



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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## Highlighting systemic issues

Welcome to the first edition of the Ombudsman's Casebook in 2018.

When reading through cases in the Casebook it always strikes me how varied the services are that are delivered by public bodies. For example in this quarter's Casebook we have cases involving agriculture grants, care in hospitals, examination results, housing and even the registration of a solemniser (a person licensed to conduct wedding ceremonies).

In most cases the service provider has acted correctly. However, I am glad to say that in most cases where something has gone wrong public service providers act quickly to rectify the failing. I would like to thank service providers for their co-operation and look forward to working together throughout 2018 for the benefit of the public.

In this Casebook we look at a number of complaints including those:

- from a number of people about the HSE's refusal to refund prescription charges incurred before the Long Term Illness scheme or receiving a medical card ([H09/16/1551](#))
- from a woman who had received a student grant but was asked to pay tuition fees to a third level college ([E38/17/0070](#))
- from a woman who sought to have her housing payment increased after her rent was increased ([L24/17/0980](#))

Individual complaints can also highlight a systemic issue and we recently published the outcome of some systemic investigations.



Ombudsman Peter Tyndall

In January we published the report of our investigation into the [Treatment Abroad Scheme](#). I am glad to say that following our investigation the HSE agreed to fully accept our recommendations. In November 2017 we published [Opportunity Lost](#) - the report of our investigation into the operation of the Magdalen restorative justice scheme.

I have spoken publicly about my disappointment that the Department has not yet fully implemented my recommendations but I am hopeful that it will do so soon.

Finally, those who are involved in the nursing home sector will be interested in the special '[Nursing Home Casebook](#)' which we published in January and is available on my website [www.ombudsman.ie](http://www.ombudsman.ie)

Peter Tyndall March 2018

# Agriculture

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## Disadvantaged Areas Scheme

C01/16/3158

Completed 10/08/2017

### # Upheld

#### Background

A forestry contractor planted a forest on behalf of a farmer and had a five year contract to maintain the forest. In return he was to receive the forest premium from the Forest Service. The agreement could only be revoked if both parties agreed. However, the year after the forest had been planted, the farmer told the Forest Service that he had maintained the forest himself and that the agreement had been revoked. They paid the premium to the farmer. The complainant was unaware of this until he contacted the Forest Service to seek payment of the premium. He considered that the Forest Service should honour the agreement and seek repayment from the farmer.

#### Examination

The contractor had a contract which could only be revoked with his agreement. The Forest Service should have sought written evidence that such agreement had been received prior to payment issuing to the farmer. Without such evidence the Ombudsman considered that payment should have been withheld pending receipt of confirmation of the agreed revocation. However he accepted that it was primarily a civil matter between both parties.

The Forest Service argued that it had paid the premium in good faith on the basis that the farmer had said that the contractor had been notified of the revocation and that he had maintained the forest himself. It also said that it has since changed its procedures to require farmers to provide written evidence that contractors have agreed to the revocation of agreements before payment issues.

#### Outcome

While the complaint was upheld because the Forest Service had not acted correctly in managing the situation, the Ombudsman did not find that payment should have issued to the complainant. This was because the farmer was required to certify that the maintenance work had been carried out satisfactorily and it was unlikely that would happen in this instance.

## Single Payment Scheme

C01/16/3238

Completed 13/06/2017

### # Assistance Provided

#### Background

A man complained of a decision by the Department of Agriculture, Food and the Marine to withhold some of the grants due to him during 2014 due to an alleged overclaim on an eligible area under the Single Payment Scheme. The man disputed the decision and said that a letter he got in September 2016 was the first correspondence from the Department on this matter despite numerous attempts to resolve the issue.

#### Examination

Following contact with the Ombudsman, the Department agreed that the best way to resolve this issue would be for the Department official and the man to meet in person and go through payments over the years. The man agreed to a meeting after which he accepted the Department's decision.

#### Outcome

The Ombudsman was happy to assist in reaching a resolution for the man but feels that this issue could have been resolved much sooner had the Department engaged and communicated more readily with the man at an earlier stage.

# Education

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## Course Fees

Dublin Institute of Technology

E38/17/0070

Completed 24/08/2017

### # Upheld

#### Background

A woman complained about Dublin Institute of Technology (DIT) because it told her she had to pay tuition fees in line with its Fees Policy. As she had been approved a student grant by Student Universal Support Ireland (SUSI), the woman could not understand why the tuition fee for her course was not also covered.

#### Examination

DIT said that its Fees Policy was based on guidelines issued by the Higher Education Authority (HEA). The Ombudsman then sought information from SUSI. Based on this information, the Ombudsman contacted the Department of Justice and Equality (DJE) to clarify the woman's immigration status, as the decisions by DIT and SUSI may have stemmed from different interpretations of the woman's immigration status.

The Ombudsman then pursued the matter with the Department of Education and Skills as it had overall responsibility for residency eligibility requirements. The Department informed the Ombudsman that it had contacted the HEA and DIT regarding the matter and provided clarification regarding the woman's immigration status to them.

#### Outcome

DIT confirmed that having reviewed the documentation provided, the woman had been approved for free tuition fees funding. In light of this case, DIT informed the Ombudsman that it was going to put new procedures in place so that a similar situation did not happen in future. The Ombudsman also requested DIT review its Fees Policy to ensure it stated clearly that, students in the woman's circumstances are eligible for free fees.

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## Exam Results

Dublin City University

E36/17/0075

Completed 01/08/2017

### # Not Upheld

#### Background

A man complained to the Ombudsman about how Dublin City University (DCU) dealt with his appeal of his grade in an assessment. The man submitted an assignment and received a

provisional result from DCU through its Loop system. He queried the result with his lecturer as he thought he should have got a better grade. They met to discuss it but he felt the lecturer could not explain the grade that was awarded. The man told the lecturer that he would be appealing the grade. A number of days after the meeting the man received an email from DCU to notify him that there were elements of his work that might indicate plagiarism. The man thought it was unusual that he queried the grade and was then accused of plagiarism.

#### Examination

DCU confirmed that students are advised at the point of logging-on to Loop that all continuous assessment marks published via Loop are provisional and subject to confirmation by a Progression Award Board. It was clear from the correspondence provided by DCU that it had identified the plagiarism in advance of the man meeting with the lecturer. The lecturer was not in a position to go into the assignment in any great detail as the allegation of plagiarism was being considered at the time by DCU staff.

DCU arranged a meeting with the man to discuss the matter. After the meeting DCU emailed the man to say it was upholding the allegation. It advised that the sanction would be that his assessment would be marked as zero and the overall mark would be calculated on the basis of the marks received for two other pieces of assessment associated with the module. The man sought clarification as to which module mark, first attempt or resit, would be used for the purpose of calculating his overall mark. DCU replied quoting the relevant guidelines and advised that his final mark would be based on the first attempt. The man confirmed his acceptance of the sanction.

When the man received his final marks they were calculated as per the sanction. He appealed the mark and advised that an unidentified lecturer had advised him that DCU would take his resit score and add it back to the original module mark. He said as a result of this advice he did not pursue the matter. He supplied copies of texts to this effect with information redacted. His appeal was rejected by DCU, which found no evidence of material administrative error.

#### Outcome

The Ombudsman was satisfied that DCU adhered to the relevant policies in dealing with the matter from the identification of plagiarism through to the appeal process. He did note that it was unfortunate that there appeared to have been informal communications on the subject from an unidentified person. However the man received the correct information from the formal channels in DCU.

## Exam Results

Royal College of Surgeons

E70/17/0140

Completed 31/08/2017

### # Assistance Provided

Background

A man complained that he had not received sufficient feedback from The Royal College of Surgeons in Ireland on the results of his examinations.

Examination

The College detailed its procedures for giving feedback to students and asserted that it has followed those procedures fully and treated the man fairly. However, it agreed as a “once off” gesture to engage further with the man.

Outcome

The Ombudsman was satisfied with the College’s approach.

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## HEAR (Higher Education Access Route)

E86/17/1000

Completed 04/07/2017

### # Not Upheld

Background

A woman complained about the Central Application Office’s decision to refuse her late application for the HEAR scheme for 2017.

Examination

The CAO said that the woman did not follow the instructions in the CAO and HEAR handbooks in relation to completing her application, including instructions for applicants who wished to carry forward their HEAR eligibility from 2016 to 2017 and the timelines involved. It also said that she took no action regarding reminder e-mails sent to her.

The woman appealed the decision to the Independent Appeals Commission (IAC). The IAC considers appeals under a set of tests and the woman’s case did not meet any of these tests. The HEAR Review and Appeals section of the website gives an example as to why an applicant might appeal a decision in relation to missing the deadline as being due to circumstances beyond their control (for example they were hospitalised for a significant period). Therefore, it upheld the CAO decision.

Outcome

The Ombudsman examined the relevant guidelines and tests, and found that the CAO and IAC decisions on the case were reasonable.

## RACE (Reasonable Accommodation at Certificate Examinations)

State Examinations Commission

E85/15/1593

Completed 09/08/2017

### # Partially Upheld

#### Background

A woman complained on behalf of her son who was refused RACE accommodations at his leaving certificate examination. Her son is profoundly deaf and applied for a number of accommodations including - 'provision of questions in writing for oral exams'; 'to have his scripts marked as a hearing impaired candidate'; 'additional time for some exams'. He was also taking music in his leaving certificate examinations and applied for an 'exemption from aural tests'.

The woman also complained that there was undue and unreasonable delay in processing her son's RACE applications through the application and appeals processes. She further complained that the State Examinations Commission did not deal with her in a timely, clear or sensitive manner in the course of her communications with it; and that the SEC did not seek the advice of hearing specialist in processing her son's applications and appeals.

#### Examination

The Ombudsman learned that the student had been awarded some RACE accommodations but not others. The SEC said that the student's application for RACE accommodations to help him take music in his exams was unique and precedential. The student's appeal for an exemption from aural tests in his music exams was upheld.

#### Outcome

The Ombudsman concluded that (i) there was undue delay in processing the RACE applications, (ii) the SEC did not deal with the woman in a reasonable or sympathetic manner. The SEC accepted the Ombudsman's findings and apologised to the woman. The Ombudsman was concerned that the assessment of the student's application may not have adequately considered his unique needs in the case of his music exams. However, the Ombudsman found no evidence that the framework of principles which governed the assessment of his RACE applications were breached.

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## Higher Education Grant

Student Universal Support Ireland

E78/16/3606

Completed 31/08/2017

### # Upheld

#### Background

A woman complained on behalf of her daughter about Student Universal Support Ireland's (SUSI) decision not to award her the Special Rate Grant for the 2013/14, 2014/15 and



2015/16 academic years. The woman said her partner had been on the TUS community work placement Scheme in 2012, so her daughter should have been eligible for the grant in 2013/14 and 2014/15. The woman also said her partner was currently on Jobseeker's Allowance (JA) so her daughter should be eligible for the Special Rate Grant in 2015/16.

#### Examination

SUSI said it made a mistake about the number of days the student's father had been in receipt of JA. Therefore, the student was given the wrong award and she should have received the Special Rate Grant for 2015/16. However, SUSI went on to say the student's 2013/14 application under the heading "Social Welfare Income", did not say her father was in receipt of TUS payments. Although the student was eligible for the Special Rate Grant in those years, SUSI said there was a reasonable expectation on an applicant to provide correct information on the form. As such, SUSI said it would not review those applications.

The Ombudsman pointed out the Department of Social Protection's website described the TUS Scheme as equivalent to JA plus a €20 top up with a minimum annual leave entitlement. As such, the Ombudsman was of the view it was reasonable for the student's father to have considered it employment and ticked that box on the 2013/14 application form. There was no box on the application form for Schemes such as TUS. The Ombudsman requested SUSI review its decision as he considered there was a sufficient level of ambiguity on the application form about Schemes like TUS and how participants would have viewed their time on it.

#### Outcome

SUSI reviewed the matter and informed the Ombudsman that both the 2013/14 and 2014/15 applications had been revised upwards to include the Special Rate Grant.

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## Higher Education Grants

Student Universal Support Ireland

E78/17/0519

Completed 27/06/2017

### # Not Upheld

#### Background

A woman's representative complained to the Ombudsman about the decision of Student Universal Support Ireland (SUSI) to refuse her maintenance grant application and the subsequent decision by the Student Grant Appeals Board (SGAB) to uphold that decision.

#### Examination

The woman completed a level 7 course in Ireland. In 2015, she moved to the UK to complete a one year course in order to achieve an honours degree (level 8) standard. Her maintenance grant was refused in October 2015 as the course was deemed not to be an approved course. The woman's representative argued that other students in the same scenario were approved for grants and that SUSI's operation of the grant scheme is inconsistent.



The Principal of the woman's school also wrote on her behalf and stated that other students had received grants for attendance at top up courses in the UK.

The Ombudsman put this point to SUSI and it replied that students matching the same scenario should not have been approved for their grants and consideration may be given to revisiting those applications. The relevant legislation provided that a full-time undergraduate course must take not less than two years to complete. SUSI refused the woman's application because the course that she was attending outside of the State in 2015/16 was a one year course and therefore not eligible for funding.

#### Outcome

The Ombudsman was satisfied that SUSI's decision to refuse the grant was in line with the relevant legislation.

# Social Protection

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## Child Benefit

C22/17/0594

Completed 04/08/2017

### # Upheld

#### Background

A man complained about the Department's decision to only backdate his late Child Dependant Allowance (CDA) application for six months. The man wanted it backdated to the time he considered he was eligible over a year earlier.

#### Examination

The legislation dealing with his claim allows backdating a CDA claim beyond six months where a person can show that they were given incorrect information by the Department or, they were incapacitated at the time. As the man had not provided any reasons for the delay, this Office asked him why he had not completed the CDA application form sent by the Department in 2013.

The man provided medical evidence to the Ombudsman showing he suffered from depression in 2013 and that this was further exacerbated by a traumatic family bereavement around the time the form was sent. The man said given the exceptional circumstances he could not recall receiving the form. He had in fact only made an application after a subsequent meeting with a Department official who told him he was eligible for the allowance.

#### Outcome

The Ombudsman sent the further information provided by the man to the Department and asked it to reconsider the application. The Department did so and revised the original decision to allow the claim from 2013.

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## Disability Allowance

C22/17/0648

Completed 03/08/2017

### # Not Upheld

#### Background

A woman complained to the Ombudsman that her application for a Disability Allowance had been refused by the Department of Social Protection. The Department's decision was based on the fact that the woman's means exceeded the statutory limit. The woman had appealed her case to the Social Welfare Appeals Office which upheld the Department's decision.

#### Examination

The Ombudsman did not see anything that would lead him to conclude that the Department's decision was incorrect or unfair. He invited the woman to submit any additional information that in her view would point to such unfairness or incorrectness but she did not provide any.

#### Outcome

As the woman did not provide any additional information the Ombudsman considered he had no grounds for asking the Department to review its decision.

## Health

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### Care and Treatment

Midlands Regional Hospital Mullingar

H65/16/3676

Completed 23/06/2017

#### # Partially Upheld

#### Background

A woman complained that it had taken over five months for her to receive an initial response from the hospital to her complaint about her late father's care and treatment. The hospital had apologised for the delay and its failure to communicate with her during the examination process. From the woman's perspective, the hospital's response did not fully address the issues she had raised and she wrote again seeking further clarity. A further two months had elapsed before she received a further letter from the hospital offering her a meeting with consultant staff involved in her late father's care. As the woman lived abroad, she declined the offer of a meeting and requested a further written response. The woman received two further detailed letters from the hospital but as she remained unhappy with the content, she contacted the Ombudsman for assistance.

#### Examination

On reviewing the correspondence between the woman and the hospital, it was clear that there had been lengthy intervals during which the woman had received no communication from the hospital. The hospital explained that there was no dedicated complaints officer in place to handle complaints and that the person dealing with complaints had responsibility for a range of other duties. Clarity in relation to the reason why certain medication had been discontinued could not be given as this had not been recorded in the patient's clinical records.

#### Outcome

The hospital apologised again to the woman for the delays she had encountered and explained that some additional staff were now in place to assist the Complaints Officer. The Ombudsman asked the hospital to remind medical staff of the importance of recording decisions about medication changes in the medical records. He also discussed with the hospital the importance of updating complainants in line with the complaints policy.

## Care and Treatment

Our Lady of Lourdes Hospital, Drogheda

H92/16/2613

Completed 07/07/2017

### # Not Upheld

#### Background

A man complained about the failure of Our Lady of Lourdes Hospital, Drogheda, to arrange a gastroscopy for his mother while an in-patient in July 2016. He said that the procedure was cancelled on three occasions. He was also unhappy with the hospital's examination of his complaint. He stated that its response just summarised what had happened with no admission of fault and did not fix the situation.

#### Examination

The hospital said that endoscopic procedures for gastroenterology in-patients are scheduled for Wednesdays and Fridays and that all referrals are assessed for clinical urgency on a daily basis by the Consultant Gastroenterologist. It said that the woman had been assessed as a priority-one patient. However, it was unable to arrange the procedure for her on a number of occasions as there were other patients with an even higher clinical urgency. The Ombudsman noted that priority-one patients should have the procedure within a month. The hospital apologised to the woman and her family for the distress this caused. It also advised that a second treatment room was opened in late 2016 and that the majority of in-patient referrals were now dealt with the same day.

#### Outcome

The Ombudsman could not examine the fact that other patients had been prioritised for the procedure ahead of the woman as this was a clinical matter. However, he acknowledged that the hospital had apologised to the family and that the opening of the second treatment room would prevent a recurrence of the issues experienced by the woman.

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## Care and Treatment

St. Luke's Hospital, Kilkenny

H53/16/3795

Completed 11/07/2017

### # Upheld

#### Background

A woman complained about the lack of personal hygiene care provided to her husband while a patient in St. Luke's General Hospital, Kilkenny in 2016.

#### Examination

The hospital explained that the patient was elderly, and was suffering from Dementia and incontinence. Staff attended to his hygiene needs every day. This included bed baths and

full body washing. However, the hospital explained that the patient was unaware that he had a tendency to touch the inside of his incontinent pad. As result, on occasions, his hands became soiled.

The hospital apologised that staff did not pay more attention to the patient's hand hygiene requirements. It acknowledged that the service provided to the patient fell short of the expected standards. However, it acknowledged that it is difficult for staff to monitor a patient's hand hygiene continuously.

The hospital admitted that the patient would have benefitted from one-to-one supervision by a Healthcare Assistant in order to supervise him and provide him with enhanced regular, consistent hand hygiene and toileting.

#### Outcome

The Ombudsman was satisfied that the hospital took the complaint very seriously, explained how the incidents happened, admitted that the hygiene service provided to the patient was poor, apologised to the complainant for what happened, and indicated that it is trying to improve the services for patients with dementia through additional staff training.

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## Care and Treatment

University Hospital Waterford

H52/16/3864

Completed 07/07/2017

### # Assistance Provided

#### Background

A woman complained that University Hospital Waterford did not offer her a bed in a private room following surgery and a prolonged course of treatment.

#### Examination

The particular unit in which the complainant was in has 68 beds, eight of which are single private rooms.

The hospital explained that the private rooms were used at the time to accommodate patients who required isolation for infection prevention and control reasons. It also pointed out that patients who require end of life care are prioritised for these rooms.

The hospital confirmed that, on discharge from her surgery, it assigned the complainant to a bed in an observation ward. The hospital allocated her a semi-private room when it deemed her well enough. She was allocated a private room when one became available, having regard to other competing clinical demands on the availability of these rooms.

#### Outcome

The Ombudsman was satisfied that the hospital's actions were reasonable in this instance.

## Care and Treatment

St. John's Hospital, Sligo

HC5/16/1734

Completed 06/06/2017

### # Not Upheld

#### Background

A man complained about the care provided to his father in the Alzheimer's Unit of St John's Hospital, Sligo during a number of respite admissions before his death in July 2014. The issues of concern were that his father's dietary requirements were not met, the man was not being listened to about his father's dietary needs and staff were not trained in appropriate food hierarchy/consistency for residents.

The man said he was making his complaint to ensure that other residents or families would not suffer a similar experience.

#### Examination

The hospital did not properly explain the decisions it made regarding the patient's treatment and it apologised to him for this. It also accepted that there needed to be clarity around the food consistency guidelines. Since the complaint was made, training for all staff on speech and language therapy, which includes food consistency, started and is ongoing. There was also an issue with a staff member relying on an unsigned and undated note on the medical file with regard to his father's dietary requirements. Sligo/Leitrim Mental Health Services developed a policy on report writing and record keeping for all clinical staff which aims to clarify staff roles and responsibilities in relation to clinical documentation in relation to residents. This policy applies to the hospital and a compliance officer was appointed to ensure that all staff adhere to this policy.

#### Outcome

The Ombudsman was satisfied that the hospital has made improvements in the provision of the correct dietary requirements for residents, with record keeping and communication with families. He believed that the hospital has taken these matters seriously and has taken steps to improve its processes for other patients and their families.

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## Care and Treatment

Mayo General Hospital

H23/17/0176

Completed 04/08/2017

### # Upheld

#### Background

A woman complained about the care afforded to her late father on a particular ward of the hospital prior to his death in March 2016. The hospital had responded to the woman's initial

complaint and her father had been moved to a different ward at that time. However, she was advised by the hospital that all of the issues she had raised would be examined in line with the HSE complaints process and that the hospital would revert to her. Eight months later, the woman received a report from the hospital, conveying condolences on her father's passing and apologised for the negative experience her family had encountered. As the report did not address all of the concerns she had raised, the woman decided to contact the Ombudsman.

### Examination

The woman's concerns related to the breakdown of the heating system, drafty windows, non-availability of raised toilet seats, the inappropriate positioning of call bells in the bathroom area, infection control, patient hygiene and nutrition, and communication with her family. The woman had explained that the standard of her late father's care had improved considerably once he was moved to a different ward. This meant that his needs were fully met and that he died peacefully in the care of the hospital staff. However, the woman was keen to understand why the level of care and communication with her family varied so much between the two wards.

In responding to the Ombudsman, the hospital said that staff are continuously made aware of their duty to be courteous and to speak to patients and families in a dignified way at all times. It apologised sincerely for the shortcomings the family had experienced and said that the complaint had been used as part of induction training for nursing and medical staff. The hospital also apologised for the physical deficits within the hospital which were being addressed as part of a rolling programme of refurbishment over the past year. It provided reassurance that the heating system was now in good working order, that call bells were now situated within arm's reach of the toilet and that raised toilet seats were available from stores as required.

The hospital also said that it had revised infection control protocols and that measures were in place to ensure that the shop trolley did not enter a ward during an outbreak of infection.

### Outcome

The hospital addressed the importance of communicating sensitively with patients and families with the Clinical Ward Managers through the national project called "Values in Action". This project is aimed at promoting the values of care, compassion, trust, learning and enhanced communication. The leaflet detailing these values was provided to the Ward Managers to encourage staff to implement these behaviours.

The Ombudsman wrote to the woman, setting out the hospital's response and conveyed the hospital's sincere apologies for the difficulties her family had experienced.



## Provision of information

Adelaide & Meath Hospital Tallaght

H61/17/0242

Completed 17/07/2017

### # Not Upheld

#### Background

A woman complained that the Adelaide and Meath Hospital, (Tallaght Hospital) gave her misleading information about the timescale for an operation on her shoulder. As a result, she chose to have the operation performed privately, at her own expense.

However, 22 days after her operation, she received notification of an appointment with Tallaght Hospital.

#### Examination

The woman injured her shoulder in December 2015. When the woman phoned the hospital in March 2016, it had not received her GP referral letter. In the absence of the GP referral letter, staff assumed the woman was asking about elective surgery and told her that the waiting time for urgent elective operations was 11 months. The woman was also asked to send her GP referral letter to the hospital for consideration.

When the Consultant received her GP referral letter at the end of March 2016, he triaged her as a trauma case rather than an elective case. On 25 April, the woman was given an out-patient appointment for early May 2016, but in the meantime she had her private operation on 13 April.

The hospital said that, because the woman sustained her injury over 3 months before the hospital received her GP referral letter, staff thought she was enquiring about the elective waiting list. Therefore, they advised the woman with what they thought was the correct information. The hospital clarified that, whilst the woman would have been reviewed in the out-patient's department in May 2016, she would still have had to wait a further 5 months for her operation.

#### Outcome

When the woman approached this Office, she was under the impression that the appointment she received for May 2016 was for an operation. In fact, that appointment was for her to be reviewed by her Consultant in the outpatient's appointment. This was to allow her Consultant review her condition and possibly schedule her for an operation at a future date.

While the Ombudsman accepted the hospital gave the woman what turned out to be misleading information in March 2016, he equally accepted that it was not unreasonable for hospital staff to have assumed the woman was asking about elective surgery as she had not provided the hospital with a referral from her GP when they told her about the 11 month wait for that surgery. The Ombudsman considered that, while he could understand how the woman formed the view that her operation would have been in May 2016, she was not actually told that and therefore it was her own decision to have the operation performed privately.

## Handling of complaint

St Vincent's University Hospital

H71/17/1127

Completed 01/08/2017

### # Partially Upheld

#### Background

A woman complained about the manner in which a doctor in St Vincent's University Hospital performed a routine medical test on her in November 2014. She was also unhappy with how her complaint to the hospital was handled.

#### Examination

The Ombudsman could not examine the substantive issue in this case as the complaint about the doctor was examined by the Medical Council.

A review of the complaint file showed that there was a delay in dealing with both her initial complaint and request for internal review and that she had not been updated on her case on a regular basis. The Ombudsman noted that the delays had been a result of staff absences in the Patient Services Department and that it had apologised for the delay. The hospital informed the Ombudsman that a review of its complaint handling process had been finalised in late 2016, resulting in a streamlining of the process. It stated that 95% of complaints were now responded to within 30 days.

#### Outcome

The Ombudsman found that the hospital had breached the timeframes set out in its Complaints Policy when dealing with both the initial complaint and request for internal review. However, he acknowledged the hospital's apology to the woman and the steps it had taken to improve its complaint handling.

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## Hospital charges

University Hospital Galway

H26/16/3273

Completed 11/07/2017

### # Not Upheld

#### Background

A woman complained that she had been incorrectly charged for semi-private treatment by University Hospital Galway. She said she had not asked for semi-private treatment as she had a medical card.

### Examination

Among the people that the Ombudsman contacted were the woman's GP, the consultant involved and also the hospital. There was a direct conflict of evidence between the complainant's GP and the consultant as to whether or not semi-private treatment had been requested. However, it was established that semi-private treatment did speed up the complainant's treatment.

The Ombudsman noted that the consultant's secretary had made contemporaneous notes of her conversation with the GP which supported the view that semi-private care had been requested. In addition the woman's answers to three different questions on the hospital admission form confirmed that she wished to be treated as a private patient.

### Outcome

Given the conflicting evidence the Ombudsman was not in a position to conclude that either account was correct and accordingly did not feel he had a basis to ask the hospital to review its actions.

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## Long Term Illness Scheme

HSE

H09/16/1551

Completed 30/06/2017

### # Upheld

#### Background

A number of people complained about the refusal of the Health Service Executive (HSE) to refund charges for drugs or prescription charges that were incurred prior to the award of the Long Term Illness Scheme (LTI) or to the award of a medical card. These people were unaware of their entitlement to a LTI and/or a medical card and were obliged to pay for a portion of their drugs and/or their prescription charges. People who applied for retrospective refunds were advised by the HSE that there was no legislative provision for refunds prior to being awarded a LTI or a medical card.

#### Examination

The issues were two fold namely: (1) failure of the HSE to give refunds backdated to the date of diagnosis/prior to the award of the LTI or medical card and (2) lack of awareness of the scheme. The decision to allow applications from the date of application only is unfair. In some cases an applicant is simply unaware of an entitlement to a LTI and may never have been informed by their GP or Pharmacist. When someone is diagnosed with a long term illness, the focus is on recovery and care, as opposed to discovering State entitlements or submitting an application for an entitlement on the date of diagnosis. We suggested that the HSE consider backdating applications for a period of four years on the basis that the Office of the Revenue Commissioners allows four years for tax refunds for medical expenses.

## Outcome

The HSE confirmed that it had written to its GPs asking them to ensure that all patients who have a diagnosis of any medical condition that would render them eligible for a LTI are so informed. The same applies to those who have medical cards and private patients whose only contact with the medical profession may be confined to the GP or Pharmacist. The HSE also confirmed that information leaflets will be displayed. The HSE subsequently confirmed that it would refund prescription charges and drugs payments for a period of four years to all those from whom we received complaints. The HSE also agreed to allow a leeway of three months for new applicants.

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## Nursing Home Support Scheme

H09/17/0333

Completed 21/07/2017

### # Not Upheld

#### Background

A woman complained to the Ombudsman that her mother was pressured by the HSE into signing the NHSS contract for her father in 2014. Her mother passed away in late 2014 and she believed that the contract should have ended at that time. In December 2014 the woman asked the HSE to cancel the contract and also asked for a refund of the money paid to the HSE under that contract. The woman's father, who has dementia, was made Ward of Court in 2016.

#### Examination

The woman provided a medical report from July 2014 that said her mother had the capacity to make decisions about her both her own care and that of her husband. The woman disputed the assessment and said that when her mother was alive, she had different views on several matters to those recorded by the HSE. The Ombudsman can not consider clinical judgement and as the woman's mother had since passed, there was no way to check the woman's claims. As regards the cancellation of the NHSS contract and the refund of the relevant fees the Ombudsman accepted the HSE's position that, given the father's medical condition, he was unable to express his preferred option and in the absence of enduring power of attorney, the HSE must act in the best interest of the patient. Additionally, as the woman's father is a Ward of Court she has no standing in respect of his affairs. The woman also questioned the validity of her father's status as a Ward of Court citing the Assisted Decision-Making (Capacity) Act 2015 but the relevant parts of that Act have not yet been commenced so the Ombudsman could not progress that part of the woman's complaint further.

#### Outcome

The Ombudsman sympathised with the woman but was satisfied that the HSE's position was correct.

## Primary and Community Care

HB7/17/0965

Completed 20/06/2017

### # Assistance Provided

#### Background

A man complained to the Ombudsman about his experience at a HSE mental health services centre.

#### Examination

In the HSE's response to the man's complaint, the man was asked if he would like to discuss the matter further with the Supervising Consultant. He was also advised of his entitlement to seek a review of the investigation of his complaint, within 30 days of the date of the decision letter. However, he did not avail of these options.

#### Outcome

The HSE confirmed that these options were still available to the man. The Ombudsman was satisfied that this was a reasonable response from the HSE and told the man that it was open to him to discuss the matter with the Supervising Consultant and/or to seek a review, and to come back to him if he was not satisfied with the response he received.

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## Primary and Community Care

HA4/17/0948

Completed 29/06/2017

### # Upheld

#### Background

A man complained that the number of home help hours given by the HSE to his father-in-law was lower at weekends than during the week even though his father-in-law's care needs remained the same.

#### Examination

Following contact from the Ombudsman, the HSE Regional Manager asked its local office to carry out a review of the case.

#### Outcome

Following this review, the HSE agreed to provide the man's father-in-law with two carers three times a day at weekends. The Ombudsman was satisfied that the HSE's response was reasonable.

## Complaint against staff

HA3/16/3278

Completed 07/07/2017

### # Not Upheld

#### Background

A woman complained about the outcome of a HSE investigation into her complaint against named staff members on two particular days while she was in the care of North Dublin Mental Health Service. She was unhappy with the HSE's findings as she was not involved in the complaint process.

#### Examination

The HSE explained that, following a preliminary investigation under the Trust in Care Policy, it found that the named staff members were not involved in the woman's care on the relevant dates. As it could not find any evidence to support the complaint no further action was warranted.

#### Outcome

The Ombudsman was satisfied that the HSE had investigated the complaint in line with the Trust in Care Policy. Following an examination of the complaint and the relevant records, he was also satisfied that the named staff were not involved in the woman's care on the relevant dates.

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## Treatment Abroad

H09/16/3627

Completed 01/06/2017

### # Not Upheld

#### Background

A woman's representative complained about a payment by the HSE under the Cross Border Directive (CBD).

#### Examination

The woman was approved for surgery under the CBD. She paid £10,745 for the procedure, which converted to a euro amount of €13,197 with the exchange rate applicable at the date the woman paid for the surgery. She was refunded €10,931 by the HSE, a difference of €2,266. The representative said that the HSE advised him that it would only reimburse applicants at the rate of exchange at the time of reimbursement rather than the time of payment by the patient. He said that this had resulted in a significant loss to the woman, who as a pensioner was on a fixed income. He also said that the woman was not aware of the possibility of such a significant financial loss.

The full details of the CBD were set out in the documentation which was completed by the woman. There was also correspondence between the HSE, the woman and her daughter regarding the CBD prior to her surgery. The refund due to the woman under the CBD is the cost of treatment abroad or the cost in Ireland, whichever is the lesser. The woman received the amount she was entitled to under the CBD.

Regarding the difference of €2,266, the HSE said that it considers that best practise, in line with HSE Finance Guidance, is to refund applicants at the rate of exchange at the date of refund rather than on the date the patient makes the payment. It also stated that patients can mitigate against any risk of currency fluctuations by the timely submission of claims for reimbursement.

The HSE's position was that the woman was told about the payment policy before she got the treatment and that she was reimbursed in line with the provisions of CBD and the relevant legislation. It also stated that it may only make a payment for which it has statutory authority to do so. It said that if it was to make any additional payment to the woman it would be operating outside of the legislation and such a payment would be contrary to the principles of transparency and equity.

#### Outcome

The Ombudsman sympathised with the woman in this matter but was satisfied that the HSE's decision was in line with the provisions of the CBD.

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## Investigation of Complaint

St. John of God Services

S38/17/2126

Completed 31/07/2017

### # Assistance Provided

#### Background

A woman complained about the way St John of God Services (SJOG) investigated her complaint against a staff member. She said that she has evidence which shows that the investigating team was misled by SJOG and she was not given the opportunity to present this evidence.

#### Examination

SJOG investigated the complaint under the HSE's Trust in Care Policy and its own policies on Safeguarding Vulnerable People and managing allegations of abuse against staff. It agreed a terms of reference with the woman. It examined each part of her complaint and it issued its final report with conclusions and recommendations.

#### Outcome

The Ombudsman was satisfied that SJOG had investigated the complaint in line with the relevant policies. He also found that the evidence held by the woman did not provide any new information and would not have altered the conclusions reached by the investigating team.



St. John of God Services

S38/16/3167

Completed 31/07/2017

### # Assistance Provided

#### Background

A woman complained that her brother, who is a resident under the care of the St John of God Services (SJOG), had sustained a serious eye injury. The incident had not been observed and so the cause of the injury was not confirmed. The woman said that staffing issues on the evening in question had contributed to the situation and she felt that her brother needed a dedicated carer on a 24 hour basis. Her complaint to the SJOG had been examined by two social care consultants who were independent of the service and who had made a number of recommendations to improve the way services were provided. However, the woman believed that the recommendations had not been implemented as she had not received a copy of the Action Plan. In addition, she felt that the investigation of her complaint did not explain how her brother sustained the injury to his eye.

#### Examination

The Ombudsman noted that the independent report into the complaint had set out what was thought to have happened to the woman's brother in relation to his eye injury. A visitor to the service had reported the incident to the staff on the night in question. The independent report by the two consultants contained a number of recommendations which had been formalised into an Action Plan. The Regional Director of the Service advised this Office that all of the recommendations had been implemented and provided assurance that additional resources and supports were in place to meet the man's needs.

#### Outcome

The Ombudsman assisted the woman by providing an outline of the recommendations, actions and progress made by the person in charge in relation to the man's care. The man also has the support of an independent advocate from the National Advocacy Service.

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## Nursing Home

### # Upheld

#### Background

A man complained that his father's nursing home (1) failed to maintain his funeral insurance policy and (2) initially refused to pay his funeral costs after he died.

#### Examination

The complainant's father took out a funeral expenses insurance policy in October 2010 while he was a resident of another nursing home. The term was for 16 years and the accruing benefit was €3,550. His father was admitted to another nursing home two years later. Payments under the insurance policy were made regularly until July 2012.

The new nursing home instructed that six months of the policy be paid and asked the insurance company to send reminders for further payments. It did so, but, despite a number of reminders, the nursing home did not complete and return the direct debit mandate to the insurance company. The policy lapsed in February 2013, as no monthly payments were received after that date.

27 months later, the nursing home told the complainant that, in the event of his father's death, it would make an application to the Department of Social Protection (DSP) for a grant towards the cost of his funeral. It confirmed that it would cover any deficit that arose from reasonable funeral expenses, after taking account of (1) his father's savings and (2) any grant from the Community Welfare Office.

Despite his father's clear decision to have a private insurance policy in place to cover his funeral expenses, the nursing home presumed that he would have been satisfied to rely on (1) State (HSE/DSP) payments (2) his own residual savings and (3) a contribution from the nursing home to cover the cost of his funeral expenses.

The consequences of letting the insurance policy lapse were that the family had to pay the cost of their father's funeral expenses. They also had the added burden and stress of having to deal with the fact that the policy was allowed to lapse at a time when they were primarily focused on grieving for the loss of their father.

#### Outcome

Following contact from the Ombudsman, the nursing home agreed to pay the man €3,550 towards the cost of his late father's funeral. It also agreed to offer him €1,000 to cover any additional funeral expenses and the uncertainty this episode may have caused him. In addition, the nursing home offered its sincere apologies for the manner in which it discontinued the funeral insurance policy and for the uncertainty this brought to the complainant and his family.

# Local Authority

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## Housing

L60/16/3749

Completed 15/06/2017

### # Not Upheld

#### Background

A man complained that Fingal County Council would not refund him the cost of repairing his house that he had rented under the Rental Accommodation Scheme (RAS).

#### Examination

The RAS agreement between the man and the Council specified a certain level of payment by the Council in respect of damage caused by outgoing tenants. The Council had met and actually exceeded this specified amount and had therefore fully honoured its agreement with the man.

The Ombudsman was satisfied that the Council had met its obligations under this agreement.

#### Outcome

The Ombudsman was satisfied that the Council had acted correctly.

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## Housing

L18/16/3461

Completed 14/07/2017

### # Assistance Provided

#### Background

The Tenant (Incremental) Purchase Scheme allows local authority tenants buy their homes.

The Scheme requires that a couple must have a minimum reckonable income of €15,000 to qualify. It also requires that employment income must be the primary source of income.

Kerry County Council refused to allow a couple, whose income was €22,500, to buy their home. This was on the basis that the majority of their income (80%) was from Social Welfare payments and was not “reckonable income” that it needed to be to qualify under the scheme.

#### Examination

The Department of Housing issued a Direction to local authorities. The Direction defined Reckonable Income as “... (a) income from employment ... (e) income from social welfare payments but only where these payments constitute a secondary source of income.” As the couple’s primary source of income was social welfare payments, rather than employment income, this meant that their social welfare income was not “reckonable income” under the

scheme and that, accordingly, Kerry County Council's decision to refuse their application was correct. The Ombudsman examined the Tenant Information Booklet that the Department produced which was designed to explain the Scheme to tenants.

It says that reckonable income for the purposes of the Scheme included "income from wages, salaries and some social welfare payments but only where they are additional to employment income." As the couple's social welfare income was additional to their employment income, following the wording in the Booklet would mean that the couple's social welfare would qualify under the scheme. The Ombudsman was concerned that the content of the Department's Tenant Information Booklet was inconsistent with the Department's own Direction to local authorities and therefore misleading.

#### Outcome

The Department reviewed the contents of the Tenant Information Booklet to ensure that it is consistent with the Direction that it issued to local authorities.

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## Housing

L24/17/0980

Completed 06/06/2017

### # Upheld

#### Background

A woman complained about Laois County Council's refusal of her request for an increase to the Housing Assistance Payment (HAP) in respect of her tenancy.

#### Examination

The woman told the Council that she had received notice from her Landlord that her rent was due to increase from €650 to €900 and that she could not afford the new amount. She stated that she was required to give a month's notice to the landlord. She asked the Council to increase the HAP for her tenancy. The Council refused her request and said that the payment limit for her family was €610. It told the woman that as there were still a number of weeks left before her rent increased, it was open to her to find other accommodation.

The Council told the Ombudsman if the woman could not find other accommodation for her family and was at risk of homelessness it would re-examine her application. The Ombudsman pointed out that the woman had a formal tenancy for the property in question and was required to give notice if she was leaving. He referenced her correspondence in which she confirmed that her landlord required one month's notice. He told the Council that other properties for rental in Laois were being advertised for amounts similar to the increased rent, which the woman said she could not afford. He also said in considering other properties this was without taking into account the family's current arrangements for school, work etc. and whether or not such properties posed any difficulties in this respect. The Ombudsman asked the Council to exercise its discretion and increase the HAP for the property by the full 20%.

#### Outcome

The Council approved a discretionary increase of the full 20% to the HAP.

## Housing

L44/17/0537

Completed 14/07/2017

### # Not Upheld

#### Background

A woman's representative complained to the Ombudsman about the refusal by Sligo County Council to take ownership of her previous property and renovate it. The woman bought a house under the 1979 Tenant Purchase Scheme. She suffered ill health in 2009 and her home had fallen into disrepair and was no longer suitable for her needs. She was rehoused by the Council. It was her understanding that her ownership would be transferred to the new property and the Council would take ownership of the previous property and renovate it.

#### Examination

The woman bought the property in 1988 after it was certified as being in good structural condition in late 1987. Repair works had been carried out to the property by the Council in 1983. In March 1992, she reported to the Council that large cracks were reappearing in the walls. It was inspected by an Engineer, who recommended renovations to the property.

Under the Tenant Purchase Scheme, a local authority is under no obligation to ensure a house is in good structural condition before it sells it. Additionally, on completion of the sale, the owners are responsible for the repair and maintenance of the property. The woman pursued legal action against the Council that alleged the house was structurally defective when it was sold to her. However this is a separate issue to that raised with this Office. Her solicitor wrote to the Council in 2009 and asked that it explore the possibility of a settlement to include an exchange of her house for more suitable accommodation. She was rehoused by the Council but this was due to her housing needs as a result of her medical condition and there was no evidence of the Council having agreed to transfer ownership of the properties when it rehoused the woman. The Ombudsman asked the woman if she had evidence of such an agreement but she did not provide any.

#### Outcome

The Ombudsman sympathised with the woman but was satisfied that there was no evidence that the Council considered transferring ownership of the properties. Additionally, there was no evidence of any commitment by the Council to carry out repairs to the property, which the woman privately owned.

## Housing

L59/17/0235

Completed 22/06/2017

### # Partially Upheld

#### Background

A woman complained to the Ombudsman about the manner in which her application for homeless status was dealt with by South Dublin County Council (the Council). She was also unhappy that the Council refused her homeless priority on its housing waiting list.

#### Examination

While a review of the housing file indicated that there were a number of issues with the Council's handling of the woman's application for homeless status, the Ombudsman considered that the main issue in the complaint was the refusal to grant the woman homeless priority. The Council had offered to meet the family's social housing need through the Housing Assistance Payment (HAP) scheme. The HAP scheme is defined in housing legislation as a social housing support, much the same as the provision of a Council-owned property. While he was satisfied that the woman's family were technically homeless, as defined in Section 2 of the Housing Act (1988), the Ombudsman considered that the fact the woman could apply for HAP meant there was a potential solution to her difficulty available to her that she has chosen not to pursue.

#### Outcome

The Ombudsman decided not to pursue the substantive matter with the Council as it had fulfilled its obligations by providing the family with the option of social housing support in the form of the HAP. He brought his concerns regarding the issues with the application process to the Council's attention.

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## Planning

L07/17/0653

Completed 20/07/2017

### # Assistance Provided

#### Background

A woman complained that Cork City Council was failing to enforce planning conditions on a neighbouring development and that this failure was facilitating "run off" water damage to her home.

#### Examination

The Ombudsman examined the records relating to the development in question. He was satisfied that, although the Council had investigated this issue before, it should make a fresh assessment of the situation on the basis of the woman's new evidence.

#### Outcome

The Council agreed to re-examine the enforcement issue.

## Burial Grounds

L05/16/3750

Completed 15/06/2017

### # Not Upheld

#### Background

A man complained that Clare County Council would not allow him replace headstones on his family plot in an old graveyard.

#### Examination

The legislation governing graveyards was examined and it was also noted that the graveyard is a Recorded Archeological Monument. The Council had allowed the man carry out some work on the plot but under the legislation it was required to preserve and protect the graveyard and could not allow the removal of the two existing headstones. On this basis it had refused the man's application.

#### Outcome

The Ombudsman was satisfied that the Council had acted correctly.

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## Sewerage & Drainage

L15/15/3167

Completed 06/07/2017

### # Upheld

#### Background

The Ombudsman received a complaint from a man about flooding on his property. He lived beside Health Service Executive (HSE) lands that flooded during periods of heavy rain resulting in an overflow of water on his property. This damaged his percolation area and septic tank, which left his toilets and bathrooms inoperable. The man said that the flooding on the land was due to a broken concrete drain (culvert) that ran under the public road.

#### Examination

A key issue in this case was establishing the cause of the flooding and who was responsible for fixing the problem. The man had been in contact with both the HSE and Galway County Council (GCC) on the matter, with both organisations informing him that it was the other's responsibility. Following an inspection of the area, a review of the relevant HSE and GCC's files and discussions with his legal advisor, the Ombudsman formed the view that the cause of the flooding was the broken drain and that this was a matter for GCC. Following protracted correspondence with GCC, it agreed to replace the existing drain and carry out remedial works to an adjacent land owner's property to prevent further flooding of the HSE's lands. These works were part funded by the HSE.

#### Outcome

The Ombudsman welcomed the decision of GCC and the HSE to carry out works to prevent further flooding of the man's property.



## Waste Permit

L36/17/0521

Completed 26/06/2017

### # Not Upheld

#### Background

A man who was a Director to two companies complained that Meath County Council would not issue a waste management permit to one of his companies until his other company pays all of the debts it owes to the Council. He said the Council would no longer engage with him on the matter. The man said that one of his companies had not operated since 2008 but that the Council still charged an annual monitoring fee. He also said that the Council appeared to be confusing the liabilities of his company with another non related company with a similar name.

#### Examination

With regard to the man's complaint that the Council would no longer engage with him, the Ombudsman noted that the Council met a number of times with the man and his consultants, as well as local political representatives. It also corresponded with him on the debt, including a detailed breakdown of the monies owed to the Council.

While one of the companies had not operated since 2008, the Ombudsman noted that a permit holder, if no longer operational, may surrender the permit and avoid yearly monitoring fees. However, the man did not apply to surrender the permit.

The Council confirmed that the liabilities of the man's company were not being confused with another non-related company. It provided a copy of the Council's calculations of the company's liabilities.

The Council processed the waste facility permit application (notwithstanding outstanding monies owing to the Council in respect of his other company) subject to submission of a €5000 bond.

#### Outcome

The Ombudsman was satisfied that the Council's position was reasonable. He advised the man that it is open to him to surrender his permit if he wishes to avoid yearly monitoring fees and that he would receive his waste facility permit on receipt of a €5000 bond.

# Reception and Integration Agency

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## Accommodation Transfer

C15/17/1498

Completed 04/07/2017

### # Not Upheld

#### Background

A man complained to the Ombudsman about the Reception & Integrations Agency's (RIA) decision to refuse his request to transfer to self-catering accommodation. He said that he had special dietary requirements that were not being met in his current accommodation.

#### Examination

RIA stated that centre management had been providing the man with raw food, suitable to his condition, which he could cook in the newly installed kitchens. It said that an arrangement had been put in place whereby the man could collect his provisions each Friday, but that he had not done so in several months. According to RIA, it was informed by centre management that the man joined a group of eight others who all cook together in the newly installed kitchens and that he ate in the dining room on most days.

#### Outcome

There are two self-catering centres in the State and the Ombudsman has been told that when a unit in one of these centres becomes available, persons / families with severe medical and / or social needs are prioritised. Having reviewed the evidence and discussed the matter with the centre manager, he was satisfied that the man's dietary requirements were being reasonably met in the centre. In such circumstances, there was no basis on which he could seek a further review of RIA's decision.

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## Accommodation Transfer

C15/17/1745

Completed 05/07/2017

### # Assistance Provided

#### Background

A woman complained about the decision of the Reception & Integration Agency (RIA) to refuse her request to transfer to alternative accommodation in Cork city. The woman, who had very little English, was the only Somalian national in her current accommodation. She sought a transfer to be with other Somalis.

#### Examination

The RIA told the Ombudsman that it could not grant the woman's transfer as there were no suitable spaces in the centre she had sought a transfer to. However, it was aware the woman

had a friend in the centre in Cork city and offered to transfer them to the woman's centre so that they could live close together.

#### Outcome

The Ombudsman was aware that centres in the direct provision system are at near full capacity and that transfers can only be facilitated in exceptional circumstances. He was satisfied that the solution put forward by the RIA in this case was reasonable.

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### Direct Provision Allowance

C22/17/2104

Completed 16/08/2017

#### # Upheld

#### Background

A woman complained to the Department of Social Protection that she did not receive her weekly Direct Provision Allowance (DPA) while she was resident in direct provision in Dublin from October 2016 to January 2017. She said that her name was misspelt on her ID card so she had no identification in her correct name. According to the woman, she subsequently moved from Dublin to Kerry in January 2017 and was awarded the allowance.

#### Examination

The Department stated that the woman did not appear to have presented to the Community Welfare Service while in Dublin and it had no record of an application for the allowance or a PPSN prior to March 2017. Its records indicated that she first applied for the allowance when she received her PPSN at the end of March 2017. The Department agreed to review the woman's entitlement to the DPA for the period in question and arrears of €223.75 were paid.

#### Outcome

The Ombudsman was satisfied that the woman had received her correct entitlement.

# Regulatory

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## Registration of teachers/Recognition of qualifications

The Teaching Council  
R29/16/3705  
Completed 20/06/2017

### # Not Upheld

#### Background

A woman complained to the Ombudsman about the decision of the Teaching Council to grant her conditional registration only when she applied to be registered as a primary school teacher. The woman had qualified in another jurisdiction and had not therefore completed the Irish language requirement. The woman currently teaches in a school where Irish is not taught.

#### Examination

The current teacher registration requirements provide that primary school teachers must be able to teach the Irish language and the range of primary school subjects through Irish. This Irish language requirement has a legislative basis. However, the Ombudsman also noted that it may be open to the woman to register as a special needs teacher (with no Irish language requirement) if she completes the Department of Education postgraduate special educational needs (Postgrad SEN) course or another programme of study which may fulfil the requirements for registration as a special needs teacher. The Teaching Council had offered to review any such course in advance to ensure that, on completion, the woman would meet the registration requirements.

#### Outcome

The Ombudsman was satisfied that the Teaching Council's actions were fair and reasonable and in line with the relevant legislation.

# Office of the Registrar General

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## Register of Solemnisers – Licence to conduct weddings

C50/17/0920

Completed 18/07/2017

### # Assistance Provided

#### Background

A couple complained about the delay and lack of decision by the General Register Office (GRO) on their nominations to the Register of Solemnisers. They said that, although all the required documentation had been provided, no decision has been made to date.

#### Examination

The GRO said that it cannot process the applications without the contact details for the person who made the nomination. The nominator had provided contact details for the ministry which is also the contact details for the couple. The nominator and the couple had been notified of this on a number of occasions. The GRO agreed to provide a written guarantee to the nominator saying that it will only contact him to check on the solemnisation of a marriage by the nominees if issues arise.

#### Outcome

The Ombudsman found that the GRO's decision was reasonable and in line with the relevant legislation.

# Culture, Heritage & the Gaeltacht

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## Cessation of Turf Cutting Compensation Scheme

C12/17/1236

Completed 28/08/2017

### # Not Upheld

#### Background

A man complained about the refusal of the Department of Culture, Heritage and the Gaeltacht to compensate him under the Cessation of Turf Cutting Compensation Scheme.

#### Examination

The man made it clear that he had not cut turf in the relevant period due to a particular health problem. The Scheme in question is aimed solely at getting those who were actually cutting turf to stop doing so. It does not provide compensation for those who had already stopped because of ill health or for any other reason.

#### Outcome

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

# 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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