

Peter Tyndall May 2017

# Agriculture

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## Forestry

C01/16/2019

Completed 12/01/2017

### # Not Upheld

#### Background

A forestry development beside a man's property was licensed by the Forest Service. He submitted an objection to the Forest Service when the development began on the basis that the access route was inadequate and that the development would affect his internet supply business. His internet service depended on line of sight and it was claimed the trees would obstruct that. The Forest Service refused to consider his objections as the licence had already issued before his correspondence was received.

#### Examination

The legislation applying to licensing forestry developments specifies that the Notice of the proposed development will be advertised on the Department of Agriculture, Food and the Marine website only. The application was submitted and advertised on the website. Objections and submissions could be made within a month of the application being advertised and none were received.

The application was originally refused because the Forestry Inspector considered the access route unsuitable. However the application was approved after an appeal and the applicant submitted alternative proposals for accessing the site. The applicant also said he had consulted with neighbours, including the complainant, and had agreed to sell land surrounding their properties to them. The complainant has refuted this. The complainant's objection was only notified by telephone to the Department after approval had issued. The emailed objection, which had been sent on the same date, was sent to the wrong email address and was not received until three months after the decision has issued. Because the licence had already been issued and the development had commenced, the Forest Service considered that it was too late to take any action.

#### Outcome

The Forest Service had acted in accordance with the legislation in processing and issued the afforestation licence. There was no evidence of maladministration and therefore the complaint was not upheld. The Forest Service intends to amend the legislation to require applicants to place site notices where forestry is planned so as to ensure that neighbours have adequate notice and are in a position to submit observations in a timely manner.

## Forestry

C01/15/4360

Completed 30/01/2017

### # Upheld

#### Background

A man complained to the Ombudsman on behalf of his company about the Forest Service's decision to apply a non-farmer rate to a forestry grant. The Forest Service is part of the Department of Agriculture, Food and the Marine. This resulted in the company failing to qualify for payments for the remaining three years of the 20 year grant. The grant application for the farmer rate was refused by the Forest Service as the company did not have an active herd number for the purposes of the grant.

#### Examination

The core issue in this complaint was the delay of 11 months in issuing a new herd number by the local Department Veterinary Office (DVO). The DVO accepted responsibility for this undue delay. The Forest Service had told the man that if the company got the herd number by the end of 2014, then it would be eligible to get the farmer rate of the grant. The company would have been issued the herd number by this time had there not been a delay in the DVO. It got a herd number in early 2015. The Ombudsman was satisfied that the company suffered the adverse effect of not qualifying for the grant because of undue delay caused by another arm of the Department. For this reason the Ombudsman asked the Department to review its decision.

#### Outcome

The Department agreed to review its decision and revised it in line with the Ombudsman's examination. The company qualified for the farmer rate of the grant and was eligible to claim the annual payments for the remaining three years of the 20-year forestry grant.

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## Rural Environmental Protection Scheme

C01/15/1914

Completed 30/01/2017

### # Not Upheld

#### Background

A man complained about the refusal by the Department of Agriculture, Food and the Marine of his application for funding for an additional year under the Rural Environmental Protection Scheme (REPS) 4.

The original Repls 4 plan was submitted on 28 April 2008 with a start date of 1 May 2008. The Scheme allows applicants to apply for additional funding as long as they apply 6 weeks before the anniversary of the start date of their plan. The man submitted a new REPS 4 plan in March 2009 with 5.15 ha additional land, which he felt entitled him to an additional year in his plan as he applied more than six weeks before 1 May 2009, a year from the start date

of his plan. However the Department refused to grant the additional year as it considered the anniversary date of the man's plan was 1 January rather than 1 May 2009. The man considered the decision was unfair as he felt he acted in accordance with the terms and conditions of the REPS 4 scheme. It was not possible for the man to re-apply the following year as the Scheme was closed in July 2009.

#### Examination

The Ombudsman reviewed the Department's processing procedures for REPS 4 applications. He noted that the anniversary date of a plan is not defined in the REPS 4 Terms and Conditions. He asked the Department to explain how it decided on the anniversary date of the plan in this case (1 January) where the application was submitted on 28 April 2008 with a start date of 1 May 2008. The Department said that "if someone joins REPS mid-year, they get a start date in that year and are due five full years after that, i.e. five full years commencing 1 January the following year. The anniversary date is 1 January as this is the calendar year in which an applicant applies for payment' The Ombudsman confirmed that the Department told the man at the time his plan for REPS 4 was accepted that 1 January would be the anniversary date. The Ombudsman noted that the Department had consistently applied 1 January as the anniversary date in this way for all REPS 4 applications.

#### Outcome

The Ombudsman was satisfied that the man was told when his plan was approved that his anniversary date was 1 January, and that the Department treated all applicants in the same way. As the decision to close the Scheme also affected all applicants, the Ombudsman was satisfied that the Department's position was reasonable.

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## Sea Fishing & Aquaculture Licensing

C01/16/0178

Completed 15/11/2016

### # Not Upheld

#### Background

A man complained about the Department of Agriculture, Food and the Marine's decision to refuse his application to replace his aging wooden boat with a bigger vessel. The man said that the Department had allowed extra capacity in another case so a similar approach should be adopted in his case.

#### Examination

The Department said that the relevant Directive prevented it from approving the application as the replacement boat had to have the same capacity as the original one. The Department also said the other case referred to by the man highlighted an ambiguity in the Directive that did not apply in the man's case as the Directive rules were quite clear on this issue.

#### Outcome

The Ombudsman was satisfied the Directive was in keeping with the underlying legislation.

He could also not find that the man was treated differently to another applicant as both cases were different. The Ombudsman noted there was a public consultation process regarding the Directives which was the appropriate avenue for the man to raise his concerns.

## Education

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### DARE (Disability Access Route to Education)

E38/16/3020

Completed 22/12/2016

#### # Not Upheld

##### Background

A complaint was received in relation to the 'random selection process' operated by DIT when allocating places to students who are eligible for the DARE scheme. A representative complained that in using the random selection process, a student's lifelong disability had not been taken into account when places were being allocated even though the student was eligible for the DARE scheme and met the minimum entry requirements to DIT.

##### Examination

Detailed reports were obtained from both DARE and DIT in relation to the random selection process and how it is used. In DIT, priority is given to students who have a physical or visual/hearing disability. Priority is also given to students who are eligible for both the DARE and HEAR schemes. Any remaining places are provided using the random selection method.

In this case the student was eligible for the DARE scheme and met the minimum entry requirements to DIT. The student did not meet the criteria for priority entry to the scheme though, and was competing with 44 other people for a very limited number of places in the random selection process that followed. Unfortunately the student was not successful.

DARE/HEAR confirmed that each Higher Education Institution taking part in the DARE HEAR schemes have full control over their own admissions policies which sets out their method(s) of selecting eligible students for reduced points places.

DARE/HEAR also confirmed that to their knowledge DIT is the only Higher Education Institution taking part in the DARE/HEAR scheme which uses random selection, but that this is a standard feature of the CAO system and is often used as a selection method when there are more students on the same points than there are remaining places available on a course.

##### Outcome

The Ombudsman was satisfied that the allocation of DARE places at DIT is being administered fairly and in accordance with the Guidelines created by DARE/HEAR. The Ombudsman was also satisfied that DIT are open and transparent about how places are allocated with detailed information about process used clearly detailed on their website.

## DARE (Disability Access Route to Education)

E85/14/1285

Completed 25/11/2016

### # Not Upheld

#### Background

A man complained that his daughter's application, to be included in the Disability Access Route to higher Education (DARE) scheme, was declined. His daughter had fully entered her application details online and provided all the necessary supporting documentation before the deadline for applications. However, she omitted to click the button 'yes' to indicate that she wished to be considered for acceptance under the DARE scheme. Had she not omitted to do so she would have qualified for inclusion in the scheme.

#### Examination

The Ombudsman asked DARE administration to review its decision. DARE administration said that it would be unfair to retrospectively admit the student to the scheme as it would potentially adversely affect another applicant who had completed the application process fully and properly. However, DARE administration amended its online application process for future applicants. Instead of the requirement to click the button 'yes' at the end of the data entry process, applicants must click 'yes' or 'no' to a question asking if they want to be considered under the DARE scheme before they are able to enter any application data. This amendment ensures that future applicants cannot be adversely affected by an error of omission, as happened in this case.

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## DARE (Disability Access Route to Education)

E86/16/2990

Completed 24/11/2016

### # Not Upheld

#### Background

A student complained that she was not aware of any problem with her DARE application until it was refused when the first round of CAO offers came out by which time it was too late for her to correct her application. She appealed the decision but was not successful.

#### Examination

When the Ombudsman reviewed the detailed report he got from the CAO on the complaint, it became clear that the student had not completed three of five parts of her application form correctly or on time. She had failed to 'save' the information on the online form and was late in submitting some of her documentation.

The CAO e-mailed the student three times with a reminder to complete and submit Section A by the deadline of 1 March 2016 in order to be considered for DARE. The student did not respond to the e-mails and did not attempt to complete the application until after the deadline had passed.

The CAO confirmed that it does not review or assess DARE applications. As the student did not confirm that she wanted to be considered for the DARE scheme before the deadline, the CAO confirmed that her application was not screened.

As regards the appeal, the CAO confirmed that they did not believe the student had been treated unfairly when measured against the set of tests used in assessing appeals.

#### Outcome

The Ombudsman was satisfied that the student was given the opportunity to apply to the DARE scheme correctly and on time but unfortunately failed to do so, and that the decision made by the CAO and the CAO Independent Appeals Commission was therefore reasonable. He told the CAO however that he felt the student was not clearly told why her application/appeal was rejected and suggested that the CAO Independent Appeals Commission provide more detailed information to applicants in their correspondence with them in the future.

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### Delay in Treatment

E81/16/1511

Completed 13/01/2017

#### # Assistance Provided

##### Background

A man complained about his dental treatment at University College Cork (UCC) and about its complaint handling policy. He said that he had been left with significant dental problems as a result of treatment he received by student dentists and that there was a delay in receiving his treatment.

##### Examination

Prior to contacting the Ombudsman the man had already met with UCC staff to discuss his dental treatment. He told the Ombudsman that he resorted to getting private treatment to rectify the issue, at his own expense. However, UCC told him that they did not intend to continue with his treatment as he was no longer eligible for treatment with a student dentist. He then made a detailed complaint to UCC but was unhappy with the response he received. The Ombudsman could not examine the substantive issue of his complaint as it related to clinical judgement, which is outside the remit of his Office. He did however examine the administrative actions of UCC to include their operating complaint procedures.

It appeared that while the man had submitted a detailed complaint to UCC, following his meeting with the Professor, he received a response which merely stated that UCC had nothing further to add. UCC said that the Professor had spent considerable time with the man on the day of their meeting, where he discussed the man's dental treatment and explained why they decided to discontinue his treatment. UCC also said that the man was advised on the day that if he had any 'further comments' he could submit them directly to UCC in writing. However, UCC said that the man did not ask any specific questions and did not raise any new issues. Therefore, they had nothing further to add. UCC also said that treatment carried out by student dentists is slower than with a qualified dentist as they are becoming familiar with procedures and all of their work has to be assessed by a tutor. In addition, UCC said that this is explained to patients prior to commencing treatment.

### Outcome

Following the Ombudsman's contact with UCC, it said that it would now accept additional correspondence from the man if he had any further questions to add. In addition, UCC agreed that it would arrange for the matter to be considered by a Professor not previously involved with the treatment and or the complaint. The Ombudsman concluded that it had made reasonable efforts to resolve the complaint.

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## HEAR (Higher Education Access Route)

E86/16/2542

Completed 09-11-2016

### # Assistance Provided

#### Background

Funding can be awarded under the HEAR scheme to students whose parent(s) or guardian(s) are in occupational groups that are considered under the scheme to qualify as indicators of socio-economic disadvantage. Self-employment is not one of the qualifying groups. A student complained that HEAR refused her application because her father was self-employed even though he had not had self-employment since 1998. The student submitted a late appeal to the DARE/HEAR Independent Appeals Commission but was told that as it was late it would not be examined until 2017.

#### Examination

Following contact from the Ombudsman, HEAR agreed to consider the late appeal from the student.

#### Outcome

The appeal was successful and the student was granted access to the HEAR scheme. The Ombudsman has engaged with HEAR to seek to ensure that the way HEAR decides on which occupational groups can qualify for funding does not cause unfairness.

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## Mature Student Application

E41/16/2475

Completed 28/11/2016

### # Assistance Provided

#### Background

A woman complained that she was not accepted as a mature student with the Dundalk Institute of Technology. She was unhappy with the refusal given her past experience and qualifications. She also said that she received conflicting correspondence from the Institute following her application which led her to believe that her application may have been successful.

### Examination

It appeared that the woman did not fully understand the application process and how the mature application process worked in tandem with the CAO process. This was evident from her correspondence with them. It appeared that when she queried this with the Institute, and demonstrated clear efforts to bring resolution to the matter by asking specific questions about her application, and the process involved, she was referred to the Institute's website for assistance. The Institute accepted that it had on occasions failed to address the woman's concerns. As a result, it agreed to address their protocols involved in administering the mature student entry route to guarantee students are communicated with in a clear, concise and timely fashion. It also agreed to undertake a review of best practice across the education sector in relation to the processing and administration of mature applications.

### Outcome

The Ombudsman was satisfied with the Institute's response.

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## SUSI/SGAB - Higher Education Grants

E78/16/2346

Completed 08/12/2016

### # Partially Upheld

#### Background

A student complained that the undergraduate element of her international integrated masters course had been determined by SUSI to be three years instead of five years which had an impact on her Back to Education Allowance. The student had written confirmation from the University she was attending that the undergraduate element of her course was five years and contended she should receive funding for that period of time. On appeal, the SGAB said it would be a matter for the Awarding Authority to determine when the student transferred from undergraduate to postgraduate. In their role as the Awarding Authority however, SUSI maintained that the undergraduate element of the course would remain at three years.

#### Examination

Following contact from the Ombudsman, SUSI re-examined the complaint and decided that the undergraduate element of the course was four years.

SUSI based its decision on information used from the European Commission's website Eurydice on medical courses in Bulgaria. This is a database which provides those responsible for education systems and policies in Europe with European-level analyses and information to assist them in their decision making.

According to Eurydice, the normal length of a Bachelor programme is four years in accordance with the curriculum. SUSI therefore changed their previous decision and decided that the undergraduate element of the students course was four years, not three.

### Outcome

The Ombudsman was satisfied that following its re-examination of the complaint, SUSI dealt with the query properly, fairly and impartially. Although SUSI did not decide that the undergraduate element of the course was five years as was requested by the student, the Ombudsman was satisfied that SUSI presented a fair and reasonable rationale for the basis of their decision. The Ombudsman also asked SUSI to provide the student with a letter with details of its decision which she could then provide to the Department of Social Protection for funding for year four of her course.

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### SUSI/SGAB - Higher Education Grants

E78/16/2434

Completed 07-11-2016

#### # Not Upheld

#### Background

A student applied to SUSI for a grant for the academic year 2015/2016 but was unsuccessful. He appealed this decision but the appeal was also unsuccessful. The student had completed two years of a four year course. He then transferred to Year 2 of another course which was a three year course. Both courses are Level 8.

#### Examination

SUSI confirmed that the student would not be eligible to apply for a grant until he progressed into year 3 of his Level 8 course because under the Student Grant Scheme a grant can not be paid in respect of a repeat period of study on the same course nor on a different course, except in exceptional circumstances. The student's circumstances were not considered to be exceptional and he was not awarded the grant.

### Outcome

The Ombudsman was satisfied that the student had been treated properly and fairly by SUSI in line with the legislation and guidelines and the complaint was not upheld.

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### SUSI/SGAB - Higher Education Grants

E78/16/2537

Completed 30/11/2016

#### # Assistance Provided

#### Background

A woman complained when SUSI refused her application for grant assistance in 2015 on the grounds that she did not provide evidence of living independently, which was a criteria of the scheme.

### Examination

The application was refused on the grounds that the woman failed to provide 'specific evidence' as required for a three month period between October and December 2014. The Ombudsman advised SUSI that the woman had previously provided a letter from the Department of Social Protection confirming her residence at her address between the period mentioned above. When SUSI reviewed the case, it said that it could overturn its decision if the applicant could provide the following, a letter from the Department of Social Protection confirming that she was assessed 'independently' for Jobseekers Allowance at the listed address which would qualify her for payment. The Ombudsman contacted the woman and she agreed to obtaining the relevant information, as requested. Once the information was received, SUSI overturned the decision and the woman was awarded payment.

### Outcome

The Ombudsman concluded that SUSI had made the correct decision based on additional information received.

# Environment

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## LEADER

C08/16/1664

Completed 18/01/2017

### # Not Upheld

#### Background

A woman complained, about a decision of the Department of Environment, Community and Local Government (DECLG) to reduce funding under the Rural Development Programme 2007-2013 (RDP). The DECLG found that proper procurement procedures were not followed and reduced the grant aid awarded to the project.

#### Examination

The Operating Rules set out the basis on which each Local Action Group should deliver the RDP and these rules are subject to compliance with EU and National requirements. The Rules require that in all cases public procurement should be conducted fairly and in a transparent manner in keeping with best practice and in line with the guidelines set out by the Department of Public, Expenditure and Reform. The woman stated that throughout the process she acted on the advice of her local LEADER group. From his examination of the files the Ombudsman was satisfied that DECLG clearly told applicants for RDP funding about the need to comply with procurement requirements.

#### Outcome

The Ombudsman was satisfied that the DECLG decision was in line with the Operating Rules and that it had based its decision on a reasonable interpretation of the relevant guidelines.

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## LEADER

C08/16/1150

Completed 16/12/2016

### # Not Upheld

#### Background

A man complained about a decision of the Department of Environment, Community and Local Government to refuse funding under the Rural Development Programme 2007-2013 (RDP). His project was deemed ineligible as the activity for which grant aid was sought was deemed to be related to 'primary agriculture' and thereby ineligible under Axis 3 as outlined in the Operating Rules of the RDP.

### Examination

The man and the Department had different interpretations of what the term 'agricultural activity' means. The Ombudsman considered the wording of the relevant Operating Rules and was satisfied that aid shall not be awarded or paid in respect of certain mainstream categories and Agriculture is listed as one of these categories.

### Outcome

The grant sought was for an agricultural activity and for this reason the Ombudsman found that the decision of the Department was in line with those Operating Rules. He found that it had based its decision on a reasonable interpretation of the term 'agricultural activity.'

## Health

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### Hospitals – Care and Treatment

H82/14/1433

Completed 12/12/2016

#### # Assistance Provided

#### Background

A woman complained that her husband fell while in Beaumont hospital shortly before his death.

#### Examination

The hospital undertook a Falls Assessment on the patient on admission. The Assessment concluded that, on admission, the man was not at risk of a fall.

Some days later, a nurse assisted the man to stand at the side of his bed so that he could use a urinal. The nurse then left the room to allow the man some privacy. Shortly afterwards, the patient fell forward and hit his head. Three nurses immediately assisted him back to bed. They contacted the doctor and commenced observations every 15 minutes. These observations showed no change to those taken before the fall.

#### Outcome

The hospital apologised to the family. It admitted that, given that the man had received a sedative earlier that day, it was not appropriate that he was left alone. The hospital indicated that it would use the complaint as a teaching tool for staff at workshops with a view to minimising the possibility of a similar incident occurring in the future.

The Ombudsman was satisfied that the hospital acted appropriately once the matter was brought to its attention.

## Hospitals – Care and Treatment

H82/15/3533

Completed 29/11/2016

### # Partially Upheld

#### Background

A woman complained about the care she received in the Emergency Department (ED) of Beaumont Hospital following her admission with a suspected urinary tract infection in January 2014. Her family had remained with her overnight until the early hours of the following morning. When they visited her later that day, they found their mother unattended and unconscious in the Resuscitation Room. A doctor advised them that she had developed double pneumonia, sepsis, was in organ failure and that no further tests were planned. A priest was called to administer the Sacrament of the Sick. The family complained that at no stage did the hospital contact them to advise them about her critical condition. Following a discussion with a more senior doctor from the Intensive Therapy Unit (ITU), the woman was transferred to the ITU where she eventually recovered. The woman herself wrote to the hospital to find out what had happened to her during her time in the ED and the hospital had compiled a detailed report, including reports from medical and nursing staff. The woman wrote to the Ombudsman because she wanted to ensure that the shortcomings highlighted in the hospital's report were fully addressed. She also believed that the hospital had failed to comply with its own complaints process, given that she had to initiate contact in order to receive an update. She also believed that there was no treatment plan in place for her, as suggested by the hospital's report, and that without the intervention of her family she would not have survived.

#### Examination

While the hospital's response to the woman was detailed and included reports from the medical and nursing staff in the ED, neither the Registrar nor the ITU Consultant were consulted in relation to the complaint. This meant that some of the woman's questions went unanswered. In its response, the hospital had apologised for the distress and upset caused to the woman and her family as a result of the lack of contact with them when the woman was moved to the Resuscitation Room. The hospital had also acknowledged that due to poor record keeping, some of the woman's admission notes were either missing from the chart or were mislaid. Ombudsman staff met with hospital staff to discuss the complaint and, from the available records, pieced together the chronology of events in so far as this was possible.

Unfortunately, due to the fact that there was no record of the family's critical conversations with either nursing or medical staff, it was not possible to determine what they were told about the woman's prognosis. However, it appeared from the records that there was a treatment plan in place in that the Emergency Doctor had documented that she was seeking to have the woman reviewed by the ITU Consultant, given that her kidneys were not functioning. The Consultant was delayed in getting to ED that day but ultimately, when he reviewed the woman, he immediately arranged to have her admitted to the ITU.

### Outcome

The hospital apologised unreservedly again for the fact that the woman's family was not contacted when her condition deteriorated in the ED. It also apologised to the woman for the difficulties she encountered in having her complaint examined within the hospital. A range of initiatives had been implemented in the ED to improve record keeping and communication with families since this complaint.

The Ombudsman asked the hospital to remind staff across all departments of the need to document critical conversations with patients and their families so that there is a record of these vital interactions. He also asked the hospital to reflect on how it handles complaints and he stressed the importance of updating the complainants while concerns are being examined.

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## Hospitals – Care and Treatment

H64/16/1475

Completed 13/12/2016

### # Not Upheld

#### Background

A man complained to the Ombudsman about the decision of medical staff in Naas General Hospital (NGH) not to resuscitate his wife. He said that he told the doctor on several occasions that he wanted her resuscitated, but eventually told them to do what they could. The man said that he felt pressured by the doctor to do what the hospital wanted. He said that she was not resuscitated and he sought an explanation for their decision.

#### Examination

Under the National Consent Policy on resuscitation the decision to resuscitate a patient is a clinical decision, made by the senior healthcare professional, following an individual assessment in each case. The decision not to resuscitate was made by the On Call Consultant, following a discussion with her doctor about her deteriorating condition and medical history. The national policy states that “where CPR is judged inappropriate, it is good practice to inform those close to the patient”. However, the Ombudsman found no evidence to show that the man had been informed of the decision not to resuscitate his wife.

The man also complained that the doctor did not speak with him, following his wife's death. The hospital said that it is normal procedure for the doctor or senior nurse to talk to the family. It apologised that this did not happen in this case.

#### Outcome

The Ombudsman was satisfied that the decision not to resuscitate was taken in accordance with the national policy. He could not examine the decision itself as it was a clinical matter, which is outside his remit. The failure of medical staff to notify the man of the decision was brought to the attention of NGH and it advised that the matter will be raised with doctors in the hospital.

The hospital offered a meeting with the relevant members of its senior management team to discuss his complaint, which the man accepted.

## Hospitals – Care and Treatment

H73/16/1270

Completed 17/11/2016

### # Not Upheld

#### Background

A man complained about the manner in which he was discharged from St Colmcille's Hospital (SCH). The man, who was a stroke patient, said that he was asked several times by a doctor if he was well enough to go home. He said that he told the doctor he was not fit to be discharged, but was discharged anyway. The man also said that he was told by the hospital's Occupational Therapist (OT) that it was HSE policy in stroke cases to arrange a home visit in advance of discharge to ensure patient safety. This, he said, did not happen.

#### Examination

The hospital said that the man had been identified for early discharge. The decision to discharge him was made by the Consultant Physician. The Ombudsman could not examine this element of the complaint as the discharge was a clinical decision. Details of the man's conversation with the doctor about his suitability for discharge were not recorded in the clinical notes. It was noted that the doctor in question no longer worked in the hospital. As a result, the Ombudsman could not confirm what was discussed with the man when he was discharged or the manner in which he left the hospital.

The records confirmed that the man had been assessed by an OT. However, there was no reference to a home visit in the OT's note so the Ombudsman could not confirm what was discussed with the man about HSE stroke policy. The hospital informed the Ombudsman that home visits are not required in all stroke cases and that a home visit was not required in this case. However the man had been discharged before the OT had completed a discharge plan and that he had been discharged from the OT service.

#### Outcome

The Ombudsman asked the hospital to ensure that normal discharge procedures are followed when a patient is discharged under its discharge escalation policy. He emphasised the importance of ensuring that all members of the multidisciplinary team are informed of their patient's discharge as it is important that all relevant assessments (OT, physiotherapy etc) are completed and, where necessary, the appropriate home supports are put in place. This was accepted by the hospital.

## Hospitals – Care and Treatment

H92/15/4294

Completed 31/01/2017

### # Assistance Provided

#### Background

A man complained about the care provided to his mother in Our Lady of Lourdes Hospital, Drogheda prior to her death in January 2013. The issues of concern were that his mother had no access to palliative care following an administrative error, there was non-transcription of heart medication, insufficient oversight of agency staff in a temporary overflow ward and there was poor record keeping and communication with him. He was also unhappy with the complaints process.

The motivation in making this complaint was to ensure that the failings highlighted were addressed adequately. The man wanted to ensure that the necessary changes were followed through to ensure that the potential for other patients or families to suffer a similar experience was minimised.

#### Examination

The Hospital failed to keep adequate records in relation to the recording of heart medication and other procedures carried out. It admitted that communication with the man could have been clearer and that the complaints process and outcomes did not meet his needs.

Following contact from this Office, the Hospital reviewed the case and the man's concerns. It also set out the improvements and changes implemented since his complaint was made. Policies have been introduced and training has taken place for Hospital staff on the importance of good record keeping, open communication with patients and families, palliative care and complaint handling. The Hospital introduced audits on the processes and systems in place to ensure that all staff adhere to these policies and procedures. It also extended its sincere apologies again for the shortcomings identified in the care provided to the man's mother.

#### Outcome

The Hospital has made significant improvements in the provision of palliative care, record keeping, communication and the management of patients particularly at times of surge in admissions. He believed that the Hospital has taken these matters very seriously and has taken steps to improve its processes for other patients and their families.

## Hospitals – Care and Treatment

H55/16/0512

Completed 07/12/2016

### # Partially Upheld

#### Background

A woman complained to the Ombudsman about the care and treatment provided to her while she was a patient in South Tipperary General Hospital.

#### Examination

Some of the matters complained about, such as the medications prescribed for the woman, related to clinical judgement. The Ombudsman could not therefore examine these matters. However, there were other matters that could be examined such as the level of advice and information provided to the woman on discharge and the fact that a discharge letter was not sent to the woman's GP until some days after her discharge and after she had attended her GP for follow-up. This was contrary to the hospital's integrated discharge policy which states that it is the responsibility of the hospital doctors to ensure that, where relevant, discharge letters are written the morning of the planned discharge date.

#### Outcome

The Ombudsman highlighted his concerns about the discharge process to the hospital. In response, the hospital said that it now has a Discharge Lounge so that all the discharge requirements are checked prior to discharge, including any verbal and written instructions to be followed by the patient when he or she leaves hospital.

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## Hospitals – End of Life Care

H23/15/2031

Completed 13/12/2016

### # Upheld

#### Background

A family complained about the care provided to their late uncle prior to his death in Mayo University Hospital in February 2013. The family had submitted a complaint to the hospital which had been examined by way of a chart review only which meant that the medical or nursing staff caring for the man were not interviewed. A number of findings and recommendations from the review had been approved by the Incident Management Team and an Action Plan was devised for implementation in September 2014. Unfortunately, the chart review did not provide the family with many of the answers they were seeking in relation to their late uncle's care.

A meeting had been held between the family and hospital staff during which verbal apologies were made for the shortcomings identified by the review. A written apology which was promised and which subsequently issued to the family simply thanked them for attending the meeting but failed to apologise for the shortcomings identified.

The family, in writing to the Ombudsman, was seeking answers to their outstanding concerns and the promised letter of apology. They strongly felt that no family should have to travel such lengths to obtain answers about the care of a much loved relative.

#### Examination

The hospital acknowledged that:

- The Early Warning Score (EWS) system had not been followed in relation to the man's care.
- Observations should have been recorded in accordance with the EWS and there were very few entries in the observation sheet.
- The escalation protocol was not implemented when the man's condition deteriorated.
- The doctor on call was not contacted when the family raised their concerns with nursing staff about their uncle's condition.
- If a request was made to a staff member to have their relative clinically reviewed, then a doctor should have been contacted.
- There was no documentation in the records regarding the interactions between the family and nursing staff.

#### Outcome

The hospital apologised most sincerely in writing to the family for the shortcomings in their late uncle's care. It said that it regretted that a written apology was not issued to the family following their meeting with hospital staff. It acknowledged that the original letter of apology should have been clearer and more explicit and it undertook to address this issue in any future cases so that there was no ambiguity for bereaved relatives. The hospital had taken a number of measures to ensure that the EWS system was being properly implemented including audits of compliance, training for staff, compliance with the documentation and escalation of the EWS. A nursing metrics system was put in place to monitor key performance indicators in nursing observations on a weekly basis. In the event that there is a non-escalation or a non compliance with policy, feedback is given to nursing staff. The hospital has also developed a Standard Operating Protocol for observations, to supplement the EWS policy, and this had been implemented on all wards and is audited for compliance. There is also an EWS Committee in place which meets every two months and which oversees the implementation of the EWS protocol.

In addition, the hospital made an ex-gratia payment to the family of €500 to reflect the considerable difficulties and delays they experienced during the complaints process.

## Medical & GP Card

H09/16/2336

Completed 24/11/2016

### # Upheld

#### Background

A man complained to the Ombudsman about the HSE National Primary Care Reimbursement Service, regarding the manner in which his application for a medical card was processed.

The man applied for a medical card in August 2014. He stated that he was applying under EU regulations and that he was not eligible on the basis of income. Notwithstanding this, he was required to provide details of his income, investments or savings in support of his application. He was awarded a medical card in October 2014 as he satisfied the requirements under EU regulations. However, he complained that he should not have been required to provide details of his means, and that the HSE failed to change the application form and process for people applying under EU regulations.

#### Examination

The application form sets out how applicants qualify for a medical card under EU regulations. It outlines the requirements and says that if these are met, applicants can apply for a medical card by sending a completed application form together with other relevant supporting documentation. The Ombudsman considered that the application form was misleading as there is no need to complete all of the details on the application form where a person applies for a medical card under EU regulations. The Ombudsman noted that the man's medical card was due for renewal in October 2016 and that the card was issued without delay after the information supplied in his application.

#### Outcome

The HSE committed to revise the wording of the form to make it clearer for applicants applying under EU regulations.

# Local Authority

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## Housing

L08/16/2947

Completed 16/01/2017

### # Upheld

#### Background

A woman complained about Cork County Council's decision to only consider her for Housing Assistance Payment (HAP) and Rent Allowance Supplement (RAS) but not to deem her eligible to be placed on the Social Housing list. The woman divorced in 2009 and as part of her divorce agreement her ex-husband retained ownership and occupancy of their family home until his death, at which point it would be willed to the woman. The Council informed the woman that they were removing her from the Housing List on the grounds that she had a share in the family home.

#### Examination

There is provision under Section 49 of the Social Housing Act 2014 whereby people can be deemed eligible for social housing supports such as HAP and RAS but not eligible to be placed on the Social Housing list, when a Local Authority cannot establish at the time of application whether the applicant might have access to alternative accommodation which would meet their housing needs in the future. It appears that this was the basis for the Council's decision to only grant her eligibility for HAP or RAS. However, it would appear that the legislation refers to situations where a couple have separated but the issues in relation to ownership of the family home have not yet been resolved.

This was not the situation in the woman's case as she had formally signed over the house to her ex-husband, giving up any entitlement to it during his lifetime. The woman had no access to the property and was in poor health. There was a possibility she could pre-decease her ex-husband and therefore would never benefit from an interest in the property.

#### Outcome

Following the Ombudsman's intervention, the Council carried out a review of the woman's case. It agreed to allow her application to be placed on the Social Housing list.

## Housing

L18/16/2920

Completed 19/01/2017

### # Assistance Provided

#### Background

A man complained to the Ombudsman about the continued anti-social behaviour of his neighbour(s), who is a tenant of Kerry County Council. He was unhappy with the Council's response to his complaint.

#### Examination

The Council's Housing Officer met with the man's neighbour at the Council offices. The neighbour presented a letter written by her solicitor to the man describing threats that the man made to her. She stated her intention to complain about his behaviour to the Gardai. However, the Council carried out a Garda check which showed that neither party made complaints to the Gardai. At this meeting, the Housing Officer told the neighbour that anti-social behaviour would not be tolerated.

The Officer explained that the neighbour was responsible for her behaviour, her children and visitors to her home, and that under no circumstances could her children enter the neighbour's garden or that of any other resident without their permission. The Housing Officer wrote to the neighbour following the meeting, setting out what they had discussed and thanking her for her co-operation in the matter. She also wrote to the man outlining the steps she had taken to address the complaint and offering to meet with him to discuss the situation, and to explore the possibility of securing planning permission for a boundary wall around his front garden. As the man made no further contact with the Housing Department, the Council believed the matter had been resolved.

#### Outcome

The Ombudsman was satisfied that the Council's position was reasonable. He noted that it was open to the man to contact the Council to discuss the situation, or to consider the possibility of securing a boundary wall for his garden. He suggested that he contact the Ombudsman if he was unhappy with the outcome, and that he would review the matter further at that time.

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## Housing

L38/16/3316

Completed 22/12/2016

### # Not Upheld

#### Background

A couple complained about the how Monaghan County Council dealt with their concerns regarding the cutting of a fence at a neighbouring property

### Examination

In 2013 the couple made a similar complaint to the Council and the fence was repaired. The Council said that an inspection of the fence was carried out by the Tenant Liaison Officer (TLO), who found that the fence was neatly cut, to include a gate, and in his view it did not have a negative impact on the area or the Council property. The couple's neighbour told the TLO that the purpose of the gate was to allow for grass cuttings to be deposited on unused, unseen land, which is owned by the Council. The TLO was satisfied that this was reasonable and would also assist in reducing weed growth in the area.

The Council also said that as the fence was not in public view it would only materially visually affect the property in the ownership of the Council. The Council said that in dealing with a complaint of a similar nature in 2013, the amendment to the fence was one of a number of other issues. The Council was satisfied that, on this occasion, the installation of a gate was a minor infraction that did not warrant further action.

### Conclusion

The Ombudsman was satisfied that the Council's position, as owners of the property, was reasonable. He also noted that it had taken appropriate action in order to resolve ongoing issues.

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## Housing

L44/16/2554

Completed 06/12/2016

### # Not Upheld

#### Background

A woman applied for Social Housing Support to Sligo County Council. She was awarded Housing Assistance Payment (HAP) but was not placed on the Social Housing List. She had purchased a property in 2006 with her ex fiancé. She moved out of the property in 2008 and has not lived there for over seven years. Her ex fiancé has stopped paying the mortgage and it is now in arrears. The bank has instigated legal proceedings to repossess the property.

#### Examination

The Council agreed that the property the woman purchased with her ex fiancé could not reasonably be expected to be used to meet her housing need and therefore she does qualify for some social housing assistance.

The Council states that the woman still has an interest in the former family home as she was not advised that her mortgage was unsustainable and no final decision has been made on what is to happen to this property at this time.

The legislation provides that while a housing authority is unable to establish for the time being whether alternative accommodation is available, the household is eligible for Housing Assistance Payment or Rent Allowance but is not eligible to be placed on the social housing waiting list.

## Outcome

The Ombudsman was satisfied that the Department had acted in accordance with the Scheme and the decision was reasonable.

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## Non Principal Private Residence charge

L60/16/3096

Completed 05/02/2016

### # Assistance Provided

#### Background

A man complained on behalf of his father about the penalties applied as a result of failing to pay the NPPR charge. The man's father purchased a property in Ireland to assist his son in looking after his children. His principal residence was outside of Ireland and he was not aware of the NPPR charge. The man's father became ill and he was unable to travel to Ireland. The man requested a waiver of the penalties but the Council refused. The man entered into a payment plan with the Council to avoid further penalties.

#### Examination

The Ombudsman asked the Council if the man's circumstances had been considered under the Briefing Note for Local Authorities and complaints with his Office. Under the Briefing Note property owners living outside Ireland who satisfy certain criteria may be entitled to a reduction of the penalties incurred. The Council advised that it did not consider the man's circumstances under the Briefing Note, as this was not part of the Council's procedures at that time.

## Outcome

The Council agreed to write to the man in order to establish if he was eligible for a reduction of the penalties, under the Briefing Note for Local Authorities.

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## Planning

L05/16/1881

Completed 06/12/2016

### # Not Upheld

#### Background

A man complained that Clare County Council was not pursuing enforcement action against a developer about construction noise at a site. The man said that he had asked the Council to clarify whether the developer had agreed the working hours with it beforehand but it had not provided this information.

### Examination

The Council said that there was no specific requirement on the developer to agree working hours with it. The Council explained that the working hours were not specified in the Environmental Impact Statement (EIS) or the conditions of the grant of planning permission.

The Council said the EIS did require noise mitigation measures be put in place at the site. The Council said it sought and received details of these measures from the Site Environmental Officer which were acceptable to it.

### Outcome

The Ombudsman was satisfied the neither the EIS or conditions of the planning permission specified working hours at the site. As such, he could not conclude that the Council's decision not to pursue enforcement action was unreasonable in the circumstances.

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## Planning

L08/15/3843

Completed 08/12/2016

### # Assistance Provided

#### Background

A man complained that Cork County Council had failed to take enforcement action against an illegal development that was adversely affecting his home.

#### Examination

The Council explained to the Ombudsman that it was preparing enforcement action to be pursued through the Courts. The Ombudsman wrote to the man explaining the Council's proposals and inviting him to comment. The man responded with a submission on some additional issues he wanted included in the enforcement action and the Ombudsman asked the Council to take these into account. The Council included some of these additional issues but explained that it could not include some others due to legal constraints.

#### Outcome

The Ombudsman was satisfied that the Council was acting to the best of its abilities and within the parameters of the legal advice available to it. The Ombudsman also advised the man that an individual has the right under section 160 of the Planning and Development Act, 2000 to pursue any issues he regards as outstanding.

## Planning

L42/15/3984

Completed 29/11/2016

### # Assistance Provided

#### Background

A man complained about Roscommon County Council's alleged inaction regarding his unfinished estate. The man said that he had been corresponding with the Council for over five years in relation to his unfinished estate. He said that the roadway was not finished, lighting not connected, landscaping unfinished, road drainage not operational, landscaping not completed on green areas. He said that a bank held a bond worth €100,000 which could be released to the Council if the works on the estate were not completed by the developer.

#### Examination

The man said that the Council was unable to secure the bond from the bank to complete the necessary works. It appeared that prior to contact from the Ombudsman the Council were accepting the bank's position and that it was ignoring the Council. Following the complaint to the Ombudsman the Council contacted the appointed receiver on a number of occasions for an update. However, the Council found it difficult to secure a response at times. The bond however was eventually paid over to the Council.

#### Outcome

The Ombudsman accepted that the Council were relying on the bank to pay over the bond and it had very little control over the bank's response. The Ombudsman concluded that the Council's actions were reasonable.

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## Planning

L59/16/2913

Completed 03/01/2017

### # Not Upheld

#### Background

A woman complained to South Dublin County Council about a housing development that was built beside her property. She said that the Part 8 process initiated by the Council was not carried out correctly and that local residents were not consulted. She mentioned that she had security and privacy concerns arising from the development as one of the properties erected overlooks her garden. She also complained about the naming structure of the new properties as one of them had the same number as her house but with an "A" prefix.

#### Examination

The Ombudsman examined the Part 8 procedure that was carried out. Public consultation had taken place as required and the development plans were made available for the public to view for the prescribed period of time.

Submissions were received from the woman's neighbours and following consultation with Councilors changes were made to the plans to accommodate some of the residents' concerns. The woman could have submitted observations or objections to the development at this point but appears not to have done so.

South Dublin County Council adds prefixes to new properties that are built beside existing ones. This prevents duplication of numbers on the same street and facilitates postal and utility services etc.

## Outcome

The Ombudsman considers that the Council acted in accordance with the Planning and Development Regulations 2001-2012 and acted reasonably in dealing with the woman's complaint.

# Revenue Commissioners

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## Capital Gains Tax

C21/16/3437

Completed 25/01/2017

### # Not Upheld

#### Background

A man had a pension fund that was subject to a yearly automatic withdrawal. The tax rules for this type of pension mean that the owner of the pension fund has to pay tax on the automatic withdrawals. In this case there was not enough money in the fund to cover the tax due in 2012 and 2013 and so the man paid the tax from his personal funds. The man said that when there was enough money in the fund to pay the tax on the automatic withdrawals he should get a refund of the tax paid in 2012 and 2013.

#### Examination

The Revenue Commissioner explained to the Ombudsman that the purpose of the tax on the automatic withdrawal is to ensure that the owners of this type of fund use it as a source of income in their retirement, rather than as a means of saving. The Commissioner cited the relevant legislation that applies to these pension funds.

#### Outcome

The Ombudsman was satisfied that the law had been interpreted correctly and the rules had been applied by Revenue as intended. The Ombudsman was also satisfied that the complaint was reasonably addressed by the Revenue Commissioner.

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## Income Tax

C21/16/2369

Completed 08/12/2016

### # Not Upheld

#### Background

A woman complained to the Ombudsman that she was unfairly treated by Revenue when she had to contribute to her husband's tax liability which was solely incurred by him. She said that Revenue took €20,000 from her husband's pension fund, even though as his wife she believed she was entitled to half of any monies relating to his pension.

#### Examination

The woman's husband's contribution to Revenue was made following a legal agreement between her husband's legal representatives and Revenue's solicitors. Revenue was not aware of where the funds came from to settle the matter.

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Any legal advice taken by the couple was privileged information and completely outside the knowledge and control of Revenue. The Ombudsman asked Revenue to clarify its position on jointly assessed couples and whether one or both parties have to consent on disposal of jointly assessed assets. Revenue advised that disposal of assets by either or both of a jointly assessed couple is a legal matter and has no connection with the Taxes Consolidation Act or interpretation thereof. Joint assessment refers to a basis of assessment for couples in a marriage or civil partnership.

#### Outcome

The Ombudsman was satisfied that the core issue in the complaint was about disposal of the couple's assets rather than Revenue's actions in jointly assessing them and therefore Revenue's position was reasonable and in accordance with a legally signed agreement between the two relevant parties.

# Social Protection

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## Carer's Allowance

C22/16/1772

Completed 01/11/2017

### # Not Upheld

#### Background

A man complained that his application for Carers Allowance had been refused because the Department of Social Protection decided that his mother did not require full-time care and attention as laid down in Carer's Allowance legislation. The man appealed his case to the Social Welfare Appeals Office (SWAO), which upheld the Department's decision.

#### Examination

The Ombudsman examined the Department's file, along with the Department's guidelines in relation to Carers Allowance. The Ombudsman noted that the man attended an oral hearing after submitting his appeal to the SWAO. The man reported that his mother was able to go to the toilet, bathe, dress herself and has the ability to walk half a mile. The man also reported that his mother was in charge of her own medication and keeps track of her appointments and attends church and bingo. Based on the information provided by the man at the oral hearing it appeared the man's mother did not require full-time care and attention.

#### Outcome

The Ombudsman was satisfied that the Department's decision, that the man's mother did not satisfy the medical conditions to be eligible for Carer's Allowance, appeared to be reasonable.

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## Family Income Supplement

C22/16/0224

Completed 23/11/2016

### # Upheld

#### Background

A woman who had been receiving Family Income Supplement (FIS) for a number of years was refused it because the Department of Social Protection (the Department) said she was not working the required number of hours.

#### Examination

The woman said that there had been no change in her working hours or rate of pay since previous approved applications. She contacted the Department and was told to send in payslips to verify her hours. However, the payslips were returned to her as the Department said that they were not valid and her application was refused.

After further contact with the Department, she was told by email that her application was refused on the basis that the handwritten payslips “are not worth the paper they’re written on”. However, she maintained that she had always provided handwritten payslips to the Department for previous applications without any problems arising. She said that her employer had since installed a computerised payroll system.

It was put to the Department by the Ombudsman that it had previously accepted handwritten payslips and it was asked if there had been a policy change in this regard. It was also asked to review electronic payslips that had not previously been reviewed which showed she had been working 20 hours per week.

It was suggested that a fair way to capture a complete picture of the woman’s working pattern would be to take into consideration all of the documentation provided.

#### Outcome

The Department eventually agreed to overturn its decision and refund her any outstanding monies owed.

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### Household Benefits Package

C22/16/2711

Completed 14/11/2016

#### # Assistance Provided

##### Background

A man complained to the Ombudsman about the Department’s decision not to backdate his Electricity Allowance (Household Benefit Package). He said that his wife changed their electricity supplier in July 2015 without his knowledge. He reapplied in June 2016 when he realised his Electricity Allowance had ceased.

##### Examination

The Department said the information available on its website advises that customers should notify the Department when they change provider. The man’s application was not backdated because he had failed to contact the Department within 6 months of changing supplier as per the Household Benefits Package’s guidelines. However the Department was unaware until contact from the Ombudsman that his wife changed supplier.

##### Outcome

The Department reviewed the man’s application and decided to pay his allowance for the period between changing suppliers and making contact with the Department i.e July 2015 to June 2016 on an exceptional basis.

## Injury Benefit

C22/16/2835

Completed 16/12/2016

### # Not Upheld

#### Background

A man complained to the Ombudsman when his application for Occupational Injury Benefit (OIB) was refused. He said that an incident occurred in work in April 2013 in which he felt a sharp pain in his neck. He applied for OIB Disablement Benefit in October 2014. His application was refused and he appealed the decision to the Social Welfare Appeals Office. He provided medical evidence to dispute the Department's decision but the appeal was not upheld.

#### Examination

Social Welfare legislation states that every person who is employed in insurable (occupational injuries) employment shall be insured against personal injury caused by accident arising out of and in the course of that employment. To qualify for Disablement Benefit the person applying must establish that the injury suffered was the result of such an accident.

At the time of the man's application in October 2014, the Deciding Officer decided that he did not satisfy this condition. The Appeals Officer upheld this decision. The Department examined all the available evidence including the medical evidence and concluded that he had not established that the injury suffered was the result of an accident arising out of and in the course of his employment. It said that the evidence would indicate that he was under treatment for an injury which had occurred prior to the alleged accident, and that he did not suffer incapacity of work resulting directly from the incident in April 2013. There was no evidence that he reported the accident to his employer at the time.

#### Outcome

The Ombudsman was satisfied that the Department's decision was reasonable in accordance with the relevant legislation.

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## Jobseeker's Allowance

C22/16/1235

Completed 16/01/2017

### # Partially Upheld

#### Background

A man complained about the delay in processing his application for Jobseeker's Allowance (JSA) and for the refusal to pay him the full rate of Social Welfare Allowance pending consideration of his JSA claim. He claimed that he was being asked for the same information time after time, despite his having provided all relevant information. He claimed that staff were discriminating against him.

### Examination

The Ombudsman found that despite the fact that he had provided a lot of information, it was not clear how this man and his wife had been supporting themselves prior to claiming JSA. There were also other discrepancies in their application which may have caused the Social Welfare Inspector (SWI) to doubt that all relevant information had been supplied. However there had been an undue delay in the SWI issuing his report to the Deciding Officer. As a result there had been an undue delay in the claim being refused. This meant that they had been unable to submit an appeal to the Social Welfare Appeals Office.

### Outcome

While the Ombudsman partially upheld the complaint in that he found that there had been an undue delay in processing the JSA application, he considered that the SWI was entitled to seek any relevant information in order to satisfy himself that all means had been declared. Therefore he did not uphold the allegation of discrimination.

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## Jobseeker's Allowance

C22/16/2911

Completed 17/01/2017

### # Assistance Provided

#### Background

A man complained about the Department of Social Protection and its means assessment.

#### Examination

Prior to contacting the Ombudsman the man was in receipt of Jobseekers Allowance. His payment was means tested. However, on review of his claim the Deciding Officer revised his means (over 32 weeks as opposed to 52 weeks) and he was awarded a reduced rate. He said that he could not accept this as his overall means had decreased since his previous assessment, and he expected to receive an increase in payment. The original assessment was based on 52 weeks. While the decision of the Deciding Officer appeared to be correct, the Ombudsman requested a review of the claim. It appeared that the applicable legislation allowed for the Deciding Officer to use their discretion. The Ombudsman outlined the particular circumstances of this case, and asked that same be considered.

#### Outcome

The case was referred from the Department to the Decisions Advisory Office for advice. The Department then agreed to review the claim, and to award retrospective entitlement if the man qualified for an increase in payment. The Ombudsman found this course of action to be acceptable.

## Jobseeker's Allowance

C22/16/1693

Completed 05/12/2016

### # Upheld

#### Background

A man applied for Jobseekers Allowance to the Department of Social Protection in August 2015, but was refused as he did not meet the Habitual Resident Condition (HRC). He appealed this decision to the Social Welfare Appeals Office (SWAO) and his appeal was upheld by an Appeals Officer but from the date of the appeal, March 2016. The man complained to the Ombudsman that his claim should have been backdated to the date of original claim in August 2015.

#### Examination

The Ombudsman having dealt with similar cases like this before in his Office, asked the SWAO to review the case as once it had been accepted that the applicant had been approved for HRC, the application is backdated to the date of the application and not the date of the successful appeal.

#### Outcome

The SWAO reviewed the evidence in the case and backdated the complainant's JSA to the date of application in August 2015, involving payment of approximately €5,000.

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## One Parent Family Payment

C22/16/3669

Completed 24/01/2017

### # Upheld

#### Background

The Ombudsman received a complaint from a woman who had repaid an overpayment of €4,200 in relation to the One Parent Family Payment (OPFP). The woman said she had been in receipt of OPFP in 2011. When she secured employment in June 2011 she tried to contact the Department of Social Protection several times by telephone to advise it of her change in circumstances, but her attempts were unsuccessful. She called to the local office and posted a letter to the Department in an internal post box located in the reception area of the building. The letter advised of her employment. The woman said the Department did not contact her until 2013 when it carried out a review of all those in receipt of the OPFP. She was then told she had been overpaid. She also said that she was entitled to Family Income Supplement (FIS) for some of that time. The woman also said that her employer had issued correspondence to the Department confirming her employment.

#### Examination

The Ombudsman requested a report from the Department on the basis that it seemed that it failed to act on information provided by the woman which led to the overpayment.

The Department's report confirmed the location of the internal post box in the building. It also confirmed that it had no record of the woman's correspondence or that of her employer. However, it reviewed its decision on the basis that in 2011, files were being moved from one geographical location to another and the information provided by the woman may have been mislaid. It confirmed that it would repay the overpayment which included an amount of FIS which had been withheld to offset the overpayment.

#### Outcome

The Ombudsman was satisfied that the Department's decision to review the matter and refund the overpayment was correct.

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## Rent Supplement

C22/14/1039

Completed 23/11/2016

### # Upheld

#### Background

A woman and her husband complained to the Ombudsman when their rent supplement was discontinued after they turned down offers of accommodation. The couple, both in their seventies, were living in private rented accommodation and receiving a rent supplement from the Department of Social Protection (DSP). They were on a Local Authority housing list, which is a precondition for receiving rent supplements. The Local Authority offered the couple one bedroom accommodation in Council owned property on three separate occasions.

The woman's husband was suffering from severe health problems and said that he needed his own bedroom therefore a one bedroom apartment was not suitable. The couple refused the one bedroom offers made by the Council. The man provided a range of medical evidence to the Council in support of his case for two bedroom accommodation. However the Council was not satisfied that his need was sufficiently clear.

After the couple refused the third offer the Council immediately notified the DSP. Social Welfare legislation provides that rent supplements should be withdrawn from private rented tenants who are on Council housing lists after they refuse an offer of suitable accommodation for the second time. The DSP immediately withdrew the couple's rent supplement.

#### Examination

The legislation governing rent supplement entitlement provides that exceptions to the normal qualifying conditions can be considered.

There is a saver clause which provides that tenants in receipt of a rent supplement before the introduction of Statutory Instrument 412 of 2007, are not bound by the condition that they cannot refuse two Council offers of suitable accommodation. The couple was in receipt of the rent supplement before its introduction.

The same statutory instrument provides that claimants aged 65 years of age and over, are not bound by the same condition. The couple were both in their seventies.

SI 412 of 2007 – Article 38 States: Notwithstanding the foregoing articles, the Executive [now DSP] may award a supplement in any case where it appears to the Executive [now DSP] that the circumstances so warrant. This effectively means that before disallowing a rent supplement the DSP must consider the implications of the decision to ensure that undue hardship will not accrue to the claimant because of it.

#### Outcome

The Ombudsman concluded that due consideration was not given to the above factors and that the rent supplement should not have been withdrawn. Before the couple's rent supplement was eventually reinstated the man sadly passed away.

The DSP acknowledged the Ombudsman's decision. It apologised to the woman for the any distress or inconvenience caused and awarded arrears of rent supplement of over €6,000.

## Other sectors

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### Enterprise Ireland

021/16/2056

Completed 16/11/2016

#### # Not Upheld

#### Background

This complaint related to an application for a grant in respect of an EU research project to Enterprise Ireland under the ITEA programme. The applicant expected to obtain a higher grant than was awarded. She also expected that the application would be dealt with as a research project instead of a business development grant application.

#### Examination

Enterprise Ireland is the National Funding Agency for ITEA projects. However as its function relates to business development, it does not provide research funding except where it is intended to result in business development. Therefore the grant application was treated as a business development grant and was assessed by its Research and Development Committee under its funding criteria.

The ITEA documentation provided to candidates for ITEA makes it clear that any funding provided is subject to national funding rules.

The national funding rules for grant aid for such projects published by Enterprise Ireland specify that salary costs up to a maximum of €80,000 per annum and overhead costs up to a maximum of 30% of salary costs will be paid. The maximum grant which can be paid is 50%. The applicant's application had included salary costs in excess of €80,000 and overhead costs of 60% of the salary costs. This was the reason why the grant amount was reduced. However she was paid the maximum 50% grant based on the allowable salaries and overheads. It was also noted that she had been told what the salary and overhead limits were when she first contacted Enterprise Ireland about her grant application.

## Outcome

The complaint was not upheld as Enterprise Ireland had applied the terms and conditions for the grant correctly.

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## Private Nursing Homes

NEG/16/2053

Completed 30/11/2016

### # Partially Upheld

#### Background

A woman complained that her mother was not informed by a private nursing home that a chiropody appointment had been booked for her. The woman was resting when the chiropodist arrived and initially did not want treatment. However following some persuasion the woman consented to her foot being examined. The woman said she found the treatment that followed to be painful and withdrew her consent to the treatment. The woman said that the chiropodist continued with the treatment. The woman made a complaint to the Director of Nursing in the home and an investigation was carried out. The woman was not satisfied with the outcome of the investigation.

#### Examination

The actions of the chiropodist could not form part of the examination because she was acting in her private professional capacity. The policy in the nursing home is to advise each resident of their referral to the chiropodist and document their verbal consent in the resident's record. On this occasion the woman had not been informed of her appointment and the chiropodist was unaware of this. The home carried out an investigation and accepted that it was at fault for not informing the woman of her appointment. A new referral form for therapies was introduced which includes a box which must be ticked by nursing staff to indicate that the resident has been informed of the referral and has consented to it. The chiropodist must also ensure that the resident is aware of the appointment and happy to proceed.

#### Outcome

The nursing home apologised for the upset and distress caused. The Director of Nursing sourced a different chiropodist for the woman and assured her that she will be accompanied for all future chiropody appointments. As a result of the complaint a new improved procedure for therapy referrals is in place. The Ombudsman was of the view that the nursing home dealt with the complaint appropriately and has taken steps to avoid a recurrence.

## Sustainable Energy Authority of Ireland

095/15/0290

Completed 18/11/2016

### # Not Upheld

#### Background

A woman complained to the Ombudsman about multiple problems with her heating system, which was installed by the Sustainable Energy Authority of Ireland (SEAI), as part of the Better Energy Warmer Homes Scheme.

#### Examination

The heating system ceased working completely since the woman first complained about it. Following a request from The Ombudsman SEAI agreed to undertake a fresh inspection of her home by an appropriately qualified person to see what the issues were.

The inspectors determined that there was a leak in the sub-floor pipework of the ground floor heating circuit which meant this circuit could not maintain water pressure. The pipework in question was in the property from an original heating system. Under normal circumstances when such pipework is encountered, SEAI contractors replace it with copper piping which is surface mounted on walls. However, the woman was opposed to this proposal as she did not want pipes to be surface mounted in her home. The contractor therefore proceeded to replace what pipework he could, connecting as appropriate to the original system. As SEAI was satisfied that the woman's heating ceased to function because of a substantial leak in pipework which was retained at her request. SEAI said the defect was in no way related to works completed by the contractor. SEAI would therefore not accept responsibility to undertake any remedial actions.

The Ombudsman accepted that the leak identified by SEAI was part of the original heating system which the woman did not want to replace, and was not related to the works carried out by SEAI contractors. Accordingly, he also accepted that, as the contractors acted in accordance with the woman's wishes, they were limited in what they could do.

#### Outcome

The Ombudsman was satisfied that SEAI's position was fair and reasonable.

## Teaching Council

R29/16/1473

Completed 04/11/2016

### # Not Upheld

#### Background

A woman complained to the Ombudsman about alleged delay on the part of the Teaching Council in processing her application for re-registration as a post-primary teacher.

#### Examination

The Council alerted the woman to outstanding elements of her application when it was returned to her for correction/completion. The outstanding documents were received by the Council just over three weeks later and the woman's application was finalised three days after that. This appeared to be within the 6-8 weeks processing time advised to applicants. The Ombudsman also noted that there appeared to be some confusion regarding what was required for the Garda vetting process. The Council has identified areas of improvement as a result, including ensuring that the Garda vetting process is clearly outlined to applicants.

#### Outcome

The Ombudsman considered that the Council had acted fairly and reasonably. Under the governing legislation, where a teacher does not apply for renewal of registration within a set period of time, the application process for a new registration applies. This includes providing all relevant documents as requested by the Council and as required as part of the Garda vetting process.

# 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.
- The body departs from the original position some form of redress is offered

## 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.

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# About the Office of the Ombudsman

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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 service providers.

At present, the service providers whose actions may be investigated by the Ombudsman include:

- 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)
- Public and private nursing homes

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.

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## Making a Complaint to the Ombudsman

Before the Ombudsman can investigate a complaint, the person affected must try to solve their problem with the service provider 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 provider 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.ie/en/Make-a-Complaint/>

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## 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.ie](http://www.ombudsman.ie) Email: [Ombudsman@ombudsman.ie](mailto:Ombudsman@ombudsman.ie)

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

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## Feedback on the Casebook

We appreciate any feedback about the Ombudsman's Casebook. Please email us at [casebook@ombudsman.ie](mailto:casebook@ombudsman.ie) with any comments.

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